

**U.S. Department of Justice**

*United States Attorney
Southern District of New York*

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April 12, 2021

BY ECF

MEMORANDUM ENDORSEMENT

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
New York, New York 10007

Re: *Turner v. Gjelaj, et al.*,
No. 18 Civ. 1973 (LTS) (GWG)

Dear Judge Gorenstein:

This Office represents the United States of America and George Gjelaj (“Defendants”) in connection with the above-referenced action. On March 30, 2021, the Court ordered a discovery schedule. **Dkt. No. 126**. I write to provide the Court with a status update based upon a recent conversation that the undersigned had with Plaintiff’s daughter, and I respectfully request a stay of discovery in this matter.

By way of background, this is a *Bivens* action arising from a search of Plaintiff’s apartment in August of 2017. Until December of 2020, Plaintiff was incarcerated at the Metropolitan Correctional Center (“MCC”). However, when his period of incarceration ended in December of 2020, Plaintiff was deported to Jamaica. See **Dkt. No. 99** (letter from Plaintiff alluding to his imminent transfer to the custody of Immigration and Customs Enforcement).

On March 15, 2021, the undersigned conferred with Plaintiff in order to propose a discovery schedule to the Court. On March 30, 2021, the Court endorsed the proposed discovery schedule. **Dkt. No. 126**.

On April 11, 2021, the undersigned received an email from a person named Nickesha Turner who stated that she was Plaintiff’s daughter, and she asked to speak to the undersigned. On April 12, 2021, the undersigned spoke with Ms. Turner. Ms. Turner informed the undersigned that Plaintiff passed away in early April while in Jamaica. I then provided this individual with the contact information for the Court’s *pro se* office, as well as this case’s docket number.

Pursuant to **Federal Rule of Civil Procedure 25(a)**, Plaintiff’s successor or representative must make a motion for substitution to the extent the successor or representative seeks to pursue

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this action. Without such a motion and court ordered substitution, there is currently no party who can prosecute this case. Accordingly, Defendants respectfully request a stay of this action until such a motion is made and granted. The Defendants further ask the Court to order that any such motion be made by July 12, 2021, as set forth by **FRCP 25**. *See, e.g., Miller v. DCM, Inc.*, No. 04-cv-1931 (JGK) (DCF), (S.D.N.Y. 2004), Dkt. Nos. 45-48.

I thank the Court for its attention to this matter.

Sincerely,

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Southern District of New York

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All discovery is stayed. The deadline for an authorized representative of plaintiff to move to substitute the proper party is July 15, 2021. (See Fed. R. Civ. P. 6(d)). Any such motion is returnable before the undersigned.

Any motion to dismiss for failure to timely substitute a proper party under Fed. R. Civ. P. 25(a)(1) is returnable before Judge Swain, shall comply with her individual practices, and shall be filed by July 29, 2021. Defendants shall serve a copy of this order on plaintiff and his daughter in the same manner that defendants served this letter.

So Ordered.



GABRIEL W. BRENSTEIN
United States Magistrate Judge
April 13, 2021