

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

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CLERK

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August 14, 2020

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Mr. Hartson Dustin Fillmore III  
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Mr. Jonathan F. Mitchell  
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Austin, TX 78701-0000

No. 19-10754 Richard DeOtte, et al v. Alex Azar  
USDC No. 4:18-CV-825

Dear Mr. Fillmore, Mr. Fillmore, and Mr. Mitchell,

The case has been removed from abeyance and briefing will now resume. Appellee's brief is due within 30 days from the date of this letter, see **FED. R. APP. P.** 31(a)(1). **5<sup>TH</sup> CIR. R.** 31 and the Internal Operating Procedures following rules 27 and 31 state that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

**Guidance Regarding Citations in Pleadings.**

**5<sup>TH</sup> CIR. R.** 28.2.2 grants the Clerk the authority to create a standard format for citation to the electronic record on appeal. You must use the proper citation format when citing to the electronic record on appeal.

- A. In single record cases, use the short citation form, "ROA" followed by a period, followed by the page number. For example, "ROA.123."

- B. For multiple record cases, cite "ROA" followed by a period, followed by the Fifth Circuit appellate case number of the record referenced, followed by a period, followed by the page of the record. For example, "ROA.13-12345.123."
- C. Please note each individual citation must end using a termination of a period (.) or semicolon (;).

**ATTENTION ATTORNEYS:** Direct access to the electronic record on appeal (EROA) for pending appeals will be enabled by the U S District Court on a per case basis. Counsel can expect to receive notice once access to the EROA is available. Counsel must be approved for electronic filing and must be listed in the case as attorney of record before access will be authorized. Instructions for accessing and downloading the EROA can be found on our website at <http://www.ca5.uscourts.gov/docs/default-source/forms/instructions-for-electronic-record-download-feature-of-cm>. Additionally, a link to the instructions will be included in the notice you receive from the district court.

Sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. Access to sealed documents will continue to be provided by the district court only upon the filing and granting of a motion to view same in this court.

**Brief Template:** The clerk's office offers brief templates and the ability to check the brief for potential deficiencies prior to docketing to assist in the preparation of the brief. To access these options, log in to CM/ECF and from the Utilities menu, select 'Brief Template' (Counsel Only) or 'PDF Check Document'.

**Record Excerpts:** 5<sup>TH</sup> CIR. R. 30.1.7(c) provides that the electronic PDF version of the record excerpts should contain pages representing the "tabs" identified in the index of the document. However, we remind attorneys that the actual paper copies of record excerpts filed with the court must contain actual physical tabs that extend beyond the edge of the document, to facilitate easy identification and review of tabbed documents.

**Reminder as to Sealing Documents on Appeal:** Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Melissa V. Mattingly, Deputy Clerk  
504-310-7719

Enclosure(s)

cc w/encl:

Ms. Elizabeth N. Dewar  
Ms. Jessica Fuhrman  
Ms. Crystal Johnson Geise  
Ms. Susan Pearl Greenberg  
Ms. Claudia Hammerman  
Mr. Richard Brian Katskee  
Ms. Jamie A. Levitt  
Ms. Melina Maria Meneguini Layerenza  
Mr. Craig A. Newby  
Mr. Bruce H. Schneider  
Ms. Priscilla Joyce Smith  
Mrs. Heidi Parry Stern  
Ms. Catherine Weiss

Case No. 19-10754

Richard W. DeOtte, on behalf of himself and others similarly situated; Yvette DeOtte; John Kelley; Alison Kelley; Hotze Health & Wellness Center; Braidwood Management, Incorporated, on behalf of itself and others similarly situated,

Plaintiffs - Appellees

v.

STATE OF NEVADA,

Movant - Appellant