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Attorney for Defendant and Appellant

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
No. DA 24-0139

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STATE OF MONTANA

Plaintiff and Appellant,

v.

YANBIN BAO,

Defendant and Appellee.

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**OPPOSED MOTION AND BRIEF IN SUPPORT OF MOTION TO STAY  
APPEAL**

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Appellee Yanbin Bao respectfully files this emergency motion to stay the appeal and remand this case to the Fourth Judicial District Court, Missoula County, for a ruling on Bao’s pending motion to dismiss for lack of speedy trial and request for hearing, which is already filed in District Court, the Honorable Leslie Halligan presiding. The remand would be for this limited purpose. The remand is the only

practical remedy for Bao as she must provide a disposition of her case to the United States government before June 10, 2024, or she will immediately become subject to removal proceedings.

A copy of the motion to dismiss for lack of speedy trial is attached as Appendix 1. The State opposes this motion.

The State arrested Bao on May 29, 2023, charged her by Information, and she entered Not Guilty pleas to all counts. (Appendix A, 2.) Bao is not a United States citizen. (Appendix 1, 2 and Exhibit 1.) At the time she was charged, Bao was in the process of obtaining a green card through the United States Citizen and Immigration Services (USCIS). (Appendix 1, 1.)

On January 30, 2024, Bao participated in an interview with USCIS as part of her green card application process. (Appendix 1, Exhibit 1.) After the interview, Bao expected she would receive a “Request for Evidence” letter from USCIS giving her roughly 90 days to provide a **disposition** of any criminal charges or her application would be denied. (Appendix 1, 3.) Once she had the interview, USCIS could have sent the letter as soon as the next day. As such, Bao requested her trial occur in April 2024, in order to comply with any potential USCIS requests. (Appendix 1, 3.)

The district court scheduled Bao’s trial for April 11, 2024. On March 6, 2024, the State filed a Notice of Appeal, seeking review of the district court’s order

suppressing evidence. (Appendix 1, 4.) At a hearing on March 12, 2024, the district court found it did not have jurisdiction over substantive matters, vacated the April 11, 2024 trial, and scheduled an aspirational trial date of June 17, 2024. (Appendix 1, 4 and 5.)

On March 19, 2024, Bao received the “Request for Evidence” letter from USCIS, giving her until June 10, 2024, to provide the agency with a disposition of her criminal charges or her green card application would be denied. (Appendix 1, Exhibits 1 and 2.)

On March 26, 2024, Bao filed a motion to dismiss for lack of speedy trial in district court, citing her inability to provide a disposition to USCIS as extreme prejudice in response to the State’s lack of diligence in providing discovery and the State’s appeal which caused her trial to be vacated. (Appendix 1).

Staying the appeal in the instant matter should be done in the interests of justice. Unlike most appeals, Bao is the appellee in this case, not having taken the appeal herself. Additionally, and unlike most appeals, this is an interlocutory appeal and Bao has not yet had the opportunity to be tried in district court. The State’s act of appealing the district court’s order suppressing evidence in the case forced the district court to vacate the trial Bao needed in order to comply with the request from USCIS. Bao has presented this argument through the *Areigwe* analysis to the district court.

Bao's green card application will be denied, and she will become subject to deportation on June 10, 2024, if she does not provide a disposition of her criminal charges to USCIS. See Appendix 1, Exhibit 1. This stay would allow the district court to review her speedy trial motion in time for her to respond to USCIS. Should this Court deny the stay, and the district court wait to review the speedy trial motion, Bao will lose the only practical chance she has at providing a disposition to USCIS in light of the State's decision to appeal the order suppressing evidence in her case which caused the loss of her much anticipated trial date. A stay would allow the district court to adjudicate whether the State's actions (of failing to disclose evidence and taking an appeal in this matter, prejudiced Ms. Bao to the extent the State) violated Ms. Bao's right to speedy trial prior to the deadline by which she must let USCIS know of the disposition of her case.

Granting the emergency stay and issuing a limited remand also allows for judicial economy. This Court has previously stayed an appeal taken by the defendant when both parties agreed that judicial economy favored the stay. *See State v. Edmonds*, DA 18-0245, Order (May 21, 2019) (staying appeal and remanding upon the parties agreeing, holding "judicial economy favors resolution of the motion for new trial prior to consideration of any other appealable issues."). This Court has likewise stayed a defendant's appeal over the objection of the State when the Court found judicial economy supported the stay. *See State v.*

*Grimshaw*, DA 22-0473 (staying appeal and remanding for the district court’s consideration of a motion to withdraw guilty plea and stating the question of whether the motion was timely filed “should be addressed first by the court in which the motion is filed...and holding “if [*Grimshaw*] loses that argument, he may include it with the appeal of his conviction.”) Here, the State filed an interlocutory appeal, and if the State loses the motion to dismiss for lack of speedy trial on remand, the State, like in *Grimshaw*, may include that argument in its appeal of the order suppressing evidence. Addressing both arguments at one time supports judicial economy.

Bao requests this Court grant her emergency motion to stay and remand to give the district court enough time to address the merits of her motion to dismiss for lack of speedy trial ahead of the deadline by which Bao must respond to USCIS or become immediately subject to removal proceedings.

DATED this 29<sup>th</sup> day of March 2024.

STEPHENS BROOKE, P.C.

By: /s/ Jordan Kilby  
Jordan Kilby

## CERTIFICATE OF SERVICE

I, Jordan Rhodes Kilby, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 03-29-2024:

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Electronically signed by Courtney Johnson on behalf of Jordan Rhodes Kilby  
Dated: 03-29-2024