



**IN THE THIRTY-SEVENTH JUDICIAL CIRCUIT  
LEE COUNTY, ALABAMA**

**STATE OF ALABAMA,**

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v.

**CC-2014-0565**

**MICHAEL GREGORY HUBBARD,**  
**Defendant.**

**State’s Sur-reply Concerning New Evidence that  
Hubbard Was Not Truthful with the Court**

The State of Alabama opposes Defendant Michael Gregory Hubbard’s motion for early release (Doc. 853). The State is filing this sur-reply because it has uncovered new evidence that Hubbard was not truthful when he wrote directly to this Court that he was “sincerely sorry” and that he took “responsibility for [his] mistakes.”<sup>1</sup> Respectfully, and based on the below evidence, the State asks this Court to deny Hubbard early release.

**Summary of the Argument**

For more than seven years—through the grand jury’s investigation, Hubbard’s trial, his appeals, and his prison report date—Hubbard denied any and all wrongdoing. Then, on September 10, 2021, Hubbard reversed course and filed a motion asking for early release.

<sup>1</sup> Any objection Hubbard may raise to the availability of a sur-reply or its timing would be groundless for two reasons. One, Hubbard made this evidence relevant when he “apologized.” Two, the State could not have filed this response any earlier because this evidence, by its very nature, took time to develop. Had the State filed immediately, Hubbard would have argued the evidence does not represent his true feelings *now* or the examples were not sufficiently expansive. To that end, the State welcomes Hubbard’s counsel’s review of the 600-plus phone calls and dozens of emails the State provided to find any inkling of the type of remorse that Hubbard expressed in his letter to this Court.

As part of that motion, Hubbard signed a letter to this Court in which he stated that he recognized and admitted his errors and took responsibility for his mistakes, among other statements that indicated he regretted the harm his crimes caused. Following that letter, the State retrieved more than 600 of Hubbard's non-private prison phone recordings from August 1, 2021, through last week. The State also collected emails covering nearly the same period of time. This evidence shows—in Hubbard's own words—that despite his letter, Hubbard holds precisely the same view he has always held. He “did nothing wrong.” “Evil” people prosecuted him. A “spineless” Supreme Court upheld his convictions. And it has all been “so unfair, unjust and wrong.”

Hubbard's own words also show that his manufactured apology was not his only gambit to get out of prison. Hubbard tried and failed to orchestrate his release by seeking to have language added to a prison bill when the Legislature recently met in special session. Hubbard proposed killing the entire session to get his way, but Alabama's legislators did not go along with his plan. Hubbard is also working with Billy Canary—his friend and a central witness in his case—on a disinformation campaign to circulate an ostensibly neutral law review article about Alabama's Ethics Laws and Hubbard's case. Canary and former Hubbard attorney Lance Bell provided tainted, undisclosed “expert advice” on the drafting of this article, which, per Canary, otherwise “wouldn't have come out the way it did” and which is now published without attribution to either source.

For his part, Hubbard continues to consult with Canary about a media rollout of the article that will best highlight his unfair fate, influence this Court, and spark changes to Alabama's Ethics Laws. These actions alone justify denying Hubbard's motion for early

release. But combined with an apology that can only be described as a lie, Hubbard deserves no mercy. In his motion, Hubbard’s attorney wrote that his “apology should carry weight when considering early release.” Doc. 877 at 2. He is right that it should carry weight. But when the apology is a lie, the scales tip in favor of Hubbard’s continued incarceration, not his release.

### Factual Background

Like every other Department of Corrections inmate, Hubbard is entitled to little privacy. He is permitted to make phone calls to an approved list of family and friends, but those calls are recorded and maintained by a third party named Securus, Inc. At the beginning of every call, Hubbard hears a prerecorded voice which states that the call is “not private,” “will be recorded,” and “may be monitored.” When the party he calls answers, they too are told—before they can accept the call—that the call is not private, is being recorded, and may be monitored. This means that before every call Hubbard makes, he is told twice that his call is not private. The automated message further informs Hubbard that if he wishes to make a private call (such as to his attorney) he needs to hang up and follow his facility’s instructions to have the number he wishes to call added to an approved list of numbers for which calls are not recorded. All of the calls the State retrieved are calls that Hubbard continued to conduct after hearing that he could hang up and follow instructions for a private call.<sup>2</sup> Thus, Hubbard has no privacy interest in these calls. *Teat v. State*, 636 So. 2d 697 (Ala. Crim. App. 1993) (holding that prisoners have no reasonable

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<sup>2</sup> Hubbard knew how to conduct private attorney-client calls because the State is aware of calls with his attorneys that were not included in the records provided by the Department of Corrections.

expectation of privacy in phone calls). As with the phone calls, Hubbard is able to send emails through a secure system that monitors his incoming and outgoing messages. These messages are not private.

Hubbard's awareness that his communications were subject to monitoring is also demonstrated by his use of code words, particularly with his wife, Susan Hubbard ("the quarterback"), and Billy Canary ("Emerald"). Based upon a thorough review of Hubbard's calls, emails, as well as the State's knowledge of Hubbard's case and background, the State has provided a key to their code words below:

The Quarterback	Susan Hubbard
Hospital CEO/Chief Hospital Official	Judge Walker
Emerald	Billy Canary
Head Doctors/Physicians/Surgeons	Hubbard's new attorneys
Treatment plan/RX	Hubbard apologizing/his Sept. 10 motion for early release generally
South Bend/The Irish	Notre Dame law student and the disinformation campaign generally
Martians/Taliban	State law enforcement officers

Finally, the State will provide the Court with a flash drive containing copies of the underlying recordings and emails that are cited within this brief. The State will also provide the Court with an HTML file of the State's motion. The Court may then click on the embedded citation of a call or email, and it will populate automatically using the flash drive

files. Where a citation says, for example, at 3:00, it refers to the approximate time a statement appears within the recording, not the time of day. Additionally, the State will provide defense counsel with a copy of every email the State collected that Hubbard sent or received (436 pages) as well as every phone call the State possesses (611 calls).<sup>3</sup>

A. Contrary to his statement to the Court, Hubbard has not accepted any responsibility for his crimes.

After more than seven years of steadfastly denying any wrongdoing, Hubbard dramatically shifted course two months ago. He signed a letter that apologized to his family, to the citizens of Alabama, and he stated that he recognized and admitted his errors and took responsibility for his mistakes. Relying on that letter, his counsel stated that “Hubbard has accepted responsibility for his convictions.” Motion at 6 (heading). He further wrote that “[b]y accepting responsibility for his actions, Defendant has already begun the rehabilitative process” and was thus fit for release pursuant to Alabama Code section 15-22-50 (providing for suspended sentences and probation in appropriate cases). The State responded, calling Hubbard’s apology an “unquestionably good thing,” but nonetheless observing that genuine remorse comes without strings attached and that courts generally consider remorse at sentencing, not years later after all other options are exhausted. Hubbard’s reply chided the State for characterizing his apology as “anything other than completely honest” and noted that “his time in prison has obviously given him the opportunity to reflect not only on his actions, but also on the broader implications that

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<sup>3</sup> The State reserves the right to provide additional recordings to the Court in whichever manner it deems appropriate should it become necessary.

his convictions have had on his former constituents and the entire political system.” Reply at 2. The State had no intention of further replying, until it learned how Hubbard truly felt.

1. Hubbard’s apology was calculated, insincere, and “better than doing nothing.”

Hubbard’s apology did not result from a year of reflection in prison. It came because there were no other legal options and his so-called “treatment plan” was “better than doing nothing.” This is the takeaway from a review of Hubbard’s calls and emails. They show, for example, that Hubbard’s friend Billy Canary met with Susan Hubbard and his new attorneys on August 5. Two days later, Canary reported that they had a good meeting with the “doctors,” had some good “surgical conversations,” and that they liked the “treatment plan.” Canary said that he expected these “doctors” would visit soon with Hubbard to do a “prescription or something.” [Call 3123 at 1:10 – 1:45](#). After Hubbard met with his attorneys on August 10, he reported to Susan that the plan was “better than doing nothing.” [Call 3112, Aug. 10 at 1:00 – 3:30](#). About two weeks later, Hubbard expressed doubts about the plan to Canary, writing: “The more I think about the treatment plan the physicians proposed to you and Susan, the more I am less optimistic of its success. The problem, of course, is the chief hospital official. Since he already authorized a less extensive procedure, I fear that he will deny another one. Still, it’s worth a try as we seek a treatment plan that will result in a cure.” [HUB021](#).

Hubbard overcame those doubts, in part from Canary’s encouragement. He wrote to Hubbard: “Sometimes the medicine that tastes the worst is the very best to bring upon a cure.” [HUB289](#). Hubbard also played the realist, not the repentant. On the day he signed

the apology letter, August 25, he told Susan that while a part of the draft letter he really liked was removed, it was “unanimous” that it would not be well received by this Court and that he was “looking at the ultimate goal.” For that reason, Hubbard said that he “held [his] nose and signed it.” [Call 3026 at 9:45](#). Hubbard did not waver even after Susan cautioned him not to “sell his soul.” As he rationalized it, he needed “to be in a position where [he] can get some things done,” *i.e.*, he needed to do whatever it took to get out of prison. *Id.* In an email to Canary, Hubbard offered the same sentiment: “Didn’t agree with everything but the doctors believe it is necessary to have a chance at treatment approval from the hospital. So I held my nose and signed.” [HUB029](#) (sent Aug. 25).

Hubbard also relied on Canary to prepare his fellow UGA alumni friends for the apology that was in the works. As Canary told Hubbard: “I communicated with them going into the thing that this was gonna maybe happen, and then I was able to communicate and chat with them when it did happen. And, you know, everybody understands that it’s about, there are not a lot of options, and this is a good one. And you went the extra mile as difficult as it was.” [Call 320, Sept. 13 at 5:08](#). Five days later, Hubbard spoke to one of those friends and made sure that everyone got Canary’s message: “I hope they all know I’m not guilty of anything.” [Call 267, Sept. 18 at 8:40](#).

2. Hubbard makes it clear to his people that he did nothing wrong.

It is not surprising that Hubbard had to hold his nose to sign his apology given that numerous other calls he made to other friends show that his attitude is unchanged: he did nothing wrong. And while Canary was laying the groundwork for Hubbard’s public apology with his Georgia friends, Hubbard got to work letting his other friends know the

truth—as he sees it. For example, shortly after Hubbard signed his apology but before he submitted it to this Court, he spoke to Friend One and declared that after he gets out of prison, “I’ll explain all the stuff that happened, but I promise you I did nothing wrong.” [Call 398, Sept. 3 at 12:45](#). He also told him, talking about his conviction and sentence: “It’s all been so unfair, unjust, and wrong.” [Call 398 at 4:30](#). The day after Hubbard filed his apology, he told Friends Two and Three: “I’ve asked God lots of times why he allowed this to happen.” “According to the way they’ve interpreted the law, they could indict and convict anybody in the Legislature who has a job.” [Call 336, Sept. 11 at 2:10](#); *see also* [Call 323, Sept. 13 at 3:45](#) (expressing the same opinion); [Call 320 at 10:15](#) (telling Canary that he recently wrote to Legislator One and expressed the same opinion).

The next day, Hubbard spoke to his son about Friend Four and said: “I hope she knows I’m not guilty of anything.” [Call 324 at 8:00](#). And while talking to Friend Five, Hubbard said: “I hope the folks there know I didn’t do anything wrong, and this was just a political hit job.” [Call 323, Sept. 13 at 4:28](#). Hubbard went on to spin a long story of multiple blackmails that led to his downfall, but which has no support whatsoever. *Id.* One week later, Hubbard spoke to Friend Six:

We filed a week ago Friday . . . . The scary thing [Friend Six] is that it comes down to that one guy. You know, the one guy who has just been, you know, it’s like he has some sort of animosity toward me. I don’t know what it is, but you know, all I can hope is that he’ll finally do the right thing. You know I think we made a very compelling argument. I mean, you could take everybody who has ever been, you know, convicted of anything with the ethics laws and add them all together and it doesn’t add up to mine. And I didn’t steal any money. I didn’t take a bribe. I didn’t, you know, extort anybody. I didn’t misappropriate any funds or anything like that. No quid pro quo. I’m just hoping for the right thing to happen.



[Call 254, Sept. 20 at 1:50.](#)

It is noteworthy that Hubbard identifies four crimes he was not convicted of but fails to mention the four crimes of which he was convicted: illegally lobbying the Governor and Commerce Director, use of office for personal gain, soliciting things of value from principals, and using State personnel and resources for personal gain. Likewise, Hubbard is mistaken that he faced a tougher punishment than everyone else convicted of ethics crimes combined. In just the last year, former Limestone County District Court Judge Doug Patterson received a four-year split sentence in the Department of Correction and former Limestone County Sheriff Mike Blakely received a three-year, day for day, county jail sentence. Both sentences are longer than Hubbard's 28-month sentence, and he should know—his attorney cited both cases in his brief asking for early release.

3. Hubbard lays the blame on others.

While accepting no responsibility for his crimes, Hubbard also let his friends and associates know where the blame truly belonged. Speaking to Friend One, Hubbard said: “I tried to understand why God has allowed it to happen. I know there's gotta be a reason. I still just don't understand just how this happened and how the Supreme Court didn't [] reverse it. It's just been uh—it's just inexplicable. And Susan can tell you some of the people we think are behind it. Some very powerful companies in Alabama we think were behind it. But you know, one of these days, I want to try to expose it all in a book.” He wasn't done: “It doesn't seem fair with people like Luther Strange and, you know, Matt Hart, this corrupt prosecutor. I mean, it's like they're off doing great, and I'm here.” [Call 398 at 6:00.](#) In a July email to Susan, he reiterated that view: “Some evil people have been

successful in keeping us physically apart, but that is temporary . . . .” [HUB070](#). And in a November call with Friend Seven, Hubbard said: “[Former Legislator One] also knows that this was a political hit . . . He saw it firsthand.” [Call 005, Nov. 1 at 6:55](#).

These examples were far from the only times that Hubbard’s words rang inconsistent with what he told this Court. For example, Hubbard wrote to this Court: “I take responsibility for my mistakes, and should the Court be inclined to grant my release, I will use the opportunity to rebuild trust with those who have lost faith in me and the entire political system.” Yet in a call with Lance Bell, he made clear where he stood: “I haven’t figured out how I screwed the State yet.” [Call 301, Sept. 15 at 2:15](#).<sup>4</sup> Hubbard also reserved special blame for the Supreme Court. On August 25, Hubbard emailed Canary asking him if he had gotten any explanation on the Supreme Court ruling against him: “I am still baffled and disappointed at those six people.” [HUB029](#). Canary responded: “Unfortunately, the SC remains a mystery. If I had to guess, politics played a part.” [HUB286](#). Hubbard sent another email five days later: “I know there is no point in wondering about the SC but I would really like to know what happened before I die. . . . Perhaps at some point the ones that are/were close to you will confide as to why they did

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<sup>4</sup> Hubbard cannot claim attorney-client privilege on this call for two reasons. Caselaw overwhelmingly holds that no privilege attaches when an inmate proceeds with a call despite being told it is not private and is being recorded and monitored. *See, e.g., United States v. Lentz*, 419 F. Supp. 2d 820 (E.D. Va. 2005) (holding that the Sixth Amendment is not violated by a prison recording all inmate calls, including to attorneys, so long as an alternative, private means of communication is offered); *cf. United States v. Walker*, 2011 WL 3349365 (M.D. Ala. 2011) (J. Thompson) (holding the privilege applied because [unlike Hubbard’s situation] the prerecorded warning stated that calls were recorded and monitored “except for privileged communications between an attorney and client”). Second, Bell filed his motion to withdraw as Hubbard’s attorney earlier on the day of this call. Doc. 857. The Court granted it the following day. Doc. 861.

what they did.” [HUB041](#). Canary responded: “SC, let it go for now. Tomorrow is another day. Let me continue to explore.” [HUB289](#).

Hubbard picked the issue back up the following month. On September 30, he wrote to Canary: “I hope you can get some intel from [Alabama Supreme Court]. I hope [they] will pass along to [their] spineless colleagues that their lack of guts will cause me to lose the business I built over 30 years in addition to everything else I’ve lost.” [HUB233](#). This, of course, being the same Supreme Court that reversed five of Hubbard’s convictions, which led to him serving 20 fewer months in prison. Canary and Hubbard reconnected two days later with Canary telling him that “[they] do[n’t] really, really know. And I think . . . what I would say is somewhat of a response, uh, it’s individuals that lack courage. Who just didn’t, in my opinion, use my words, didn’t want to do the right thing and just took the easy way out . . . . And [they] tried as best as [they] could to make the convincing argument which unfortunately it, um, it didn’t get.”). [Call 177, Oct. 2 at 12:30](#). Hubbard embraced this analysis rather than admit—as he did in the letter to this Court—that it was his own “errors” and “mistakes” that led to his downfall. Not surprisingly, Hubbard left these unvarnished opinions out of his letter to this Court.

B. Hubbard seeks other avenues to get out of prison.

Hubbard also failed to inform this Court that at the same time he was expressing remorse, he was actively involved in two other campaigns to secure his release and weaken the penalties for violating the Ethics Laws. These actions—which include his attempt to legislate from his prison cell and a disinformation campaign—are plainly inconsistent with his expressed remorse.

1. Hubbard tries and fails to get released through legislation.

First, the legislation. Hubbard and Canary worked together, along with Susan Hubbard and Lance Bell, in a failed effort to have language added to a prison bill during the recent special session that commenced on September 27. As Canary previewed the effort on September 17, ten days before the session started: “Let’s just say we’ve been huddling, the group around the quarterback, on making sure this time we get it right. I had a conversation with a good old friend of yours by the name of [code phrase for Lobbyist One], anyway, let’s just say this time all of the oars will be in the water at the same time. And there’s activities occurring even as we speak on language and uh, that’s about as far as I want to go . . . . Absolute focus of the team on what needs to be done this time in coordination.” [Call 278 at 3:00](#). Translated, Canary was in touch with Lobbyist One about helping Hubbard, after the group failed to secure Hubbard’s release through legislation in the 2021 regular session of the Legislature.

Lance Bell was also assisting Hubbard with a legislative solution. Five days before Canary’s call, on September 12, he reported to Hubbard that he’d been speaking with a House member about ensuring language to help Hubbard would be in the bill and that he’d “talk to another person to make sure that other person makes sure that’s in there.” Hubbard expressed hope that he could talk to a senator to make sure the necessary language was in the bill on that side of the chamber as well. [Call 328](#).<sup>5</sup> Yet in a September 21 call, Lance Bell informed Hubbard that the Senate did not want to carry a community corrections bill

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<sup>5</sup> Hubbard cannot claim attorney-client privilege because he voluntarily proceeded with the call with Bell while both parties knew it was being recorded and was not private. *See* fn. 4, *supra*.

that a House member had agreed to carry, which would have helped Hubbard, provided his preferred amendment was added. Hubbard expressed his disappointment since his other friend [Canary] had told him the bill had “professional help working behind that bill,” which Bell confirmed. [Call 237, Sept. 21 at 1:30.](#)

Hubbard then said what the House member needed to do is “pitch a fit and say I’m going to try to block everything on building prisons in the house. That’s the way you play the game. . . . But he oughta play that game and he oughta say he’s going filibuster, and he’s gonna complain about it, and he’s gonna talk about how it’s not going to do anything, and he’s gonna call out the Senate, he’s gonna raise hell, he’s gonna go to the media. That’s what he needs to do.” When Bell said the House member wouldn’t do that, Hubbard mused: “Well, I guess that one’s dead. Well, I was hoping we’d have another backup. You know the other one’s not going to work [his motion before this Court]. I mean, he ain’t going to do anything. We knew that when we submitted it. I was hoping this would be an alternative.” *Id.*

Trying one last time, Hubbard called Bell back and suggested that “somebody contact [Senator One] and ask him if he would try to recruit a couple of more [other Senators] that he’s friends with to tell [Senator Two] that if it’s not in there, they’re going to filibuster the bill and they’re going to vote against the bill and kill it.” [Call 236.](#) “That’s the only way to operate with those guys in that chamber is to threat, and it would only take about three Republicans to start saying they’re going to filibuster and they’re going to oppose it, and they’re going to make a big stink if it’s not in there, and they need to tell

[Senator Two] and say you know what you're going to have a mess on your hands." *Id.* Bell reported he'd make a call, but in the end, Hubbard did not get his wish.

2. Hubbard joins in an effort to circulate a law-review article to bolster the case for his release and weaken the Ethics Laws.

Hubbard's final known gambit to bolster his chance at being released early continues as of the date of this filing. It began with Lance Bell discovering a Notre Dame law symposium about government ethics that featured Hubbard's case and which culminated with a published article. As Canary told Hubbard: it went from "Lance to the quarterback, the quarterback to me. And I said, well, let me just kind of reach out to this dude [a law student] . . . we created a relationship, and I became, what I would consider to be, an expert witness." [Call 130 at 3:00](#). In a prior call, he said he "became part of the team." [Call 320 at 9:00](#). If Canary was an official part of the team, then Hubbard was the anxious cheerleader. He peppered Canary with questions about when the article would be finalized. *See, e.g.*, [HUB041](#) (asking when the article would be ready); [HUB206](#) (looking forward to article's arrival); [HUB208](#) (expressing desire for article to arrive); [HUB214](#) (hoping article arrives); [HUB229](#) (asking for article to be sent finished or not); [Call 320 at 8:25](#) (asking Canary if he'd heard from the Irish and what kind of press rollout is possible).

When the article finally arrived in early October, Canary described the impact that he and Bell had on the article, if not the student: "I know for a fact had we not been able to at least give some expert advice, I don't -- I know it wouldn't have come out the way it did . . . I think at the end of the day, at this juncture . . . with these doctors and this CEO, there's a couple good nuggets in there that can be used. And I do think it allows us the

platform for them to have a greater voice. And I do think there's enough unique reform conversation in there for the group of men and women that call themselves Legislature to get enough you know, that people can actually dream on to and say ooh, this is interesting . . . ." [Call 130, Oct. 9 at 6:40](#). Canary graded the article as "at least a B if higher." As to why he did not grade it higher, Canary demurred, saying that there would be another time for "a lot of conversation about how it got to where it was and where it may have gone and where it was headed." *Id.*; *see also* [Call 278 at 12:00](#) (Canary offering to show Hubbard someday the "many, many written versions of stuff I did, notes and direction" he apparently provided the authors); [Call 320 at 11:00](#) (Canary stating that he had the "Notre Dame guys get a few extra comments and help from our friend Lance").<sup>6</sup>

When Hubbard asked about next steps on October 9, Canary said: "The quarterback's got a lot on the field." [Call 131 at 10:45](#). "I thought it would be helpful to the doctors. . . . I've been shooting it off to a bunch of people." *Id.* [at 12:30](#). "Next play in this thing with these folks is to do an op-ed which I've been trying to get them to do . . . get that out, move on this thing, keep it alive, and try to get the attention. I know there's at least one publication that will write about it, in a good way. I've already had conversation with that person, and I've tried to get these guys hooked up so it can be more of an exclusive." *Id.* [at 14:00](#). Hubbard continued to wonder how it represented him: "Does it make any mention that I was wrongly, that I didn't intend to, or that something broke down,

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<sup>6</sup> On October 30, about a month after Canary secured a final copy, the article was posted to SSRN. It is available here: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3925077](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3925077) Neither Canary nor Bell's name appear in the article, either in passing or in attribution.

or is it just more of that this is a problem?” [Id. at 14:45](#). In an immediate call after, Hubbard continued: “Does it make mention that I had sought and received advice, and that there was no quid pro quo and all that?” [Call 130 at 1:10](#). Canary ultimately answered that it was “fair.” [Call 130 at 6:15](#).

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As a former public official, Hubbard knows about oaths. He knows about duties. In a courtroom, every party—whether a public official or not—owes a duty of candor. Judges depend on it. Our judicial system depends on it. Hubbard has already been removed from office for breaching his duty to the public. Now he has been caught breaching his duty to this Court. He deserves condemnation, not mercy.

#### Conclusion

For the foregoing reasons, the State asks this Court to deny Defendant Michael Gregory Hubbard’s motion for early release.

Respectfully submitted this 15 day of November, 2021.

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**CERTIFICATE OF SERVICE**

I certify that on November 15, 2021, I electronically filed the foregoing using the AlaFile system, which will send notification of such filing to all counsel of record.

s/ Kyle Beckman  
*Assistant Attorney General*