

**Date :** 1/10/2021 2:54:29 PM  
**From :** "Shahar Sverdlov"  
**To :** "Vered Shpilman"  
**Cc :** "Omer Mucznik"  
**Subject :** RE: אתר אינטרנט של קפאח  
**Attachment :** [664808\\_image001.jpg](#);

Hi Vered,

Please find below the draft email.

Warm regards,  
Shahar

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Dear John, Reeves and Stephen,

We wanted to inform you that we were recently made aware that Mr. Kapach created a website and registered a non-profit organization in Israel, entitled: *The Movement for Quality in the Israeli Justice System* (translation).

The following is a link to the organization's Facebook page (in Hebrew): <https://www.facebook.com/Judgmentquality/>. The page seems to mostly post articles on divorced fathers' cases from the organization's website.

Below, please find some 'interesting' links to the organization's website (partially in English):

- <https://ednakarnaval.com/male-discriminations-in-israel/>. This is a link to a GoFundMe page for "Israeli Fathers in USA fighting Israeli feminist Judges".
- <https://ednakarnaval.com/assistance-to-find-escape-routes-for-israeli-men/>. This is a link to a letter by Kapach addressed to the United Nations Special Rapporteur on the human rights of migrants.
- <https://ednakarnaval.com/%d7%94%d7%9e%d7%93%d7%a8%d7%99%d7%9a-%d7%9c%d7%96%d7%99%d7%94%d7%95%d7%99-%d7%a7%d7%95%d7%a8%d7%91%d7%a0%d7%95%d7%aa-%d7%a2%d7%91%d7%93%d7%95%d7%aa-%d7%95%d7%a2%d7%91%d7%95%d7%93%d7%94-%d7%9b%d7%a4/>. This is a link to a "Guide on the identification of victims of slavery and forced labor of the Zionist Ministry of Justice – or – the guide to dual Zionist morality " (in Hebrew).

In addition, there is also a general public Facebook group for divorced fathers against the Israeli court system (in English): <https://www.facebook.com/groups/4877845469/>.

Warm regards,  
Vered

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**From:** Vered Shpilman <VeredSh@justice.gov.il>  
**Sent:** Sunday, January 10, 2021 2:44 PM  
**To:** Shahar Sverdlov <ShaharSv@justice.gov.il>  
**Cc:** Omer Mucznik <OmerMu@justice.gov.il>  
**Subject:** RE: אתר אינטרנט של קפאח

היי שחר,

מרלין ביקשה שנכין איזשהו מייל רקע לעורכי הדין עם הקישורים השונים שמצאנו – לידיעתם.  
האם תוכלי להכין טיוטה?

תודה

ורד

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**From:** Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>  
**Sent:** Sunday, January 10, 2021 1:06 PM  
**To:** Vered Shpilman <[VeredSh@justice.gov.il](mailto:VeredSh@justice.gov.il)>  
**Cc:** Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>  
**Subject:** RE: אתר אינטרנט של קפאח

Hi Vered,

I came across a public Facebook group for divorced fathers against the Israeli court system (it seems to be different to what you sent last week):

<https://www.facebook.com/groups/4877845469/>

The group describes itself as:

*Fathers 4 Justice Israel is part of the most powerful global civil rights movement campaigning for a child's right to see both parents with equal access. This group is dedicated to assisting divorced and separated Jewish and Israel dads.*

*The group comprises of Jewish and non-Jewish Fathers, Mothers, Grandparents, Psychologists, Teachers, Doctors, a complete cross section of society which believes that Israel is creating a Jewish nation of children without parents.*

*Fathers 4 Justice Israel raises awareness through publicity, the media, the Internet 'making the injustice visible' and mobilising a 'dads army' - applying pressure to the system - members of Knesset, family courts, child welfare departments to implement joint custody and shared parenting. For the latest news regarding how both fathers of divorce and their children suffer in Israel from gender bias discrimination in court custody cases, Parental Alienation Syndrome, read the Jerusalem Post Magazine article: <http://tinyurl.com/68m74>*

*All children and their parents have inalienable rights to enjoy a loving relationship with each other. The Knesset's intention in the 1962 Family Custodian Act was to embrace the child's best interest principle which has now effectively become the mothers best interest. We are pro-active divorced and single fathers who assert their interests in civil rights reform of legal, economic, sociological aspects of Family Law, most principally: parental rights, child custody / child support and the judicial system / industry.*

*The main forum focuses on INTELLIGENCE SHARING and SUBSTANTIVE OPINIONS. Our mission is to be well-informed dads for the purpose of parenting and political action. We critically discuss CASE LAW, STRATEGY, PAS, job searching, suicide as well as the functions of psychologists, mediators, attorneys, judges and legislators.*

Since the group is public, I browsed a bit. You can actually see who is a member in the group (I couldn't find Kapach), and there are some podcasts and also events (for

example, last year, it appears they held a conference). Just thought I would let you know.

Warm regards,  
Shahar

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**From:** Vered Shpilman <[VeredSh@justice.gov.il](mailto:VeredSh@justice.gov.il)>  
**Sent:** Wednesday, January 6, 2021 6:31 PM  
**To:** Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>; Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>  
**Subject:** FW: אתר אינטרנט של קפאח

אנא שמרו בתיקייה בבקשה

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**From:** Vered Shpilman  
**Sent:** Wednesday, January 6, 2021 6:17 PM  
**To:** Itai Apter <[ItaiA@justice.gov.il](mailto:ItaiA@justice.gov.il)>; Maya Freund <[MayaF@justice.gov.il](mailto:MayaF@justice.gov.il)>; Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>; Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>; Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>; 'Dosoretz Karin (Karin.Dosoretz@mfa.gov.il)' <[Karin.Dosoretz@mfa.gov.il](mailto:Karin.Dosoretz@mfa.gov.il)>  
**Subject:** RE: אתר אינטרנט של קפאח

תסתכלו במיוחד בלינקים האלה:

[/https://ednakarnaval.com/male-discriminations-in-israel](https://ednakarnaval.com/male-discriminations-in-israel)

[/https://ednakarnaval.com/assistance-to-find-escape-routes-for-israeli-men](https://ednakarnaval.com/assistance-to-find-escape-routes-for-israeli-men)

אין לי מילים....

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**From:** Vered Shpilman  
**Sent:** Wednesday, January 6, 2021 5:30 PM  
**To:** Itai Apter <[ItaiA@justice.gov.il](mailto:ItaiA@justice.gov.il)>; Maya Freund <[MayaF@justice.gov.il](mailto:MayaF@justice.gov.il)>; Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>; Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>; Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>; Dosoretz Karin (Karin.Dosoretz@mfa.gov.il) <[Karin.Dosoretz@mfa.gov.il](mailto:Karin.Dosoretz@mfa.gov.il)>  
**Subject:** אתר אינטרנט של קפאח

היי חברים,

ימית הסבה את תשומת לבי לכך שקפאח פתח אתר אינטרנט, וגם עמותה – התנועה למען איכות השפיטה בישראל!

חשבתי שיעניין אתכם גם:

<https://ednakarnaval.com/%d7%94%d7%9e%d7%93%d7%a8%d7%99%d7%9a-%d7%9c%d7%96%d7%99%d7%94%d7%95%d7%99-%d7%a7%d7%95%d7%a8%d7%91%d7%a0%d7%95%d7%aa->

[%d7%a2%d7%91%d7%93%d7%95%d7%aa-  
/d7%95%d7%a2%d7%91%d7%95%d7%93%d7%94-%d7%9b%d7%a4](#)

[/https://www.facebook.com/Judgmentquality](https://www.facebook.com/Judgmentquality)

ורד

**From:** Vered Shpilman  
**Sent:** Wednesday, January 6, 2021 10:20 AM  
**To:** yamits <[yamits@court.gov.il](mailto:yamits@court.gov.il)>; 'נעמה אורבך פוקס' <[naamao@eca.gov.il](mailto:naamao@eca.gov.il)>; Dosoretz Karin (Karin.Dosoretz@mfa.gov.il) <[Karin.Dosoretz@mfa.gov.il](mailto:Karin.Dosoretz@mfa.gov.il)>; Itai Apter <[ItaiA@justice.gov.il](mailto:ItaiA@justice.gov.il)>; Maya Freund <[MayaF@justice.gov.il](mailto:MayaF@justice.gov.il)>; David.GoldfarbFW <[David.Goldfarb@mfa.gov.il](mailto:David.Goldfarb@mfa.gov.il)>  
**Cc:** Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>; Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>; Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>  
**Subject:** RE: הגשת ערעור בתיק קפאח

שוב שלום לכולם,

לקראת שיחתנו אחה"צ ועל מנת שסטטוס התיק יהיה עדכני בפני כולנו, נעדכנכם כי הודעת ערעור הטכנית של מר קפאח התקבלה על ידי בית המשפט לערעורים של ה-9<sup>th</sup> circuit, ומספר הליך הוקצה לתיק. מעיון בצו של בית המשפט (מצ"ב) עולה כי האגרה עוד לא שולמה על ידי מר קפאח, וצוין שם כי אי תיקון פגם זה עלול לגרום לדחיית התיק.

בנוסף, קבע בית המשפט בצו כי מר קפאח יידרש להגיש את נימוקי הערעור עד ליום 1 במרץ 2021 וכפי שהסביר סטיבן במייל הקודם שלו - ישנה אפשרות לאורכה של 30 ימים נוספים. כמו כן, כפי שהסבירו עורכי הדין, כתב תגובה מטעם המשיבים יוגש עד 30 ימים לאחר הגשת כתב הערעור, ומר קפאח יוכל להגיש כתב תשובה, ככל שיבחר לעשות כן, בתוך 21 ימים לאחר מכן.

עוד נזכיר את הנקודות ששלחנו כמצע לדיון היום עם עורכי הדין:

- (1) Procedurally, is there an legal obligation for the Israeli officials to appear? Could non-appearance somehow be construed as a waiver of immunity?
- (2) If not, and we do not appear, would there be another chance for us to do so later on before a decision is rendered (ie. in oral arguments) and/or after a decision is given (ie. a motion for reconsideration and/or a request for an appeal *en ban*)c.
- (3) Would it make sense to see if the State Department would have an interest in weighing in - supporting the judges decision on immunity (and then perhaps we would have a precedent with a broader reach in future cases.. OR, is it best as a precedent, to have the court able to get rid of these cases *sua sponte* without the need for wasting additional resources. Would it make sense for us to give State a heads up on these issues.
- (4) Is there any opportunity for us or Intel to act quickly with regard to his application to proceed *in forma pauperis* regarding the fact that Kapach does not have a good faith basis for the appeal in general and/or specifically against the Israeli officials?

נשתמע היום בארבע אחר הצהריים – סטיבן ישלח פרטי תא ועידה ונצרך זאת לנוחותכם לזימון לשיחה.

בברכה,

מרלין וורד

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**From:** Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>  
**Sent:** Sunday, January 3, 2021 6:44 PM  
**To:** yamits <[yamits@court.gov.il](mailto:yamits@court.gov.il)>; 'נעמה אורבך פוקס' <[naamao@eca.gov.il](mailto:naamao@eca.gov.il)>; Dosoretz Karin (Karin.Dosoretz@mfa.gov.il) <[Karin.Dosoretz@mfa.gov.il](mailto:Karin.Dosoretz@mfa.gov.il)>; Itai Apter <[ItaiA@justice.gov.il](mailto:ItaiA@justice.gov.il)>; Maya Freund <[MayaF@justice.gov.il](mailto:MayaF@justice.gov.il)>; David.GoldfarbFW <[David.Goldfarb@mfa.gov.il](mailto:David.Goldfarb@mfa.gov.il)>; Yael Weiner <[Yaelw@justice.gov.il](mailto:Yaelw@justice.gov.il)>  
**Cc:** Roy Schondorf <[RoySc@justice.gov.il](mailto:RoySc@justice.gov.il)>; Vered Shpilman <[VeredSh@justice.gov.il](mailto:VeredSh@justice.gov.il)>; Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>; Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>  
**Subject:** עדכון: הגשת ערעור בתיק קפאח

שלום רב,

כפי שכתב סטיבן במייל שלו מטה, נבקש לעדכן כי מר קפאח הגיש ביום 30.12.2020 ערעור על החלטת בית המשפט המחוזי למחוק את התיק. להבנתנו, בשלב זה הוגשה רק הודעת ערעור טכנית (מצ"ב) ובקשה לפטור מאגרה.

כפי שהסביר סטיבן, ה-9<sup>th</sup> circuit (בית המשפט לערעורים שידון בתיק זה) צפוי לקבוע לו"ז להגשות בתיק זה. בדרך כלל, נימוקי הערעור יוגשו בין 90-120 ימים לאחר שהערעור ייקלט טכנית, עם אפשרות לאורכה של 30 ימים. כתב תגובה לערעור מטעם המשיבים יוגש בתוך 30 ימים לאחר מכן (ואפשרות לאורכה נוספת) וכתב תשובה של המערערים בתוך 21 ימים אחר כך.

כעת מתעוררת שאלה אסטרטגית בניהול הערעור מטעמנו אשר בעיקרה היא האם להמשיך באסטרטגיה של אי הופעה בתיק כפי שנקטנו בבית המשפט המחוזי. ראו במייל מטה את השיקולים שמעלים עורכי הדין ביחס לכך.

אנו מציעות כי נקבע שיחה קצרה עם עורכי הדין לדון בשאלה זו ובשאלות נלוות נוספות, ונפנה לעורכי הדין על מנת שיציעו מועדים לשיחה.

נודה להשתתפותכם בשיחה עימם.

אנו לרשותכם לכל שאלה.

בברכה,

מרלין וורד

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**From:** Wirth, Stephen K. <[Stephen.Wirth@arnoldporter.com](mailto:Stephen.Wirth@arnoldporter.com)>  
**Sent:** Friday, January 1, 2021 6:35 PM  
**To:** Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>; Bellinger III, John B. <[John.Bellinger@arnoldporter.com](mailto:John.Bellinger@arnoldporter.com)>; Anderson, Reeves <[Reeves.Anderson@arnoldporter.com](mailto:Reeves.Anderson@arnoldporter.com)>  
**Cc:** Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>; Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>; Vered Shpilman <[VeredSh@justice.gov.il](mailto:VeredSh@justice.gov.il)>; Yael Weiner <[Yaelw@justice.gov.il](mailto:Yaelw@justice.gov.il)>; David.GoldfarbFW <[David.Goldfarb@mfa.gov.il](mailto:David.Goldfarb@mfa.gov.il)>; Maya Freund <[MayaF@justice.gov.il](mailto:MayaF@justice.gov.il)>; Itai Apter <[ItaiA@justice.gov.il](mailto:ItaiA@justice.gov.il)>; 'נעמה אורבך פוקס' <[naamao@eca.gov.il](mailto:naamao@eca.gov.il)>; yamits <[yamits@court.gov.il](mailto:yamits@court.gov.il)>; 'karin.dosoretz@mfa.gov.il' <[karin.dosoretz@mfa.gov.il](mailto:karin.dosoretz@mfa.gov.il)>; Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>  
**Subject:** RE: Kapach v. Intel

Dear Marlene,

We have some frustrating news to ring in the New Year: Mr. Kapach has filed a notice of appeal, which means this case is going to the Ninth Circuit.

The next steps will be for the case to be docketed and for the court to set a briefing schedule. In our experience, the Ninth Circuit will set a default briefing schedule as soon as the case is docketed, and opening briefs are generally due around 90 to 120 days after the case is docketed, with the option for a “streamlined extension” of 30 days, no questions asked. Answering briefs are due 30 days after that (with the option for an extension), and the reply will be 21 days after that. So, assuming the case is docketed on Monday, the appeal probably won’t be fully briefed until June.

While we are still discussing internally, our initial view is that we should take the same tactic in the Ninth Circuit that we took in district court and not appear or file any briefs on appeal. There are (at least) four good reasons to do so. First, it is consistent with what we did below, and since the district court dismissed us sua sponte before we appeared, it will not seem odd for us not to appear on appeal. Second, the district court cited the right cases (especially the Second Circuit’s Eliahu decision) and laid out the correct reasons for why the Israeli defendants are immune, so we don’t have to worry that our arguments won’t be considered. Third, the Ninth Circuit is familiar with the law of immunity, especially considering the recent and very favorable Doğan opinion (by my old boss, Judge Bea). And fourth, we have capable codefendants who will file a very good answering brief.

On balance, we think that any benefit that might be had from appearing at this stage to raise yet more arguments will likely not be worth the added expense of fully briefing a Ninth Circuit appeal. That said, we will continue to monitor the case, and we may have a different view after we see Mr. Kapach’s brief. But if he files anything like what he has filed in district court, we don’t expect he will convince anyone on the Ninth Circuit.

I hope you all have a very happy New Year, and we look forward to continuing to work with you in 2021.

Best,

Stephen

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**From:** Wirth, Stephen K.  
**Sent:** Thursday, November 12, 2020 10:22  
**To:** 'Marlene Mazel' <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>; Bellinger III, John B. <[John.Bellinger@arnoldporter.com](mailto:John.Bellinger@arnoldporter.com)>; Anderson, Reeves <[Reeves.Anderson@arnoldporter.com](mailto:Reeves.Anderson@arnoldporter.com)>  
**Cc:** Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>; Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>; [zzz.External.VeredSh@justice.gov.il](mailto:zzz.External.VeredSh@justice.gov.il) <[VeredSh@justice.gov.il](mailto:VeredSh@justice.gov.il)>; Yael Weiner <[Yaelw@justice.gov.il](mailto:Yaelw@justice.gov.il)>; [zzz.External.David.Goldfarb@mfa.gov.il](mailto:zzz.External.David.Goldfarb@mfa.gov.il) <[David.Goldfarb@mfa.gov.il](mailto:David.Goldfarb@mfa.gov.il)>; Maya Freund <[MayaF@justice.gov.il](mailto:MayaF@justice.gov.il)>; [zzz.External.ItaiA@justice.gov.il](mailto:zzz.External.ItaiA@justice.gov.il) <[ItaiA@justice.gov.il](mailto:ItaiA@justice.gov.il)>; 'נעמה אורבך פוקס' <[naamao@eca.gov.il](mailto:naamao@eca.gov.il)>; yamits <[yamits@court.gov.il](mailto:yamits@court.gov.il)>; 'karin.dosoretz@mfa.gov.il' <[karin.dosoretz@mfa.gov.il](mailto:karin.dosoretz@mfa.gov.il)>; [zzz.External.MarleneM@justice.gov.il](mailto:zzz.External.MarleneM@justice.gov.il) <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>  
**Subject:** RE: Kapach v. Intel

Thank you, Marlene. We will be closely watching the docket for any activity and will advise you of any changes.

One quick follow up from our conversation yesterday: You had asked what sort of request we could make of the State Department. We think the most efficient approach would be to draft a dip note that explains the lack of service and immunity issues and ask State/DOJ to file it on the docket. (Of course, there's no guarantee that State will carry out this request.) This approach is something we can reevaluate depending on how the court responds to Mr. Kapach's deficient motion.

In the meantime, don't hesitate to reach out with any questions.

Best,  
Stephen

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**From:** Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>  
**Sent:** Thursday, November 12, 2020 10:15  
**To:** Wirth, Stephen K. <[Stephen.Wirth@arnoldporter.com](mailto:Stephen.Wirth@arnoldporter.com)>; Bellinger III, John B. <[John.Bellinger@arnoldporter.com](mailto:John.Bellinger@arnoldporter.com)>; Anderson, Reeves <[Reeves.Anderson@arnoldporter.com](mailto:Reeves.Anderson@arnoldporter.com)>  
**Cc:** Shahar Sverdlov <[ShaharSv@justice.gov.il](mailto:ShaharSv@justice.gov.il)>; Omer Mucznik <[OmerMu@justice.gov.il](mailto:OmerMu@justice.gov.il)>; [zzz.External.VeredSh@justice.gov.il](mailto:zzz.External.VeredSh@justice.gov.il) <[VeredSh@justice.gov.il](mailto:VeredSh@justice.gov.il)>; Yael Weiner <[Yaelw@justice.gov.il](mailto:Yaelw@justice.gov.il)>; [zzz.External.David.Goldfarb@mfa.gov.il](mailto:zzz.External.David.Goldfarb@mfa.gov.il) <[David.Goldfarb@mfa.gov.il](mailto:David.Goldfarb@mfa.gov.il)>; Maya Freund <[MayaF@justice.gov.il](mailto:MayaF@justice.gov.il)>; [zzz.External.ItaiA@justice.gov.il](mailto:zzz.External.ItaiA@justice.gov.il) <[ItaiA@justice.gov.il](mailto:ItaiA@justice.gov.il)>; 'נעמה אורבך פוקס' <[naamao@eca.gov.il](mailto:naamao@eca.gov.il)>; yamits <[yamits@court.gov.il](mailto:yamits@court.gov.il)>; 'karin.dosoretz@mfa.gov.il' <[karin.dosoretz@mfa.gov.il](mailto:karin.dosoretz@mfa.gov.il)>; [zzz.External.MarleneM@justice.gov.il](mailto:zzz.External.MarleneM@justice.gov.il) <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>  
**Subject:** RE: Kapach v. Intel

External E-mail



Hi John, Reeves and Stephen,  
 Thank you for the call yesterday and the detailed e-mail – we decided to take your advice and wait at this point of time.  
 Please keep us posted as to new developments in the case.

Best regards,  
 Marlene

Adv., **Marlene Mazel**

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**From:** Wirth, Stephen K. <[Stephen.Wirth@arnoldporter.com](mailto:Stephen.Wirth@arnoldporter.com)>  
**Sent:** Tuesday, November 10, 2020 10:15 PM  
**To:** Marlene Mazel <[MarleneM@justice.gov.il](mailto:MarleneM@justice.gov.il)>  
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**Subject:** Kapach v. Intel

Dear Marlene,

As noted in my last email, Mr. Kapach has moved for default judgment against the Israeli defendants (attached). He claims to have effected service through the Courts Administration. He also states that he has a letter from the Courts Administration that the lawsuit infringes Israel's sovereignty, which he says is proof that the defendants are aware of the suit. (He claims to have attached the letter to his affidavit, but it seems he forgot to.) He seeks entry of judgment in the amount of \$20,000,000.

This morning, the clerk filed an order (attached) noting technical deficiencies in the motion, including that it was electronically filed using the wrong ECF code, that it is missing a hearing date, and that it lacks a proposed order. The order states that no action is required until the court directs. The court will likely strike the motion or direct Kapach to cure it, but for now, we have no obligation to respond to the pending motion.

**Even putting aside these technical deficiencies, our bottom-line analysis is that this is an improper motion, for reasons described below. And, due to the motion's numerous technical and substantive deficiencies, we think the prudent course is to wait and see what the court does in response and whether Kapach is able to file a non-deficient motion.** Even if Kapach cures the motion's deficiencies, we have strong arguments for opposing it and even for unwinding any technical default that might be entered by the clerk. If, however, you decide that avoiding the risk of even a technical default is worth the cost and hassle of appearing prior to effective service, we can begin preparing opposition papers immediately. **Because these are strategic considerations worth discussing, we propose setting up a phone call to talk through the issue.** Our lengthier analysis follows.

There are good reasons to do nothing for now. For one, even if Kapach cures the technical deficiencies noted by the clerk, his motion for default judgment is improper. Kapach missed the court's deadline for responding to the show cause order; he has not followed the proper procedure of first requesting an *entry of default* from the clerk under Rule 55(a) followed by a *motion for default judgment* under Rule 55(b); and even if default had already been entered, he failed to comply with the local rules by including certain required information in his declaration. Beyond that, Intel's motion to dismiss is pending, and Intel's defenses, if accepted by the Court, would also apply to the Israeli defendants. In the best case scenario, the court could decide to dismiss the entire lawsuit based on Intel's motion without us having to do anything.

In any case, it is not necessary for us to act yet, and waiting may be beneficial. As noted, the clerk has noted the motion's technical deficiencies, no default has been entered, and Kapach's motion for default judgment is premature and procedurally improper. It is extremely unlikely that the clerk will suddenly enter default judgment without requiring Kapach to first cure these errors. *If* Kapach cures this motion's deficiencies, and *if* the clerk enters default, and *if* Kapach then properly moves for default judgment, we can then decide how to respond. In the meantime, the court may simply strike the pending motion because it is deficient, or it may deny the motion because Kapach failed to first apply for entry of default. And there's a chance Kapach will bungle this process or take a long time to file his motion after the court enters default. Any of these scenarios could result in the case ultimately being dismissed without us having to file a response.

If Kapach ultimately files a proper motion for default judgment, we would have two options: oppose or do nothing. First, we could oppose the motion. In this procedural posture, we would not necessarily have fully address the merits; rather, we could oppose the motion for improper service only. That said, it would likely be more efficient to simply file a full motion to dismiss along with our opposition to the motion for default judgment. That way, we would have all of our arguments in front of the court, and it would save us from the expense of potentially having to make multiple

filings. (This approach would also remove any possibility that the court could construe our limited opposition as a waiver of our other arguments.)

Kapach filed his motion Friday, November 6. Assuming the court construes the motion as an application for entry of default by the clerk, default may be entered as early as next week. Then Kapach would have to move for default judgment, and we would have a limited time to oppose (around 7 to 14 days, depending on when the motion is calendared). If, however, the court simply denies the pending motion because Kapach failed to first apply for entry of default, that would give us some more time before we have to respond.

Alternatively, we could do nothing, in which case the court could enter a default judgment against the Israeli defendants. (That assumes, of course, that Kapach files a proper motion and complies with all of the rules—something he might never get right.) But even if the court enters a default judgment, we would still be able to contest (unwind) the judgment on the basis that the judgment is void for lack of jurisdiction. This would be done through a motion to vacate under Rule 60(b)(4), which must be made within a “reasonable time” after entry of default (generally, the sooner the better, but courts regularly grant these motions months, or even more than a year, after entry of default judgment). At that point, we could raise all of our *jurisdictional* arguments, including lack of service and foreign-official immunity. Notably, in this posture, we would *not* be able to raise any other defenses, such as failure to state a claim, forum non conveniens, or international comity. That said, our service and immunity arguments are strong, and we are reasonably confident that we would prevail without any “backup” arguments.

Even if the court enters default, there are some benefits to moving under Rule 60(b)(4) rather than opposing Kapach’s motion, but they are limited. One potential benefit is that, assuming the court will grant Intel’s motion to dismiss, we would be able to rely on the court’s dismissal in seeking vacatur. The downside is that the Israeli defendants would have a default judgment entered against them. And the fact that a U.S. court entered a judgment against these defendants could be seized upon (and distorted) by the fathers movement. Also, as noted, moving to vacate after judgment is entered would limit the types of arguments we could raise.

Given the various strategic and practical considerations at play, we suggest having a conversation to talk through these issues. Please let us know your availability this week.

Best,  
Stephen

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