No. 16-1159

United States Court of Appeals
For the First Circuit

BHARANIDHARAN PADMANABHAN MD PhD
Plaintiff - Appellant

v.

MAURA HEALEY, STEVEN HOFFMAN, CHRIS CECCHINI, JAMES PAIKOS, LORETTA KISH COOKE, ADELE AUDET
Defendants - Appellees

On Appeal from U.S. District Court for the District of Massachusetts
HON. NATHANIEL GORTON, U.S. DISTRICT JUDGE
Civil Case No. 15-CV-13297-NMG

Plaintiff-Appellant's MOTION to Set the Briefing Schedule and date for oral argument without further delay

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Plaintiff-Appellant Dr Bharani has already suffered two unjustified delays, first from unjust manipulations designed to avoid court rules apropos the date of filing which awarded Defendant-Appellees an extra 15 days to file a response brief and second from awarding 90 further days to the Defendant-Appellees to file their response brief.

Defendant-Appellees are required to file their response brief by June 17, 2016.

Given the history of pure bad faith underlying all the actions of Defendant-Appellees and their counsel Mark Sutliff, Appellant fully expects them to file a motion to indefinitely stay the briefing schedule and a motion for summary affirmance instead of filing their response brief in order to evade the Court's declaration that the Appellees violated major Federal law and that the crime is complete.

Given that Appellees had 90+45=135 days to file a response brief, granting such a request would be undeniably counter to the interests of justice, judicial economy and Appellant's rights.

Granting any further delay to the Appellees would bring this case into the realm of the report in the New York Times about deliberate

delays deliberately thwarting the dispensing of justice:

> "Judge Boyle, gentlemanly and well liked, often seemed to be watching the proceedings rather than running them. After one of Ms. Nadell's complaints about the delays, the judge responded, "I'm not satisfied about the way this is being done either" — as if someone else were in charge."
> *Courts in Slow Motion, Aided by the Defense*, NYT, April 14, 2013.
> Exhibit 1

Appellant also respectfully reminds this court of the ruling in

United States v. Fortner:

> "We now explain why the government's litigation strategy- filing a motion for summary affirmance days before its merits brief was due- is problematic. The practice is widely used; anecdotally, this is the second such motion this motions panel has addressed (and denied) in a single week. "The strategy is this: instead of filing a brief on the due date, the appellee files something else, such as a motion to dismiss. The goal and often the effect is to obtain a self-help extension of time even though the court would be unlikely to grant an extension if one were requested openly." United States v. Lloyd, 398 F.3d 978, 980 (7th Cir. 2005); see also Ramos v. Ashcroft, 371 F.3d 948, 949-50 (7th Cir. 2004). As we held in Lloyd and Ramos, a last-minute motion, if necessary, should be filed along with a timely brief, not in place of it.
>
> A motion for summary affirmance is somewhat different from the motions at issue in Lloyd (motion to dismiss) and Ramos (motion to transfer). The government's submission in this case is fifteen pages long, and but for the formal requirements of Federal Rule of Appellate Procedure 28, it is essentially a brief on the merits.
>
> But by filing it the government has wasted the resources of this court. (Six judges will ultimately consider this appeal: three on the motions panel and three on the merits panel.) The government could have made these same arguments in a brief and moved to waive oral argument if it felt that argument would be unhelpful. See Fed. R. App. P. 34. But then, such motions are not always granted, particularly in criminal appeals where, as here, substantial punishment has been imposed. See United States v. Adeniji, 179 F.3d 1028, 1029-30 (7th Cir.1999) (Posner, J., in chambers).

> Rather than risking a motion to waive argument and undertaking the extra work of submitting a timely brief, the government took a shortcut, filing this motion to affirm summarily and seeking to delay briefing in the event the motion was denied and it needed to file a full brief. So the case presents the same element of self-help as in Lloyd and Ramos." *United States v. Danny D. Fortner*, 455 F.3d 752 (7th Cir. 2006)

Wherefore Appellant respectfully requests that this Court ORDER the dates for oral argument and the Court's final decision to immediately follow the required filing of Appellees' response brief on June 17, 2016.

This Court should delay no longer in adjudicating the merits of Appellant's claims.

Any further delay would deliberately and irreparably harm the delivery of justice to Appellant and would be a clear case of uncaring discrimination against a *pro se* Appellant of color who has already been unlawfully discriminated against, twice, in this very case.

Respectfully submitted,

31 May 2016

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