

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-814 (RCL)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME TO RESPOND
TO DEFENDANT'S RENEWED MOTION FOR SUMMARY JUDGMENT

COME NOW plaintiffs Roger Hall, Studies Solutions Results, Inc. ("SSRI"), and Accuracy in Media, Inc. ("AIM"), by counsel, under Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure, and respectfully move this Court for an enlargement of time to file their oppositions and cross-motions in response to *Defendant's Renewed Motion for Summary Judgment*, ECF No. 295, for approximately six weeks, until November 30, 2018.

The government opposes this relief, relating that the "CIA opposes the request on the ground that its renewed motion for summary judgment (ECF No. 295) was filed on November 29, 2017—nearly a year ago—and, in its view, the demands imposed by recent developments in cases before the D.C. Circuit do not justify further delay in this fourteen-year-old case."

Memorandum of Points and Authorities

1. By order entered on September 18, 2018 (ECF No. 305), the Court granted, *nunc pro tunc*, plaintiffs' motion for an extension of time (ECF No. 296), denied plaintiffs' motions to Stay Proceedings for discovery, ECF Nos. 297 and 298, and set October 19 as the due date for plaintiffs' to file their oppositions to the CIA's dispositive motion.

2. Major developments in other cases in the Court of Appeals have markedly curtailed the ability of counsel for Hall and SSRI, James Lesar, to meet the current October 19 deadline for filing the Opposition. Much of counsel's limited time has been spent re-arranging his schedule because of new developments in several cases in this Court and in the Court of Appeals.

3. Motions for extensions in D.C. Cir. No. 17-5048 show that the undersigned has multiple appellate deadlines within the next month. Accordingly, he needs to adjust his schedule in this case. For example, the Court of Appeals issued an *en banc per curiam* order partially granting the Central Intelligence Agency's motion for an extension of time to respond to this Court's August 30, 2018 order directing the CIA to file a response to Appellant Morley's petition for a rehearing or rehearing *en banc* of that Court's July 9, 2018 decision, DC Cir. No. 17-5114. As a consequence of the Court's granting the CIA's motion for a further extension to October 24, 2018, Morley must file a motion for leave to reply to the CIA's response no later than November 1, 2018. On Wednesday, October 10, Judge Thomas F. Hogan issued an order that a hearing be held on November 29, 2018 on long-pending cross-motions for summary judgment in *Clemente v. FBI*, C.A. No. 13-0108.

4. Local Rule 16 requires appellate scheduling to take precedence over district court schedules, contrary to the CIA's view that "recent developments in cases before the D.C. Circuit do not justify further delay in this fourteen-year-old case." In *Morley v. C.I.A.* D.C. Cir. No. 17-5114, July 9, 2018, the dissent begins, "Over the past 15 years, we have remanded this case four times... Jefferson Morley, however, is not to blame for this 'staggering' saga." (*Per curiam*, J. Henderson). So too here.

5. Health issues also contribute to the need for counsel's enlargement of time. The undersigned's weekly physical therapist takes a half day, and he has ankle, leg, and back pain caused by neuropathy and arthritis. One day last week, he was unable to work at all for nearly the entire day. Also last week he had emergency treatment for bruised toes, a matter of serious concern due to diabetes.

6. Personal commitments also impede counsel's ability to respond by October 19. He will be in Missouri October 12 through 15, attending his 50th High School class reunion. On October 19, 2018, Mr. Lesar leaves on a trip to China, where he will be traveling with several family members and a college friend between several cities on China's eastern and southern coasts. He returns on November 1, 2018. And he will be in Boston at Thanksgiving.

7. In an effort to meet pressing court dates in the District of Columbia District and Circuit Courts, counsel has reached out to other counsel for assistance.

8. In the instant matter, William Simpich, Esquire, will be working on a critical aspect of the case. Mr. Simpich's Affidavit is attached hereto as Exhibit A. He writes, "During the last couple of weeks, Jim Lesar has asked me to research the vein of law regarding *in camera* submissions in the FOIA arena. There are a variety of approaches in this arena, and I have researched this area in previous civil rights cases.... Due to the press of business, I cannot turn around and provide Mr. Lesar with the immediate answers he is seeking. I have been able to advise him in various approaches and will continue to refine our approach. I need another thirty days to be able to wrap up this line of research."

9. Counsel for AIM, John H. Clarke, is similarly unable to complete the dispositive filing by October 19. Beginning September 21, in an effort to catch up on his

fiduciary and other litigation matters including this case, the undersigned has declined all court appointments from the District of Columbia Fiduciary Panel.

10. As the Court observed in its September 18, 2018, Order (ECF 305), plaintiffs' "response may include arguments about the necessity of discovery through Rule 56." Plaintiffs had propounded discovery on the issue of the review and disclosures upon CIA Decennial Reviews, and plaintiffs' dispositive pleading will address the necessity of discovery. Plaintiffs' pleadings will address the failures of defendant to follow the Court's order, and, *inter alia*, the CIA's conduct in the thirty-year period from 1973 Operation Homecoming to the 2004 filing of the this lawsuit. Having worked on AIM's dispositive motions early last week, counsel opines that the task will take many hours, and, given the press of other matters, he will need more time.

11. Under Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure, *Extending Time*, "the court may, for good cause, extend the time... if a request is made, before the original time or its extension expires..."

WHEREFORE, plaintiffs respectfully seek an extension of time to and including November 30, 2018, to submit their dispositive motions in response to Defendant's Renewed Motion for Summary Judgment.

DATE: October 11, 2018.

Respectfully submitted,

/s/
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