ORAL ARGUMENT SCHEDULED FOR JANUARY 21, 2016

14-7193(L), 14-7194, 14-7195, 14-7198, 14-7202, 14-7203, 14-7204

IN THE

United States Court Of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSAN WEINSTEIN, *et al.,*

Plaintiffs-Appellants

v.

ISLAMIC REPUBLIC OF IRAN, *et al.,*

Defendants-Judgment Debtors

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Third Party Garnishee-Appellee

APPELLANTS' RESPONSE IN OPPOSITION TO UNITED STATES' MOTION FOR A 23-DAY EXTENSION

Plaintiffs-Appellants,
by their Attorneys,

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In its motion to extend the time to file its brief from the present deadline of December 15 until January 7, 2016—just two weeks before oral argument, which is scheduled for January 21—the government reports that Appellants "would not object to the government's requested extension if this Court were to postpone the oral argument and afford the plaintiffs a reasonable amount of time in which to respond to any filing by the government." (Government's motion at 5). That is correct, but incomplete. Appellants offer this brief opposition to clarify their position.

The government has requested permission to file a brief just two weeks before oral argument. If the Court would grant the government's motion, without also rescheduling oral argument, it would effectively prevent the parties from responding to the government's brief in any manner that could be useful during oral argument. In theory, the parties could draft their responses in a week and file just one week before oral argument. But one week will likely not be adequate time to research and draft a proper response. And the one week that the Court would have to review the response would likely likewise be inadequate.

Further, the need to quickly draft a response just two weeks before oral argument will negatively impact on oral argument. By devoting their time to drafting responses, the parties will not be using that time to prepare for oral argument. Perhaps ICANN, which is represented by a firm of "more than 2,400 lawyers in 41

offices in 19 countries" and that has "recent reported revenues [of] $1.716 billion,"[1] can reasonably expect to put its full efforts into both without negatively impacting either. But the Appellants are represented by two small law firms. The Appellants' attorneys assigned to this appeal all have very full dockets and could not possibly set aside adequate time to fully respond to the government's brief and simultaneously prepare for oral argument with the same energy and dedication that they would otherwise bring to oral argument.

If oral argument would be rescheduled, affording Appellants adequate time to respond to the government, that problem would be resolved. But that does not mean oral argument *should* be delayed. Indeed, it should not be delayed. Rescheduling oral argument, inconveniencing the Court and the parties simply to allow the government to resolve internally its position on the questions it seems prepared to address, would have the tail wag the dog.

The government asserts that it needs the requested extension "to ensure that the government can provide its considered views on the novel, unsettled, and important issues presented in this case." (Government's motion at 4). It also asserts that those issues—apparently including "whether Internet domain names may be attached in satisfaction of a judgment" and "whether a ccTLD...may be attached"—

[1] Investopedia, World's Top 10 Law Firms, Jan. 07, 2015, http://www.investopedia.com/articles/personal-finance/010715/worlds-top-10-law-firms.asp.

may "implicate the interests of a wide array of government entities." *Id.* at 3-4. It thus states that it must await guidance from the Office of the Solicitor General, the Department of Commerce, and potentially other government agencies, before articulating a position. *Id.* at 3. But all of that assumes the necessity of addressing the merits issues at this stage in the proceedings.

As Appellants argued at length in their briefs and in their motion to certify questions to the District of Columbia Court of Appeals, it is not necessary to reach those merits questions now. Indeed, doing so would be improper.[2] The proper course, rather, is to resolve the limited issues reached by the district court and about which there is a full record, and remand for discovery. While the case is in discovery, the government will likely continue its inquiry and "careful consultation[.]" *See id.* at 3. Long before this case returns to this Court, the government surely will have adopted a position on the "unsettled, and important issues" it has now begun considering. *See id.* at 4. This Court will then be able to review the merits issues with the benefit of a full record, a pertinent decision from the district court, and the government's well-considered position, all without rescheduling an oral argument and creating needless disruption.

[2] Appellants rely on the arguments previously made in their briefs and motion for certification. They do not seek to re-litigate those questions here, which explains the brevity with which they are referenced.

Conversely, delaying oral argument now *might* afford the government adequate time to stake out a position. Of course, it might not. Even if it does, the Court will still lack a full record or a pertinent district court decision to review. Little will be gained by so disrupting the proceedings.

* * * *

For the foregoing reasons, Appellants respectfully request that the Court deny the government's motion for an extension of time to submit a brief. In the event that the Court grants the motion, Appellants respectfully request that oral argument be postponed. And, in any event, Appellants respectfully request at least three weeks, concluding a reasonable time before oral argument, to respond to any brief submitted by the government.

Dated: Baltimore, Maryland
November 22, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2015, I filed the foregoing using the ECF system, which is expected to electronically serve all counsel of record.

/s/ Meir Katz
Meir Katz