

[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SAI,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

No. 14-1005

**RESPONSE TO PETITIONER'S MOTION FOR A DECLARATION AND
ORDER TO COMPEL, PETITIONER'S MOTION TO SUPPLEMENT THE
RECORD, AND PETITIONER'S MOTION TO FILE A SURREPLY.**

Respondent, the United States Postal Service, hereby responds to three motions filed by Petitioner Sai: (1) his Motion for a Declaration and Order to Compel, dated February 25, 2014; (2) his Motion to Supplement the Record, dated March 4, 2014; and (3) his Motion for Leave to File a Surreply, dated March 3, 2013, concerning the Respondent's motion to dismiss for lack of jurisdiction.

We respectfully request that a ruling on the first two motions be deferred until after the Court considers whether it has jurisdiction over this case. The parties appear to agree that, as Sai suggests in his lodged surreply, issues concerning this Court's jurisdiction should be resolved before other motions are resolved. Here, the jurisdictional issue, raised on February 25, 2014, in the Postal

Service's Motion to Dismiss for Lack of Jurisdiction, is whether this Court has original jurisdiction over Sai's claim that the Postal Service violated the Freedom of Information Act ("FOIA") when it denied his requests for expedited processing and for a "public interest" fee waiver.¹ The law is plain that courts of appeals do not have original jurisdiction over FOIA cases, and that such cases must be brought initially in a complaint filed in district court. *See* 5 U.S.C. § 552(a)(4)(B).

If this Court determines that it lacks original jurisdiction, then Sai's petition is not a valid petition for review in "a court of appeals authorized to review the agency order." Fed. R. App. P. 15(a)(1). Accordingly, the Postal Service is not obligated to file a certified list under D.C. Circuit Rule 17(b), and Sai's first two motions, concerning the Postal Service's failure to submit such a certified list, could be denied as moot. In the event that the Court determines that it has original jurisdiction over Sai's FOIA case, the Postal Service will promptly comply with the requirements of D.C. Circuit Rule 17.

As to Sai's third motion, for leave to file a surreply, the petitioner has asserted that a surreply should be allowed "in the best interests of justice" but has not explained the basis for his assertion. However, the Postal Service does not oppose Sai's motion.

¹ Sai's lodged surreply clarifies that he does not object to the timing of the Postal Service's motion, which was filed on the same day as the first of the three motions to which this response is directed.

Respectfully submitted,

/s/ David C. Belt

David C. Belt

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2014, I electronically filed the Response to Petitioner's Motion for a Declaration and Order to Compel, Petitioner's Motion to Supplement the Record, and Petitioner's Motion for Leave to File a Surreply with the U.S. Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. The petitioner is registered as an ECF filer, and will be served by the CM/ECF system.

/s/ David C. Belt _____

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