

**United States Court of Appeals
District of Columbia Circuit**

333 Constitution Avenue, NW Washington, DC 20001-2866
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Sai
Petitioner

v.

Case Number: 14-1005

United States Postal Service (USPS)
Respondent

Reply to USPS' opposition re. the record

I will not further argue whether this Court has original jurisdiction over this matter. The Court is far better versed than I on jurisdictional requirements in a matter where FOIA, APA abuse of discretion, and improper rulemaking¹ claims are all raised, as well as whether (if some can be heard in this court and others must be transferred to the District Court²) those claims can be severed.

¹ I note that my claim is a petition for review of *both* USPS' improper response to my FOIA request, *and* its improper action in instituting 39 CFR 265.9(g)(3)(v).

² I note that USPS has agreed that, should the Court deny jurisdiction, it should transfer the case (as to the claim(s) for which it lacks original jurisdiction) rather than dismiss it. As for the interest of justice in permitting my surreply, please see the Supreme Court's long history of liberally permitting filings that clarify the filer's intent, state a fuller basis for a claim, or counter new questions of law raised in the filing to which they respond, especially from *pro se* plaintiffs.

However, I oppose USPS' motion to defer or moot my motions regarding the record. They are not post-judicial; they are both procedural due process and implied by my right to timely³ responses to my FOIA requests, and irreparably harmed by USPS' failure to comply with FRAP 17.

To permit without sanction USPS' failure to comply with FRAP filing requirements, merely because they filed a motion to dismiss *after* they should have already filed the record, would effectively gut FRAP 17 and permit agencies to stall the timely proceeding of petitions for review.

FRAP has an unambiguous mandate that "[t]he agency must file the record ... within 40 days after being served with a petition for review". While "[t]he court may shorten or extend the time to file the record", this does not justify *post hoc* untimely filing. If USPS wanted the court to so order, they should have requested *and obtained* such an order *before* the filing deadline. As this Court warns even *pro se* litigants, who are given liberal construction (unlike USPS): "In one regard, however, you will be strictly held to the requirements of the Federal Rules of Appellate

³ My FOIA request asked for expedited processing, as it directly affects a *pending* proceeding before the Postal Regulatory Commission (MC2013-60), which is *statutorily defined* to be of "public interest" (39 USC § 505), and for which I made my FOIA request. Further delay exacerbates the risk to the public of this proceeding continuing without the benefit of pertinent information.

Procedure and the Circuit Rules of this Court ... in the area of timeliness of your filings." Surely USPS, and its experienced counsel, are to be held to *at least* the same strict standard for timeliness of filings. USPS claims that it will "promptly comply" with FRAP 17 should the Court deny its motion to dismiss, but this is *impossible* under the plain language of the rule.

This case has been improperly delayed by USPS' failure.⁴ The delay has caused irreparable harm, there is a need to ensure that such harm does not occur again in other cases, and therefore my motions are not moot.⁵ A declaration of USPS' failure to obey the rules; a permanent injunction against their doing so again in the future; and an expedited schedule for USPS to file an answer on the merits (wherever this continues) would be appropriate remedy.

Respectfully submitted,
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⁴ This delay is significant, as it is greater than the deadline to reply to a FOIA complaint. If this case *is* transferred, then I ask that the record (which I have filed myself as a good faith attempt to cure USPS' failure) be transferred with it, so that the case may proceed expediently to USPS' reply on the merits.

⁵ Again, see e.g. this Court's decision in *CREW v FEC*. An agency's failure to comply with timeliness requirements is in itself reviewable and sanctionable, regardless of the mootness of an otherwise underlying issue.