

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
AMIR MESHAL,)	
)	
Plaintiff,)	
)	
v.)	No. 09-cv-2178 (EGS)
)	
CHRIS HIGGENBOTHAM, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**REPLY IN SUPPORT OF PLAINTIFF’S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Defendants do not dispute that Plaintiff has met the requirements of Rule 15(a)(2) and do not oppose granting leave to amend. *See* Defs.’ Response to Pl.’s Mot. for Leave to File Second Am. Compl. (“Defs.’ Response”) at 2. They ask the Court to give them 44 days to re-brief in full the arguments they already briefed in their Motion to Dismiss the Amended Complaint. *Id.* at 1. But proceeding along such a course would waste judicial resources and cause undue delay. For the reasons set forth below and in Plaintiff’s Motion, this Court should grant Plaintiff leave to file a second amended complaint, deny Defendants’ request for 44 days to respond to the amended pleading with a motion to dismiss, order Defendants to submit only a short supplemental memorandum in support of that motion, and order Plaintiff to submit an equally limited and short response.

The Court has discretion to manage its cases so as to avoid unnecessary duplication of filings, including on a renewed motion to dismiss. *See* 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1476 (3d ed. 2010) (“If some of the defects raised in the original motion remain in the new pleading, the court simply may consider

the motion as being addressed to the amended pleading.”); *Jordan v. City of Philadelphia*, 66 F. Supp. 2d 638, 641 n.1 (citing Wright, Miller & Kane §1476 and permitting motion to dismiss complaint to be considered as addressing amended complaint where portions of the amended complaint suffered from same deficiencies as the superseded complaint). Defendants have not cited any authority indicating that the Court may *not* proceed in the economical, efficient, and fair manner that Plaintiff proposes.

The course Defendants propose would require the unnecessary expenditure of judicial resources. The Court has already considered Defendants’ Motion to Dismiss the Amended Complaint, related briefing by both parties, and the parties’ oral arguments on that motion. The proposed amendments constitute narrow, additional factual allegations bolstering Plaintiff’s claims that Defendants were involved in his proxy detention and rendition in East Africa—allegations that Defendants concede are “not extensive.” Defs.’ Response at 2. Responding to this small, albeit significant, set of additional facts alleged in a mere eight paragraphs of what would otherwise be a 219-paragraph complaint does not require the filing of new full-length briefs. There is no need to re-argue what has already been argued. If this Court limits Defendants’ response to a second amended complaint to ten pages, Defendants will be free to incorporate by reference the arguments they previously made and address only the impact of the new material.

The course Defendants propose would also cause undue delay. Defendants have not shown why they require 44 days to respond to amendments to the complaint that do not alter Plaintiff’s legal theories, assert new claims, or raise new legal issues, and that are limited to a mere eight paragraphs. Such a response period is 30 days longer than the default 14-day

response period contemplated by Rule 15(a)(3) following the filing of an amended complaint.

Defendants have been on notice of the proposed amendments since January 18, the date on which Plaintiff filed his Motion for Leave. Defendants do not need 44 days, plus the additional time from January 18 to the date on which Plaintiff's Motion for Leave is granted, to respond.

Finally, Defendants note that several pertinent judicial opinions have been issued since the completion of briefing on their Motion to Dismiss the Amended Complaint. *See* Defs.' Response at 3. But these authorities have already been brought to the Court's attention by the parties' notices of supplemental authority, and the Court undoubtedly has already considered them. Although Defendants may wish to address these authorities again, that is not necessary.¹

Plaintiff has shown that justice requires a grant of leave to further amend the complaint in this action and has proposed that the Court proceed in a manner that permits the just resolution of the case, while best conserving the Court's time and resources. For the reasons set forth above and in Plaintiff's Motion for Leave to File a Second Amended Complaint, this Court should grant the motion and issue the proposed order attached to that motion.

Respectfully submitted,

/s/ Nusrat J. Choudhury

Nusrat J. Choudhury

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¹ The fact that a potentially relevant case is scheduled for *en banc* rehearing this month by the Seventh Circuit Court of Appeals, *see* Defs.' Response at 3 n.2, is irrelevant, as there is no reason to expect a decision in that case during the 44 days that Defendants seek to brief their renewed motion to dismiss.

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/s/ Arthur B. Spitzer

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February 6, 2012