No. 23–

IN THE

Supreme Court of the United States

MS. SHALINI AHMED,

Applicant,

v.

UNITED STATES,

Respondent.

On Application to Recall and Stay the Mandate of the
United States Court of Appeals for the First Circuit

EMERGENCY APPLICATION FOR A RECALL AND STAY OF MANDATE PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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January 25, 2023

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ATTACH. B – Opinion of the United States Court of Appeals for the First Circuit affirming district court judgment, dated November 1, 2022

ATTACH. C – Ms. Ahmed's Notice of Her Intention to Move the District Court to Set Aside, Reduce, or Vacate the Declaration of Bond Forfeiture, dated November 7, 2020

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To the HONORABLE KETANJI BROWN JACKSON, Associate Justice of the Supreme Court of the United States and Circuit Justice for the First Circuit:

INTRODUCTION

Pursuant to 28 U.S.C. § 1651 and Supreme Court Rule 23, Applicant Ms. Shalini Ahmed (or "Ms. Ahmed") respectfully requests that this Court recall and stay the mandate in *U.S. v. Ahmed*, Case 21-1193 and 21-1194 in the First Circuit, pending disposition of Ms. Ahmed's petition for certiorari, which *pro se* Ms. Ahmed intends to file expeditiously. The petition for certiorari seeks review of the First Circuit's affirmation of the district court judgment of bond forfeiture in *US v. Ahmed*, Case No. 1:15-cr-10131-NMG (D. Mass.) (or "insider trading case").

This recall and stay of mandate application arises from the denial of a motion by the First Circuit Court of Appeals to stay the mandate in the appellate court pending disposition of Ms. Ahmed's petition for certiorari. (Attach. A). Ms. Ahmed had also requested a temporary stay of the mandate to seek emergency relief from this Court, which the First Circuit denied on January 25, 2023, and instead, issued the mandate on the same day. (Attach. A) Because the Court is likely to grant certiorari and reverse the First Circuit's lack of consideration for Ms. Ahmed's *pro se* status and due process rights, as well as the First Circuit's refusal to grant a stay of the mandate, and because a recall and stay of mandate pending disposition of Ms. Ahmed's petition for certiorari is necessary to avoid imminent and irreparable harm

to Ms. Ahmed and her three minor children, the Court should grant this recall and stay application.

This Court is likely to grant certiorari because this Court has consistently held that submissions drafted by *pro se* litigants are to be construed liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (stating that "[a] document filed *pro se* is to be liberally construed") (citation omitted); *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam) (*pro se* litigants given the benefit of liberal interpretation of federal rules, holding that *pro se* submissions, "however inartfully pleaded," are held to "less stringent standards than formal pleadings drafted by lawyers").

In contravention of these well-established holdings, the First Circuit did not consider or reference Ms. Ahmed's status as a *pro se* litigant in affirming the district court judgment (Attach. B), and that omission and lack of consideration for Ms. Ahmed's *pro se* status has prejudiced Ms. Ahmed and violated her due process rights to be heard on the merits.

In particular, Ms. Ahmed was a surety for an appearance bond for her husband Iftikar Ahmed (or "Defendant" or "Mr. Ahmed") in the criminal insider trading case. The government moved for declaration of bond forfeiture, which Ms. Ahmed opposed. The district court granted the declaration of bond forfeiture, which Ms. Ahmed timely appealed. The First Circuit dismissed her appeal for lack of jurisdiction and the government moved pursuant to Fed. R. Crim. P. 46(f)(3) for a

judgment of bond forfeiture, despite Ms. Ahmed, at all times, explicitly reserving her rights to request a set aside of the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2) (or "Rule 46(f)(2)").

Ms. Ahmed immediately informed the district court of her intention to move for setting aside of the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2) (Attach. C) and requested the entry of a briefing schedule for her to do so (Attach. D). In opposing the government's motion for judgment, Ms. Ahmed explicitly referenced her pending motion for a Rule 46(f)(2) briefing schedule (Attach. E at 14-15). However, the district court denied the *pro se* Ms. Ahmed's motion for entry of a briefing timeline and *in the same order*, granted the government's motion for judgment of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(3), thereby precluding Ms. Ahmed, a *pro se* litigant, from her right to request a set aside of the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2) and in violation of her due process rights which provides that a litigant must have an opportunity to be heard. (Attach. F). In the order allowing for judgment, despite denying Ms. Ahmed's request for a briefing schedule, the district court stated that "no one, including the Surety, has filed a motion to set aside the Court's declaration of bond forfeiture, as provided for in Fed. R. Crim. P. 46(f)(2)." (Doc. 379)

Ms. Ahmed timely appealed the district court's orders. However, the First Circuit Court of Appeals did not address Ms. Ahmed's *pro se* status in its' summary

affirmation Order, which stated that "the burden was on the appellants in the proceedings below to prove that the bail forfeiture should be set aside." (Attach. B). Furthermore, the First Circuit Court of Appeals did not address the district court's denial of Ms. Ahmed's request for a briefing schedule in the same order granting the government's motion for a bond forfeiture, precluding Ms. Ahmed from any opportunity to be heard on a Rule 46(f)(2) motion, which was a violation of her due process rights. These rulings stand in direct contrast to this Court's holdings that "[t]he… *pro se* document is to be liberally construed… a *pro se* [submission], however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (internal quotation marks and citations omitted).

If certiorari is granted, the Court is likely to reverse the First Circuit. The First Circuit's omission or lack of consideration of Ms. Ahmed's *pro se* status stands in direct contrast to this Court's holdings on reading *pro se* submissions liberally and ensuring that *pro se* litigants do not lose any rights due to their lack of legal training. *See Castro v. United States*, 540 U.S. 375, 381 (2003) (noting that courts may construe *pro se* pleadings so as to avoid inappropriately stringent rules and unnecessary dismissals of claims); *see Hughes v. Rowe*, 449 U.S. 5 (1980) (Holding that pleadings drafted by *pro se* litigants should be held to a lesser standard than

those drafted by lawyers since "[a]n unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his [arguments]").

Here, *pro se* Ms. Ahmed, who is also a single mother of three minor children, had requested three months to brief a motion to set aside the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2) and was waiting for the entry of a briefing schedule before submitting such motion. Ms. Ahmed should not be punished for waiting for district court adjudication of her motion requesting a briefing schedule and for the entry of such schedule, especially as "the government [did] not oppose providing the Surety with reasonable additional time to file a Rule 46(f)(2) motion" (Attach. G)[1] and further stated that the "[i]f the [lower] [c]ourt is so inclined to allow the Surety to file a Motion to Set Aside or other filings, the government respectfully requests that this [lower] [c]ourt set a briefing schedule with a specific deadline for the Surety to file such motions." (Doc. 366 at 7-8) However, the district court did not allow Ms. Ahmed any opportunity to submit a Rule 46(f)(2) motion before denying it and in the same order, granting the government's motion for a bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(3). (Attach. F)

This ruling has prejudiced *pro se* Ms. Ahmed and denied her an opportunity to be heard, in contrast to holdings of this Court which have consistently held due

[1] Ms. Ahmed's response is Attach. H.

process protections as sacrosanct, as "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *See Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) ("What the Constitution does require is "an *opportunity* . . . granted at a meaningful time and in a meaningful manner," *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), "for [a] hearing appropriate to the nature of the case," *Mullane* v. *Central Hanover Tr. Co., supra*, at 313.") (citations in original); *see Grannis* v. *Ordean*, 234 U.S. 385 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard.")

Ms. Ahmed also will suffer irreparable harm if this recall and stay application is denied. Ms. Ahmed will be forced to litigate in district court and will be forced to seek remission of the bond forfeiture judgment pursuant to Fed. R. Crim. P. 46(f)(4) and thus, will lose the opportunity to request a motion to set aside the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2). In fact, any adjudication by this Court will be rendered moot by denying this recall and stay application, as the process in the district court would have continued, moving along the Fed. R. Crim. P. 46(f) statute, without allowing Ms. Ahmed an opportunity to move to set aside the declaration of forfeiture, as is her right as per the Fed. R. Crim. P. 46(f)(2) statute. As the First Circuit has already issued the mandate to the district court, in

conjunction with denying Ms. Ahmed's stay motion, the harms from this ongoing litigation cannot be undone in the future and thus, a recall and stay would safeguard against Ms. Ahmed losing her right to seek to set aside the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2).

Furthermore, the government will likely seek to enforce the bond forfeiture amount of $9 million, which was secured by the home where Ms. Ahmed and her three minor children reside. This will result in irreparable harm to the three minor children. In a situation where Ms. Ahmed did not agree to assume a massively enlarged risk of Defendant's flight with the government's filing of another matter under seal, alleging massive fraud and the *ex-parte* freezing of her (and others') assets, Ms. Ahmed's arguments on the merits of setting aside the declaration of bond forfeiture are strong and substantial and are supported by this Court's holdings on sureties and contractual risk. Without a recall and stay of the mandate, Ms. Ahmed will not be able to be heard on these merits for a setting aside of the declaration of the bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2).

Accordingly, Ms. Ahmed respectfully requests that the Court grant this recall and stay application pending disposition of Ms. Ahmed's petition for certiorari, which she intends to file expeditiously.

STATEMENT OF THE CASE

A. Factual Background

On April 2, 2015, Defendant Iftikar Ahmed (or "Mr. Ahmed" or "Defendant") was arrested on charges of insider trading,[2] alleging an offense of approximately $1 million, with a maximum civil judgment amount of approximately $4 million. That same day, Mr. Ahmed was released on bail of $9 million, which was to be secured by Mr. Ahmed's equity[3] in the home he owned with his wife (or "Ms. Ahmed" or "Surety") and where they lived with their three minor children. Ms. Ahmed became the co-Surety on that bond for Mr. Ahmed's release for the insider trading case.

Mr. Ahmed attended the insider trading case court hearings and abided by all terms of the contract, assented to by the government that "[Mr.] Ahmed has complied fully with all of the release conditions since he was released approximately four weeks ago"[4] filed on April 30, 2015 and granted by the court.

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[2] *US v. Ahmed*, Case No. 1:15-cr-10131-NMG (D. Mass.) ("insider trading case") Filings in this matter referred to as "Doc.___"

[3] Though the magistrate judge at the bail proceeding had ordered that only Mr. Ahmed's equity in the home would secure the $9 million bond, somehow Ms. Ahmed's equity in the home was also used to secure the bond, though that was not the judge's order.

[4] Assented to motion for modification of conditions of release to allow Mr. Ahmed, a cancer patient, to meet with his doctor in New York, filed on April 30, 2015. *US v. Ahmed*, 1:15mj-02062-MBB, Doc. 23.

However, on May 6, 2015, the government[5] filed under seal, a separate Complaint[6] against, *inter alia*, Mr. Ahmed, that alleged different conduct of fraud, in the United States District of Connecticut. A request for an asset freeze for an amount of $55 million was also filed *ex-parte* and under seal on May 6, 2015 and was granted under seal on May 7, 2015 by the Connecticut district court in the Connecticut case. In or around mid-May 2015, Mr. Ahmed left the jurisdiction. The amount of assets frozen of $55 million was subsequently increased to $118 million in August 2015, which was also the maximum amount of judgment in the Connecticut case.[7]

On May 24, 2019, the government moved for declaration of bond forfeiture. (Doc. 293) On May 28, 2019,[8] Ms. Ahmed promptly requested intervention as Surety (Doc. 295) and on June 6, 2019, Ms. Ahmed opposed the government's motion for declaration of bond forfeiture. (Doc. 298, electronically filed on June 7, 2019). On November 7, 2019, the district court denied Ms. Ahmed's request for intervention and granted the government's request for declaration of bond forfeiture.

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5 The "government" is the Federal government under the single sovereign of the United States of America and "[t]he right hand cannot complain about the actions of the left." *U.S. v. Urquiza*, No. 04-CR-191, at *5 (E.D. Wis. Sep. 19, 2006).

6 *SEC v. Ahmed*, 3:15-cv-675 (JBA) (D. Conn) ("Connecticut case", "Connecticut district court"). The Complaint was subsequently amended on April 1, 2016. Filings in this matter referred to as "ECF___"

7 Ms. Ahmed and others are Relief Defendants in the Connecticut case and all of their assets are frozen in that case.

8 Filed electronically by the clerk on May 29, 2019

(Doc. 307). Ms. Ahmed appealed to the First Circuit Court of Appeals, which ultimately dismissed her appeal for lack of jurisdiction and cited the district court's order stating that "Once the bond is declared forfeited, Mrs. Ahmed, as a co-surety, has the right to move to have the forfeiture set aside pursuant to Fed. R. Crim. P. 46(f)(2)…"[9]

The mandate issued on August 17, 2020, upon which Ms. Ahmed moved for reconsideration of the declaration of bond forfeiture and subsequently a stay of proceedings in the district court, to allow for, *inter alia*, adjudication of a motion pending in the Connecticut case for a release of funds for her to retain counsel as Surety in the insider trading case. (Doc 330, Doc. 339, respectively) Both were denied by the district court, on October 1, 2020 (Doc. 337) and November 3, 2020 (Doc. 347) respectively. On November 6, 2020, the government moved for a judgment of forfeiture of appearance bond, pursuant to Rule 46(f)(3). (Doc. 351)

On November 7, 2020,[10] Ms. Ahmed informed the district court of her intention to oppose the government's motion for judgment of forfeiture (Doc. 352) and also of her intention to file a motion setting aside the declaration of bond forfeiture pursuant to Rule 46(f)(2). (Attach. C). On November 7, 2020, Ms. Ahmed

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[9] Case: 19-2213; Document: 00117558438; Page: 1; Date Filed: 02/28/2020; Entry ID: 6320887

[10] Because the district court denied Ms. Ahmed's motion to intervene, she did not have electronic filing access or privileges and had to mail her pleadings to the Court. While dated November 7, 2020, these pleadings were electronically filed by the clerk on November 9, 2020.

also requested a briefing schedule to enter for her to file a Rule 46(f)(2) motion, and as a *pro se* litigant, requested three months to research and write such motion. (Attach. D). The government, while opposing Ms. Ahmed's request for three months, stated that "[i]f the [district] [c]ourt deems it necessary to set a briefing schedule, the government does not oppose providing the Surety with reasonable additional time to file a Rule 46(f)(2) motion." (Attach. G). In a different filing, the government further stated that "[i]f the Court is so inclined to allow the Surety to file a Motion to Set Aside [pursuant to Rule 46(f)(2)] or other filings, the government respectfully requests that this Court set a briefing schedule with a specific deadline for the Surety to file such motions." (Doc. 366 at 7-8).

On February 26, 2021, the district court denied the Surety's motion for a briefing schedule to file a Rule 46(f)(2) motion and in the same order, granted the government's motion for default judgment. (Attach. F) The district court stated that "no one, including the Surety, has filed a motion to set aside the Court's declaration of bond forfeiture, as provided for in Fed. R. Crim. P. 46(f)(2)." (Doc. 379)

Ms. Ahmed timely appealed to the First Circuit Court of Appeals, which was fully briefed on January 18, 2022. In that briefing, Ms. Ahmed outlined the merits of her position, *inter alia*, that she was denied an opportunity to brief a Rule 46(f)(2) motion, which violated her due process rights, and that she was not made aware of the Connecticut case, which was filed under seal, and did not agree to assume the

vastly enlarged risk of defendant's flight due to the substantial allegations of fraud against him in that case. In fact, the maximum civil judgment in the insider trading case for which Ms. Ahmed became a surety was for approximately $4 million, while the maximum civil judgment in the Connecticut case alleging different and more serious conduct was for approximately $118 million, a *vastly* different undertaking of contractual risk as a surety which Ms. Ahmed never agreed to assume.

On November 1, 2022, the First Circuit Court of Appeals affirmed the district court's judgment, stating that the "burden was on the appellants in the proceedings below to prove that the bail forfeiture should be set aside." (Attach. B). Ms. Ahmed moved for a rehearing and rehearing *en banc*, which was denied on January 17, 2023. Ms. Ahmed then moved for stay of the mandate pending this Court's disposition of her writ for certiorari which was denied on January 25, 2023. (Attach. A) Despite Ms. Ahmed requesting a temporary stay of the mandate so she could seek relief in this Court, the First Circuit has already issued the mandate on January 25, 2023. (Attach. A)

ARGUMENT

The question presented by this case is whether Ms. Ahmed is entitled to (1) a liberal reading of her filings in the district court and appellate court as a *pro se* litigant as well as (2) the due process protections afforded sureties pursuant to Fed. R. Crim. P. 46. Ms. Ahmed's position is —consistent with this Court's holdings—

that a *pro se* litigant is entitled to a liberal reading of her filings and protection of her due process rights with an opportunity to be heard and thus, Ms. Ahmed is entitled to file a motion to set aside a declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2). Ms. Ahmed, who is also *pro se* in this instant proceeding, expects to file her petition for writ of certiorari expeditiously.

Separately, Ms. Ahmed respectfully submits that she meets this Court's traditional test for a discretionary stay pending "disposition" of a "petition for certiorari." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). Under that traditional test, a stay is called for when there is "'(1) a reasonable probability that this court will grant certiorari, (2) a fair prospect that the Court will then reverse the decision below, and (3) a likelihood that irreparable harm [will] result from the denial of a stay.'" *Id*. (quoting *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)). Ms. Ahmed satisfies each of these factors. There is a reasonable probability that the Court will grant certiorari to resolve the important and recurring question of consideration afforded to a *pro se* litigant's filings and ensuring the protections of due process are followed, particularly for *pro se* litigants. There is a fair prospect that this Court will reverse the First Circuit and allow for Ms. Ahmed to brief a motion to set aside the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2), given her rights as surety pursuant to Fed. R. Crim. P. 46, the fact that she reserved such right and

had a pending motion for the entry of a briefing schedule to do so, and as she is *pro se*. Last, if a recall and stay were denied, Ms. Ahmed and her three minor children would suffer the irreparable harm of potentially losing their home before the merits of a motion to set aside the declaration of forfeiture was heard, in a situation where the government vastly increased the risk to the Surety without her knowledge or consent. Furthermore, without a recall and stay, Ms. Ahmed would be compelled to litigate a Fed. R. Crim. P. 46(f)(4) motion, which may moot any relief afforded by this Court on allowing Ms. Ahmed to request a reversal of the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2).

I. THIS COURT IS LIKELY TO GRANT CERTIORARI TO REVIEW THE FIRST CIRCUIT'S AFFIRMATION OF JUDGMENT OF BOND FORFEITURE.

Given the longstanding and well-established holdings of this Court regarding liberal constructions of *pro se* filings and a clear protection of due process rights, this Court is likely to grant certiorari.

A. This Court's Holdings Dictate a Liberal Construction of *Pro Se* Filings.

This Court has long held that submissions drafted by *pro se* litigants are to be construed liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (stating that "[a] document filed *pro se* is to be liberally construed") (citation omitted); *see Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (holding that "[t]he… *pro se* document is to be liberally construed… a *pro se* [submission], however inartfully pleaded, must be

held to less stringent standards than formal pleadings drafted by lawyers") (internal quotation marks and citations omitted); *see Castro v. United States*, 540 U.S. 375, 381 (2003) (noting that courts may construe *pro se* pleadings so as to avoid inappropriately stringent rules and unnecessary dismissals of claims); *see Hughes v. Rowe*, 449 U.S. 5 (1980) (Holding that pleadings drafted by *pro se* litigants should be held to a lesser standard than those drafted by lawyers since "[a]n unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his [arguments]"); *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam) (*pro se* litigants given the benefit of liberal interpretation of federal rules, holding that *pro se* submissions, "however inartfully pleaded," are held to "less stringent standards than formal pleadings drafted by lawyers").

In contravention to this Court's holdings, when the First Circuit affirmed the district court's judgment, the First Circuit did not even acknowledge Ms. Ahmed's *pro se* status, the fact that she reserved all rights to file a motion to set aside the declaration of forfeiture pursuant to Fed. R. Crim. P. 46(f)(2), and that she had requested and was waiting for the entry of a briefing schedule for a Rule 46(f)(2) motion. As this Court's holdings are binding on appellate courts, including the First Circuit, the Court should grant certiorari to make it clear that Ms. Ahmed's *pro se* status should be considered and addressed by the First Circuit.

B. This Court's Holdings Dictate a Protection of Due Process, Especially for *Pro Se* Litigants.

This Court has zealously guarded due process rights that are enshrined in our Constitution, consistently holding these protections as sacrosanct, as "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *See Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) ("What the Constitution does require is "an *opportunity* . . . granted at a meaningful time and in a meaningful manner," *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), "for [a] hearing appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co., supra*, at 313.) (citations in original); *see Grannis v. Ordean*, 234 U.S. 385, 394 ("The fundamental requisite of due process of law is the opportunity to be heard."). Ms. Ahmed has a constitutional right to be heard, especially where the government seeks to deprive her of her property. There is no question that Ms. Ahmed has a constitutionally protected interest in her property, or the amount of collateral, and it is well recognized that "[in a bail forfeiture action], the legal rights of a third party, namely the surety, are also implicated." *United States v. Cain*, No.1:16-cr-00103-JAW, at *18 (D.Me. June 1, 2018). Furthermore, "[l]iability on a bond is a matter of contract, independent of the [underlying] criminal prosecution… and persons potentially liable on a contract are entitled to notice and an opportunity to be heard during judicial proceedings that

may affect their interests." *U.S. v. King*, 349 F.3d 964, 966-67 (7th Cir. 2003) (internal citations omitted).

Here, Ms. Ahmed was waiting for the entry of a briefing schedule before filing a Rule 46(f)(2) motion, as she was allowed that right by statute. The district court's denial of Ms. Ahmed's request for a briefing schedule *in the same order* as granting the government's motion for judgment violated Ms. Ahmed's due process rights and denied her an opportunity to protect her rights. This Court's rulings on protection of due process rights are binding on the appellate courts, including the First Circuit, and the Court should grant certiorari to make it clear that the First Circuit must consider and address the fact that Ms. Ahmed always protected her right to file a Rule 46(f)(2) motion, as the statute provides, and allow her to do so.

C. The Court Should Grant Certiorari Because the Ruling Will Not Resolve on its Own, The Questions Presented Are Important, and this Case Is an Ideal Vehicle.

This case merits this Court's review, for multiple reasons.

First, there is clear precedent that courts must read a *pro se* litigant's filings liberally and to the highest argument. This is not a frivolous holding. *Pro se* litigants are at a significant disadvantage in issues of litigation and a single misstep can cause *pro se* litigants to lose substantial rights. Therefore, this Court and all appellate courts have held that "[t]he… *pro se* document is to be liberally construed… a *pro se* [submission], however inartfully pleaded, must be held to less stringent standards

than formal pleadings drafted by lawyers." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (internal quotation marks and citations omitted); *also Ruotolo v. I.R.S.*, 28 F.3d 6, 8 (2d Cir. 1994) (recognizing *pro se* litigants must be accorded "special solicitude"). The First Circuit did not address or even consider Ms. Ahmed's *pro se* status in its ruling.

Ms. Ahmed sought a rehearing and *en banc* review of the First Circuit's panel ruling, but the First Circuit denied her request. Thus, there is simply no chance that this lack of consideration for Ms. Ahmed's *pro se* status will resolve unless this Court weighs in, and Ms. Ahmed, a *pro se* litigant and surety with substantial merits to her position, would lose the opportunity to seek a set aside of the declaration of bond forfeiture, which could ultimately impact the home where she and the minor children reside, *even though she as Surety did not agree to assume the vastly enlarged risk of Defendant's flight with the filing of the Connecticut case.* This Court's precedents make it clear that an appearance bond is contractual between a surety and the government and that any action by the government that changes that risk impacts the contract and releases the surety from any obligation. *See Reese v. United States*, 76 U.S. 13 (1869) ("There is… an implied covenant on the part of the government, when the recognizance of bail is accepted, that it will not in any way… take any proceedings with the principal which will increase the risks of the sureties or affect their remedy against him.") Here, the government unilaterally and *ex-parte*

vastly enlarged the risk of defendant's flight by the filing different and more substantial allegations against Mr. Ahmed and *ex-parte* imposing a substantial asset freeze, all without Ms. Ahmed's knowledge and consent. The government changed the contractual nature of the risk that Ms. Ahmed assumed as surety for the earlier insider trading case with a maximum judgment amount of $4 million versus the later Connecticut case with different and materially more serious allegations of fraud and a maximum judgment amount of $118 million. It is well recognized that "a wide variety of governmental actions may increase or decrease the chance that the defendant will flee, and that such actions extinguish the surety's primary obligation… when the change in the surety's risk is material." *United States v. LePicard*, 723 F.2d 663, 665 (9th Cir. 1984).

Courts set aside declarations of bond forfeiture where the government materially increases the risk to the sureties without their notice and consent. *See U.S. v. King*, 349 F.3d 964, 967 (7th Cir. 2003) ("That a material change in risk can discharge the surety's obligation is a staple of suretyship law…"); *United States v. Miller*, 539 F.2d 445, 447 (5th Cir. 1976) ("As a general rule the terms of a bail contract are to be construed strictly in favor of the surety, who may not be held liable for any greater undertaking than he has agreed to."); *Allstate Insurance v. American Bankers Insurance*, 882 F.2d 856, 861 (4th Cir. 1989) ("When one undertakes a surety obligation, the surety undertakes a calculated risk, and events which

materially increase that risk without consent of the surety terminate the obligation of the bond.") (citations omitted).

Here, the district court did not even allow Ms. Ahmed an opportunity to present the factors to set aside the declaration of forfeiture, because the district court did not even allow the Surety an opportunity to brief a Rule 46(f)(2) motion, even though the government itself did not oppose allowing a reasonable amount of time for Surety to do so. The First Circuit compounded this due process violation by affirming the lower court decision.

Second, the question presented is important. The issue of bail and surety risk arises in each and every case involving any application for bail. Bail proceedings for criminal offenses operate with the cooperation and involvement of a surety. Many times, those sureties are not represented by counsel and must rely on the protections inherent in statutes, such as in Fed. R. Crim. P. 46. Given the importance of bail proceedings to the judicial system in this country, as well as the safeguarding of due process rights for sureties pursuant to statute, as well as the fact that there is a rise in *pro se* litigants in this country, ensuring that *pro se* litigants do not lose important rights and that due process is followed is important and necessary.

Third, this case presents an excellent vehicle for review. Here, *pro se* Ms. Ahmed specifically requested a briefing schedule to issue, which the government did not oppose *if* the district court was inclined to allow Ms. Ahmed to brief a motion

to set aside pursuant to Fed. R. Crim. P. 46(f)(2). There is no issue of the district court being "inclined" here, as Ms. Ahmed has a *statutory right* to file a Rule 46(f)(2) motion and as a *pro se* litigant, was requesting time and a briefing schedule to do so, specifically to protect her rights and so that she knew, with specific deadlines, when filings would be due in the district court.

This Court's holdings on both *pro se* filings and on following due process and allowing an opportunity to be heard mandate that the district court should have allowed Ms. Ahmed an opportunity to file a Rule 46(f)(2) motion and be heard on the merits before granting the government's motion for a judgment of forfeiture pursuant to Rule 46(f)(3). The district court did not.

Because this Court's holdings are binding on both appellate courts and district courts, and because neither the First Circuit nor the district court even considered Ms. Ahmed's *pro se* status, her pending motion for a briefing schedule, and her right by statute to move for a set aside of the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2), this Court should grant certiorari to make it clear that applications of this Court's rulings regarding *pro se* filings and protection of due process are mandatory.

II. THIS COURT IS LIKELY TO REVERSE THE FIRST CIRCUIT.

This Court is likely to reverse the First Circuit, which failed to consider or address Ms. Ahmed's *pro se* status and the fact that statute mandates sureties a right to move to set aside a declaration of bond forfeiture.

A. *Pro Se* Filings Are to Be Read Liberally.

Not only this Court, but also all Circuit courts have stated that *pro se* litigant filings are to read liberally, *including the First Circuit*, but it did not follow that premise here, which has prejudiced Ms. Ahmed.

As stated earlier, this Court has long held that submissions drafted by *pro se* litigants are to be construed liberally. (*see earlier for case citations*).

Circuit appellate courts hold the same, as there is "an obligation on the part of the court to make reasonable allowances to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training," which includes avoiding "harsh application of technical rules." *Traguth v. Zuck*, 710 F.2d 90 (2d Cir. 1983); *Ruotolo v. I.R.S.*, 28 F.3d 6, 8 (2d Cir. 1994) (recognizing *pro se* litigants must be accorded "special solicitude"). *Also see Pagayon v. Holder*, 675 F.3d 1182, 1188 (9th Cir. 2011) (noting that the court is "particularly careful to give claims raised by *pro se* petitioners their most liberal construction"); *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) ("As a pro se petitioner, Solomon's complaint and addendum are to be given liberal construction"); *Miller v. Stanmore*, 636 F.2d 986,

988 (5th Cir. 1981) ("pro se [pleadings] are held to less stringent standards than formal pleadings drafted by lawyers"); *Tannenbaum v. U.S.*, 148 F.3d 1262, 1263 (11th Cir. 1998) ("Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed."); *Zilich v. Lucht*, 981 F.2d 694 (3d Cir. 1992) ("When… the [litigant] is a pro se litigant, we have a special obligation to construe his [pleading] liberally."); *Christensen v. C.I.R*, 786 F.2d 1382, 1384 (9th Cir. 1986) ("The Supreme Court has directed federal trial courts to read pro se papers liberally"); *Toevs v. Reid*, 685 F.3d 903, 913 n.7 (10th Cir. 2012) ("Because Mr. Toevs proceeds pro se, he is entitled to a liberal construction of his filings."); *Hudson v. McHugh*, 148 F.3d 859, 864 (7th Cir. 1998) ("Our guiding principle is, again, the well-known admonition that district courts must construe pro se pleadings liberally… The essence of liberal construction is to give a pro se plaintiff a break when, although he stumbles on a technicality, his pleading is otherwise understandable.") (internal citations omitted); *Caruth v. Pinkney*, 683 F.2d 1044, 1050 (7th Cir. 1982) ("It is clear that a trial court has special obligations with respect to a *pro se* litigant. This heightened judicial solicitude is justified in light of the difficulties of the *pro se* litigant in mastering the procedural and substantive requirements of the legal structure... Trial courts have also been held obligated to inform *pro se* [litigants] of their right to file affidavits and other responsive material when their adversaries move for summary judgment against

them."); *Garaux v. Pulley*, 739 F.2d 437, 439 (9th Cir. 1984) ("The rights of *pro se* litigants require careful protection where highly technical requirements are involved, especially when enforcing those requirements might result in a loss of the opportunity to prosecute or defend a lawsuit on the merits."); *Richardson v. U.S.*, 193 F.3d 545, 548 (D.C. Cir. 1999) ("Courts must construe pro se filings liberally"); *Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999) ("Boswell's status as pro se litigant affords relief from the standing problem… Pro se [litigants] enjoy the benefit of a liberal construction of their pleadings and filings…. The appropriate liberal construction requires active interpretation in some cases….") (internal citations and quotes omitted); *Triestman v. Federal Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) ("In this time of ever increasing legal costs and complexity of litigation, the *pro se* litigant is at an insurmountable disadvantage.") (citation omitted); *Green v. U.S.*, 260 F.3d 78, 83 (2d Cir. 2001) ("It is well settled that *pro se* litigants generally are entitled to a liberal construction of their pleadings, which should be read to raise the strongest arguments that they suggest.") (citation and quotation marks omitted)

This liberal construction also applies to *pro se appellate* pleadings. *See Triestman v. Federal Bureau of Prisons*, 470 F.3d 471, 475 (2d Cir. 2006):

> [Pro se] language must be liberally construed. *See Dotson v. Griesa*, 398 F.3d 156, 159 (2d Cir.2005) (applying a "liberal reading" to plaintiffs" *pro se* appellate brief); *Wright v. Comm'r.*, 381 F.3d at 44 ("[W]e construe *pro se* appellate briefs and submissions liberally and interpret them to raise the strongest arguments they suggest.") (citation omitted); *Ortiz v. McBride*, 323 F.3d 191, 194 (2d Cir.2003) ("This court construes appellate briefs submitted by *pro se* litigants liberally and reads such submissions to raise the strongest arguments they suggest.") (citation omitted).

Even the First Circuit holds the same, stating that "[o]ur judicial system zealously guards the attempts of pro se litigants on their own behalf." *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997); *Rodi v. Southern New England School of Law*, 389 F.3d 5, 13 (1st Cir. 2004) ("the fact that the plaintiff filed the complaint pro se militates in favor of a liberal reading"); *Boivin v. Black*, 225 F.3d 36, 43 (1st Cir. 2000) ("…courts are solicitous of the obstacles [pro se litigants]… face… courts hold pro se pleadings to less demanding standards than those drafted by lawyers… courts endeavor… to guard against the loss of pro se claims due to technical defects."); *Instituto De Educacion Universal Corp. v. United States Department of Education*, 209 F.3d 18, 23 (1st Cir. 2000) ("[p]resumably unskilled in the law, the pro se litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel… Accordingly, the lower court should not have dismissed this action, on essentially technical grounds, without affording the Institute some opportunity to replead") (internal citations and

quotations omitted); *James v. Garland*, 16 F.4th 320, 324 (1st Cir. 2021) ("her pro se status would call for reading her filing liberally in her favor."); *Dutil v. Murphy*, 550 F.3d 154, 158 (1st Cir. 2008) ("we hold pro se pleadings to less demanding standards than those drafted by lawyers and endeavor, within reasonable limits, to guard against the loss of pro se claims due to technical defects.")

However, in contrast to *its' own holdings, that of sister Circuits and this Court's holdings which are binding,* the First Circuit did not consider or address Ms. Ahmed's *pro se* status and that she was waiting for the entry of a briefing schedule to brief a Rule 46(f)(2) motion. That calls for a reversal.

B. This Court's Precedents Mandate Allowing Litigants an Opportunity to Be Heard and Following Due Process.

This Court has zealously guarded due process rights that are enshrined in our Constitution, consistently holding these protections as sacrosanct, as "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). (*see earlier for case citations*).

Circuit appellate courts hold the same. *U.S. v. Eufracio-Torres*, 890 F.2d 266, 270 (10th Cir. 1989) ("The fundamental requirement of due process is an opportunity to be heard…. The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.") (internal citation and

quotations omitted); *Guba v. Huron Cnty.*, 600 F. App'x 374, 12 (6th Cir. 2015) ("Due process requires that a person have an opportunity to be heard before being deprived of property, or adequate remedies when an erroneous deprivation occurs."); *Gibson Wine Co. v. Snyder*, 194 F.2d 329, 336 (D.C. Cir. 1952) ("The right to be heard is an important element of due process."); *Council of Federated Organizations v. Mize*, 339 F.2d 898, 901 (5th Cir. 1964) ("The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of the right requires a reversal."); *duPONT v. SOUTHERN NAT. BANK OF HOUSTON, TEX*, 771 F.2d 874, 888 (5th Cir. 1985) ("A fundamental aspect of due process is the right to be heard. Rendering judgment based only on the evidence of one party offends a litigant's most precious constitutional rights. Here, the district court in effect denied the appellants an opportunity to present their evidence..."); *Christhilf v. Annapolis Emergency Hosp. Ass'n*, 496 F.2d 174, 178-79 (4th Cir. 1974) ("The fundamental requisite of due process of law is the opportunity to be heard… And the right to a hearing embraces an adequate opportunity…. to defend…. Though this is commonly denominated a procedural right, whether it has been denied must be determined by the substance of things and not by mere form… The district court… ruled that Dr. Christhilf should have reasonable notice of the charge, adequate time to prepare his case, the right to present evidence in his behalf, the right to rebut evidence against him, and the right of cross-examination.")

Even the First Circuit claims such protections. *Amsden v. Moran*, 904 F.2d 748, 752 (1st Cir. 1990) ("Where persons are deprived of property interests, it has long been "clearly established" that due process safeguards must be afforded"); *In re Vazquez Laboy*, 416 B.R. 325, 330-31 (B.A.P. 1st Cir. 2009) ("The Fifth Amendment provides in pertinent part that no person shall be… deprived of life, liberty, or property, without due process of law… The fundamental requisite of due process of law is the opportunity to be heard… The essence of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") (internal citations and quotations omitted). Yet, the First Circuit held otherwise in this case.

Here, the government even stated that "[if the lower court was inclined], [the government] does not oppose providing the Surety with reasonable additional time to file a Rule 46(f)(2) motion" (Attach. G) and "[i]f the [district] [c]ourt is so inclined to allow the Surety to file a *Motion to Set Aside* [pursuant to Rule 46(f)(2)] or other filings, the government respectfully requests that this [lower] [c]ourt *set a briefing schedule with a specific deadline* for the Surety to file *such motions*." (Doc. 366 at 7-8) (emphasis added in all).

But here, there is no question of the district court's "inclination" – Ms. Ahmed had a statutory right to request a set aside of the declaration of bond forfeiture and as a *pro se* litigant, had requested a briefing schedule, which the government did not oppose for reasonable time. However, the district court did not even respond to Ms.

Ahmed's motion for a briefing schedule and instead, denied that motion in the *same order that it granted judgment to the government.*

This ruling by the district court, and the subsequent affirmation by the First Circuit, is against the tenets of due process enshrined in our Constitution and has violated Ms. Ahmed's rights, which she was trying to protect as a *pro se* surety litigant with requesting specific deadlines for the entry of a briefing schedule. This Court has held that "[a] fundamental requirement of due process is the opportunity to be heard... It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Similarly, Ms. Ahmed should have had the opportunity to file a motion to set aside the declaration of bond forfeiture pursuant to Rule 46(f)(2) and a consideration of the merits of such motion, as is her right by statute as surety, and especially given the facts. This Court's precedents warrant a reversal.

III. ABSENT A RECALL AND STAY, MS. AHMED AND HER MINOR CHILDREN WILL INCUR IRREPARABLE HARM.

A recall and stay of the mandate is necessary to protect Ms. Ahmed and her three minor children, all United States citizens by birth who reside in the home that

secured the bond, from irreparable harm. Absent a recall and stay, Ms. Ahmed will be forced to litigate in district court and will be forced to seek remission of the bond forfeiture judgment pursuant to Fed. R. Crim. P. 46(f)(4), thereby losing the opportunity to request a motion to set aside pursuant to Fed. R. Crim. P. 46(f)(2).

Any adjudication by this Court will be rendered moot by denying the recall and stay application, as the process in the district court would have continued, moving along the Fed. R. Crim. P. 46(f) statute to Fed. R. Crim. P. 46(f)(4) without allowing Ms. Ahmed an opportunity to move to set aside, as is her right as per the Fed. R. Crim. P. 46(f)(2). As the mandate has issued to the district court, the harms from this ongoing litigation cannot be undone in the future and a recall and stay here would safeguard against Ms. Ahmed losing out on her right to seek to set aside the declaration of bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2).

Furthermore, the government will likely seek to enforce the bond forfeiture amount of $9 million, which was secured by the home where Ms. Ahmed and her three minor children reside. This will result in irreparable harm to the three minor children. In a situation where Ms. Ahmed as surety did not agree to assume a massively enlarged risk of Defendant's flight with the government's filing of a Complaint under seal in the Connecticut case alleging substantial and separate fraud, and the *ex-parte* and under seal freezing of her (and others') assets with a maximum

potential civil judgment of $118 million[11] compared to a maximum potential civil judgment of $4 million[12] in the insider trading case, Ms. Ahmed's arguments on the merits of setting aside the declaration of bond forfeiture are strong and substantial and are supported by this Court's holdings on sureties and contractual risk. *See Reese v. United States*, 76 U.S. 13 (1869) ("There is… an implied covenant on the part of the government, when the recognizance of bail is accepted, that it will not in any way… take any proceedings with the principal which will increase the risks of the sureties or affect their remedy against him.")

Without a recall and stay of the mandate, Ms. Ahmed will not be able to be heard on these merits for a setting aside of the declaration of the bond forfeiture pursuant to Fed. R. Crim. P. 46(f)(2).

Under these circumstances, a recall and stay of the mandate is plainly justified and Ms. Ahmed respectfully requests the Court recall and stay the issuance of the First Circuit's mandate pending the filing and disposition of Ms. Ahmed's petition for certiorari.[13] Additionally, because the mandate has already issued on January 25, 2023, *pro se* Applicant Ms. Ahmed respectfully asks this Court to administratively recall and stay the mandate pending disposition of this Application.

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[11] The Receiver in the Connecticut case alleges a judgment even more than this amount.

[12] This was eventually settled for a judgment amount of approximately $3.0 million.

[13] Respondent will suffer no irreparable injury from a stay. Respondent seeks neither injunctive nor prospective relief. The only "harm" it might face is a delay in potentially obtaining monetary damages, which are compensable. Thus, there are no countervailing reasons to alter the status quo during the certiorari stage.

CONCLUSION

The application for a recall and stay of the mandate should be granted.

Dated: January 25, 2023

Respectfully Submitted,

By: */s/ Shalini Ahmed*

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Pro Se

Attach. A

United States Court of Appeals
For the First Circuit

No. 21-1193

UNITED STATES,

Appellee,

v.

IFTIKAR AHMED,

Defendant,

SHALINI AHMED,

Interested Party - Appellant.

No. 21-1194

UNITED STATES,

Appellee,

v.

IFTIKAR AHMED,

Defendant.

ORDER OF COURT

Entered: January 25, 2023

Interested Party Shalini Ahmed and Appellant Iftikar Ahmed have each filed a motion to stay mandate pending filing and disposition of a petition for writ of certiorari. The motions are denied. Mandate shall issue forthwith.

By the Court:

Maria R. Hamilton, Clerk

cc:
Carol Elisabeth Head
Donald Campbell Lockhart
Iftikar Ahmed
Shalini Ahmed

United States Court of Appeals
For the First Circuit

No. 21-1193

UNITED STATES,

Appellee,

v.

IFTIKAR AHMED,

Defendant,

SHALINI AHMED,

Interested Party - Appellant.

No. 21-1194

UNITED STATES,

Appellee,

v.

IFTIKAR AHMED,

Defendant - Appellant.

MANDATE

Entered: January 25, 2023

In accordance with the judgment of November 1, 2022, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc: Iftikar Ahmed, Shalini Ahmed, Carol E. Head, Donald C. Lockhart

Attach. B

United States Court of Appeals
For the First Circuit

No. 21-1193

UNITED STATES,

Appellee,

v.

IFTIKAR AHMED,

Defendant,

SHALINI AHMED,

Interested Party - Appellant.

No. 21-1194

UNITED STATES,

Appellee,

v.

IFTIKAR AHMED,

Defendant.

Before

Barron, Chief Judge,
Lynch and Kayatta, Circuit Judges.

JUDGMENT

Entered: November 1, 2022

Defendant-Appellant Iftikar Ahmed and Interested Party (and co-surety) Shalini Ahmed each appeal from the district court's order of a default judgment of forfeiture of Iftikar Ahmed's appearance bond. We have carefully reviewed all the submissions of the parties, and the record below.

We note that the burden was on the appellants in the proceedings below to prove that the bail forfeiture should be set aside. Under all the circumstances, we find that there was no abuse of discretion on the part of the district court judge in allowing the government's motion for default judgment of forfeiture of the appearance bond in question.

We add, however, as the government acknowledges in its brief, that even after entry of a default judgment, Rule 46(f)(4) of the Federal Rules of Criminal Procedure allows for a surety or defendant to request remission of a bail forfeiture on the same bases as a request to set aside under Rule 46(f)(2).

The challenged judgment of the district court is affirmed. See 1st Cir. Loc. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:
Carol Elisabeth Head
Donald Campbell Lockhart
Iftikar Ahmed
Shalini Ahmed

Attach. C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	
v.	Criminal No. 15-10131-NMG
IFTIKAR AHMED Defendant,	November 7, 2020

SURETY'S NOTICE OF HER INTENTION TO MOVE THE COURT TO SET ASIDE, REDUCE OR VACATE THE BOND FORFEITURE

Ms. Shalini Ahmed (or, the "Surety"), the spouse of Defendant Iftikar Ahmed, and the co-signer of the Bond (as she is the co-owner of the home which secured the Bond), respectfully files this notice to inform the Court that she intends to move the Court to set aside, reduce or vacate the bond forfeiture that was declared in this Court [ECF No. 307], pursuant to Fed. R. Crim. Pro. 46(f)(2). The Surety reserves all rights.

The DOJ has not allowed for the Surety to have any time to request a set-aside, vacate or reduction of the bond forfeiture amount, as is her right as per Fed. R. Crim. Pro. 46(f)(2). In every filing that the *pro se* Surety has filed with this Court, she has explicitly reserved her right to request such a set-aside and has made it clear that "By submitting this motion, the Surety does not waive her rights to request a set aside, or vacate of the bond forfeiture, or a vacate, set aside or reduction of the bond amount, or to present any defenses at any bond forfeiture hearing, *when the process is at that point*." (emphasis added). The Surety is *pro se* and will file a motion, as per Fed. R. Crim. Pro. 46(f)(2) for the set aside, vacate or reduction of the bond forfeiture amount.

Dated: November 7, 2020

Greenwich, Connecticut

Respectfully Submitted,

By: */s/ Shalini Ahmed*

Shalini A. Ahmed
505 North Street
Greenwich, CT 06830
Tel: 203-661-2704
Email: shalini.ahmed@me.com
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that the Surety's Notice of her Intention to Move the Court to Set Aside, Reduce or Vacate the Bond Forfeiture was mailed to the following parties by U.S. Mail:

Carol Head
Assistant United States Attorney
1 Courthouse Way
Suite 9200
Boston, MA 02210

Dated: November 7, 2020

/s/ Shalini Ahmed

Shalini A. Ahmed

Attach. D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	
v.	Criminal No. 15-10131-NMG
IFTIKAR AHMED Defendant,	November 7, 2020

SURETY'S MOTION FOR
TIMELINE TO SUBMIT A RULE 46(F)(2) MOTION

The *pro se* Surety – Ms. Shalini Ahmed, the spouse of *pro se* Defendant Iftikar Ahmed, and the co-signer of the Bond (as she is the co-owner of the home which secured the Bond) respectfully moves this Court for a timeline of when she is to submit a Rule 46(f)(2) Motion[1] to Set-Aside, Reduce or Vacate the Amount of Bond this Court has declared forfeited.[2] The *pro se* Surety reserves all rights.

ARGUMENTS

The Surety, as per Fed. R. Crim. Pro. 46(f)(2), has a right to request a set-aside, reduction or vacate of the bond forfeiture. The government has recently filed a motion for a declaration of default judgment against the Surety and Defendant. [ECF No. 351]. However, the government has not allowed for the *pro se* Surety to have any time to request a set-aside, vacate or reduction of the

[1] Pursuant to Fed. R. Crim. Pro. 46(f)(2).

[2] By submitting this motion, the *pro se* Surety does not waive her rights to request a set aside or vacate of the declaration of bond forfeiture, or to present any defenses at any bond forfeiture hearing, when the process is at that point. The Surety reserves all rights.

bond amount, as is her right as per Fed. R. Crim. Pro. 46(f)(2). In every filing that the *pro se* Surety has filed with this Court, she has explicitly reserved her right to request such a set-aside and has made it clear that "By submitting this motion, the Surety does not waive her rights to request a set aside, or vacate of the bond forfeiture, or a vacate, set aside or reduction of the bond amount, or to present any defenses at any bond forfeiture hearing, *when the process is at that point*." (emphasis added). The Surety is *pro se* and will file a motion, as per Fed. R. Crim. Pro. 46(f)(2) requesting a set-aside, vacate or reduction of the bond forfeiture amount.

The government indeed even acknowledges that the Surety has stated that she has "noted that [she was] not waiving [her] right to move to set aside or vacate the declaration of bond forfeiture." [ECF No. 351 at 3]. However, the government neglects to state that after the Court declared the bond forfeited on November 7, 2019, the Surety (and Defendant) filed notices of appeal on November 20, 2019 on the Court's Order declaring the bond forfeited and this case was under appellate jurisdiction until August 17, 2020 when the mandate issued by First Circuit. The Surety moved this Court for reconsideration of the bond forfeiture declaration on August 28, 2020 which the Court denied on October 1, 2020. The Surety moved the Court for a stay of this matter on October 13, 2020. The Court denied the Surety's motion for a stay on Monday, November 2, 2020 and on Wednesday, November 4, 2020, denied the Surety's Motion for leave to file a Reply in support of her Motion to Stay. The government filed the Motion for a Default Judgment ***two days later*** on November 6, 2020.

Two days is hardly enough time for Ms. Ahmed, a *pro se* litigant, to research, write and submit a Motion to Set Aside, Reduce or Vacate the Bond Forfeiture. Ms. Ahmed does not have access to databases or caselaw and is not a lawyer. Ms. Ahmed, as a *pro se* litigant, does not have

electronic filing privileges[3] and is not able to readily leave her home with her three minor children in the middle of a global pandemic to send the mailings to the Court, which alone take her ***at least*** a day or two to be delivered and filed to the Court.

The Surety is *pro se* and does not know the legal rules or caselaw to submit a Motion as per Fed. R. Crim. Pro. 46(f)(2), especially within two days. The *pro se* Surety had requested a stay in this matter, which the Court has only recently denied [ECF No. 347]. The entirety of *pro se* Surety's assets are frozen by another Court Order[4] and there is a stay of litigation against the Surety and the Defendant and a motion pending in that Court for the release of funds for the Surety to retain counsel in this instant matter. The Surety, if she does not have counsel, needs time to research, write and submit her motion to the Court and requests at least three months from the date of ruling on this Motion for when she must submit a Motion to set-aside, vacate or reduce the bond amount to the Court as per Fed. R. Crim. Pro. 46(f)(2).

A. The Surety Has a Right to Move the Court for Relief as per Fed. R. Crim. Pro. 46(f)(2)

The Surety has a right to move the Court for relief as per Fed. R. Crim. Pro. 46(f)(2), and this Court has stated as such, "Once the bond is declared forfeited, Mrs. Ahmed, as a co-surety, has the right to move to have the forfeiture set aside pursuant to Fed. R. Crim. P. 46(f)(2) if the surety later surrenders her husband into custody or if it is found that justice does not require bail forfeiture." [ECF No. 307 at 4-5]. Ms. Ahmed, as co-Surety, has stated and will move this Court for relief pursuant to Fed. R. Crim. Pro. 46(f)(2). The government has completely pre-empted Ms. Ahmed's right to do so and the Court must allow Ms. Ahmed the right to move the Court for the stated relief. Indeed, due process requires that Surety be allowed to move for set-aside, reduction

[3] This Court denied Ms. Ahmed's motion to intervene, though Ms. Ahmed is a Surety.

[4] *SEC v Ahmed, et al.*, 15-cv-675 (D. Conn) ("CT Case"; "CT Court"; and "SEC Action")

or vacate of the bond forfeiture amount as per Fed. R. Crim. Pro. 46(f)(2).

Ms. Ahmed is not a lawyer, she is *pro se*, she has no legal knowledge or experience, and there is no provision for timing for the Surety to request a set-aside or vacate pursuant to Fed. R. Crim. P. 46(f)(2) once the bond has been declared forfeited. If there is such a provision, the *pro se* Surety does not know it and she must be given an opportunity to present her case to have the forfeiture set aside, reduced or vacated.

B. The Equities Weigh in Favor of Allowing the *pro se* Surety Time to Research and Write her Motion

Ms. Ahmed is not a lawyer and has no legal knowledge or experience. Ms. Ahmed is *pro se,* does not know the caselaw or rules and procedures of the various applicable laws and/or statutes and needs the guidance of counsel in this matter, but her assets are frozen by Connecticut Court Order. Ms. Ahmed has a fully-briefed motion pending in the District Court of Connecticut for a release of funds to retain counsel in this instant proceeding. This Court has denied Ms. Ahmed's request for a stay pending the release of funds for her to retain counsel. As such, Ms. Ahmed, as a *pro se* movant, needs time to research, write and submit her Motion for the Set-Aside, Vacate or Reduction of the Bond Forfeiture Amount in this case and requests a minimum of at least three months for her to do so from the date this Motion is ruled on.

The government seeks a default judgment in the substantial sum of $9,000,000 plus interest and costs and Ms. Ahmed, as a *pro se* Surety, needs time to research, write and submit her Motion to Set-Aside, Reduce or Vacate the Bond Forfeiture Amount, pursuant to Fed. R. Crim. Pro. 46(f)(2).

C. The Government Has Not Allowed for *any time* for the Surety to file a Motion to Set-Aside, Vacate or Reduce the Bond Forfeiture Amount

Ms. Ahmed has a right to move this Court to set-aside, vacate or reduce the bond forfeiture amount, as per Fed. R. Crim. Pro. 46(f)(2) and the Court only denied Ms. Ahmed's Motion for

Stay on Monday, November 2, 2020 and denied Ms. Ahmed's Motion for leave to file a reply in support of her Motion to Stay on Wednesday, November 4, 2020. The government filed this Motion for Default Judgment *two days later* on November 6, 2020. The Court should allow Ms. Ahmed, especially as a *pro se* Surety, at least the time to effectively research, write and submit her Motion to Set-Aside, Vacate or Reduce the Bond Forfeiture Amount.

D. Conclusion

In conclusion, the *pro se* Surety respectfully requests that the Court allow for at least three months from ruling on this Motion for the *pro se* Surety to research, write and submit her motion to request a set-aside, vacate or reduction in the bond forfeiture amount, pursuant to Fed. R. Crim. Pro. 46(f)(2).

WHEREFORE, the Surety requests that her Motion for Timeline to Submit a Fed. R. Crim. Pro. 46(f)(2) Motion be granted in its entirety.

Dated: November 7, 2020

Greenwich, Connecticut

Respectfully Submitted,

By: */s/ Shalini Ahmed*

Shalini A. Ahmed
505 North Street
Greenwich, CT 06830
Tel: 203-661-2704
Email: shalini.ahmed@me.com
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that the Surety's Motion for Timeline to Submit a Rule 46(f)(2) Motion was mailed to the following parties by U.S. Mail.

Carol Head
Assistant United States Attorney
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Dated: November 7, 2020 */s/ Shalini Ahmed*

Shalini A. Ahmed

Attach. E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	
v.	Criminal No. 15-10131-NMG
IFTIKAR AHMED Defendant,	November 18, 2020

SURETY'S OPPOSITION TO THE GOVERNMENT'S MOTION FOR DEFAULT JUDGMENT OF FORFEITURE OF BOND

The *pro se* Surety[1] Ms. Shalini Ahmed, the spouse of *pro se* Defendant Iftikar Ahmed, and the co-signer of the Bond (as she is the co-owner of the home which secured the Bond) opposes the government's Motion for Default Judgment[2] of Forfeiture of Appearance Bond [ECF No. 351, or the "Motion" or "Motion for Default Judgment"].[3] The *pro se* Surety reserves all rights.[4]

[1] The Surety is *pro se* and *pro se* "pleadings [are to be read] liberally and interpret them to raise the strongest arguments that they suggest." *Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 50 (2d Cir. 2003).

[2] The Surety is *pro se*. Local Rules 7.1(a)(2) indicates that "No motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue." The government is represented by counsel and they have not reached out to the *pro se* Surety to resolve or narrow the issue nor have they certified that they have done so. The Surety is *pro se* and does not know how to reach out to the government, and believes that she must be represented by counsel to do so. The Motion does not comport with local rules and must be denied on this basis alone.

[3] By submitting this motion, the *pro se* Surety does not waive her rights to request a set aside, reduction or vacate of the declaration of bond forfeiture, or to present any defenses at any bond forfeiture hearing, when the process is at that point. The *pro se* Surety, who does not know any law and has no legal experience or knowledge, reserves all rights to add additional defenses and/or reasons why the forfeiture should be set aside, reduced or vacated. The Surety reserves all rights.

[4] The Surety reserves all rights, *inter alia,* that the government has moved, in violation of sister court orders (CT Court), against the Surety and Defendant. The bond forfeiture process is civil in nature and CT Court order prohibits any action civil in nature against the Surety and Defendant without leave of that court. In addition, the injunction order in the CT Court prevents any action against the frozen assets.

ARGUMENTS

The Surety, as per Fed. R. Crim. P. 46(f)(2) (also "Rule 46(f)(2)"), has a right to request a set aside, reduction or vacate of the bond forfeiture and has explicitly reserved that right throughout this litigation. The government's Motion for Default Judgment has not allowed the Surety an opportunity, as is her right, to move the Court for the stated relief. As such, the Court should deny the Motion for Default Judgment on this basis alone, or in the alternative hold it in abeyance, to allow the Surety to move the Court, pursuant to Rule 46(f)(2), for a set aside, reduction or vacate of the bond forfeiture. The Court should further allow the Surety an opportunity to submit a renewed reply to the Motion for Default Judgment, dependent on the Court's ruling on her Motion for relief pursuant to Rule 46(f)(2).

The Court should deny the government's Motion for Default Judgment in its entirety. The interests of justice do not require bond forfeiture in this case and the bond forfeiture should be set aside in its entirety. The government unilaterally and materially increased the risk that Defendant might flee by freezing assets *after the contract was signed* and the Surety did not consent to or agree to be Surety in a situation where the assets were frozen. The government[5] decided to *ex-parte* and unilaterally freeze assets to secure the assets instead of "securing" the Defendant. In the interests of justice, the Court should deny the Motion for Default Judgment in its entirety and vacate or set aside the bond forfeiture in its entirety.

I. The Surety Has a Right to Request Relief, Pursuant to Rule 46(f)(2) and the Government's Motion Should be Denied in its Entirety as Premature

A. The Government is in Violation of Due Process and its Motion for Default Judgment is Premature.

The government erroneously and misleadingly states that "No one, including the surety,

[5] The government is the sovereign of the United States of America.

Shalini Ahmed, has filed a motion to set aside the declaration of bond forfeiture, as provided for in Fed. R. Crim. P. 46(f)(2)" [Motion at 2; ECF No. 351-1 at 2]. However, in contrast to the government's statement, at all times during this bond forfeiture process, the Surety has reserved all rights to seek a set aside, reduction or vacate of the bond forfeiture, pursuant to Rule 46(f)(2).

Due process under the Fifth Amendment and Rule 46 itself require that the Surety have an opportunity to move the Court pursuant to Rule 46(f)(2) to set aside, vacate or reduce the bond forfeiture before the government moves for a default judgment against her. The Fed. R. Crim. P. 46 are clear that moving to set aside, reduce or vacate a bond forfeiture, pursuant to Fed. R. Crim. P. 46(f)(2) occurs ***before*** the government moves for a default judgment under Fed. R. Crim. P. 46(f)(3). The government has not allowed[6] for the Surety to have an opportunity to move the Court for relief under Rule 46(f)(2) and due process mandates that the Surety be allowed an opportunity to move the Court for such relief.

In addition, this Court itself has stated that the Surety has a right to request the set aside. "Once the bond is declared forfeited, Mrs. Ahmed, as a co-surety, has the right to move to have the forfeiture set aside pursuant to Fed. R. Crim. P. 46(f)(2) if the surety later surrenders her husband into custody or if it is found that justice does not require bail forfeiture." [ECF No. 307 at 4-5]. The Court should allow, as per its own Order, Ms. Ahmed to move the court to have the

[6] The government has not provided the complete facts to this Court. This Court declared the bond forfeited on November 7, 2019. However, after the Court declared the bond forfeited on November 7, 2019, the Surety (and Defendant) filed notices of appeal on November 20, 2019 on the Court's Order declaring the bond forfeited and this case was under appellate jurisdiction until August 17, 2020 when the mandate issued by First Circuit. The Surety moved this Court for reconsideration of the bond forfeiture declaration on August 28, 2020 which the Court denied on October 1, 2020. The Surety moved the Court for a stay of this matter on October 13, 2020. The Court denied the Surety's motion for a stay on Monday, November 2, 2020 and on Wednesday, November 4, 2020, denied the Surety's Motion for leave to file a Reply in support of her Motion to Stay. The government filed the Motion for a Default Judgment ***two days later*** on November 6, 2020. Two days is not enough time for anyone, let alone Ms. Ahmed, a *pro se* litigant, to research, write and submit a Motion to Set Aside, Reduce or Vacate the Bond Forfeiture, pursuant to Rule 46(f)(2).

"forfeiture set aside pursuant to Fed. R. Crim. P. 46(f)(2)."

Also, the First Circuit Court of Appeals stated that it did not have jurisdiction of the Surety's appeal *precisely because* it relied on this Court's Order stating that the Surety had the right to move the Court for such relief. The Court of Appeals specifically stated that

> "Moreover, and relatedly, it appears that the district court's denial of Ms. Ahmed's motion to intervene expressly without prejudice is likewise not an immediately appealable order. Indeed, in that regard, the challenged order by its terms stated the following: "Once the bond is declared forfeited, Mrs. Ahmed, as a co-surety, has the right to move to have the forfeiture set aside pursuant to Fed. R. Crim. P. 46(f)(2) if the surety later surrenders her husband into custody or if it is found that justice does not require bail forfeiture." D.E. No. 307 at 4-5."[7]

It is clear that a denial of a motion to intervene is immediately appealable. "An order denying a motion to intervene of right is *immediately* appealable," (emphasis in original) *Credit Francais International v. Bio-Vita, Ltd.*, 78 F.3d 698, 703 (1st Cir. 1996). Here, the First Circuit Court of Appeals relied on this Court's Order stating that Ms. Ahmed "has the right to move to have the forfeiture set aside..." If the Court *now* does not allow for the Surety to move, as per its own Order and pursuant to Rule 46(f)(2), for a vacate, set aside or reduction in the bond forfeiture, the First Circuit Court of Appeals would have erroneously relied on this Court's Order in determining that it did not have jurisdiction over the appeal and such will be an issue on appeal.

It is a clear tenet of law that persons potentially liable on a contract are entitled to notice[8] and an opportunity to be heard during judicial proceedings that may affect their interests. The government itself admits that the Surety has a right to move to set aside or remit the forfeiture as it itself cited: "declaration of forfeiture is made without abridging *the right of the surety to move*

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[7] First Circuit Court of Appeals, Case: 19-2213, Document: 00117558483, filed on 2/28/2020

[8] The *pro se* Surety did not receive notice from the government on the motion for declaration of forfeiture or the motion for default judgment.

to set aside or remit the forfeiture, consistent with [Fed. R. Crim. P. 46]." (internal quotes and citations omitted) (emphasis added) [ECF No. 331 at 3] The government also stated that "...the government does not oppose providing the Surety with reasonable additional time to file a Rule 46(f)(2) motion" [ECF No. 356 at 1] and the Court should allow for such before ruling on the government's Motion for Default Judgment.

B. The Surety Explicitly Reserved her Rights to Move for Relief under Rule 46(f)(2)

Ms. Ahmed, as Surety, has *always* stated her intention to move this Court for the relief, as in every filing with this Court, she has stated that "By submitting this motion, the Surety does not waive her rights to request a set aside, or vacate of the bond forfeiture, or a vacate, set aside or reduction of the bond amount, or to present any defenses at any bond forfeiture hearing, when the process is at that point." Even the government has acknowledged this fact in its Motion: Surety has "noted that [she was] not waiving [her] right to move to set aside or vacate the declaration of bond forfeiture." [Motion at 3].

The Court cannot enter a default judgment in favor of the government without first allowing for and considering the Surety's request for relief pursuant to Rule 46(f)(2) and the Motion for Default Judgment must be denied on that basis alone.

II. The Interests of Justice Do Not Require Forfeiture;[9] the Forfeiture Must be Set Aside in its Entirety and the Government's Motion Should be Denied in its Entirety

A. The Government Materially Increased the Risk that Defendant Might Flee.

The Surety is not responsible for any bond forfeiture where the government materially and

[9] The *pro se* Surety provides the facts here for the Court. This does not replace the Surety's right to move the Court for Rule 46(f)(2) relief, and a motion for setting the briefing schedule for filing a Rule 46(f)(2) Motion is pending before the Court. [ECF No. 354] The *pro se* Surety gives the Court the relevant facts in this Opposition to the government's Motion for Default Judgment because the government did not give the *pro se* Surety a chance to first move the Court for Rule 46(f)(2) relief, as is her right, and as she is waiting on the pending motion for setting a briefing schedule for her to do so.

unilaterally increased the risk to the Surety. Here, it was the *government* that increased the risk of Defendant's flight, it is the *government* that froze the assets, it is the *government* that opposed a release of funds for the Defendant to be represented in his matters, it is the *government* that opposed any release of funds for the Defendant to return to the United States.[10] In addition, there is a stay of litigation imposed by the CT Court,[11] in the Order Appointing Receiver, and a stay on any action against frozen assets in the Preliminary Injunction Order, that the CT Court ordered on the *government's* request.

It is clear that "the terms of a bail contract are to be strictly construed *in the surety's favor*, and the *surety may not be held liable for any greater undertaking than [s]he has agreed to*." (emphasis added in both) *United States v. Martinez*, 613 F.2d 473, 476 (3d Cir. 1980) ("*Martinez*"). Here, the government unilaterally and materially increased the risk with no notice to the Surety and without the Surety's consent. "The law is clear that sureties must be released from the bond where the Government materially increases the risk to the sureties without their notice and consent." (internal citation omitted) *U.S. v. Zhang*, 153 F. Supp. 2d 341, 345 (S.D.N.Y. 2001).

When the contract was signed on April 23, 2015, the Surety had access to assets in excess of $100 million. The Defendant attended the Court hearings (on April 2, 2015 in Connecticut for the initial hearing in this case and on April 21, 2015 in Massachusetts before Hon. Magistrate Bowler) and abided by all terms of the contract. The Defendant was represented by counsel and this case was proceeding. However, completely unknown to the Surety and without any explanation of why the assets were being frozen and without the Surety's knowledge or consent,

[10] ECF No. 298 at 9-12

[11] *SEC v Ahmed, et al.*, 15-cv-675 (D. Conn) ("CT Case"; "CT Court") Filings in the CT Court are referred to as "Doc. #" while filings in this instant matter are referred to as "ECF No."

the government *ex-parte* froze the assets on May 7, 2015 at 6:50pm. [*See* Ex. 1 (TRO filed under seal)]. The filings were unsealed nearly a week later, on May 12, 2015. Defendant left shortly *after* the assets were frozen and filings unsealed.

Here, justice does not require forfeiture, as the government unilaterally and materially increased the risk of Defendant's flight by freezing the assets *after the contract was signed* without notice to the Surety and without the Surety's knowledge, agreement or consent. The *pro se* Surety did not have any idea or knowledge of the asset freeze itself, the scale of the asset freeze, what investigations were occurring or why the assets were frozen. The Surety did not agree to be Surety in that situation where assets were frozen by the government with no warning.

The widespread recognition that "the surety may not be held liable for any greater undertaking than [s]he has agreed to" *(Martinez)* echoes the view of the Supreme Court of the United States: **"There is... an implied covenant on the part of the government, when the recognizance of bail is accepted, that it will not in any way... take any proceedings with the principal which will increase the risks of the sureties or affect their remedy against him."** *Reese v. United States*, 76 U.S. 13, 22 (1869). It is clear that **"[w]hen one undertakes a surety obligation, the surety undertakes a calculated risk, and events which materially increase that risk without consent of the surety terminate the obligation of the bond."** (citations omitted). *Allstate Insurance v. American Bankers Insurance*, 882 F.2d 856, 861 (4th Cir. 1989)

It is clear that "[l]iability on a bond is a matter of contract... Bond agreements allocate risk, so when determining a surety's liability, the right question to ask is what risk [the surety] agreed to accept." (internal quotes and citations omitted) *United States v. Mohammed-Ali*, 822 F.3d 312, 314 (6th Cir. 2016). The Surety did not agree to accept the materially increased risk of Defendant's flight when the government unilaterally and *ex-parte* froze the assets. The Surety was never given

notice nor an opportunity to be heard on this materially increased risk. "Absent notice and an opportunity to revoke ... a material change in risk can discharge the surety's obligation... a material increase in risk discharges a surety." (internal quotes and citations omitted) *Id.*

The government seeks a default judgment on a bond amount of $9,000,000 when it alone increased the risk that Defendant might flee. It is clear that "bail need not be forfeited where performance is rendered impossible by act of God, or of the law, or of the obligee... the government may not enforce the forfeiture of bond when the government itself has increased the risk..." (internal quotes and citations omitted). *U.S. v. Urquiza*, No. 04-CR-191, at *4 (E.D. Wis. Sep. 19, 2006). The government breached the contract as the Surety and the government *both* had an interest in seeing the Defendant "secured." However, it was more important to the government to freeze and secure the assets than it was to inform and get the Surety's consent and "secure" the Defendant. The government secured the assets at the expense of securing the Defendant and that was a choice that it alone made, without the Surety's knowledge or consent. The government made its choice and the Surety should not have to rectify the government's choices.

B. The Surety Informed the government of the Defendant's Absence and Also of His Subsequent Custody

The Surety is not a professional bondsman and was *pro se* when the contract was signed. In addition, it was the Surety who informed the government[12] that the Defendant was not in the jurisdiction and even provided his location when she received the information. It was also the Surety who informed the government of the Defendant's custody when he was arrested in India. The Surety provided the information that she received to the government, which saved the government time and resources in trying to locate the Defendant. Indeed, the government expended *no* resources to locate the Defendant *solely* because of the Surety's cooperation.

[12] via Defendant's counsel in this case at that time.

C. The government opposed Releasing Funds to Effectuate the Defendant's Return

The Defendant attempted to return to the United States within days of leaving. As per the affidavit of Defendant's former counsel: "On or about May 22, 2015, Mr. Ahmed was arrested in India by the Foreign Registration Office..." [Doc. #97-1 at 2] "When he was in India… he went to whatever local office in India there is to get a stamp so he could get out of the country. He was then arrested, put in jail for 61 days and he is now without travel documents in India. He can't leave… He did go to the [United States] Consulate… with the intention of coming back and was arrested." [Doc. #1173 at 3] "[Defendant] is unable to leave the territorial jurisdiction of India without permission of the Indian Court." [Doc. #97-1 at 2]. [*Also see* Ex. 2, affidavit of counsel].

The Defendant, within days, attempted to return to the United States and requested a release of funds from the asset freeze to retain counsel, who would try to get him released from India to return to the United States. However, in an asset freeze of assets worth over $100 million, the *government* refused to release *even $35,000* – a relatively nominal amount that is less than 0.03% of the value of assets frozen – so that Defendant's counsel could visit him in India in early 2016 and ascertain the situation in India to determine how to get him back to the United States: "counsel has unsuccessfully sought to reach agreement with [government] regarding a release of [$35,000] to allow… [counsel], to travel to India in order to work towards effectuating [Defendant's] return to the United States. As background, given the pending case against [Defendant] in India by the Indian Foreign Residents Registration Office, the purpose of the visit… would be to take all reasonable and prudent steps to effectuate [Defendant's] return from India to the United States. The [government] has stated that it will oppose any motion for release of funds, including for the limited purpose outlined above." [Doc. #210 at 2-3].

Had the government agreed to release the nominal amount of $35,000 at that time, it is

entirely possible that Defendant would have been back in the United States. Yet, every single time the Defendant has requested a release of funds to retain counsel both in the United States and in India, the government has opposed the Defendant's requests, making it impossible for him to return.

D. The Amount of the Bond was Determined Arbitrarily and was Excessive

The amount of the bond was determined arbitrarily and was excessive. In addition, the *pro se* Surety was not represented by counsel when the amount was determined. It was simply the alleged value of the home at that time that was used as the amount of the bond. There was no determination of the relationship or appropriateness of the bond amount – a staggering $9,000,000 – relative to the amount of the alleged wrongdoing (approximately $1,100,000) or any other factors when the bond amount was stated in the Connecticut Federal Court before Magistrate Judge Garfinkel on April 2, 2015.[13]

> Government: Your Honor, the residence is worth about ten million dollars, so we're fine with that amount as being put down as surety.
> ...
> Defendant Counsel [Public Defender]: It seems to me that a ten million dollar bond, that is my understanding of what the house is worth. Nine -- perhaps nine million dollars, not ten million. But it seems to me that that would be an excessive amount of bond. I guess under the circumstances I think that that could be revisited in Massachusetts.
>
> THE COURT: Yes. I don't know enough about the case or the amount of money involved in the case or alternative sources of income. So at this point I will say that, to be honest, let's say a nine million dollar bond.

[*See* Ex. 3, Transcript of proceeding at 15:15-16:4]

Even the Defendant's co-defendant in this matter (Amit Kanodia or "Kanodia") had a far

[13] *United States v. Ahmed*, 3:15-mj-00052-WIG (D. Conn. Apr. 2, 2015), bail hearing for this instant matter.

more reasonable bond of $500,000, determined in Massachusetts before Magistrate Judge Bowler.[14] [*See* Ex. 4] That means that the Defendant's bond was ***18x*** the amount of his co-defendant's bond in the ***same*** case and was arbitrarily determined simply based on the alleged value of the home. This amount was unreasonable, excessive and in violation of the Eighth Amendment to the United States Constitution, that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." This substantial difference between the two co-defendants clearly was excessive and violated the Eighth Amendment.

In addition, the arbitrary and excessive bail amount determined in the Connecticut court violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. There is no difference between the Defendant and his co-defendant Kanodia in this case, and there should not have been *any* difference in the bail amount between Kanodia and the Defendant. There is absolutely no rationale whatsoever for the drastic difference in bail amount between the two co-defendants and the fact that the Defendant's bail amount was set at ***18x greater*** than that of his co-defendant should "shock the conscious" of this Court.

The Supreme Court of the United States has stated that "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). It is clear that here, the government has discriminated against the Defendant and that the government took advantage of the alleged home value at that time. The government improperly executed the bail amount and simply took the alleged value of the home

[14] *United States v. Kanodia,* 1:15-mj-02062-MBB (D. Mass, Apr. 2, 2015 and Apr. 6, 2015), bail hearing for this instant matter.

at that time for the amount of Defendant's bond whereas the government took a more reasonable amount for the bond with co-defendant Kanodia by putting the bond amount at ***$500,000 for Kanodia versus $9,000,000 for the Defendant***. In addition, at no point did the government ever inform the Surety that Kanodia's bail was given at a more reasonable amount of $500,000.

E. Any Judgment on Forfeiture is a Penalty on the Surety and Minor Children

When the Surety signed the contract in April 2015, she had full access to over $100 million worth of assets. The entirety of assets is now frozen for a judgment in the government's favor. The Surety is entirely reliant on the CT Court for a release of funds for living expenses for her and the minor children and has not been able to secure employment due to the publicity of the various cases. The Surety simply cannot satisfy any judgment in this case due to the asset freeze ordered at the government's request. In addition, any judgment in this case is a penalty on the Surety and the minor children,[15] who are doing their best to deal with this nightmare situation, which started with this very case, on April 2, 2015 and which became worse when assets were frozen.

To impose a judgment on the Surety in this situation imposes a judgment as a punishment directly on her and the minor children. "The purpose of a bail bond is not punitive. Its object is not to enrich the government or punish the defendant." *Dudley v. United States,* 242 F.2d 656 (5th Cir. 1957). Yet, any judgment here is exactly that – one that will enrich the government (for their own actions) and that will punish the Surety and minor children – through no fault of theirs.

The government has a substantial judgment in the CT Case – an amount of approximately $64.4 million, which includes a $21 million penalty.[16] In addition, the government settled the sister

[15] The minor children are ages 8, 12 and 13 years old.

[16] The CT Court made it clear that it was imposing a significant penalty, partly because the Defendant was not in the jurisdiction. For this Court to now impose yet another judgment – and one that would fall directly on the Surety (and minor children) – would be inequitable and amount to punishing them for no fault of theirs.

civil case[17] to this instant matter in Massachusetts, where the government has a judgment of $2.83 million, which includes an approximate $1.9 million penalty. Thus, there has been nearly $23 million in penalties already imposed on the Defendant. To now include *another* judgment, and one that would fall *directly* on the Surety (and the minor children), is a further penalty and would directly punish the Surety (and minor children) – who reside in the home the government seeks to forfeit – through no fault of her own. Bail bonds are not meant to punish the Defendant, nor enrich the government, but are simply to ensure the appearance of the Defendant. In this case, the government chose to freeze the assets without informing the Surety or receiving her consent to continue being Surety in this situation and it was the government's actions that increased the risk of flight. Thus, any judgment here would only punish the Surety (and minor children) and enrich the government, which is contrary to the purpose of bail bonds.

F. The Court Should Not Impose Interest and Expenses on Any Forfeiture Amount

All assets are frozen by Federal Court Order in the CT Case. Neither the Surety nor the Defendant have any control over the assets, which are under the custody of the Receiver and frozen until the CT Court releases assets from the freeze. When the Surety signed the contract, the assets were not frozen and she had access to over $100,000,000 of assets. All of the assets are now frozen by Court Order. The government "seeks interest accruing from the date of this Default Judgment and reserves the right to seek costs associated with the enforcement of the Secured Appearance Bond" [ECF No. 351-1, n. 1] and also asks the Court to impose interest and costs from the date of the default judgment in its proposed order. [ECF No. 351-1 at 1]. The Surety opposes the proposed order in its entirety. The Surety has no ability to pay any judgment and the Court should not allow for interest or costs, as it is the government itself that would be withholding payment towards any

[17] *SEC v. Kanodia, et al.*, 15-cv-13042 (D. Mass)

judgment amount.

As such, it is an additional penalty and inequitable for the Court to impose interest and costs on any judgment amount, as it is not the Surety who would be withholding satisfaction of any judgment, but rather another Federal District Court, who froze the assets on the government's request. Indeed, it is the *government* that is withholding any payment that would satisfy any judgment in this case to the *government*. The Court should not impose interest or expenses on any forfeiture amount and to do so would be inequitable.

G. The government's Motion is Time-Barred

The government waited until over four years after the Defendant left to seek a forfeiture of the bond. The government's motion is time-barred. The escrow agreement that the Surety signed states that "[t]he validity and construction of this Agreement shall be governed by the law of the Commonwealth of Massachusetts." [ECF No. 293-4 at 2]. The laws of Massachusetts have a two-year statute of limitations for any actions for penalties or forfeitures. *See* MASS. GEN. LAWS CH 260, §5 (2020). Thus, the forfeiture of the home, as per the escrow agreement, is time-barred.

H. The Court Should Deny the Motion for Default Judgment or Alternatively, hold it in Abeyance, and Allow the Surety to Respond to this Motion *After* the Court Rules on the Surety's Motion for Relief pursuant to Rule 46(f)(2)

The *pro se* Surety has a pending motion before the Court on a briefing schedule for submitting a Rule 46(f)(2) motion. [ECF No. 354] The *pro se* Surety requests that the Court deny the government's Motion for Default Judgment in its entirety. Alternatively, the Surety requests that the Court hold the Motion for Default Judgment in abeyance until the Court allows Rule 46(f)(2) briefing to be complete and gives a ruling on such briefing.

In addition, because the Surety does not know how or what the Court will rule on the Surety's Rule 46(f)(2) Motion, the *pro se* Surety requests an opportunity to submit a renewed

response to the government's Motion for Default Judgment, dependent on the Court's decisions. The government's own actions of not allowing the Surety an opportunity to move the court for the Rule 46(f)(2) relief before it submitted the Motion for Default Judgment, warrants allowing the Surety an opportunity to submit a renewed response.

I. Alternatively, the Court Should Only order Partial Forfeiture and Should Release the Surety from Any Responsibility of Satisfying that Amount.

The Surety requests that the entirety of the bond amount be set aside, as she did not have notice of or consent to the assets being frozen, which materially increased the risk of Defendant's flight and the government decided to freeze the assets to ensure no assets were dissipated instead of ensuring that Defendant would not flee when the assets were frozen. This has prejudiced the Surety and the interests of justice require that the entirety of the bond amount be set aside and the Motion for Default Judgment denied in its entirety

In the alternative, if the Court believes that there should be a forfeiture, then the Court should only order a partial forfeiture of the $9,000,000 amount. In equity, the Court could order the same amount of bond that was placed on Kanodia (Defendant's co-defendant in this case) be declared forfeit in this case – in the amount of $500,000 – and that the Surety should not have to pay that or any other amount and that there be no interest or costs assessed. The $500,000 itself is a substantial amount. In addition, the Surety, when she signed the bond, had access to over $100 million of assets. All of the assets are now frozen by Court Order on the government's request and the Surety, due to the publicity of the various cases, has been unable to find employment to support herself and the minor children. The Surety would be extremely hard-pressed to pay any amount of judgment in this matter and it would amount to a punishment and penalty on the Surety for no fault of hers.

In addition, the Surety requests that Court stay the enforcement of any judgment at least

until the CT Case is over and the asset freeze has been lifted, especially given the current global pandemic which is getting worse.

CONCLUSION

In conclusion, the *pro se* Surety respectfully requests that the Court deny the government's Motion for Default Judgment in its entirety and set aside or vacate the forfeiture amount in its entirety. In the alternative, the *pro se* Surety respectfully requests that the Court allow for a more reasonable amount of forfeiture with no interest or costs and that the Surety be excused from satisfying any forfeiture amount. The Surety also respectfully requests a stay of any enforcement until the CT Case is over or the asset freeze has been lifted, especially given the current global pandemic.

In addition, the Surety respectfully requests that the Court deny the Motion for Default Judgment in its entirety or alternatively, hold the Motion for Default Judgment in abeyance for renewed briefing until the Court rules on the Surety's pending motion for briefing schedule for a Rule 46(f)(2) motion and until the Court rules on such Rule 46(f)(2) motion once it is fully briefed.

Dated: November 18, 2020

Greenwich, Connecticut

Respectfully Submitted,

By: */s/ Shalini Ahmed*

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Pro Se

CERTIFICATE OF SERVICE

I hereby certify that the Surety's Opposition to the DOJ's Motion for Default Judgment of Forfeiture of Bond was mailed to the following parties by U.S. Mail.

Carol Head
Assistant United States Attorney
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Boston, MA 02210

Dated: November 18, 2020 */s/ Shalini Ahmed*

Shalini A. Ahmed

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. IFTIKAR AHMED, Defendant, and IFTIKAR ALI AHMED SOLE PROP and I-CUBED DOMAINS, LLC, Relief Defendants.	Civil Action No. 3:15cv675 (JBA)

FILED UNDER SEAL

TEMPORARY RESTRAINING ORDER FREEZING ASSETS AND PROVIDING FOR OTHER ANCILLARY RELIEF, AND ORDER SETTING PRELIMINARY INJUNCTION HEARING

On May 6, 2015, Plaintiff United States Securities and Exchange Commission (the "Commission") filed an emergency motion [Doc. # 2] for an *ex parte* order: (1) freezing funds and other assets of Defendant Iftikar Ahmed and Relief Defendants Iftikar Ali Ahmed Sole Prop and I-Cubed Domains, LLC; (2) requiring Defendant and Relief Defendants to provide an accounting; (3) providing for expedited discovery; (4) providing for alternative service by the Commission; (5) prohibiting the destruction or alteration of documents; and (6) setting this matter for a preliminary injunction hearing. For the reasons that follow, Plaintiff's motion is granted with modifications.

On May 7, 2015, the Court conducted an *ex parte* telephonic hearing on the record to

consider the representations and arguments of Plaintiff in support of its claims. The Court has considered the record presented in support of Plaintiff's Motion for a Temporary Restraining Order, including: the Complaint; the Commission's Memorandum of Law in Support of its Motion for an *Ex Parte* Temporary Restraining Order Freezing Assets and Providing for Other Ancillary Relief, and for Preliminary Injunction; the Declaration of Grace Ames, with attached exhibits; and the Certification of Counsel pursuant to Federal Rule of Civil Procedure 65(b).

Based on this record, the Court finds:

1. The Court has jurisdiction over the subject matter of this action and over the Defendant and Relief Defendants.

2. The Commission has made a sufficient and proper showing in support of the relief granted herein, as required by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)], Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)] and Section 209(d) of the Investment Advisor's Act of 1940 ("Advisor's Act") [15 U.S.C. § 80b-9(d)] by establishing a likelihood that the Commission will prevail at trial on the merits and an inference that the Defendant has engaged in acts, practices, and courses of business constituting violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1), 206(2), 206(3), and 206(4) of the Investment Advisers Act 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(3)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

3. There is good cause to believe that, unless restrained and enjoined by order of this Court, the Defendant and Relief Defendants will dissipate, conceal, or transfer from the jurisdiction of this Court assets that could be subject to an order directing disgorgement or the

payment of civil monetary penalties in this action such that an order freezing the Defendant's and Relief Defendants' assets, as specified *infra*, is necessary to preserve the *status quo* and to protect this Court's ability to award equitable relief in the form of disgorgement of illegal profits from fraud and civil penalties.

4. In light of the Court's finding that there is good cause to believe the Defendant will dissipate, conceal, or transfer assets, and pursuant to Fed. R. Civ. P. 65(b), the Court specifically finds that there is a likelihood of irreparable injury unless this order is issued *ex parte*. To avoid this irreparable harm, the Court will issue this Temporary Restraining Order Freezing Assets *ex parte* so that prompt service on appropriate financial institutions can be made, thus preventing the dissipation of assets.

5. There is good cause to believe that, unless restrained and enjoined by order of this Court, the Defendant and Relief Defendants may alter or destroy documents relevant to this action.

6. There is good cause to believe that expedited discovery and alternative means of service are warranted.

Now, therefore, and for the reasons set forth on the record during the *ex parte* telephonic hearing of May 7, 2015 with counsel for Plaintiff:

I.

IT IS HEREBY ORDERED that, pending the determination of the Commission's Motion for a Preliminary Injunction or hearing on the merits:

A. The assets, funds, or other property held by or under the direct or indirect control of Defendant Iftikar Ahmed, Relief Defendant Iftikar Ali Ahmed Sole Prop, and Relief

Defendant and I-Cubed Domains, LLC, whether held in any of their names or for their direct or indirect beneficial interests, wherever located, up to the amount of **$55,089,546**, are frozen.

B. Defendant Iftikar Ahmed and Relief Defendants Iftikar Ali Ahmed Sole Prop and I-Cubed Domains, LLC, and their officers, directors, successor corporations, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever of any of their funds or other assets or things of value presently held by them, under their control or over which they exercise actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, up to the amounts identified in paragraph I.A.

C. Any bank, financial or brokerage institution or other person or entity holding any funds, securities or other assets of Defendant Iftikar Ahmed or Relief Defendants Iftikar Ali Ahmed Sole Prop or I-Cubed Domains, LLC, up to the amounts identified in paragraph I.A, held in the name of, for the benefit of, or under the control of Defendant Iftikar Ahmed or Relief Defendants Iftikar Ali Ahmed Sole Prop or I-Cubed Domains, LLC, or their officers, directors, successor corporations, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, shall hold and retain within their control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets.

D. No person or entity, including the Defendant, Relief Defendants, or any creditor or claimant against the Defendant or any of the Relief Defendants, or any person acting on behalf

of such creditor or claimant, shall take any action to interfere with the asset freeze, including, but not limited to, the filing of any lawsuits, liens, or encumbrances, or bankruptcy cases to impact the property and assets subject to this order; provided, however, that any party or non-party may seek leave from this order upon a proper showing.

II.

IT IS HEREBY FURTHER ORDERED that, the Defendant and Relief Defendants are prohibited from destroying or altering documents and records. Pending determination of the Commission's Motion for a Preliminary Injunction or hearing on the merits, Defendant Iftikar Ahmed and Relief Defendants Iftikar Ali Ahmed Sole Prop and I-Cubed Domains, LLC, and their officers, directors, successor corporations, subsidiaries and affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, are hereby restrained from destroying, mutilating, concealing, altering, or disposing of any document referring or relating in any manner to any transactions described in the Commission's Complaint in this action, or to any communications between or among any of the Defendant or Relief Defendants. As used in this order, "document" means the original and all non-identical copies (whether non-identical because of handwritten notation or otherwise) of all written or graphic matter, however produced, and any other tangible record, or electronic data compilation capable of reproduction in tangible form, including, without limitation, computer data, e-mail messages, correspondence, memoranda, minutes, telephone records, reports, studies, telexes, diaries, calendar entries, contracts, letters of agreement, and including any and all existing drafts of all documents.

III.

IT IS HEREBY FURTHER ORDERED that the Commission's application for expedited discovery is granted in part and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 33, 34, 36, and 45 of the Federal Rules of Civil Procedure, discovery shall proceed as follows:

A. Pursuant to Rule 30(a) of the Federal Rules of Civil Procedure, the Commission may take depositions upon oral examination on **three days'** notice of any such deposition. Depositions may be taken telephonically. As to Defendant Iftikar Ahmed and Relief Defendants Iftikar Ali Ahmed Sole Prop and I-Cubed Domains, LLC, and their officers, directors, subsidiaries and affiliates, agents, servants, employees, owners, brokers, associates, trustees, and underwriters, the Commission may depose such witnesses after serving a deposition notice by facsimile, e-mail, mail, hand or overnight courier upon such Defendant or Relief Defendant, and without serving a subpoena on such witness;

B. Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, the Defendant and Relief Defendants, and each of them, shall answer the Commission's interrogatories within **seven days** of service of such interrogatories. Interrogatories may be served and answered by facsimile, e-mail, mail, hand or overnight courier upon the parties or their counsel;

C. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, the Defendant and Relief Defendants, and each of them, shall produce all documents requested by the Commission within **seven days** of service of such request. Documents produced to the Commission shall be delivered by hand or overnight courier to the U.S. Securities and Exchange Commission, Denver Regional Office, 1961 Stout St., Suite 1700, Denver, CO 80294, to the attention of Nicholas P.

Heinke or Mark L. Williams, or such other person or place as counsel for the Commission may direct in writing. Requests for production may be served by facsimile, e-mail, mail, hand or overnight courier upon the parties or their counsel; and

D. In connection with any discovery from any non-party, deposition or document discovery may be had within **five days** of service of a subpoena pursuant to Rule 45. Service of a subpoena may be made by facsimile, e-mail, mail, hand or overnight courier.

IV.

IT IS HEREBY FURTHER ORDERED that service of this Order, the Summons and Complaint may be made by facsimile, mail, e-mail, delivery by commercial courier, or personally by any employee of the Securities and Exchange Commission who is not counsel of record in this matter, or special process server, or any other person, or in any other manner authorized by Rule 5 of the Federal Rules of Civil Procedure and may be made on any registered agent, officer, or director of Defendant or Relief Defendant, or by publication. If alternative service is made, the Commission must thereafter effect formal service in compliance with Fed. R. Civ. P. 5.

V.

IT IS HEREBY FURTHER ORDERED that, until the Commission is able to freeze Defendant's and Relief Defendants' bank, financial, and brokerage accounts, all documents filed in this matter are **SEALED**. The Commission shall move to unseal the documents filed in this matter once Defendant's and Relief Defendants' bank, financial, and brokerage accounts are frozen, but in any case no later than seven days following the issuance of this Order.

VI.

IT IS HEREBY FURTHER ORDERED that the Defendant and Relief Defendants, and each of them, shall appear before this Court at 10 a.m. on May 21, 2015 in Courtroom Three in New Haven of the United States District Court for the District of Connecticut, to show cause, if any there be, why this Court should not enter a Preliminary Injunction against the Defendant and Relief Defendants pursuant to Rule 65 of the Federal Rules of Civil Procedure extending the temporary relief granted in this Order until a final adjudication on the merits may be had.

SO ORDERED this 7th day of May, 2015, at 6:50 p.m.

/s/
Janet Bond Arterton, U.S.D.J.

Exhibit 2

To Whom It May Concern

DECLARATION OF ADVOCATE ANIL SHARMA

1. I am Advocate Anil Sharma and I am the local Indian attorney for Iftikar A. Ahmed in a pending case in India.
2. Mr. Ahmed has a pending criminal case in India, which has been pending since May 2015.
3. Mr. Ahmed was arrested and detained for 61 (sixty-one) days and is currently released on bail. He cannot leave the jurisdiction of India.
4. It is my understanding that Mr. Ahmed has tried to get funds released so that he may have proper attorney representation in India and in the United States, but that he has been unsuccessful in these efforts.
5. Until Mr. Ahmed's case in India is resolved, he cannot leave the jurisdiction of India.

Dated: November 18th, 2019
Kolkata, India

Anil Sharma
Advocate Anil Sharma

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	No. 3:15-mj-00052-WIG
	141 Church Street
vs.	New Haven, CT 06510
IFTIKAR AHMED,	April 2, 2015

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE WILLIAM I. GARFINKEL

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:
RAHUL KALE, AUSA
MR. SIMMONS, STUDENT INTERN
U.S. ATTORNEY'S OFFICE - BRIDGEPORT
1000 Lafayette Boulevard
Tenth Floor
Bridgeport, CT 06604

For the Defendant:
KELLY M. BARRETT, ESQ.
FEDERAL PUBLIC DEFENDER'S OFFICE - NEW HAVEN
265 Church Street
Suite 702
New Haven, CT 06510

Hana Copperman
eScribers
700 West 192nd Street
Suite #607
New York, NY 10040
(973) 406-2250

The defendant must not violate any federal, state or local law while on release. The defendant must cooperate in the collection of a DNA sample if it's required by law and advise the Court and pre-trial services of any change in address or telephone number. And, of course, appear in court as required and if convict -- surrender for service of any sentence that might be imposed.

And there's a separate order that includes the date and time and place of the next court appearance.

The defendant must sign a bond to be cosigned by his wife and also further to be secured by equity in the defendant's residence in Greenwich.

What is the amount of the bond that folks have been discussing?

MR. SIMMONS: Your Honor, the residence is worth about ten million dollars, so we're fine with that amount as being put down as surety.

THE COURT: Well, if that's what it's worth. But let me hear Ms. Barrett on that.

MS. BARRETT: It seems to me that a ten million dollar bond, that is my understanding of what the house is worth. Nine -- perhaps nine million dollars, not ten million. But it seems to me that that would be an excessive amount of bond. I guess under the circumstances I think that that could be revisited in Massachusetts.

THE COURT: Yes. I don't know enough about the case or the amount of money involved in the case or alternative sources of income. So at this point I will say that, to be honest, let's say a nine million dollar bond. Then the bond is in effect as soon as the defendant and his wife sign it and cosign it, but it will be further secured, at the earliest possible time, by the defendant's equity.

And the U.S. Attorney's office has helpful information online, but your counsel is also familiar with the bond paperwork, which has been fairly streamlined for Connecticut real estate. It shouldn't take very long at all. But, again, that could be without prejudice to reconsideration of the amount in the District of Massachusetts.

And there won't be a necessary third-party custodian. He should simply report to the probation office as directed and continue employment, surrender passport to the clerk or government counsel, and I think that's been done. Travel is restricted to Connecticut, except for travel to Massachusetts for court or meeting counsel if there's Massachusetts counsel, and New York City -- presumably he has to go through Westchester if you drive a little bit -- New York City for purposes of business meetings and consulting counsel. And I'm going to put prior notice to probation.

And, Ms. Welks, do you think we have a situation where you all would like Mr. Ahmed to call in when he's

Exhibit 4

(Rev. 12/11) Appearance Bond

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

United States of America
v.
AMIT KANODIA
Defendant

Case No. 15-MJ-2062-MBB

APPEARANCE BOND

Defendant's Agreement

I, AMIT KANODIA *(defendant)*, agree to follow every order of this court, or any court that considers this case, and I further agree that this bond may be forfeited if I fail:

(X) to appear for court proceedings;
(X) if convicted, to surrender to serve a sentence that the court may impose; or
( ) to comply with all conditions set forth in the Order Setting Conditions of Release.

Type of Bond

( ) (1) This is a personal recognizance bond.

( ) (2) This is an unsecured bond of $ _____ .

(X) (3) This is a secured bond of $ 500,000.00 , secured by:

( ) (a) $ _____ , in cash deposited with the court.

(X) (b) the agreement of the defendant and each surety to forfeit the following cash or other property *(describe the cash or other property, including claims on it – such as a lien, mortgage, or loan – and attach proof of ownership and value)*:

90 Browne St., Apt. 1
Brookline, MA

If this bond is secured by real property, documents to protect the secured interest may be filed of record.

( ) (c) a bail bond with a solvent surety *(attach a copy of the bail bond, or describe it and identify the surety)*:

Forfeiture or Release of the Bond

Forfeiture of the Bond. This appearance bond may be forfeited if the defendant does not comply with the above agreement. The court may immediately order the amount of the bond surrendered to the United States, including the security for the bond, if the defendant does not comply with the agreement. At the request of the United States, the court may order a judgment of forfeiture against the defendant and each surety for the entire amount of the bond, including interest and costs.

Release of the Bond. The court may order this appearance bond ended at any time. This bond will be satisfied and the security will be released when either: (1) the defendant is found not guilty on all charges, or (2) the defendant reports to serve a sentence.

Declarations

Ownership of the Property. I, the defendant – and each surety – declare under penalty of perjury that:

(1) all owners of the property securing this appearance bond are included on the bond;
(2) the property is not subject to claims, except as described above; and
(3) I will not sell the property, allow further claims to be made against it, or do anything to reduce its value while this appearance bond is in effect.

Acceptance. I, the defendant – and each surety – have read this appearance bond and have either read all the conditions of release set by the court or had them explained to me. I agree to this Appearance Bond.

I, the defendant – and each surety – declare under penalty of perjury that this information is true. (See 28 U.S.C. § 1746.)

Date: 04/06/2015

Defendant's signature

Surety/property owner – printed name | *Surety/property owner – signature and date*

Surety/property owner – printed name | *Surety/property owner – signature and date*

Surety/property owner – printed name | *Surety/property owner – signature and date*

CLERK OF COURT

Date: 04/06/2015

Signature of Clerk or Deputy Clerk

Approved.

Date: 04/06/2015

Judge's signature

Attach. F

United States District Court
District of Massachusetts

United States of America,	)	
	)	
v.	)	
	)	**Criminal Action No.**
Iftikar Ahmed,	)	**15-10131-NMG-2**
	)	
Defendant.	)	
	)	

ORDER

GORTON, J.

This Court, having reviewed the proliferation of pending motions in this case (Docket Nos. 351, 354, 358 & 362) and the accompanying memoranda filed in support and in opposition thereto, hereby rules as follows:

- surety's motion for timeline to submit a Rule 46(f)(2) motion (Docket No. 354) is **DENIED;**
- surety's motion for electronic filing privileges (Docket No. 358) is **DENIED;**
- defendant's motion to join surety's opposition to the government's motion for default judgment (Docket No. 362) is **ALLOWED;** and
- the government's motion for default judgment of forfeiture of appearance bond (Docket No. 351) is **ALLOWED.**

So ordered.

Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated February 26, 2021

Attach. G

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 15-CR-10131-NMG
	)	
IFTIKAR AHMED,	)	
a/k/a "Ifty,"	)	
Defendant.	)	

UNITED STATES' OPPOSITION TO SURETY'S MOTION REQUESTING AT LEAST THREE MONTHS TO SUBMIT A RULE 46(f)(2) MOTION

The United States of America, by and through its attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, respectfully submits this Opposition to Surety's (hereinafter the "Surety") Motion for Timeline to Submit a Rule 46(f)(2) Motion (Docket No. 354). The Surety seeks *at least* three months to submit her motion to request a set-aside, vacate or reduce the bond forfeiture pursuant to Fed. R. Crim. Pro. 46(f)(2).

The United States moved for a declaration of bond forfeiture pursuant to 18 U.S.C. § 3146(d) and Fed. R. Crim. P. 46(f)(1) on May 24, 2019. This Court entered a Memorandum and Order granting the government's motion and declaring the bond forfeited over one year ago, on November 7, 2019. *See* Docket Nos. 293 & 307. The Surety was fully aware of the avenues of relief available to sureties in Rule 46(f) and even acknowledges in her motion, and prior motions, that she reserved her right to request to set aside, reduce, or vacate the bond forfeiture. Thus, the Surety has had ample opportunity to file a motion pursuant to Rule 46(f)(2) in the year since the Court declared the bond forfeited. She is not entitled to an additional three months. If the Court deems it necessary to set a briefing schedule, the government does not oppose providing the Surety with reasonable additional time to file a Rule 46(f)(2) motion.

For these reasons, the United States respectfully requests that the Court deny Surety's Motion requesting at least three months to file a Motion pursuant to Rule 46(f)(2).

Respectfully submitted,

ANDREW E. LELLING
United States Attorney

By: */s/ Carol E. Head*
CAROL E. HEAD
Assistant United States Attorney
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100
Carol.Head@usdoj.gov

Dated: November 10, 2020

CERTIFICATE OF SERVICE

I, Carol E. Head, AUSA, hereby certify that on November 10, 2020, I served, by First Class mail, a copy of the foregoing document on the following party who is not a registered participant of the CM/ECF system:

Shalini Ahmed
505 North Street
Greenwich, CT 06930

Iftikar Ahmed
505 North Street
Greenwich, CT 06930

/s/ Carol E. Head
CAROL E. HEAD
Assistant U.S. Attorney

Dated: November 10, 2020

Attach. H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	
v.	Criminal No. 15-10131-NMG
IFTIKAR AHMED Defendant,	November 13, 2020

SURETY'S REPLY TO UNITED STATES' OPPOSITION TO HER MOTION FOR TIMELINE TO SUBMIT RULE 46(F)(2) MOTION

(LEAVE TO FILE GRANTED NOVEMBER 12, 2020)

The *pro se* Surety – Ms. Shalini Ahmed, the spouse of *pro se* Defendant Iftikar Ahmed, and the co-signer of the Bond (as she is the co-owner of the home which secured the Bond) respectfully files this Reply to the United States' Opposition [ECF No. 356 or "Opposition"] to her Motion for Timeline to Submit Rule 46(f)(2) Motion[1] [ECF No. 354 or "Motion for Timeline"]. The *pro se* Surety reserves all rights. [2]

ARGUMENTS

The *pro se* Surety, as per Fed. R. Crim. Pro. 46(f)(2), has a right to request a set-aside, reduction or vacate of the bond forfeiture. In its Opposition, the government deliberately omits

[1] Pursuant to Fed. R. Crim. Pro. 46(f)(2).

[2] By submitting this motion, the *pro se* Surety does not waive her rights to request a set aside or vacate of the declaration of bond forfeiture, or to present any defenses at any bond forfeiture hearing, when the process is at that point. The Surety reserves all rights.

that 1) the Surety is *pro se* and requires time to research, write and submit her Rule 46(f)(2) motion and 2) that this case was under appellate jurisdiction for almost nine months since the bond was declared forfeited.

First, the Surety is *pro se*. She is not a lawyer and has no legal experience. She has no access to legal or caselaw databases and has no help. Ms. Ahmed needs time to adequately research, write and prepare her Rule 46(f)(2) Motion. Ms. Ahmed, as a *pro se* litigant, does not have electronic filing privileges[3] and is not able to readily leave her home with her three minor children in the middle of a global pandemic to send the mailings to the Court, which alone take her *at least* a day or two just to be delivered and filed to the Court.

Indeed, courts routinely allow *pro se* litigants time to research, write and submit their briefings. This Court should allow the *pro se* Surety the time she requires – at least three months – to research, write and submit her Rule 46(f)(2) Motion, especially as the Court denied her motion for stay pending the resolution of her motion to retain counsel.[4] In addition, the *pro se* Surety is clearly disadvantaged here as her opponent in this case is the United States government, who has unlimited access to resources and experienced legal counsel.

Second, contrary to the government's representations, the *pro se* Surety did not have "ample opportunity to file a motion pursuant to Rule 46(f)(2) in the year since the Court declared the bond forfeited" [Opposition]. This Court declared the bond forfeited on November 7, 2019. However, the government neglects to state that after the Court declared the bond forfeited on November 7, 2019, the Surety (and Defendant) filed notices of appeal on November 20, 2019 on the Court's Order declaring the bond forfeited and this case was under appellate jurisdiction. Even

[3] This Court denied Ms. Ahmed's motion to intervene, though Ms. Ahmed is a Surety.

[4] Fully briefed and pending in *SEC v Ahmed, et al.*, 15-cv-675 (D. Conn) ("CT Case").

the government admits that the "Notices of Appeal (Docket Nos. 310-311) have divested this Court of jurisdiction to consider [Motions]" [ECF No. 320 at 1] and the Court ordered as such "When defendant and the putative intervenor filed notices of appeal on November 20, 2019, (Docket Nos. 310 and 311) this Court was divested of jurisdiction with respect to "any matter touching upon or involved in the appeal."" [ECF No. 321].

This appellate jurisdiction continued for nine months, until August 17, 2020 when the mandate issued by First Circuit. Because the government had requested "that it be allowed to defer briefing on [Motions to Reconsider] until such time as the matters involved the appeals have been remanded or are otherwise before this Court" [ECF No. 320] and the Court allowed that "the government is excused from filing responses thereto until such time as renewed motions are properly before this Court" [ECF No. 321] the Surety moved this Court for reconsideration of the bond forfeiture declaration on August 28, 2020, which the Court denied on October 1, 2020.

Because there are pending motions in the Connecticut District Court that froze the entirety of the Surety's assets and that has a stay of litigation order that impacts this proceeding, the Surety moved the Court for a stay of this matter on October 13, 2020. The Court denied the Surety's motion for a stay on Monday, November 2, 2020 and on Wednesday, November 4, 2020, denied the Surety's Motion for leave to file a Reply in support of her Motion to Stay. The government filed the Motion for a Default Judgment ***two days later*** on November 6, 2020.

The government's assertion that the *pro se* Surety "has had ample opportunity to file a motion pursuant to Rule 46(f)(2) in the year since the Court declared the bond forfeited" [Opposition] does not comport with reality. Not even an experienced lawyer, let alone a *pro se* litigant, can research, write and submit a Rule 46(f)(2) motion in two days. The *pro se* Surety, who has no legal experience, needs the time to adequately prepare her Motion.

The *pro se* Surety also requests that the Court hold the government's Motion for Default Judgment [ECF No. 351] in abeyance while the briefing pertaining to the Surety's Motion to Set Aside, Vacate or Reduce the Bond Forfeiture, pursuant to Rule 46(f)(2) is being considered by the Court. The *pro se* Surety reserves all rights to respond to and will respond separately to the government's Motion for Default Judgment.

In conclusion, the *pro se* Surety respectfully requests that the Court allow for at least three months from ruling on this Motion for the *pro se* Surety to research, write and submit her motion to request a set-aside, vacate or reduction in the bond forfeiture amount, pursuant to Fed. R. Crim. Pro. 46(f)(2) and to hold in abeyance the government's Motion for Default Judgment.

WHEREFORE, the Surety requests that her Motion for Timeline to Submit a Fed. R. Crim. Pro. 46(f)(2) Motion be granted in its entirety.

Dated: November 13, 2020

Greenwich, Connecticut

Respectfully Submitted,

By: */s/ Shalini Ahmed*

Shalini A. Ahmed
505 North Street
Greenwich, CT 06830
Tel: 203-661-2704
Email: shalini.ahmed@me.com
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that the Surety's Reply to Motion for Timeline to Submit a Rule 46(f)(2) Motion was mailed to the following parties by U.S. Mail.

Carol Head
Assistant United States Attorney
1 Courthouse Way, Suite 9200
Boston, MA 02210

Dated: November 13, 2020 */s/ Shalini Ahmed*

Shalini A. Ahmed