

App. No. 18A\_\_\_\_\_

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In the  
Supreme Court of the United States  
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Bharanidharan Padmanabhan MD PhD  
(Dr Bharani), *Petitioner*  
v.  
James Paikos et al, *Respondents*  
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From the 1st Circuit Court of Appeals  
Case No. 18-1017  
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ON APPLICATION FOR AN INJUNCTION  
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INTERVENOR-APPELLANT'S APPLICATION FOR AN INJUNCTION

September 6, 2018

**Elena Rogers**  
96 Crescent Street,  
Rockland MA 02370  
Telephone (774) 360 1238  
email ebk1962@gmail.com

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## **INTERVENOR-APPELLANT'S APPLICATION FOR AN INJUNCTION**

To the Honorable Stephen Breyer, Associate Justice of the Supreme Court and Circuit Justice for the 1st Circuit:

Appellant Elena Rogers respectfully requests that an injunction staying the illegal suspension of the Appellant's doctor's medical license be granted as all the factors are met. This Court has jurisdiction over this Application under 28 U.S.C. 1254 (1) and has authority to grant the requested relief under the All Writs Act, 28 U.S.C. 1651.

Appellant Rogers chose to receive specialist neurological care, for more than ten years, from Dr. Bharani Padmanabhan and chose to do so even after he was reported to the medical licensing board by the same people that he reported to the government for patient neglect and Medicare fraud. Along with numerous other patients, Appellant Rogers informed the board members in person numerous times that what they were trying to do would harm her because Appellant Rogers had sought care from numerous other doctors in the Massachusetts market and was not satisfied. This may be seen on YouTube:

1 <http://www.youtube.com/watch?v=prB1SrUqEL8>

2 <https://www.youtube.com/watch?v=1tClSAdOvrk>

3 <https://www.youtube.com/watch?v=3xTKKVSibGE>

4 <http://www.youtube.com/watch?v=A8F7e8vsFkY>

5 <https://www.youtube.com/watch?v=qPaHrpOotQ0>

The members of the licensing board did not consider any of the patients' pleas and announced that they would suspend Dr. Bharani's medical license anyway on June 10, 2017. The board went out of their way to ensure the patients understood that they did not matter at all.

On May 22, 2017 Dr. Bharani filed in federal court an emergency petition for an injunction to prevent the indefinite suspension from coming into effect. We trusted that an emergency petition would be heard by a federal court within a few days or a week at the most.

Prior to the July deadline, Appellant Rogers joined seven other patients and filed motions to 'intervene as of right' in order to exercise their right to receive medical care from a physician of their choice. The Judge, for reasons that remain inexplicable, did not grant the patients even a hearing for seven long weeks. Appellant Rogers was forced to see the deadline date approach with dread and with no avenue for relief, both medically and in the legal system.

On July 12, 2017 the board members made good on their threat and suspended her neurologist's medical license, because the Judge deliberately did not do his duty!

The same board then stated that patients in the United States have no right to receive medical care from a doctor of their choice. And the Judge agreed!

On April 18, 2018 Appellant Rogers, other patients and Dr. Bharani jointly filed their brief in appeals court. On June 14, 2018 Dr. Bharani filed an emergency motion in appeals court for an injunction so he could get his license back and care for patients who were unable to transition to another neurologist and are now without specialist medical care.

Just like the other Judge, the appeals court also had not heard the patients for months. Dr. Bharani then filed an application for an injunction from the Supreme Court. **Immediately**, the appeals court denied the joint appeal and stated that it need not hear from American patients at all, in a transparent effort to scuttle the application pending before the Supreme Court.

Appellant Rogers now applies for help from the Supreme Court and Justice Stephen Breyer, hoping that someone in a federal court will finally hear the patients.

### REASONS FOR GRANTING THE APPLICATION

The All Writs Act, 28 U.S.C. 1651(a), authorizes an individual Justice to issue an injunction when (1) the circumstances presented are “critical and exigent”; (2) the legal rights at issue are “indisputably clear”; and (3) injunctive relief is “necessary or appropriate in aid of [the Court’s] jurisdiction.” *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm’n*, 479 U.S. 1312 (1986) Two US courts have now stated that American patients do not deserve to be heard and that their motions to intervene in order to protect their federal right is not worth the courts’ time. This violated Appellant Rogers’ federal rights under the constitution and the laws, disrupted chosen continuity of care, and must be set right because it goes against long-established principles in our United States.

### REASONS FOR GRANTING THE INJUNCTION

***(1) the plaintiff will suffer irreparable injury if the injunction is not granted;***

In this case, because two federal courts have deemed that American patients have no right to choose who their doctor should be, Appellant <sup>ROGERS</sup>~~DOE~~ has been deprived of specialist care from the doctor of <sup>ROGERS</sup>~~HIS~~ HER choice. Appellant ~~DOE~~ has already been injured.

“This is individual-rights language, stated in mandatory terms, and interpreting the right does not strain judicial competence. See *Gonzaga Univ.*, 536 U.S. at 284.”  
*Planned Parenthood of Indiana v. Commissioner*, 699 F.3d 962 (7th Cir. 2012)

***(2) such injury outweighs any harm which the granting of injunctive relief would inflict on the defendant;***

The board members did not suffer any injury when they held off for 60 days from suspending Dr. Bharani’s medical license last year. They knew they would not and did not suffer

any harm at all. They won't in the future either. Only the patients and their doctor were harmed.

***(3) that plaintiff has exhibited a likelihood of success on the merits;***

Dr. Bharani and his patients, including Appellant Rogers, applied to a federal court to stop deprivation of property and violation of an individual right without due process and to prevent disruption of medical care. This was their right guaranteed by the Constitution. Federal courts are obligated to hear our federal claim but two courts did not. *Sprint Communications, Inc. v. Jacobs*, 571 U.S. \_\_\_\_ (2013) Appellant Rogers is forced to apply to the Supreme Court just to be heard. However, the likelihood of Appellant Rogers and Dr. Bharani succeeding on the merits in the Supreme Court before Justice Breyer is very high.

***(4) the public interest will not be adversely affected by the granting of the injunction.***

Granting this injunction and staying the unlawful suspension would be in the public interest as it would restore continuity of subspecialty care to patients who have exercised in federal court their right to choose their physician. Protecting Constitutional rights is in the public interest.

## CONCLUSION

For the above reasons, Appellant Elena Rogers respectfully requests that this application for an injunction be granted and the suspension of her neurologist's medical license be again stayed so continuity of medical care may be restored along with her federal right.

Respectfully submitted, and signed under the penalties of perjury,

September 6, 2018

  
**Elena Rogers**  
96 Crescent Street,  
Rockland MA 02370  
Telephone (774) 360 1238  
email ebk1962@gmail.com

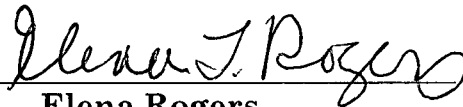
CORPORATE DISCLOSURE STATEMENT

Appellant Elena Rogers is an individual who is proceeding *pro se*.

AFFIDAVIT OF SERVICE

Appellant Elena Rogers certifies that she has served a copy of this application upon the defendant-appellees via their counsel, Samuel Furgang, AGO, 11th Floor, One Ashburton Place, Boston MA 02108, via First Class mail, postage prepaid.

September 6, 2018

A handwritten signature in cursive script that reads "Elena J. Rogers". The signature is written in black ink and is positioned above a horizontal line.

**Elena Rogers**

96 Crescent Street,

Rockland MA 02370

Telephone (774) 360 1238

email ebk1962@gmail.com

# United States Court of Appeals For the First Circuit

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No. 18-1017

BHARANIDHARAN PADMANABHAN, MD PHD,

Plaintiff, Appellant,

SONYA BRITE; SCOTT L'HEUREUX; JUNE MARTIN; CLIFFORD PHIPPEN; JOSHUA  
PHIPPEN; ELENA ROGERS; PATRICIA TARDANICO; LESLEY WOKOSKE,

Intervenors, Appellants,

v.

JAMES PAIKOS; LORETTA KISH COOKE; GEORGE ZACHOS; DEBRA STOLLER;  
SUSAN GIORDANO; MICHAEL HENRY; ROBIN RICHMAN; BRENT GIESSMANN, a/k/a  
Woody; GEORGE ABRAHAM; CANDACE LAPIDUS SLOANE,

Defendants, Appellees.

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Before

Howard, Chief Judge,  
Torruella and Thompson, Circuit Judges.

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## JUDGMENT

Entered: August 23, 2018

Plaintiff-appellant Bharanidharan Padmanabhan and eight intervenor-appellants appeal from the district court's dismissal of plaintiff's complaint seeking a "further stay" of the indefinite suspension of plaintiff's medical license, "while the *en banc* SJC opinion is pending and until [plaintiff] can avail [himself] of remedies in Federal court for the egregious violations detailed above." Complaint, Dkt # 1, p. 21. The awaited opinion of the Massachusetts Supreme Judicial Court issued on June 27, 2017. See Padmanabhan v. Board of Registration in Medicine, 477 Mass. 1026 (2017). On July 12, 2017, the indefinite suspension of plaintiff's medical license took effect. On October 10, 2017, plaintiff filed his federal action against these same defendants, among others, challenging the disciplinary proceedings and indefinite suspension of his medical license as violating his federal due process rights, among other claims, and seeking preliminary and permanent injunctive relief and damages, in Padmanabhan v. Hulka, No. 17-cv-11939. On April

3, 2018, while this appeal has been pending, the district court granted defendants' motions to dismiss that complaint.<sup>1</sup>

In view of those events, this appeal is moot. See Newspaper Guild of Salem, Local 105 of Newspaper Guild v. Ottaway Newspapers, Inc., 79 F.3d 1273, 1277 (1st Cir. 1996) ("An appeal from the denial of a motion for preliminary injunction is rendered moot when the act sought to be enjoined has occurred."); Cf. Chaparro-Febus v. Int'l Longshoremen Ass'n, Local 1575, 983 F.2d 325, 331 n.5 (1st Cir. 1992) ("[P]reliminary injunctions, which are interlocutory in nature, cannot survive a final order of dismissal."). None of the parties has raised mootness. "However, even though neither party raised this issue, we must inquire sua sponte whether an appeal has been rendered moot by subsequent events." Overseas Military Sales Corp. v. Giralt-Armada, 503 F.3d 12, 16 (1st Cir. 2007).

This appeal is dismissed as moot. The district court's judgment is vacated and the case is remanded for dismissal of the complaint. See County Motors, Inc. v. General Motors Corp., 278 F.3d 40, 44 (1st Cir. 2002).<sup>2</sup>

Appellants have filed an "Emergency Motion to Disqualify the Attorney General" from representing defendants-appellees. Appellees contend that they lack standing to move to disqualify the Massachusetts Attorney General's Office on the grounds asserted. We agree. See Dupree v. Hardy, 859 F.3d 458, 463-464 (7th Cir. 2017) (holding that defendant, in § 1983 suit against state prison staff, lacked standing to move to disqualify defendants' attorneys on the ground that their appointment to defend the county violated state law). To the extent that this motion is not moot, it is dismissed for lack of standing.

Plaintiff's motion for a temporary restraining order and all other pending motions are denied as moot.

By the Court:

/s/ Margaret Carter, Clerk

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<sup>1</sup> Padmanabhan's appeal from that dismissal is presently before this court. See Appeal No. 18-1301.

<sup>2</sup> In view of this result, it is unnecessary to consider appellants' challenges to the district court's denial of motions for recusal of the district court judge and for intervention by additional would-be plaintiffs.



cc:

Hon. Nathaniel M. Gorton

Robert Farrell, Clerk, United States District Court for the District of Massachusetts

Bharanidharan Padmanabhan

Samuel M. Furgang

Clifford Phippen

Joshua Phippen

Patricia Tardanico

Elena Rogers

Scott L'Heureux

Sonya Brite

June Martin

Lesley Wokoske