

NO. 13-1816

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

PLAINTIFF-APPELLEE,

v.

ANDREW AUERNHEIMER,

DEFENDANT-APPELLANT.

On Appeal From The United States District Court
For The District of New Jersey
Case No. 2:11-cr-00470-SDW-1
Honorable Susan D. Wigenton, District Judge

**APPELLANT AUERNHEIMER'S UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE REPLY BRIEF**

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Appellant Andrew Auernheimer, through undersigned counsel, asks this Court to extend the time to file a reply brief to October 25, 2013. The government has no objection to this request. Mr. Auernheimer makes this request based on the following facts and for the following reasons:

1. Mr. Auernheimer was convicted of two felony counts on November 20, 2012. On March 18, 2013, he was sentenced to a 41-month prison term on each count, to run concurrently. He began serving his sentence that day and is currently incarcerated.

2. On April 23, 2012, Mr. Auernheimer asked for an extension of time to file his opening brief from May 6, 2013 to July 1, 2013. This Court granted the request on April 25, 2013, informing counsel no further extensions of time would be granted.

3. Mr. Auernheimer filed his opening brief as directed on July 1, 2013. The brief fell within the 14,000-word limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

4. On August 5, 2013, the government asked this Court to stay the briefing schedule while this Court considered the government's request to file an enlarged brief of 26,500 words. The Court granted the stay before Mr. Auernheimer could respond.

5. On August 6, 2013, the government, withdrew its request for a stay and instead asked for an extension of time to September 20, 2013, which was unopposed by Mr. Auernheimer.

6. On September 20, 2013, the government filed a 26,495 word answering brief. Mr. Auernheimer filed a request with this Court on September 23, 2013 asking it to reject this deficient brief, or alternatively to grant it leave to file an enlarged reply brief.

7. To date, the Court has not ruled on the government's motion for extra words or Mr. Auernheimer's motion to reject it, nor has this Court lifted the stay or ruled on the government's request for an extension of time.

8. Under Federal Rule of Appellate Procedure 31(a)(1)(A), a reply brief must be filed within fourteen days of the filing of the Appellee's brief. That would make Mr. Auernheimer's reply brief due on October 4, 2013.

9. Mr. Auernheimer needs extra time to prepare the reply brief because the government's brief is almost 90% longer than permitted by the Federal Rules of Appellate Procedure. That means there is a larger than usual number of points and arguments Mr. Auernheimer must respond to in his reply brief. And there is a possibility that the points and arguments Mr. Auernheimer will have to respond to may change if this Court rejects the government's oversized brief and orders it to

refile a brief conforming to the 14,000-word limit in the Federal Rules of Appellate Procedure.

10. Mr. Auernheimer's counsel are representing him *pro bono* and have a variety of pre-existing litigation, transactional, and academic deadlines, as well as work-related travel that make filing a reply brief by the current deadline extremely difficult.

11. Undersigned counsel has spoken with counsel to the Government, who indicated he has no objection to this request.

12. Therefore, Mr. Auernheimer requests this Court grant him an extension of time to file his reply brief on October 25, 2013.

Dated this 23rd day of September, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system on September 23, 2013.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 23, 2013

By: /s/ Hanni Fakhoury
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