

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13 C 8985
)	Criminal Case No. 05 CR 254
HOSSEIN OBAEI,)	
)	
Defendant.)	

MEMORANDUM ORDER

This Court holds no brief for the government's having dropped the ball in dealing with the 28 U.S.C. § 2255 ("Section 2255") motion filed pro se by Hossein Obaei ("Obaei") to challenge his conviction and sentence in this case -- neglect on the part of the United States that has caused many months to pass without the resolution of Obaei's motion. But a few days after the government finally filed its response in opposition to Obaei's motion, this Court issued an April 1, 2015 memorandum order ("Order") that gave Obaei four weeks to submit a reply to that response as permitted by Rule 5(d) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

Instead of filing such a reply addressed to nine of the twelve grounds that Obaei had asserted as the basis for Section 2255 relief,¹ he has once again criticized the government's tardiness and urged that this Court deny the government's motion for leave to file its response instanter, ruling instead "on the information provided timely by the Defendant and ignore or rule

¹ As the Order stated, this Court had then just ruled on a Section 2255 motion filed by Obaei's co-defendant in the underlying criminal case, Amir Hosseini ("Hosseini"), and three of the grounds for relief advanced by Hosseini had included the same contentions as those set out in Obaei's Grounds Eight, Nine and Ten. As a result it was unnecessary for Obaei to speak to those issues.

as untimely Governments[sic] response." If this Court were to do what Obaei has requested, that could result in his obtaining relief even though no violation of his constitutional rights had taken place. Hence Obaei's invitation to do so is declined.

Obaei has alternatively stated in the penultimate paragraph of his current Response:

The Defendant would like to remind the court that while he can speak limited english, he is not fluent, nor does he understand many of the words used in these legal proceedings, nor the legal nature and consequences of not stating something properly. The Defendant would ask that the Court have an advocate present at the hearing, or at least allow the Defendant to have an inmate advocate present with him to try and help him understand the proceedings as best as he can and protect his constitutional due process rights.

But just such a request was rejected by our Court of Appeals more than two decades ago in Oliver v. United States, 961 F.2d 1339, 1343 (7th Cir. 1992):

A section 2255 proceeding is an independent civil suit for which there is no constitutional right to appointment of counsel. Rauter v. United States, 871 F.2d 693 (7th Cir. 1989). Rule 8(c) of the Rules Governing Section 2255 Proceedings, however, requires that counsel be appointed for indigent prisoners if an evidentiary hearing is required. See Rule 8(c), 28 U.S.C. foll. § 2255.

If Obaei wishes to obtain the assistance of counsel, then, he must make a showing of indigency -- and to enable him to do that if he can, this Court is contemporaneously transmitting to him copies of this District Court's form of In Forma Pauperis Application, which he should promptly complete and return to this Court for ruling.²



Milton I. Shadur
Senior United States District Judge

Date: April 8, 2015

² If Obaei does not qualify for such assistance, he will simply have to continue to go it alone. In that event he is again ordered to file a reply or before May 6 -- this time substantive -- and although it would be troubling for this Court to be required to act effectively as Obaei's counsel in that sense if he does not do an adequate job, that may prove necessary.