No. 16-1159

# United States Court of Appeals
# For the First Circuit

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BHARANIDHARAN PADMANABHAN MD PhD
Plaintiff - Appellant

v.

MAURA HEALEY, STEVEN HOFFMAN, CHRIS CECCHINI, JAMES PAIKOS, LORETTA KISH COOKE, ADELE AUDET
Defendants - Appellees

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On Appeal from U.S. District Court for the District of Massachusetts
HON. NATHANIEL GORTON, U.S. DISTRICT JUDGE
Civil Case No. 15-CV-13297-NMG

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## Plaintiff-Appellant's Objection to Summary Disposition

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## INTRODUCTION

Plaintiff-Appellant Dr Bharani fully anticipated and warned this Court ahead of time that the long history of Appellees' bad faith conduct made it inevitable that they would file a motion to stay the briefing schedule and a motion for summary affirmance on the day their principal Answering Brief was due, after having obtained a 135-day delay from this Court on the now-proven-false claim that they needed the time to compose and file an Answering Brief.

The order from this Court explicitly specified that the delay was granted for Appellees to file their "principal brief."

> "04/07/2016 ORDER entered by Sandra L. Lynch, Appellate Judge: Appellees' motion for an extension of time to file their principal brief is granted. Appellees' brief shall be filed on or before June 17, 2016."

Appellees did not need 135 days to file a motion for summary affirmance. If they knew that there were no facts in controversy, as they falsely assert in their motion, they knew it 135 days earlier already. Waiting till day-135 violates Local Rule 27.0 (c) which stresses the word "promptly" as speedy resolution is in the interest of due process, justice and the Court. This Court did NOT grant Appellees 135 days to file a

motion for summary affirmance and was explicit the time was for the filing of the "principal brief."

This conduct by Appellees falls squarely within the bad-faith conduct and impermissible manipulations of the system that is unjust and repeatedly condemned by honest judges in various Circuits.

This Court already has in Appellant's motion of May 31, 2016, ample citations as to why Appellees' exact conduct must be condemned by this Court and their motions denied. [Document 00117008072]

It is truly staggering that even after being served Appellant's motion warning the Court of this very same unjust and bad faith manipulation of the system, Appellees have gone ahead and done precisely that. Greater proof cannot be found that Appellant knows the Appellees' bad faith approach very well. Appellant is prepared to again be shouted at for "gratuitous, inflammatory and groundless charges against defendants and their counsel" but the fact shall forever remain that the Appellees have done precisely what Appellant warned this Court they would do.

It is also undeniable now that despite 135 days to file their principal answering brief, Appellees have miserably failed to locate and

marshall a single legal authority to support them on the legal merits of the case and they have thus been forced to resort to yet further delay and manipulation.

It is further undeniable that Appellees have miserably failed to legally prove that they did not trespass on the confidential medical PMP database. Appellees have proved unable to legally rebut Appellant's declaration, based on black letter law and the authority of Law Professor Orin Kerr, that the confidential medical PMP database is a protected computer and "the crime is complete."

## APPELLEES' CONSCIOUS FACTUAL MISREPRESENTATIONS REINFORCE THEIR INABILITY TO MOUNT A LEGAL DEFENSE

Appellees repeatedly rely on the word "belief" when discussing the allegations in Plaintiff-Appellant's complaint to the lower court in order to minimize the gravity of the evidence against them. Appellant has already repeatedly confirmed in writing that he is a scientist and does not "do" belief, only facts. He has presented only evidence, not beliefs.

Appellant's Opposition to Defendants' Motion to Dismiss laid out the various conscious factual misrepresentations that the Defendants had presented to the District Court. Here follow just two conscious

factual misrepresentations by Appellees to the Circuit Court of Appeals in their motion for summary 'disposition.'

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Appellant's Opening Brief clearly detailed Appellees' various conscious factual misrepresentations and the fact that Judge Nathaniel Gorton had treated him disparately and refused to follow the U.S. Supreme Court's standard for considering a *pro se* Plaintiff's complaint.

It is staggering, but not altogether surprising knowing the Appellees now, that in their motion for summary affirmance they have stooped to asserting a total fabrication:

> "Here the Complaint failed to allege that the purportedly accessed information was in "electronic storage" within the meaning of the SCA."

and quoted a statement by Judge Nathaniel Gorton:

> "The District Court "agree[d] with defendants that plaintiff fails to allege that the purportedly accessed information is protected by the SCA. That is because plaintiff neither claims that the patient information is an electronic communication within the meaning of § 2510(12) nor asserts that the PMP database is stored at a facility that provides an electronic communication service." *Padmanabhan*, 2016 WL 409673, at *9."
> Footnote 8, Motion for summary disposition, page 10

This specific lie was addressed in detail by Appellant in his Opening Brief, a document that the Appellees have had in their hands from

March 2, 2016. See Opening Brief pages 13-14.

This conscious factual misrepresentation by Appellees and Judge Nathaniel Gorton is not only a total fabrication, it was proved to be a total fabrication by the Appellant in his Opening Brief.

For the Appellees to consciously peddle this lie again is an undeniable and explicit fraud on this Court.

The U.S. Supreme Court has declared that fraud of this magnitude is not merely a fraud against the litigant/Appellant, it is a fraud against the Circuit Court of Appeals, the entire judicial system and the entire United States, to wit:

> "Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."
> *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238 (1944)

In our case here the Appellant has already explicitly brought this egregious unacceptable fraud to the attention of this Court in his Opening Brief dated March 2, 2016. Despite this the Appellees have

again chosen to compound a fraud on the Court.

The only just remedy is for this Circuit Court of Appeals to immediately DENY Appellees' motion for summary disposition and immediately ORDER a date for oral argument in the first half of July 2016. Both the U.S. Supreme Court and the public welfare demand it.

This Court must also ORDER that Appellees have forfeited their right to file an Answering Brief.

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Yet another egregious conscious misrepresentation by Appellees in their motion is their statement about Appellant's arguments regarding damages and loss:

> "In his brief, Dr. Bharani fails to offer any basis for this Court to find that these conclusions were in error. The only case that Dr. Bharani relies on is the Third Circuit decision in United States v. Auernheimer, 748 F.3d 525 (3rd Cir. 2014) (Plaintiff-Appellant's Brief at pp. 9-10), which is readily distinguishable from the facts of this case."
> Appellees' Motion for summary disposition page 8

This is blatantly false as Plaintiff-Appellant Dr Bharani relied first on *Animators* in his Complaint and Opening Brief. *Auernheimer* was NOT "the only case" Dr Bharani relied on.

It is also a fact that Judge Nathaniel Gorton did not discuss either

*Animators* or *Auernheimer* in his order dismissing the Complaint. Judge Nathaniel Gorton demonstrated pervasive bias by not considering anything submitted by the Plaintiff at all and even fabricated a straw man argument in order to unlawfully place his thumb on the scale on behalf of the Defendants as detailed in Appellant's Opening Brief.

Appellees then double down on their conscious factual misrepresentations by declaring:

> "Also, Dr. Bharani directs the Court's attention to Animators at Law, Inc. v. Capital Legal Solutions, LLC, 786 F. Supp. 1114 (E.D. Va. 2011) for the proposition that courts may grant jurisdictional discovery where appropriate. See Plaintiff-Appellant's Brief at pp. 11-12. Dr. Bharani provides no further explanation as to the relevance of this proposition or why jurisdictional discovery would be either necessary or appropriate in this case. Since Dr. Bharani's Complaint contains no allegation of "loss" or "damage" within the meaning of CFAA, the claim for violation of the CFAA was properly dismissed."
>
> Appellees' Motion for summary disposition page 9

Even a cursory reading of the Complaint and Appellant's Opening Brief makes plain Appellant quoted *Animators* repeatedly in the context of defining damages and loss. Appellant further quoted a ruling from the District Court in Maryland which held that *Animators* also supported discovery to determine damages and loss prior to simply tossing a Complaint as Judge Nathaniel Gorton did. Even a cursory

reading of Appellant's Opening Brief makes plain that Appellant did NOT quote *Animators* to make a point about jurisdictional discovery: "*Wikimedia Foundation et al* v. *National Security Agency / Central Security Service et al*. Case No. l:15-cv-662." See Appellant's Opening Brief page 12.

Having miserably failed to locate even one legal authority to support them on the legal merits of this trespass case, Appellees have been forced to resort to a blatant fraud on this Court, and to openly supporting Judge Nathaniel Gorton's discriminatory disparate dismissal without even a *pro forma* perfunctory eyewash of an oral hearing, in order to attempt escaping from the consequences of their crime. There is no legal doubt that "the crime is complete."

Again, as made clear by the U.S. Supreme Court in *Hazel*, supra, fraud of this magnitude is not merely a fraud against the litigant / Appellant, it is a fraud against the Circuit Court of Appeals, the entire judicial system and the entire United States.

The only just remedy is for this Circuit Court of Appeals to immediately DENY Appellees' motion for summary disposition and immediately ORDER a date for oral argument in the first half of July 2016. Both the U.S. Supreme Court and the public welfare demand it.

This Court must also ORDER that Appellees have forfeited their right to file an Answering Brief.

## CONCLUSION

Appellees have committed a fraud on this Court by relying on numerous conscious and willful factual misrepresentations in their motion for summary affirmance and openly lying about Appellant's Complaint and Opening Brief. It is not true at all that there are no facts in dispute and no controversy in this case. Substantial questions have been presented.

In all Circuits where summary affirmance is allowed, care is taken to ensure there absolutely is no fact in controversy.

The 1st Circuit has made plain that summary affirmance may be proper if it is clear that no substantial question is presented. Both Appellant's brief and Appellees' motion demonstrate that substantial questions of first impression are presented to this Court. Given this fact, in addition to concerns about equity, one would not be "able to give the merits of this appeal "the fullest consideration necessary to a just determination" without plenary briefing or oral argument." *Sills v. Bureau of Prisons*, 761 F.2d 792, 794 (D.C. Cir. 1985) Accordingly, this

Court must reject summary affirmance to the Appellees.

Appellant has already timely briefed this Court, his appeal is far from frivolous, *Brandon v. Dist. of Columbia*, 734 F.2d 56 (D.C. Cir. 1984), presents substantial issues of first impression to this Court and a viable claim for relief, *Sills v. Bureau of Prisons*, *supra*, qualifies for *de novo* review and the Court would benefit from further proceedings given that due process, justice and equity demand reversal.

Appellees have not met and cannot meet their burden of proving summary affirmance is appropriate. *United States v. Allen*, 408 F.2d 1287 (D.C. Cir. 1969), *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294 (D.C. Cir. 1987), *United States v. Hooton*, 693 F.2d 857 (9th Cir. 1982)

As noted earlier in Appellant's motion (May 31, 2016) warning this Court that Appellees may fully be expected to file a motion for summary affirmance as they are unlikely to locate any legal authority to successfully rebut the legal fact that "the crime is complete" and that they did indeed trespass and violate a major Federal law, summary affirmance is impermissible, inappropriate and unjust where major facts remain in controversy and Appellees are forced to repeat conscious factual misrepresentations and an egregious error by Judge Gorton.

It is also the **<u>standard</u>** in this Circuit to conduct a *de novo* review. See *DeCambre v. Brookline Housing Authority*, 15-1458 and 15-1515 (1st Cir. 2016), *Massachusetts v. Sebelius*, 638 F.3d 24 (1st Cir. 2011), *Boroian v. Mueller*, 616 F.3d 60 (1st Cir. 2010), *Gorelik v. Costin*, 605 F. 3d 118 (1st Cir. 2010), *Watson IV v. Waltham Deaconess Hospital*, 298 F. 3d 102 (1st Cir. 2002). There is no legal reason, basis or justification for deviation here.

Appellant has also detailed in his Opening Brief that he was actively discriminated against by Judge Nathaniel Gorton and treated disparately. The U.S. Supreme Court has held that even the perception of bias by a litigant is enough to remove a Judge and revisit his/her findings. *Liljeberg v. Health Svcs. Acq. Corp.* 486 U.S. 847 (1988) Racial discrimination, as in this case where Judge Nathaniel Gorton's tone, conduct, pervasive bias and decision was indistinguishable from that of a county Judge in the Deep South in the early 1960s, is even worse and demands proper relief. Maura Healey finds Judge Nathaniel Gorton's disparate and discriminatory conduct perfectly acceptable to her. This Court must not.

Granting a summary affirmance shall publicly demonstrate far

and wide that the U.S. First Circuit Court of Appeals actively supports disparate discrimination against a *pro se* Appellant of color and openly defies long-standing high principles declared by the United States Supreme Court as binding on all lower courts.

This Circuit Court of Appeals must immediately DENY Appellees' motion for "summary disposition" and immediately ORDER a date for oral argument in the first half of July 2016. Both the U.S. Supreme Court and the public welfare demand it.

The Complaint was filed in November 2015 and announced on PR Newswire. Also see Plaintiff-Appellant's official website at www.MauraBrokeCFAA.com

It is now June 2016 and Plaintiff-Appellant has yet to see the inside of a courtroom consistent with due process and the rules of the court.

This Court must also ORDER that Appellees have forfeited their right to file an Answering Brief.

Respectfully submitted,

20 June 2016 ______________________________
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CERTIFICATE OF SERVICE

Appellant certifies that he served a copy of this Objection upon Appellees' Counsel Mark Sutliff via First Class Mail on June 20, 2016.

Respectfully submitted,

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