

09-1559

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

ALFRED W. TRENKLER,
Petitioner - Appellant

v.

UNITED STATES,
Respondent - Appellee

Appellant Alfred W Trenkler's Motion For An Order To Clarify The Time Within Which He Must File His Reply Brief - For 42 Days - To February 22, 2010, And To Further Toll The Time To Reply Should The Situation Outside Of Trenkler's Control Arise To Prevent Him From Completing His Reply Brief

Petitioner - Appellant Alfred W. Trenkler "Trenkler" respectfully seeks clarification from the Court for the due date within which he must file his reply brief. Trenkler moves the Court to continue for 42 days - to **February 22, 2010** - the date on which his reply brief is due, further, to toll the due date should Trenkler be placed into transfer mode and separated from all of his reply brief work product preventing him from completing his reply brief. In support of this motion, Trenkler states the following:

1. Trenkler is not an attorney and is proceeding pro se in this matter with no outside legal assistance.
 2. Trenkler's appeal involves a number of legal issues regarding Trenkler's ability to establish that he is entitled to pursue his claims at this time as well as complex factual issues
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concerning the nature and relevance of the newly discovered evidence.

3. On October 6, 2009, this Court granted Trenkler's motion to file his reply brief 28 days from the filing date of the appellee's brief, due to the extensive delays in the Federal Medical Center Devens, "FMC Devens", mail room, document number 00115957510.

4. On October 9, 2009, this Court granted the government a 45 day extension, until December 1, 2009, to file its responsive brief.

5. On November 12, 2009, while housed at FMC Devens, due to his chronic heart condition, Trenkler was instructed to pack all his property, which included two years of work product integral to this appeal.

6. On November 13, 2009, just before being placed on a transport bus, Trenkler had been informed that he was being transferred to Tucson Arizona where he was told that his property, including his appeal work product, would be sent via U.S. Mail, thus severely hampering Trenkler's efforts to write his appeal reply brief.

7. Trenkler is now temporarily being held at Metropolitan Detention Center Brooklyn, "MDC Brooklyn", awaiting his move to the Oklahoma Transfer facility where he will again be temporarily housed awaiting his transfer to Tucson.

8. Trenkler has been informed that he will remain at MDC Brooklyn until mid January due to the holiday season.

9. MDC Brooklyn houses some 3800 inmates, has one small

library, and is not equipped to provide more than a maximum of two to eight hours per week for manual research in a paper law library and for writing his reply brief.

10. Trenkler suffers from arthritis making it very difficult to hand write his brief and without adequate time allowed by MDC Brooklyn to access a typewriter further impedes Trenkler's writing of his Reply Brief.

11. During transportation, Trenkler is not permitted to carry any legal documents and must await for said documents to "catch up" to Trenkler.

12. In the event That Trenkler is again placed "in transit" it will be physically impossible for Trenkler to conduct any research or write his reply brief while on a bus or plane or held at an interim holding facility without access to his Reply Brief in progress or any of his research materials.

13. Due to Trenkler's abrupt transfer and separation from his appeal work product, he filed with this Court, on November 30, 2009, a "Motion For Further Extension Of Time, Until January 12, 2009 [sic] Or Toll The Time During Transfer Or Other Separation From Trenkler's Work Product Within Which To File A Response/ Rebuttal To The Government's Opposition/Response To Trenkler's Appeal...", document number 00115985243.

14. On December 1, 2009, this Court granted the "Government's Motion For An Order Extending The Time - To January 11, 2010 - Within Which it Must File Its Responsive Brief", document number 00115982619, a total continuance of 85 days or 12 weeks.

15. On December 10, 2009 Trenkler received an Order Of Court entered December 7, 2009, "Treating Petitioner - Appellant's motion for extension of time as protective (because the time period for filing the rely[sic] brief will not begin to run until the Appellee serves a responsive brief, currently due January 12, 2010), we allow the request that the deadline to file his brief not fall before January 12, 2010", document number 00115985491.

16. It is unclear from the December 7, 2009 Order Of Court which deadline to file Trenkler's reply brief has been ordered, the 28 day period ordered and entered on October 6, 2009, document number 00115957510, or the 42 days in Trenkler's November 30, 2009 Motion For Further Extension Of Time ... with the tolling provision, document number 00115985243.

It is only fair that since the government received eighty-five days in extensions and due to Trenkler's unexpected transfer to Tucson, his current housing conditions, the limited use of a law library and typewriter, the separation from over two years worth of research and work product in support of his appeal, should warrant an enlargement of time to file his reply brief.

It is for these reasons that Trenkler seeks clarification from the Court and respectfully requests the Court to allow Trenkler to continue for a total of 42 days - to February 22, 2010 - the date on which his reply brief is due. In addition, should Trenkler be separated from his appeal work product due to transportation issues beyond Trenkler's control, Trenkler requests the Court to allow for a tolling of time commensurate with the time in transportation.

Finally, Trenkler would agree to file a status report on the date such transportation begins in order to start the toll and a status report subsequent to the end of transportation and receipt of Trenkler's reply brief work product to end the tolling period.

For the foregoing reasons, Trenkler respectfully requests that the Court allow this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alfred W. Trenkler, petitioner appellant pro se, certify that I have caused this motion to be served by first class mail on the government, Assistant United States Attorney Randall E. Kromm, One Courthouse Way, Suite 9200, Boston, Massachusetts 02210 on December 21, 2009.

Alfred W. Trenkler
Petitioner, pro se