

**United States Court of Appeals
For the First Circuit**

UNITED STATES OF AMERICA

v.

SALVATORE F. DiMASI

No. 11-2163

**DEFENDANT-APPELLANT SALVATORE F. DiMASI'S
MOTION FOR ENLARGEMENT OF TIME TO FILE BRIEF**

Counsel for Defendant-Appellant Salvatore F. DiMasi hereby moves that this Honorable Court grant an enlargement of time until August 20 for the filing of Mr. DiMasi's opening brief. As grounds therefore, the undersigned counsel for Mr. DiMasi states that Mr. DiMasi's medical condition and physical movement within the Bureau of Prisons has prevented him from participating in the preparation of his Opening Brief, that the course of treatment which he is about to undergo will further limit his short-term ability to participate and that counsel has been unable to complete the brief in part because of the efforts to address his medical condition. The date for filing was extended by Order of this Court on April

6, 2012, extended in large measure because of the voluminous record and complexity of the matter. Specifically, Mr. DiMasi states

1. Mr. DiMasi was convicted by a jury, sentenced by the District Court and has appealed to the First Circuit Court of Appeals the District Court's judgments of conviction and sentence entered on September 27, 2011.
2. After the sentence, as a result of Mr. DiMasi's health and that of his wife, the District Court endorsed a judicial recommendation that Mr. DiMasi remain close to home and serve his sentence at Ft. Devens in Massachusetts.
3. Notwithstanding the Court's recommendation, Mr. DiMasi was designated to begin serving his sentence at the Federal Medical Facility in Lexington, Kentucky.
4. Mr. DiMasi sought to be released on bail pending appeal. The request was denied.
5. Attorney Thomas R. Kiley has been appointed by the Court to represent Mr. DiMasi in his appeal.
6. When Mr. DiMasi began serving his sentence in Kentucky, Attorney Kiley was unable to travel to see him to discuss the various aspects of the issues on appeal.
7. Since Mr. DiMasi is also an attorney and has worked with his attorneys in preparing the numerous pre-trial motions and preparing the defense

presentation at trial, his input on the issues that will be argued on appeal is essential to Counsel representing Mr. DiMasi.

8. In December 2011, while at the Medical Facility at Kentucky, Mr. DiMasi noticed several lumps on his neck. He asked that the lumps be examined. After a number of requests, Mr. DiMasi was finally examined in January 2012. He was told that the prison staff would follow up with blood tests and a trip to a specialist at the University of Kentucky Hospital.
9. The preliminary diagnosis was that the lumps were potentially cancerous and the question of performing further tests to determine whether the lumps were malignant and had spread was discussed with Mr. DiMasi and planned while he was in Kentucky.
10. Before further testing could be done on the lumps on his neck, he was transported from Kentucky, through other federal detention facilities, to the federal detention facility in Central Falls, Rhode Island for his appearance before a Federal Grand Jury in the District of Massachusetts.
11. At each detention facility Mr. DiMasi passed through, he requested medical treatment and asked that the tests that were supposed to have been done in Kentucky be performed.
12. He received no such treatment or testing.

13. While in “transit,” Mr. DiMasi could not communicate with counsel concerning his appeal and could not work with the appellate materials he left behind at FMC Lexington.
14. After weeks of travel, Mr. DiMasi was eventually brought to the Wyatt Detention Facility, in Central Falls, Rhode Island.
15. Following his arrival in Rhode Island, Mr. DiMasi’s attorney spent a considerable amount of time preparing him for his appearance before the Grand Jury. Throughout 2012, many hours were spent attempting to have Mr. DiMasi obtain the medical tests necessary on the lumps on his neck. That time could have been used to prepare the brief in this case and was lost due to circumstances beyond Mr. DiMasi’s control.
16. As he had in the other facilities, Mr. DiMasi requested that he be treated and tested while he was at Wyatt.
17. Because of Mr. DiMasi’s concern that he had cancer and was not getting the proper treatment, he was emotionally distracted and it was difficult, if not impossible, to discuss the appeal and brief with him while he was at Wyatt. That difficulty was compounded by the impending grand jury appearance.
18. Mindful of the briefing schedule and Mr. DiMasi’s condition, Counsel filed a motion in the District Court asking for a recommendation that Mr. DiMasi remain at Wyatt to assist in his appeal. Counsel stated that he needed to see

him regularly to discuss the appeal. The proximity of Central Falls and the availability to confer with Mr. DiMasi in person would substantially decrease the travel burden and communications gap and result in a more effective use of counsel's work time and increase the quality of the brief ultimately produced. The motion was denied.

19. Before the further testing could be done at Wyatt, Mr. DiMasi was removed, without forewarning, from Wyatt and retraced the circuitous route back to Kentucky. As on his trip to Rhode Island, Mr. DiMasi continued to ask for treatment at each facility he stopped at on the way back. During this time travelling back to Kentucky, Mr. DiMasi was *incommunicado* – unable to use the phones to call home to speak with his family, call his attorney or work with the appellate materials he needed to effectively participate.
20. Mr. DiMasi arrived back at FMC Lexington on March 25 and immediately reported to sick call the next day. He again began trying to find out what was happening with his throat and the lumps on his neck and what, if any treatment he would receive.
21. On April 24, 2012, approximately a month after he arrived back in Kentucky, Mr. DiMasi was finally sent to the University of Kentucky Hospital to see a cancer specialist, Dr. Gal, who examined him and

immediately sent him to have a thin needle biopsy – the test the doctor in Rhode Island had recommended two months earlier.

22. Dr. Gal had found a lesion on Mr. DiMasi's tongue, suspected that the involvement of the lymph nodes may be a sign of a cancer spreading and worried that the biopsy had been delayed too long.
23. The thin needle biopsy was positive for squamous cell carcinoma. Mr. DiMasi had additional tests done that day.
24. Dr. Gal explained several treatment options to Mr. DiMasi, but no plan was communicated to him for treatment. He continued to wait – scared and frustrated – but nothing seemed to be happening. As a consequence, Mr. DiMasi's wife began calling the doctors in Kentucky to inquire about her husband and when he would be tested and treated. She also began communicating with a doctor at Dana Farber to assist in the evaluation and treatment.
25. On May 7, 2012 Mr. DiMasi returned to University of Kentucky Hospital for exploratory surgery with a triple scope exam and an incisional biopsy of the lesion, which came back positive for squamous cell carcinoma.
26. Mr. DiMasi returned to the hospital on May 22nd. At that time Mr. DiMasi had a consultation with Dr. Gal, who informed him that the test for hpv

came back positive for hp 16 and Dr. Gal staged the cancer at t2 n2b m0, 4th stage cancer.

27. During this entire period of time Mr. DiMasi's was immersed in the effort to obtain treatment and unable to converse with counsel, and Mr. DiMasi's wife and attorneys were trying to get Mr. DiMasi treatment and were speaking with the doctors at the Hospital as well as BOP personnel. Dr. Gal agreed to consult with the doctor from Dana Farber and transmit Mr. DiMasi's records for his review. Then, inexplicably, the doctor in Kentucky stopped taking Mrs. DiMasi's calls. After several more attempts to call the doctor in Kentucky, the doctor's assistant told Mrs. DiMasi that the Bureau of Prisons had told the doctor that he could not speak any further with Mrs. DiMasi.
28. When Mr. DiMasi was again seen by the doctors in Kentucky, he was told that the cancer had apparently spread. Reviewing the pet scan and ct scan performed on April 24 and May 30, 2012, respectively, the doctors told Mr. DiMasi that "[t]here is suggestion of a mass arising from the gastric cardia ..., although no oral contrast was administered and there is suboptimal distention of the stomach. Extensive calcifications are noted in the hepatic artery. The Spleen and distal pancreas are absent, possibly postsurgical

although there are no radiopaque surgical clips in place. Small nodules in the splenic bed likely represent splenules.”

29. On or about June 6, 2012, Mr. DiMasi was transferred from FMC Lexington, Kentucky to FMC Butner in North Carolina. Mr. DiMasi is preparing to begin radiation on his tongue – which will be quite painful and affect his ability to speak. He will be unable to eat and will require a feeding tube placed in his stomach. After the radiation is completed, Mr. DiMasi will undergo seven (7) weeks of Chemotherapy.
30. An extension until August 20 for filing the Opening Brief would enable the brief to be prepared with appropriate input from Mr. DiMasi and accommodate his medical needs.

WHEREFORE, Mr. DiMasi asks that the time within which he must file his opening brief be further extended from July 2, 2012, until August 20, 2012 or any time thereafter convenient to the Court.

Respectfully submitted,

Salvatore F. DiMasi,
By his attorney,

/s/ Thomas R. Kiley

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Dated: June 19, 2012

CERTIFICATE OF SERVICE

I, Thomas R. Kiley, hereby certify that the foregoing document has been served by e-filing on all parties to this matter.

/s/ Thomas R. Kiley