

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION
ET AL.,

Plaintiffs,

-against-

DEPARTMENT OF JUSTICE ET AL,

Defendants.

ORDER

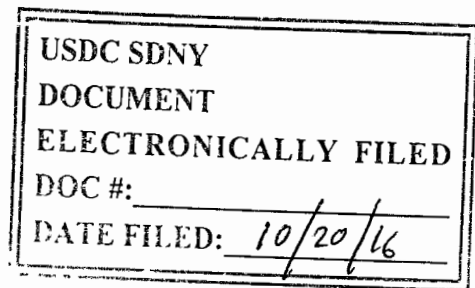
McMahon, CJ:

On August 30, 2016, the Court of Appeals issued a mandate in connection with two appeals in the above-captioned case (“the mandate”).

The mandate is brief and, frankly, so cryptic that I cannot figure out what it is that I am supposed to do. It refers, for example, to something called SPA 9. I have no idea what SPA 9 is. In fact, I cannot tell even know which of my many orders in this case are implicated on these appeals, since nothing in the mandate gives this court any indication of what docket entries on our docket are before the appellate court (I appreciate that it is the job of the parties, not the Court of Appeals, to clarify such matters for the district court).

At first reading, it appeared to me that compliance with the mandate would require considerable work from this court, in a secure facility – essentially a redo of work done previously. If I am correct that these appeals are from orders that were entered in mid-2015, I have little memory of them. Since that time, this court has worked for hundreds of hours and issued a lengthy decision in a more recently-filed case involving the same parties and similar issues. Simply reacquainting myself with the orders appealed from, and the facts that were before the court a year and a half ago, would be the work of a day. However, the mandate gave the court no timetable for compliance; there was no indication of urgency, and I certainly did not realize that the mandate might have issued in advance of an oral argument.

After receiving the mandate, I assumed that I would hear from the parties, with some explanation of what it was that the Second Circuit found confusing about the orders appealed from and what the parties think this court should do in order to comply with the mandate.



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I have heard nothing from the parties since the mandate issued.

This afternoon at 4:30, I received from the Clerk of the Second Circuit Court of Appeals a request that I issue a decision in connection with the “limited remand” contemplated by the mandate and that I do so before oral argument in some appeal, which is scheduled for next Tuesday, October 25, 2016. At more or less the same time I received a letter out of the blue from the Government, which advised me about the status of both cases but did nothing to enlighten me about the mandate.

Obviously I will not be able to comply with the Court of Appeals’ request, for which I am truly sorry. I apologize to the panel, as it may well be that the October 25 oral argument will have to be rescheduled.

By this order, I reach out to the parties and ask them to do what they should have done without prompting – explain to the court, in writing and with great clarity, what orders are implicated on these appeals, what has confused the Court of Appeals and what it is that they think I am expected to do.

My senior law clerk telephoned the Government after we heard from the Court of Appeals, so the Government is expecting this order. The Government has asked to have until Monday, October 24 to comply with this order. That is certainly fine with me, although I cannot say whether it is fine with the Court of Appeals. However, I must tell both the parties and the Court of Appeals that I will not be able to turn my attention to this matter until after my current criminal trial concludes at the earliest – and that I will have to wedge any work that is required into whatever interstices there are in my very busy schedule.

Dated: October 20, 2016

A handwritten signature in black ink, appearing to read "Colleen R. Kelly", written over a horizontal line.

Chief Judge

BY ECF TO ALL COUNSEL
BY FAX TO THE CLERK OF THE COURT OF APPEALS

