

No. 11-5158

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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ELOUISE PEPION COBELL, *et al.*,  
Plaintiffs-Appellees,

HARVEST INSTITUTE FREEDMEN FOUNDATION, *et al.*,  
Movants-Appellants,

v.

KENNETH LEE SALAZAR, *et al.*,  
Defendants-Appellees.

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**PLAINTIFFS' OPPOSITION TO MOVANTS-APPELLANTS'**  
**MOTION TO EXCEED PAGE LIMITS**

Plaintiffs respectfully submit this opposition to Movants-Appellants' untimely motion to exceed page limits. Movants-Appellants (collectively, "HIFF") are nonparties who moved for permissive intervention in this landmark class action settlement shortly before final judgment.

This class action, which the parties litigated for more than 15 years, concerns claims by individual Indians, whose land and related natural resources are held in trust by the United States, to enforce trust duties owed to them by the United States government. HIFF and the individuals it purports to represent are not class members. Rather, HIFF purports to represent the descendants of African-

American slaves owned by certain Indian Tribes that sided with the Confederacy during the Civil War. HIFF argues that this class settlement is “racially discriminatory” because it settles the claims of individual Indian trust beneficiaries but does not settle HIFF’s own, separate legal claims against the government.

(Mot. 2.) As explained in Plaintiffs’ motion to dismiss, however, HIFF previously litigated those claims *three times* in three different federal courts—and lost each case.

On August 29, 2011, Plaintiffs and the government both filed separate motions to dismiss HIFF’s appeal or for summary disposition. HIFF obtained an extension of time to respond to those motions, which extended the deadline until September 23, 2011. On September 22, 2011, HIFF filed a 52-page response without first obtaining leave to exceed the 20-page limit provided by FRAP 27(d)(2). On September 23, 2011, the clerk’s office notified HIFF that its response brief exceeded the permissible page limit. The clerk’s office also designated the response brief as lodged, but not filed. On September 26, 2011, three days *after* the deadline to file its response, HIFF filed this motion for leave to exceed the 20-page limit and to file its original 52-page response. Plaintiffs oppose HIFF’s motion for two reasons.

*First*, the D.C. Circuit rules expressly provide that “[t]he court disfavors motions to exceed page limits; such motions will be granted only for

extraordinarily compelling reasons.” *See* D.C. Cir. Rule 27(h)(3); *see also Roberts v. Segal Co.*, No. 01-7003, 2001 WL 936305, at \*1 (D.C. Cir. July 12, 2001) (denying a request to exceed page limits because the movant “has not demonstrated ‘extraordinarily compelling reasons’ for its request”); *Swartz v. Clinton*, No. 99-5373, 2000 WL 1279304, at \*1 (D.C. Cir. Aug. 11, 2000). HIFF has not provided any “extraordinarily compelling reasons” for its request to file a 52-page response. To the contrary, HIFF’s only grounds for seeking additional pages are its conclusory statements that extra pages are “warranted given the complexity of the legal issues” and the need to “accord full consideration to these issues and assist the court.” (Mot. 1-2.) These unsupported statements, even if correct, are plainly insufficient to show “extraordinarily compelling reasons” to exceed the page limits. Moreover, both Plaintiffs and the government filed motions to dismiss this appeal, or alternatively for summary disposition, that complied with the 20-page limit in FRAP 27(d)(2) despite HIFF’s claim that the legal issues are complex. Thus, HIFF has not shown any “extraordinarily compelling reasons” to exceed the 20-page limit provided in the Federal Rules of Appellate Procedure.

*Second*, HIFF’s request to exceed the page limits for its response is untimely. As a result of its request for extension of time, HIFF had nearly a month to prepare its response. But during that time, HIFF did not file a request to exceed

the page limits. Instead, HIFF attempted to file its 52-page response without first obtaining leave of Court. After the clerk's office informed HIFF that its response exceeded the page limit and thus could not be filed, HIFF waited several more days—until *after* its deadline to respond had passed—before filing this motion to exceed the page limits. As a result, HIFF has further delayed resolution of Plaintiffs' and the government's pending motions to dismiss.

In sum, HIFF has already litigated its claims three times in three federal courts and lost each time. Its claims are barred and it should not be permitted to delay justice for hundreds of thousands of individual Indian trust beneficiaries simply because it is unhappy with the outcome of its own litigation. Accordingly, the Court should deny this request to exceed the page limits and grant Plaintiffs' motion to dismiss this appeal.

### **CONCLUSION**

For the reasons discussed above, the Court should deny Movants-Appellants' Motion for Leave to Exceed Page Limit.

Respectfully submitted,

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DATED: September 27, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2011, I filed a copy of the foregoing PLAINTIFFS' OPPOSITION TO MOVANTS-APPELLANTS' MOTION TO EXCEED PAGE LIMIT with the clerk of court using the CM/ECF system and served a copy by first class mail on the following:

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