

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOLI SYARIEF PULUNGAN

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

11-cv-470-bbc

Defendant United States of America has moved under Fed. R. App. P. 8(a)(1) & (2) to stay both the order entered in favor of plaintiff Doli Syarief Pulungan on May 9, 2012 and the accompanying certificate of innocence. Defendant filed an appeal of the order in the Court of Appeals for the Seventh Circuit on July 5, 2012; the appeal is being briefed. In the interim, however, plaintiff has filed a suit in the Court of Federal Claims seeking damages of \$25,000 for wrongful incarceration. The United States is concerned that this suit will result in an award before the court of appeals has had an opportunity to decide the pending appeal.

It seems unlikely that the Court of Federal Claims will have resolved plaintiff's civil case before the court of appeals has ruled or that if it does, the government cannot ask for a stay of any order in plaintiff's favor. Even if it were likely, I would deny the motion

because defendant has not shown that it has a significant probability of success on the merits, which it must do in order to obtain a stay. It made most of the arguments it is raising now in opposition to plaintiff's motion for a certificate of innocence; those arguments are no more persuasive now than they were when they were first raised. In large part, this was because the arguments took issue with rulings of the court of appeals, well beyond this court's authority to ignore or contradict. It is possible that defendant will be able to persuade the court of appeals to change those rulings, but not so significantly probable as to justify a stay order.

ORDER

IT IS ORDERED that the motion of defendant United States of America to stay this court's order of May 9, 2012 and the accompanying certificate of innocence is DENIED.

Entered this 27th day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge