

No. 25-1886

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

LORI CHAVEZ-DEREME, Secretary of Labor, US Department of Labor,
Plaintiff-Appellee,

v.

SUFFOLK ADMINISTRATIVE SERVICE, LLC; PROVIDENCE INSURANCE
CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER,

Defendants,

and

DATA MARKETING PARTNERSHIP, LP; LP MANAGEMENT SERVICES,
LLC,

Interested Parties – Appellants.

**INTERESTED PARTIES-APPELLANTS' RESPONSE IN OPPOSITION
TO THE SECRETARY'S MOTION TO DISMISS APPEAL OR
ALTERNATIVELY FOR EXTENSION OF TIME TO FILE APPELLEE'S
BRIEF AND LEAVE TO FILE OUT-OF-TIME RESPONSES**

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*Counsel for Interested Parties –
Appellants, Data Marketing
Partnership LP and LP Management
Services LLC*

Interested Parties-Appellants Data Marketing Partnership, LP and LP Management Services, LLC (collectively “Appellants”), by and through undersigned counsel, respectfully submit this Response in Opposition to Appellee Lori Chavez-DeRemer, Secretary of the United States Department of Labor’s (the “Secretary”) Motion to Dismiss Appeal or Alternatively For Extension of Time to File Appellee’s Brief and Leave to File Out-of-Time Responses (hereinafter the “Motion to Dismiss”). In support of this Response in Opposition, Appellants state as follows:

1. On September 19, 2025, this Court issued a Case Opening Notice upon the docketing of the instant appeal and, in the Notice, directed Appellants to file an Appearance Form and Docketing Statement by October 3, 2025. *See* Doc. 00118342469. On October 3, 2025, Appellants timely filed the Appearance Form and Docketing Statement. *See* Docs. 00118348546 & 00118348549.

2. On October 6, 2025, the Court issued an Appellant’s Briefing Notice in which it set November 17, 2025 as the deadline for Appellants to file their brief. *See* Doc. 00118348967. The Notice also set the deadline for Appellee’s brief “in accordance with Fed. R. App. P. 31 and 1st Cir. R. 31.0,” meaning thirty (30) days after Appellant’s brief is served. *See id.*

3. After the issuance of the Briefing Notice, Appellants and the Secretary both filed Motions requesting to stay proceedings and/or extend the briefing

deadlines. Appellants filed a Motion to Abate Briefing Schedule Pending Mediation, in which they requested “that this Court hold the briefing schedule in abeyance or, in the alternative, extend the briefing schedule for sixty (60) days[.]”¹ The Secretary thereafter filed a Motion to Stay Proceedings Due to Lapse in Appropriations, in which she requested that the Court “stay all proceedings in this case, including extending any applicable deadlines” or “extend all deadlines in this matter, including any proceeding dates, until at least 30 days after Congress has restored appropriations to the Department of Labor [‘DOL’].”² Appellants had also filed a Motion to Stay Proceedings in the District Court Pending Appeal. *See* Doc. 00118360365.

4. Two days after the Secretary filed the Motion to Stay Proceedings Due to Lapse in Appropriations, Appellants filed a Response in which they stated that they did not oppose the Secretary’s Motion to Stay “and consent[ed] to pursuing their pending motions after Congress [] restored appropriations to the DOL.” Doc. 00118363423 at 2. Appellants further “suggest[ed] that the DOL be required to notify the Court when Congress has restored appropriations to the DOL and that appropriate deadlines be set such that the Appellants’ pending motions can be responded to and heard before a new briefing schedule is set.” *Id.*

¹ Doc. 00118358477 at 3.

² Doc. 00118362236 at 3.

5. The Secretary did not respond to either of Appellants' Motions within the 10-day deadline imposed by Federal Rule of Appellate Procedure 27(a)(3)(A), or after Congress restored appropriations to the DOL on November 13, 2025. *See* Motion to Dismiss ¶ 6 (stating date of restored appropriations).

6. The Court did not rule on the parties' pending Motions on or before Appellants' brief was due to be filed on November 17 and, to date, the Motions remain currently pending before the Court.

7. All of the foregoing circumstances should lead this Court to deny the Secretary's Motion to Dismiss. To begin with, the Secretary's request for dismissal "for lack of diligent prosecution" flies in the face of Appellants' participation in this appeal thus far. This Court generally only grants motions to dismiss appeals where there has been "persistent" or "egregious" noncompliance with the appellate rules. *See Rivera-Rivera v. Medina & Medina, Inc.*, 898 F.3d 77, 90 n.5 (1st Cir. 2018) (alterations in original) (quoting *Reyes-Garcia*, 82 F.3d at 15) (declining to dismiss appeal where the appellant "was not so 'persistent[ly] noncomplian[t]' as to justify dismissal"); *Reyes-Garcia v. Rodriguez & Del Valle, Inc.*, 82 F.3d 11, 15 (1st Cir. 1996) (noting that "a party's persistent noncompliance with appellate rules" can constitute sufficient cause to dismiss and ultimately dismissing appeal where the noncompliance was "nothing short of egregious").

8. Here, Appellants' *only* potential noncompliance was not filing their appellate brief on November 17. But keep in mind, the Secretary had requested a stay of this appeal for at least thirty (30) days after the Government reopened, to which Appellants agreed, but which the Court has not yet entered an Order. Appellants have otherwise complied with *all* filing and response deadlines. See *supra* ¶¶ 1, 4.

9. The Secretary's suggestion that Appellants have not "diligently prosecuted" this action is further belied by Appellants' Motion to Abate Briefing Schedule Pending Mediation, in which they sought to modify the current briefing schedule *three weeks before* the November 17 deadline. *Cf. In re Simply Media, Inc.*, 566 F.3d 234, 236 (1st Cir. 2009) (dismissing appeal where appellant violated appellate rules and "made no effort to obtain an extension"). Given that (1) the Secretary thereafter filed her own Motion to Stay requesting a stay of the appeal until 30 days after restoration of appropriations, (2) Appellants did not oppose the Secretary's extension request and suggested "that the Appellants' pending motions [] be responded to and heard before a new briefing schedule is set," and (3) all of the aforementioned Motions remain currently pending before the Court, Appellants' failure to file their brief on November 17 was not due to carelessness, oversight, or lack of diligence. See *Virella-Nieves v. Briggs & Stratton Corp.*, 53 F.3d 451, 454 (1st Cir. 1995) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*,

507 U.S. 380, 395 (1993)) (“The determination of whether a party’s neglect is excusable ‘is at bottom an equitable one, taking into account all of the relevant circumstances’”).

10. Indeed, the Secretary provides this Court with no authoritative support for her position. The sole case cited by the Secretary in her Motion to Dismiss is completely inapposite to the present circumstances. *See CrossFit, Inc. v. Mustapha*, 2017 WL 7113962, at *1 (1st Cir. Aug. 21, 2017) (dismissing appeal where the appellant “failed to file an opening brief, despite previous lengthy extensions of time[] and despite the court’s recent order directing compliance[,]” and where his new request “to present his appellate arguments in oral argument” form rather than “file a brief in written form [wa]s no substitute for complying with this court’s order.”).

11. More importantly, the procedural history of this appeal makes clear that any failure by Appellants not filing their brief on November 17 has *not* prejudiced the Secretary. The Secretary requested a stay of the action until thirty (30) days after appropriations were restored, and Appellants filed a response consenting to the stay. If granted, that stay would be in effect until December 13, 2025. Now, with appropriations recently restored and those motions still pending, the Secretary files this “gotcha motion” in an attempt to prevent this appeal from being heard on the merits. It was reasonable for Appellants to believe that a new briefing schedule

would be issued due to their consent to the Secretary’s request for a stay. The appellate rules are not designed to punish a party who has in good faith attempted to pursue its appeal. *See Rodriguez-Machado v. Shinseki*, 700 F.3d 48, 50 (1st Cir. 2012) (quoting *Reyes-Garcia*, 82 F.3d at 15) (“[M]inor ‘infringements of the rules that neither create unfairness to one’s adversary nor impair the court’s ability to comprehend and scrutinize a party’s’ papers—typically ‘will not warrant Draconian consequences’” of dismissal); *Rivera-Rivera*, 898 F.3d at 90 n.5 (quoting *Rodriguez-Machado*, *supra* and stating same).

12. Finally, the unique circumstances that have transpired in this appeal thus far should lead the Court to find good cause to allow Appellants to file their brief at an established future date, rather than dismiss this appeal altogether. *See* Fed. R. App. P. 26(b). The unfortunate timing of the Government shutdown taking place in the midst of this appeal temporarily prevented the Secretary from being able to participate and resulted in both parties moving for an extension or modification of the current briefing schedule. Recognizing this, Appellants understandably and graciously consented to the Secretary’s request for a 30-day extension of the current briefing schedule upon restoration of appropriations. That the Secretary’s first action after restoration of appropriations was to move for dismissal—rather than make any good faith attempt to respond to any of Appellants’ pending Motions, respond to undersigned counsels’ prior outreach efforts to discuss mediation, or seek

an agreement on a reasonable schedule to move forward with this appeal³—tellingly reveals that the Motion to Dismiss is an unreasonable and meritless attempt by the Secretary to have this entire appeal dismissed on a minor procedural error that has *not* prejudiced her whatsoever.

13. The Secretary’s requested alternative relief of an additional 30 days to respond to Appellants’ appellate brief due to its “unusually large number of filing deadlines in a compact time frame” only underscores the lack of prejudice it faces by the briefing schedule in this case being extended for all parties.

14. The Secretary requests 21 days to respond to Appellants’ two pending motions. Appellants do not oppose this request but submit that it would make the most sense to allow for briefing on the pending motions first, and then set a new briefing schedule for both parties to submit their briefs on the merits of the appeal.

15. Alternatively, Appellants request thirty (30) days in which to file their appellate brief, thereby making their brief due on December 22, 2025.

³ See Doc. 00118358477 at 1-2 (“It is in the interest of judicial efficiency not to proceed with briefing so that the parties can mediate this dispute, which has been impossible to schedule due to the ongoing federal government shutdown. Movants have reached out to counsel for the DOL to discuss both mediation and consent to an extension of the briefing schedule but, to date, there has been no response. . . . The Movants are committed to mediating this dispute in the First Circuit CAMP program before continuing to pursue the appeal. Due to the government shutdown, however, DOL attorneys have not been available to consult with regard to mediation and/or an extension of the briefing schedule here.”). A day *after* filing the Motion to Dismiss, the Secretary’s counsel rejected, without explanation, Appellants’ request to seek mediation of this appeal.

WHEREFORE, for all of the foregoing reasons, Appellants respectfully request that this Court: (1) deny the Secretary’s Motion to Dismiss this appeal; and (2) set a new briefing schedule after resolution of the parties’ other pending Motions (Docs. 00118358477, 00118360365, 00118362236) or, alternatively, extend the Appellants’ briefing deadline to December 22, 2025.

Dated: November 21, 2025

Respectfully submitted,

/s/ Alberto J. Bayouth-Montes

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Partnership LP and LP Management
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Response in Opposition complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,766 words. The Response in Opposition complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word for Office 365 in proportionally spaced 14-point Times New Roman typeface.

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge

CERTIFICATE OF SERVICE

I, Lisa Carney Eldridge, hereby certify that on November 21, 2025, I caused this document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the Court's appellate CM/ECF system. Plaintiff/Appellee's counsel is a registered CM/ECF user and will be served via the Notice of Docket Activity through the Court's CM/ECF system.

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge