

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

THE UNITED STATES OF AMERICA	(
	(
V.	(CRIMINAL NO. 21-98
	(
SHIVA AKULA	(SECTION “I” (4)
	(

**RESPONSE TO THE GOVERNMENT’S MOTION
TO APPOINT A RECEIVER (ECF 403)**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendant Shiva Akula (“Defendant” or “Akula”) presents this response to the Government’s motion to appoint a receiver.

The Government obtained an order that restrained Akula’s use of his assets on December 14, 2023. (ECF 364). At that time, the four Canon entities had employees, patients, and revenue. As the Government explained, it could have moved for the appointment of a receiver when it moved to restrain Akula’s use of his or Canon’s assets. (ECF 403, page 4). The Government did not move for the appointment of a receiver in December 2023 or even January 2024. Instead, the Government waited seventy-six days until February 28, 2024, to ask for a receiver. (ECF 403, generally). In the seventy-six-day window between December 14, 2023 and February 28, 2024, the attorneys and Special Agent Krista Bradford made extraordinary efforts to pay the Canon employees. Further, in this seventy-six-day window the Canon employees made super-human efforts to care for and move patients. Had the Government moved for the appointment of a receiver

in December 2023, when it moved to restrain Akula's use of his assets, then the hospice patients would not have suffered needlessly, the employees would not have had their pay delayed, and the four Canon entities would have remained viable businesses. Instead, the Government waited for the Canon entities to collapse and now seeks the appointment of a receiver to oversee the carnage.

Counsel for Akula did not believe he could ethically request the appointment of a receiver and instead suggested bankruptcy. The suggestion to put the four Canon entities into Chapter 11 bankruptcy, a rehabilitation bankruptcy, was never intended to "impede the government's collection efforts to secure them for restitution" nor was it intended to violate this Court's order. (ECF 403-3, pages 3, 6). Yet the Government alleges "Akula has repeatedly violated this Court's orders by transferring funds from his accounts, concealing additional accounts, attempting to transfer additional funds and attempting to file bankruptcy." (ECF 403-3, page 6) (emphasis added). Counsel for Akula suggested the bankruptcy as an effort to rehabilitate the Canon entities so that they could be sold at a maximum price to contribute to restitution. Counsel acknowledges the attorney who planned to manage the bankruptcies required a fee, but counsel believed that the cost could have been recovered by an increase in the value of the Canon entities. Counsel cannot understand how this effort to rehabilitate the Canon entities through Chapter 11 could violate this Court's order. (ECF 403-3, page 6).

Now that the Canon entities are no longer functioning, the Government seeks the appointment of a receiver. (ECF 403, generally). The Government has provided no estimate of what that receiver will eventually cost Canon's / Akula's diminished estate. The Government has provided no explanation or justification for the appointment of a receiver rather than placing Akula and the Canon entities into bankruptcy.

The Government's argument for the appointment of the receiver acknowledges "[t]he government must set forth the factual and legal basis for each prejudgment remedy sought, state that the debtor shall be afforded an opportunity for a hearing and set forth with particularity that all statutory requirements for the issuance of the prejudgment remedy sought have been satisfied. 28 USC §§3101(a)(1)(2) (A)(B)." (ECF 403-3, page 4). To carry this burden, the Government argues "[a] receivership is necessary to preserve the defendant's businesses for restitution." (ECF 403-3, page 5). The Government quotes law but never explains what the receiver would do to "preserve the defendant's businesses for restitution." (ECF 403-3, pages 5-6). And the receiver appears to specialize in liquidation instead of rehabilitation. (ECF 403-4, Ex. A). Given the extraordinary delay in the appointment of a receiver and the shabby condition of the businesses, it is not clear that there is value for the receiver to preserve. The Government has not carried its burden to explain how a receiver would preserve the businesses.

The Government's remaining efforts to show it has met its burden are conclusory. (ECF 403-3, pages 6-9). The Government argues it "satisfied the requirements for the appointment of a receiver because the record and Affidavit of FBI Agent Krista Bradford reflect that there is reasonable cause to believe there is a substantial danger, Akula's assets will be removed from the jurisdiction of this court, lost, concealed, materially injured or damaged or mismanaged." But if the Court accepts these conclusory arguments, Akula asks this Court to recognize that all the allegations concern violations in the past. There have been no claims that Akula has squandered any resources since he was taken into custody.

The Government has not met its legal burden to appoint a receiver. Nor has the Government explained why a receiver is desirable or how much a receiver will cost this diminished estate. Most importantly, the Government points this Court to Akula's past conduct, but the Government never

explains why it did not seek the appointment of a receiver in December 2023 or January 2024 or even in early February 2024 and instead waited seventy-six days. This delay was the immediate cause of the collapse of the four Canon entities. The Government now boldly claims that the appointment of a receiver is necessary to preserve the very assets the Government spent two months watching crumble.

The motion presents two additional problems. First the motion does not address issues such as how Akula's personal property will be preserved for restitution. Akula is delinquent on his condominium fees and potentially his mortgage. Presumably more money can be obtained from the sale of this property if it is not in foreclosure. Additionally, the Government's proposed order requires the receiver to "investigate the financial affairs" of the Canon corporations. (ECF 304-1, page 2). It is unclear whether the Government seeks to use the receiver to investigate other charges against Akula or if the Government intends the receiver to investigate the finances of the corporations so they can be revived.

In conclusion, this Court needs some solution to the problem of the Canon entities. The Government, however, has not shown that it is entitled to a receiver, what a receiver would cost, how a receiver would rehabilitate the Canon entities, or that the cost of the receiver would result in sufficient economic gain so that the appointment of a receiver would be economically rational. Akula, through his attorneys, asks this Court to deny the Government's motion for the appointment of a receiver.

Respectfully submitted,

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Certificate of Service

The undersigned counsel hereby certifies that this document has been served on all counsel of record via the Court's ECF filing system on March 7, 2024.

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