

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

DUCAN FANFAN,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
BEFORE JUDGMENT TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT**

**RESPONSE TO MOTION TO ESTABLISH EXPEDITED SCHEDULE
FOR BRIEFING AND ARGUMENT IF CERTIORARI IS GRANTED**

For the reasons set forth in the Brief in Opposition, filed concurrently with this response, Respondent contends that the United States' petition for certiorari before judgment should be denied. If this Court does grant the petition, however, Respondent opposes the United States' motion to expedite briefing in this matter. Alternatively, if the Court were to expedite the briefing, Respondent joins in the request for modified expedited briefing schedule proposed by the Respondent in *United States v. Booker*, No. 04-104.

1. We agree with the United States that the questions presented by *Blakely v. Washington*, 542 U.S. ___, 124 S. Ct. 2531 (2004), are of great significance. But the very importance of these questions requires that the parties have adequate time to brief the issues, in order to provide this Court with the greatest possible assistance in resolving them. The response filed in *Booker* properly notes that the lower courts are dealing admirably with the implications of *Blakely*, just as they did after *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and

Miranda v. Arizona, 384 U.S. 436 (1966). For these reasons, we believe the costs of an expedited schedule outweigh the benefits.

2. We therefore suggest that, if certiorari is granted, briefing proceed on the schedule provided for by this Court's Rule 25, with oral argument set for the earliest practicable date following the completion of briefing, given the time this Court requires to prepare for argument on the merits.

3. If briefing in this matter is to be expedited, we join in the proposed briefing schedule suggested by the Respondent in *Booker*: Petitioner's brief would be due August 24, 2004; Respondent's brief would be due September 21, 2004; and Petitioner's reply would be due September 27, 2004.

Respectfully submitted,

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