UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION FOUNDATION; AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN; COUNCIL ON AMERICAN-ISLAMIC RELATIONS; COUNCIL ON AMERICAN-ISLAMIC RELATIONS MICHIGAN; GREENPEACE, INC.; NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; JAMES BAMFORD; LARRY DIAMOND; CHRISTOPHER HITCHENS; TARA MCKELVEY; and BARNETT R. RUBIN, Plaintiffs, v. NATIONAL SECURITY AGENCY / CENTRAL SECURITY SERVICE; and LIEUTENANT GENERAL KEITH B. ALEXANDER, in his official capacity as Director of the National Security Agency and Chief of the Central Security Service, Defendants.	Case No. 2:06-cv-10204 Hon. Anna Diggs Taylor

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR STAY PENDING APPEAL

In its August 17, 2006 Memorandum Opinion, the court correctly held that defendants' warrantless eavesdropping Program ("the Program") violated the Foreign Intelligence Surveillance Act ("FISA"), the constitutional separation of powers doctrine, and the plaintiffs' Fourth and First Amendment rights. *See ACLU v. NSA*, 438 F. Supp. 2d 754 (E.D. Mich. 2006). The court issued a Judgment and Permanent Injunction Order ("Order") that requires defendants

to comply with FISA and the Constitution as they conduct surveillance. *Id.* The court also dismissed the plaintiffs' claims challenging the NSA's datamining program. Defendants have appealed from the court's decision, plaintiffs have appealed the dismissal of their datamining claims, and the parties have agreed to accelerated briefing before the Court of Appeals. *See* Response to Consent Motion for Entry of Expedited Briefing and Oral Argument Schedule, 5.

Defendants now ask this court to stay its injunction pending a decision on appeal, wrongly suggesting that the injunction will prevent them from conducting surveillance of al Qaeda or of its affiliates. To the contrary, if the court denies the stay, defendants may continue any surveillance that complies with FISA and the Constitution. In contrast, a stay would continue the already substantial and irreparable harm to the constitutional rights of plaintiffs and the public, and allow the President and the National Security Agency to continue to violate the law and the Constitution. Because defendants have failed to meet the heavy burden necessary to obtain a stay, their motion should be denied.

I. To Obtain a Stay, Defendants Must Show, At a Minimum, Both Serious Questions Regarding the Merits and Irreparable Harm that Decidedly Outweighs Harms to Others.

The Sixth Circuit Court of Appeals re-stated the test for determining whether a trial court should grant a stay pending appeal in *Baker v. Adams County/Ohio Valley Sch. Bd.*, 310 F.3d 927, 928 (6th Cir. 2002). In *Baker*, the court held that the factors to be considered include:

> (1) whether the defendant has a strong or substantial likelihood of success on the merits; (2) whether the defendant will suffer irreparable harm if the district court proceedings are not stayed; (3) whether staying the district court proceedings will substantially injure other interested parties; and (4) where the public interest lies. These factors are to be balanced.

Under Sixth Circuit law, "to justify a stay of the district court's ruling, the defendant must demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted." *Id.* (citations omitted; emphasis added). All factors weigh heavily against granting a stay here.

Courts regularly deny motions to stay injunctions where, as here, the injunction merely requires defendants to comply with the law. *See, e.g., Family Trust Foundation of Kentucky, Inc. v. Kentucky Judicial Conduct Comm.*, 388 F.3d 224, 227 (6th Cir. 2004) (denying emergency motion to stay trial court injunction of rule barring campaign statements by judges); *Baker,* 310 F.3d at 928, 931 (denying motion to stay injunction prohibiting a school district from displaying the Ten Commandments on public property); *Americans United for Separation of Church and State v. City of Grand Rapids*, 784 F. Supp. 415, 417 (W.D. Mich. 1991) (denying stay of injunction prohibiting construction of a menorah on city property based on opinion that display would violate First Amendment); *Securities & Exchange Comm. the G. Weeks Secs., Inc.*, 483 F. Supp. 1239 (D. Tenn. 1980) (denying motion to stay injunction requiring that securities be registered), *aff'd*, 678 F.2d 649, 651 (6th Cir. 1982); 11 C. Wright, A. Miller & M. Kane, *Federal Practice & Procedure* § 2904, nn.13-16 (1995) (collecting cases). In fact, most applications to stay injunctive relief pending appeal are denied. *See* 11 *Federal Practice and Procedure* § 2904, *supra,* 501-05 ("[b]ecause the burden of meeting this standard is a heavy one, more commonly stay requests will not meet the standard and will be denied").

II. The Alleged Harms that Defendants Rely Upon Do Not "Decidedly Outweigh" the Proven Harms that Will Be Caused by Continued Illegal Surveillance.

A stay should be denied because the balance of harms favors plaintiffs rather than defendants. *See Baker,* 310 F.3d at 928. The Supreme Court has recognized that "[t]he loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Tucker v. City of Fairfield, Ohio,* 398 F.3d 457, 464 (6th Cir. 2005) (same); *Chabad*, 363 F.3d 427, 436 (6th Cir. 2004) (same). The Sixth Circuit has also held that "the public interest is served by preventing the violation of constitutional rights." *Chabad of Southern Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004).

As the district court found in this case, the journalist and scholar plaintiffs, including Tara McKelvey, Larry Diamond, and Barnett Rubin, conduct extensive research in the Middle East, Africa, and Asia and communicate with individuals abroad whom the government believes to be terrorist suspects or associates. *See ACLU v. NSA*, 438 F. Supp. 2d at 767. Similarly, attorney plaintiffs Nancy Hollander, William Swor, Joshua Dratel, Mohammed Abdrabboh, and Nabih Ayad communicate with individuals abroad whom the government believes to be terrorist suspects or associates and that they discuss confidential information over the phone and via email with their clients abroad. *Id.* The court found that the Program caused the attorney plaintiffs' clients, witnesses, and sources to stop communicating with plaintiffs out of fear that their communications would therefore be intercepted. *Id.* at 767-768.

Because of the Program, the attorney plaintiffs have also incurred financial costs to travel substantial distances to meet personally with their clients and others relevant to their cases. The

Program has thus interfered with the attorney plaintiffs' ability to communicate confidentially with their clients. *Id.* at 768. The declaration of University of Michigan legal ethics professor Leonard Niehoff underscored the reasonableness of plaintiffs' actions since the disclosure of the Program. *Id.* Based on the record, this court concluded that the plaintiffs had shown "a concrete, actual inability to communicate with witnesses, sources, clients and others without great expense which has significantly crippled Plaintiffs, at a minimum, in their ability to report the news and competently and effectively represent their clients." *Id.* at 770.

The court found that plaintiffs' declarations showed that "Plaintiffs have suffered actual concrete injuries to their abilities to carry out their professional responsibilities." *ACLU v. NSA*, 438 F. Supp. 2d at 770. The court also held that the "illegal monitoring of [plaintiffs'] telephone conversations and email communications" are "distinct, palpable, and substantial injuries that had resulted from the Program." *Id.* These proven harms to plaintiffs led the court to hold appropriately that plaintiffs are entitled to injunctive relief to remedy the violation of their First and Fourth Amendment rights. *Id.* at 782, n.59.

In opposing plaintiffs' summary judgment motion, defendants submitted no evidence disputing plaintiffs' declarations. Defendants now do nothing more than repeat their assertion that "plaintiffs' allegations of injury were insufficient . . . ." Govt. Br. 6 (emphasis added). By referring to the injuries that plaintiffs proved as "allegations," defendants continue to simply ignore undisputed evidence. *See Id.* at 770 ("Defendants ignore the significant, concrete injuries which Plaintiffs continue to experience from Defendants illegal monitoring of their telephone conversations and email correspondence").

Rather than submit evidence to oppose plaintiffs' proof that the Program is causing plaintiffs' injuries, defendants claim that the "refusal to stay the Court's order might cause grave harm . . . to the American public." Govt. Br. 3, 11 (emphasis added). Defendants suggest that the court ordered them to stop all efforts to intercept communications between al Qaeda members or supporters and individuals in the United States. The Court did no such thing. The court simply ordered defendants to comply with FISA and the Constitution. Defendants have failed to show that they will suffer harm if they comply with FISA and the Constitution, much less that they will suffer "irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted." *Baker,* 310 F.3d at 928.[1]

III. Defendants Have Not Shown that They Will Prevail on the Merits on Appeal nor Have They Raised Serious Legal Questions Going to the Merits.

A. The Court Properly Rejected the Government's State Secrets Claims.

In pressing for a stay, defendants claim that "it is apparent that a serious question exists as to whether the information protected as privileged by the court is necessary to resolve plaintiffs' claims properly ...." Govt. Br. 3. Defendants further argue that, because the court recognized that defendants had properly invoked the state secrets privilege as to certain evidence, it was error to find that the government's public admissions about the Program provided a basis to permit this action to proceed. *Id.* 7.

The defendants' state secrets argument oversimplifies the court's decision. The court decided that plaintiffs established a *prima facie* case against the Program based on more than the

[1] While plaintiffs obviously have no knowledge of the contents of the *ex parte* declaration of General Alexander submitted in support of defendants' motion for a stay, *see* Govt. Br. 2, 10, those details are presumably consistent with the classified materials that the court reviewed earlier and found unpersuasive or irrelevant. *ACLU v. NSA,* F. Supp. 2d at 760-761.

government's mere admission that the Program exists. Rather, the court found that the Government had not only publicly admitted (1) the existence of the Program but had also publicly admitted and repeatedly reaffirmed that (2) the Program operates without warrants and (3) targets communications with al Qaeda suspects, affiliates, and supporters where one end of such communications is made inside the United States. *ACLU v. NSA,* 438 F. Supp. 2d at 763, 769. The court rightly held that these three public admissions by the Government were not state secrets, and that they established plaintiffs' *prima facie* case. *Id.* The court also reviewed *in camera* the classified, state secret information that defendants submitted and held that it was "not necessary to any viable defense to the Program." *ACLU v. NSA,* 438 F. Supp. 2d at 765. [2] The court then properly found that the line of cases beginning with *Totten v. United States*, 92 U.S. 105 (1875), did not apply here because such cases apply to actions "where there is a secret espionage relationship between the Plaintiff and the Government. It is undisputed that Plaintiff[s] do not claim to be parties to a secret espionage relationship with the Defendants." *ACLU v. NSA,* 438 F. Supp. 2d at 763 [Citation omitted]. In addition, the court correctly held that the line of cases from *United States v. Reynolds*, 345 U.S. 1 (1953), through *Terkel v. AT&T Corp.*, 2006 WL 2088202 (N.D. Ill. July 25, 2006), did not apply because plaintiffs do not need state secrets to establish their *prima facie* challenge to the Program and defendants do not need state secrets to support their alleged defenses. *ACLU v. NSA,* 438 F. Supp. 2d at 764-766.

[2] In addition, after reviewing *in camera* the classified information submitted *ex parte* to the Court, the Court observed that the Administration has repeatedly told the public that there is a "valid basis in law for the Program," *ACLU v. NSA,* 438 F. Sup.. 2d at 765, and noted that the defendants have cited statutory and constitutional authority to support its positions. *Id* at 766. The Court rejected defendants' claim "that they cannot defend this case without the use of classified information to be disingenuous and without merit." *Id.*

B. The Court Properly Held That the Program Violates the Separation of Powers Doctrine.

As the court observed, FISA was passed after the Church Committee disclosed that numerous administrations had engaged in warrantless wiretaps in the name of national security and that there had been numerous political abuses of that power. *ACLU v. NSA,* 438 F. Supp. 2d at 771-773. Title III was amended to state that "FISA . . . shall be the exclusive means by which electronic surveillance of foreign intelligence communications may be conducted." 18 U.S.C. § 2511(2)(f). The court recognized that the balancing that Congress effected in FISA was intended "to create a secure framework by with the Executive branch may conduct legitimate electronic surveillance for foreign intelligence while meeting our national commitment to the Fourth Amendment." *ACLU v. NSA*, 438 F. Supp. 2d at 773; *see also United States v. Cavanagh*, 807 F.2d 787 (9th Cir. 1987) (finding that FISA met Fourth Amendment requirements and constituted a reasonable balance between government needs and protected rights); *United States v. Duggan*, 743 F.2d 59 (2d. Cir. 1984) (same). It could not be clearer that Congress intended FISA to govern the electronic surveillance conducted under the Program. Yet, the government has admitted that it does not obtain FISA orders for surveillance under the Program and has not done so for five years. *ACLU v. NSA,* 438 F. Supp. at 771, 778.

To determine whether defendants' violation of FISA also violates the separation of powers doctrine, the court first reviewed the historical bases of the doctrine. *Id.* at 776-778. The court then applied the analysis set out in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 636 (1952):

> [I]f the President acted pursuant to an express or implied authorization by Congress, his power was at its maximum, or zenith.

> If he acted in absence of Congressional action, he was in a zone of twilight reliant upon only his own independent powers. [Citation omitted.] But "when President takes measures incompatible with expressed or implied will of Congress, his power is at its lowest ebb, for he can rely only upon his own Constitutional powers minus any Constitutional powers of Congress over the matter."

Id. at 777 (quoting *Youngstown*, 343 U.S. at 636-38 (Jackson, J., concurring)).

The court held that the Executive here had acted "indisputably as FISA forbids. FISA is the expressed statutory policy of our Congress. The presidential power, therefore was exercised at its lowest ebb and cannot be sustained." *ACLU v. NSA,* 438 F. Supp. 2d at 778. The court concluded that "[t]he President, undisputedly, has violated the provisions of FISA for a five-year period." *Id.* at 36. The court also correctly rejected defendants' claim that the President has "inherent authority" as Commander in Chief, or "pursuant to the penumbra of Constitutional language in Article II," to ignore FISA and the First and Fourth Amendments. *Id.* at 780-781 (citing cases from *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2, 120 (1866), through *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)).

Defendants contend that the court failed to evaluate properly their inherent authority argument, citing three pre-FISA decisions and *dicta* from *In re Sealed Case*, 310 F.3d 717, 742 and n.26 (FISA Ct. of Rev. 1992). Govt. Br. 13-14. These arguments fail to raise a serious issue about the court's separation of powers analysis and the defendants' inherent authority defense. The pre-FISA cases and *dicta* from *In re Sealed Case* do not conflict with the cases cited by the court. If there were any question as to whether the court's separation of powers and inherent authority conclusions were correct, it was resolved by the Supreme's Court's decision in *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006). In *Hamdan*, the Supreme Court rejected the Bush

Administration's argument that the circumstances of the "war on terror" justified the Administration's failure to comply with duly enacted statutory law addressing the procedure of military tribunals. The court stated "[w]hether or not the President has independent power, absent Congressional authorization, to convene military commissions, he may not disregard limitations the Congress has, in proper exercise of its own war powers, placed on his powers." *Id.*, at 2774 n.23 (plurality opinion) (emphasis added) (citation omitted). This court properly applied the same settled principles that the Supreme Court applied in *Hamdan* and held here that the President may not disregard limitations on his powers properly enacted by Congress in FISA.

C. The Court Properly Rejected the Defendants' Claims that Special Needs Exempted Them from the Fourth Amendment's Warrant Requirement.

As the court observed, the Fourth Amendment was adopted to assure that the Executive did not abuse the power to search. *ACLU v. NSA,* 438 F. Supp. 2d at 773-775 (citing *Entick v. Carrington*, 95 Eng. Rep. 807 (1765); *United States v. United States District Court*, 407 U.S. 297 (1972) (the *Keith* case); *Zweibon v. Mitchell*, 516 F.2d 594, 618 (D.C. Cir. 1975) (*en banc)* (plurality opinion)). Defendants contend, however, that the court erred by concluding that "the Fourth Amendment 'requires prior warrants for any reasonable search,'" Govt. Br. 12, (quoting *ACLU v. NSA,* 438 F. Supp. 2d at 775), and by failing to recognize that the ultimate touchstone of the Fourth Amendment is reasonableness. In fact, the court did recognize that the touchstone of the Fourth Amendment is its requirement of "reasonableness in all searches." *Id.* The court also recognized, however, that warrantless searches of private residences and other places in which society recognizes an expectation of privacy "are presumptively unreasonable, absent exigencies" *Id.* at 774 (citing *United States v. Karo*, 468 U.S. 705, 714-15 (1984)), and that

"searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specially established and well-delineated exceptions," *Id.* at 775 (emphasis added) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)). Defendants do not dispute these two principles.

Defendants argue that the court's decision is in error because the general rule requiring judicial warrants is subject to numerous exceptions. Govt. Br. 12. In fact, the court expressly considered whether defendants' alleged "special needs" justified their failure to obtain warrants or FISA orders and found that they did not. *ACLU v. NSA,* 438 F. Supp. 2d at 781-782. As the court found, neither the "hot pursuit," border search, nor other emergency situation cases that may excuse compliance with the Fourth Amendment's warrant requirement, apply here. *Id.* Further, the court observed that FISA itself includes exceptions for various exigencies, which are "concessions to stated executive needs." *Id.* at 774-775. Defendants have neither shown they will prevail on appeal regarding their special needs claims nor presented a serious question about the court's Fourth Amendment analysis.

D. The Court Correctly Found That the Program Violates Plaintiffs' First Amendment Rights.

As the court observed, by interfering with the plaintiffs' right to communicate with their clients, sources, and other persons outside of the United States, the Program caused "distinct, palpable, and substantial injuries" to plaintiffs' First Amendment rights. *ACLU v. NSA,* 438 F. Supp. 2d at 770, 775, 782. The same surveillance infringes both plaintiffs' First and Fourth Amendment rights:

> National Security cases . . . often reflect a convergence of First and Fourth Amendment values not present in cases of "ordinary" crime.

> Though the investigative duty of the executive may be stronger in such cases, so also is their greater jeopardy to constitutionally protect its speech. "Historically the struggle for freedom of speech and press in England was bound up with the issue of the scope of the search and seizure power." (Citation omitted.) History abundantly documents the tendency of Government -- however benevolent and denying its motives -- to view with suspicion those who most fervently dispute its policies. . . .

Id. at 776 (quoting *Keith*, 407 U.S. at 313-14). The court correctly applied these principles, finding that plaintiffs had established both that their communications with certain individuals outside the United States are being intercepted because the government perceives the individuals as being "member[s] of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda, or working in support of al Qaeda," *Id.* at 765, and that certain persons outside of the United States have refused to speak with plaintiffs because of the Program, *id.* at 770. These two effects of the Program directly interfere with the communications between plaintiff journalists, scholars, and lawyers, on the one hand, and people the government perceives as being affiliated with al Qaeda, on the other. These two effects also impair the access of the journalist and scholar plaintiffs to newsworthy information and impair the attorney plaintiffs' ability to gather information that they would ordinarily gather in the course of representing their clients.

Such interference with plaintiffs' ability to speak freely with news sources and potential witnesses and to gather information plainly violates plaintiffs' First Amendment rights. As the court correctly found, such interference "may be justified only upon showing of a compelling governmental interest; and that the means chosen to further that interest are the least restrictive of freedom of belief and association that could be chosen." *ACLU v. NSA,* 438 F. Supp. 2d at

776 (citing *Clark v. Library of Congress*, 750 5th F2d 89, 94 (D.C. Cir. 1984)). Defendants made no such showing here. In fact, there is a statutory scheme – FISA – that would allow the government to surveil foreign agents and terrorists with substantially less intrusive on constitutional rights. Defendants, therefore, have neither shown they will prevail on appeal regarding their First Amendment arguments nor have they raised a serious question regarding the court's First Amendment analysis.

E. The Court Correctly Held that the Plaintiffs Have Standing.

Defendants' motion also questions the court's holding that plaintiffs established standing. In addition to repeating their claim that "plaintiffs' allegations of injury were insufficient to establish standing to sue," Govt. Br. 6, defendants assert that "plaintiffs could not establish their standing without the disclosure of state secrets," *id.* The court did not rely on the plaintiffs' mere allegations of injuries. The court recognized that, because plaintiffs had moved for summary judgment, plaintiffs had to set forth specific facts to support their claims. *ACLU v. NSA,* 438 F. Supp. 2d at 767 (citing Fed. R. Civ. Proc. 56(e)). As discussed at above, the court found that the plaintiffs' declarations showed "a concrete, actual inability to communicate with witnesses, sources, clients and others without great expense which has significantly crippled Plaintiffs, at a minimum, in their ability to report the news and competently and effectively represent their clients." *Id.* at 769. The court applied the test stated in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), and found that plaintiffs' declarations established facts necessary to satisfy the prerequisites of the *Lujan* standing test. *Id.* at 767.

As the court observed, numerous cases have found standing where plaintiffs have suffered "concrete profession-related injuries comparable to those suffered by the Plaintiffs

here." *Id.* at 21 (citing *Presbyterian Church v. United States*, 870 F.2d 518, 522 (9th Cir. 1989); *Ozonoff v. Berzak*, 744 F.2d 224, 229 (1st Cir. 1984); *Jabara v. Kelley,* 476 F. Supp. 561 (E.D. Mich. 1979), *vac'd on other grounds sub. nom Jabara v. Webster*, 691 F.2d 272 (6th Cir. 1982)). The court thus correctly rejected defendants' reliance on *Laird v. Tatum*, 408 U.S. 1 (1972), holding that "Plaintiffs have suffered actual concrete injuries to their abilities to carry out their professional responsibilities. The direct injury and objective chill incurred by Plaintiffs are more than sufficient to place this case outside the limitations imposed by *Laird.*" *Id.* at 769.

Defendants have not shown that they will succeed in reversing the court's standing decision on appeal nor have they raised a serious question regarding the court's standing analysis. Their unsupported "disagreement" with the court's careful determination that plaintiffs established standing provides no basis for a stay.

F. The Injunction Is Not Overly Broad.

Finally, there is no merit to defendants' argument that the court's injunction is "substantially overbroad" because it orders defendants to comply with the law not only with respect to plaintiffs but with respect to all surveillance conducted under the Program. Govt. Br. 11. There is no requirement that an injunction affect only the parties. *See, e.g., Bresgal v. Brock*, 843 F.2d 1163, 1169 (9th Cir. 1988). A district court enjoys "a wide range of discretion in framing an injunction in terms it deems reasonable to prevent wrongful conduct." *Forchner Group, Inc., v. Arrow Trading Co.,* 124 F.3d 402, 406 (2d Cir. 1997); *see also Bano v. Union Carbide Corp.*, 361 F.3d 696, 716 (2d Cir. 2004) (a narrowly tailored injunction does not preclude the power of the federal courts to "enjoin [a party] from committing acts elsewhere").

The rights of all Americans affected by the Program, whether they are named plaintiffs in this case or not, are violated by allowing defendants to operate the Program. The court thus properly invalidated the Program on its face. *See, e.g., Sable Communications of California, Inc. v. FCC*, 692 F. Supp. 1208 (C.D. Cal. 1988), *affirmed*, 492 U.S. 115 (1989); *McCargo v. Vaughn*, 778 F. Supp. 1341, 1342 (E.D. Pa. 1991); and *Doe v. Rumsfeld,* 342 F. Supp. 2d 1, 17 (D.D.C. 2004).

CONCLUSION

For the foregoing reasons, defendants' motion to stay the court's injunction pending a decision on the merits by the Court of Appeals should be denied.

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September 15, 2006

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2006, I electronically filed Plaintiffs' Opposition to Defendants' Motion for Stay Pending Appeal using the ECF system, which will send notification of such filing to Anthony J. Coppolino, Department of Justice and Andrew Tannenbaum, Department of Justice.

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