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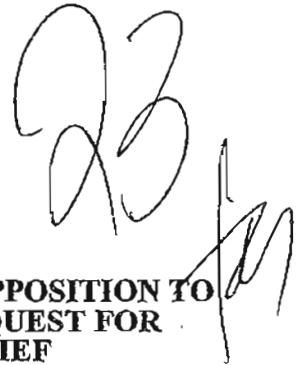
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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION



12 ROBERT-JOHN:FOTI; JOE NEUFELD;
13 KEN AUGUSTINE,)

14 Plaintiffs,

15 v.

16 OFFICER McHUGH and other unknown
17 number of unnamed officers of the U.S.
Marshals Service and the Federal Protective
18 Service; U.S. MARSHALS SERVICE;
FEDERAL PROTECTIVE SERVICE,)

19 Defendants.

No. C 04-2567 PJH

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' REQUEST FOR
INJUNCTIVE RELIEF**

The Honorable Phyllis J. Hamilton

[NO HEARING DATE; MOTION TO BE
DECIDED ON THE PAPERS]

INTRODUCTION

25 At the November 10, 2004 hearing, the Court agreed to treat Plaintiffs' First Amended
26 Complaint and the authorities cited therein as a request for injunctive relief without the usual
27 necessity of a formal motion. In accordance with the Court's November 10, 2004 Scheduling
28 Order, Defendants Federal Protective Service Officer Timothy McHugh, the U.S. Marshals

1 Service ("USMS"), Federal Protective Service ("FPS") and the unnamed federal officials hereby
2 submit this Opposition to Plaintiffs' request for injunctive relief.

3 **ARGUMENT**

4 **I. Plaintiffs Are Not Entitled To Injunctive Relief.**

5 Plaintiffs appear to seek an order enjoining USMS and FPS officers from requiring them
6 to present "Government issued picture ID as a pre-requisite to enter a courthouse or public
7 building . . ." First Amended Complaint, ¶ 115. Plaintiffs cannot, however, meet the
8 requirements for obtaining such relief.

9 **A. The Authorities Cited By Plaintiffs Do Not Support Their Request.**

10 At the November 10, 2004 hearing, Plaintiffs indicated that they intended to rely on the
11 cases cited in their First Amended Complaint as authority supporting their request for immediate
12 injunctive relief. None of the cited cases, however, establishes Plaintiffs' entitlement to
13 injunctive relief.¹

14 Plaintiffs first cite *Crandall v. Nevada*, 73 U.S. 35 (1868), for the proposition that a
15 citizen has a right of free access to the courts. See FAC, ¶ 7 n.4. That case, however, has
16 nothing to do with the question of whether federal officers securing a federal courthouse may
17 validly request identification from those seeking entry. Instead, the case dealt with the State of
18 Nevada's attempt to levy a tax upon every person who wished to leave the state by railroad or
19 other carrier. The Supreme Court held that Nevada's legislation was unconstitutional because
20 such a state tax would burden the operations of the federal government and its citizens' right to
21 travel. Notably, in their quotation of the case, Plaintiffs omit the portion of the opinion that
22 makes clear the Court's focus on the supremacy of federal rights over the state's efforts to elicit a
23 tax: "He [a citizen] has a right to free access to its sea-ports, through which all the operations of
24 foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue
25 offices, and the courts of justice in the several States, and this right is in its nature independent
26

27 ¹ This Opposition addresses only those cases (1) that relate to Plaintiffs' alleged
28 basis for injunctive relief, and (2) that are not discussed in Defendants' Motion to Dismiss
Plaintiffs' First Amended Complaint.

1 of the will of any State over whose soil he must pass in the exercise of it.” *Crandall*, 73 U.S. at
2 44 (portion omitted from Plaintiffs’ First Amended Complaint italicized). *Crandall*, therefore,
3 fails to support Plaintiffs’ request for injunctive relief.

4 Plaintiffs also cite the Supreme Court’s recent decision in *Tennessee v. Lane*, ___ U.S. ___,
5 124 S.Ct. 1978 (2004), apparently for the proposition that they have a right to enter the federal
6 courthouse freely, on whatever terms they choose. See FAC, ¶ 7 n.4. Although it mentions the
7 right of access to the courts, *Lane*, like *Crandall*, did not deal with security measures at federal
8 courthouses. Rather, the Supreme Court in *Lane* addressed the question of whether Title II of the
9 Americans with Disabilities Act constituted a valid exercise of Congressional authority to
10 legislate pursuant to section 5 of the Fourteenth Amendment, notwithstanding the State’s claim
11 to Eleventh Amendment immunity.

12 Nor does *Dunn v. Blumstein*, 405 U.S. 330 (1972), advance Plaintiffs’ cause. See FAC,
13 ¶ 7. The Court in *Dunn* addressed the State of Tennessee’s durational residence requirements for
14 would-be voters, and found them invalid. The decision had nothing to do with identification
15 requirements and security measures at federal courthouses.

16 Plaintiffs also cite *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), for the
17 proposition that citizens have a right to freedom of association. See FAC, ¶ 7 n.6. That case,
18 however, found that the State of Minnesota’s Human Rights Act, which required the Jaycees to
19 admit women, was a valid exercise of the State’s authority to eradicate discrimination,
20 notwithstanding the Jaycees’ male members’ associational rights. Thus, not only does *Roberts*
21 fail to address the question at issue – the right of the federal government to require identification
22 as a security measure to protect its property and employees – it in fact supports the proposition
23 that citizens do *not*, contrary to Plaintiffs’ implicit claims, have wholly unfettered rights of
24 association regardless of any competing governmental interest.

25 Plaintiffs’ citation to *Dallas v. Stanglin*, 490 U.S. 19 (1989), is similarly misplaced. See
26 FAC, ¶ 7 n.6. The Court there held that the City’s ordinance limiting the use of certain dance
27 halls to teenagers between the ages of 14 and 18 was not an unconstitutional burden on the right
28 to association or a violation of the Equal Protection Clause. Like the other cases cited by

1 Plaintiffs, *Stanglin* has no bearing on the issue of requiring identification as a security measure at
2 a federal courthouse.

3 Finally, Plaintiffs' reliance on *Hale v. Henkel*, 201 U.S. 43 (1906), *overruled on other*
4 *grounds*, *Murphy v. Waterfront Commission of New York Harbor*, 378 U.S. 52 (1964), is
5 unavailing. See FAC, ¶ 7 n.8. Again, that case has nothing to do with identification
6 requirements on federal property; it dealt with the question of whether a witness could validly
7 refuse to answer questions or produce documents pursuant to a grand jury subpoena on the
8 ground that, *e.g.*, such responses might incriminate him. Plaintiffs purport to quote *Hale* in
9 (apparently) asserting that individuals have an unchecked right not to divulge their business to
10 the government, but again omit a critical clause: "He owes no duty to the state or to his
11 neighbors to divulge his business, or to open his doors to an investigation, *so far as it may tend to*
12 *criminate him.*" *Id.* at 74 (emphasis added; this clause omitted from Plaintiffs' First Amended
13 Complaint). Plaintiffs do not assert that merely showing government-issued identification would
14 incriminate them. *Hale* is – like all of Plaintiffs' other cited authorities – wholly inapposite.

15 Thus, none of the authorities on which Plaintiffs rely justify their request for injunctive
16 relief.

17 **B. Plaintiffs Fail To Meet The Standards For Obtaining Injunctive Relief.**

18 Plaintiffs may obtain preliminary injunctive relief only by demonstrating "either: (1) a
19 likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious
20 questions going to the merits were raised and the balance of hardships tips sharply in their favor."
21 *Southwest Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 917 (9th Cir. 2003) (en
22 banc). "The district court must also consider whether the public interest favors issuance of the
23 injunction." *Id.*

24 Here, because the authorities in Plaintiffs' First Amended Complaint fail to support their
25 request, *see* Section I.A, *supra*, and for all of the reasons set forth in Defendants' motion to
26 dismiss (filed concurrently herewith), Plaintiffs cannot show either a likelihood of success on the
27 merits or even that they have raised serious questions as to the merits of their claims. *See*
28 Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, pp. 2-11. Accordingly,

1 even assuming Plaintiffs could show the possibility of irreparable injury or that the balance of
2 hardships tips sharply in their favor, Plaintiffs cannot satisfy either of the two means for
3 obtaining injunctive relief.

4 Moreover, the public interest militates *against* issuance of an injunction here. It would be
5 extremely disruptive for the officers at the Federal Building to have to alter their well-established
6 security practices for the three Plaintiffs. One can imagine the scenario: The officers would first
7 have to verify (somehow) that Plaintiffs were, in fact, entitled to enter the Federal Building
8 without identification; even assuming Plaintiffs carried with them a copy of an Order from this
9 Court, the officers would, of course, be totally frustrated in any attempt to verify that the
10 Plaintiffs were actually the individuals set identified in the Order because Plaintiffs refuse to
11 present identification. Meanwhile, during the inevitable back-and-forth between the federal
12 officers and Plaintiffs, other citizens attempting to enter the Federal Building would at the very
13 least be backed up and delayed – and might even attempt to circumvent the security measures in
14 place as the confrontation between Plaintiffs and the federal officers caused a distraction. The
15 public interest thus requires denial of Plaintiffs' request.

16 **CONCLUSION**

17 Because Plaintiffs' cited authorities do not support a claim for injunctive relief and
18 because Plaintiffs cannot meet the standards for obtaining such relief, this Court should deny
19 their request.

20 DATED: November 24, 2004

Respectfully submitted,

21 KEVIN V. RYAN
22 United States Attorney

23 
24 TRACIE L. BROWN
Assistant United States Attorney

(3) (5)

CERTIFICATE OF SERVICE

1 The undersigned hereby certifies that she is an employee of the Office of the United States
2 Attorney for the Northern District of California and is a person of such age and discretion to be
3 competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

- 4 1. **Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint**
5 2. **Declaration of Gerald Auerbach in Support of Defendant's Motion to Dismiss Plaintiffs'**
6 3. **Declaration of Carol Lazzaro in Support of Defendants' Motion to Dismiss Plaintiffs' First**
7 4. **Defendants' Opposition to Plaintiffs' Request for Injunctive Relief**

8 *Foti, et al. v. McHugh, et al.*
9 C 04-2567 PJH

10 to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope,
and served as follows:

- 11 **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the
12 designated area for outgoing U.S. mail in accordance with this office's practice.
13 **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the
14 designated area for outgoing U.S. mail in accordance with this office's practice.
15 **PERSONAL SERVICE (BY MESSENGER)**
16 **FEDERAL EXPRESS**
17 **FACSIMILE (FAX)** Kenneth Augustine only
18 **HAND-DELIVERED**
19 **E-MAIL**


20 to the party addressed as follows:

21 Robert-John Foti
22 General Delivery
23 Woodacre, CA 94973

24 Joseph Leonard Neufeld
25 General Delivery
26 Mission Rafael Station
27 San Rafael, Ca 94915-9999

28 Kenneth Augustine
53 Mark Drive
San Rafael, CA 94903
Ph: 415-472-4952

I declare under penalty of perjury under the laws of the United States that the foregoing is true
and correct. Executed on November 24, 2004 at San Francisco, California.


STEPHANIE MIZUHARA
Legal Assistant