

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN GILMORE)	
)	
)	
Plaintiff-Appellant,)	
)	
v.)	
)	No. 04-15736
JOHN D. ASHCROFT, Attorney General,)	
et al.)	
)	
Defendants-Appellees.)	

**APPELLEES' MOTION TO SUSPEND THE BRIEFING SCHEDULE
PENDING THIS COURT'S ACTION ON THE GOVERNMENT'S
MOTION TO FILE MATERIALS AND OPPOSING BRIEF
UNDER SEAL, FOR *IN CAMERA* AND *EX PARTE* REVIEW**

In accordance with Fed. R. App. P. 27 and Circuit Rule 27-1, defendants/appellees hereby respectfully move to suspend the briefing schedule pending this Court's action on the Government's recently-filed motion to file materials and an opposing brief with this Court under seal, for *in camera* and *ex parte* review.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleges the existence of a security directive issued by the Federal Government relating to airline security procedures, and he challenges the constitutionality of that directive. A federal statute and accompanying regulations, however, prohibit defendants from disclosing any such directive in open court, to plaintiff, or to plaintiff's counsel. See 49 U.S.C. § 114(s)(1)(C); 49 C.F.R. §§ 1520.5(b)(1)(i), (b)(2)(i), 1520.9(a)(1), 1544.103(b)(4). In light of this statute and accompanying regulations, and for reasons set forth in its motion filed on September 2,

2004, the Government moved this Court to permit federal defendants to file materials and an opposing brief under seal, for *in camera* and *ex parte* review. The Government would also file and serve a redacted, unsealed version of that brief. The Government requested action by this Court by September 15, 2004, the date on which the Government's brief is currently due.

DISCUSSION

Until this Court acts on the Government's September 2, 2004, motion, the Government will not know what procedures to follow in filing its brief. Specifically, without knowing whether its motion will be granted, the Government cannot know whether it should file certain materials and a copy of its brief under seal, for *in camera* and *ex parte* review. Accordingly, the Government respectfully moves this Court to suspend the briefing schedule in this case pending this Court's resolution of the Government's September 2, 2004 motion. Once that motion is acted upon, the Government requests that its brief be due 21 days thereafter under the procedures approved by this Court.

CONCLUSION

For the reasons stated above, this Court should grant the Government's motion to suspend the briefing schedule pending this Court's action on the Government's September 2, 2004 motion to file an opposing brief and materials under seal, *in camera* and *ex parte*.

Respectfully submitted,

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September 8, 2004

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2004, I filed and served the foregoing MOTION TO SUSPEND THE BRIEFING SCHEDULE PENDING THIS COURT'S ACTION ON THE GOVERNMENT'S MOTION TO FILE MATERIALS AND OPPOSING BRIEF UNDER SEAL, FOR *IN CAMERA* AND *EX PARTE* REVIEW by causing the original and four copies to be sent to this Court via Federal Express and by causing one copy to be served upon the following counsel by Federal Express:

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