



June 2, 2004

By Hand

Hon. Victor Marrero
United States District Judge
United States Courthouse
40 Centre Street, Room 414
New York, NY 10007

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Re: *ACLU et ano. v. Ashcroft*, 04-CV-2614 (VM)

SEALED

Dear Judge Marrero:

Plaintiffs respectfully submit this letter in response to the government's letter in support of disputed redactions in plaintiffs' summary judgment pleadings.

Most of the disputed redactions involve the question of [REDACTED]. The government takes the position that [REDACTED].

Plaintiffs believe that the Court has already resolved this issue in their favor. On May 17, 2004, this Court has ruled that the following statement could be made public: "Plaintiffs originally filed the case under seal because their Complaint [redacted] might be construed to fall within the scope of 18 U.S.C. §2709(c). . . ." In plaintiffs' view, the vast majority of the contested redactions involve precisely the same issue the Court sought to resolve on May 17. [REDACTED]

In addition, even the most cursory review of the publicly available documents in this case demonstrates that a significant amount of information has been withheld from the public. The public is entitled to know the reason

why this information has remained under seal. [REDACTED]

[REDACTED] The public should be allowed to know how the uncertainty about the reach of Section 2709 has not only influenced this litigation but also restricted the public's right of access to information about this case.

Finally, the public is already aware that plaintiffs are continuously litigating the question of what information must remain under seal. Accordingly, there is no reason to redact words that simply confirm the obvious: the government has been demanding that certain information be redacted, and the plaintiffs are resisting those efforts.

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The disputed redactions falling into this category appear at:

Plaintiffs' Memorandum of Law ("Memorandum"):

Page 2, ¶ 1, lines 2-3

Page 2, ¶ 1, lines 5-6

Page 5, ¶ 3, line 2

Page 9, ¶ 2, lines 1-3

Page 14, ¶ 3, lines 2-3

Page 17, ¶ 2, lines 1-2

Page 20, ¶ 3, lines 1-4

Page 21, ¶ 1, lines 4-5

Page 22, ¶ 1, line 3

Page 22, ¶ 2, lines 1-4

Bceson Declaration:

Page 1, ¶ 3

Page 3, ¶ 16, lines 1-2

Other redactions proposed by the government raise slightly different issues, which warrant separate analysis.

First, the government insinuates that some redactions are appropriate because plaintiffs' arguments are, in its view, "inaccurate." These assertions are wholly irrelevant to the question of whether the gag provision requires redaction; defendants can dispute plaintiffs' allegations in their opposition papers. [REDACTED]

[REDACTED]

The disputed redactions falling into this category appear at:

- Memorandum Page 14, ¶ 3, lines 2-3
- Memorandum Page 20, ¶ 3, lines 2-4
- Memorandum Page 22, ¶ 2, lines 1-4
- Beeson Declaration, Page 1, ¶ 3

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Second, the government seeks to redact the words "how the government is using" from paragraph 30 of [REDACTED] declaration, where he states, "the public should be able to monitor how the government is issuing these new powers so that it can police against possible abuses." The government also seeks to redact these words in plaintiffs' memorandum of law, where [REDACTED] statement is recounted. These redactions, however, are wholly unnecessary.

[REDACTED]

The disputed redactions falling into this category appear at:

- Memorandum Page 18, ¶ 1, lines 1-3
- [REDACTED] Declaration Page 7, ¶ 30

[REDACTED]

The disputed redaction falling into this category appears at:

- Romero Declaration Page 9, ¶ 25

Finally, the government objects to the phrase "general categories of information," if used in connection with other disputed redactions [REDACTED]

[REDACTED] plaintiffs believe that it should be unredacted consistent with the Court's prior order.

The disputed redactions falling into this category appear at:

- Memorandum Page 2, ¶ 1, line 5
- Memorandum Page 9, ¶ 2, lines 2-3
- Memorandum Page 17, ¶ 3, line 3
- Memorandum Page 21, ¶ 2, line 6
- Romero Declaration Page 6, ¶ 18
- Romero Declaration Page 8, ¶ 21
- Beeson Declaration Page 4, ¶ 21

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Plaintiffs respectfully ask the Court to rule that the redactions proposed by the government are not necessary, and that the information contained therein can be disclosed on the public docket.

Respectfully,



Ann Beeson

cc: Meredith Kotler
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