

JOHN DOE; AMERICAN CIVIL LIBERTIES
UNION; AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,

Plaintiffs-Appellees,

v.

ALBERTO GONZALES, in his official
capacity as Attorney General of the United
States; ROBERT MUELLER, in his official
capacity as Director of the Federal Bureau of
Investigation; JOHN ROE, Federal Bureau
of Investigation, in his official capacity,

Defendants-Appellants.

**PLAINTIFFS-APPELLEES'
MEMORANDUM IN SUPPORT
OF EMERGENCY MOTION TO
VACATE STAY PENDING
APPEAL**

No. 05-4896

(No. 3:05cv1256 JCH)
(D.Conn.)

SEALED

**PLAINTIFFS-APPELLEES' MEMORANDUM IN SUPPORT OF
EMERGENCY MOTION TO VACATE STAY PENDING APPEAL**

Plaintiffs-appellees (hereinafter "plaintiffs") respectfully move to vacate a stay entered by this Court on September 20, 2005, pending the appeal of a district court decision that preliminary enjoined defendants-appellants (hereinafter "defendants") from enforcing a gag provision against plaintiffs under 18 U.S.C. § 2709(c). *See* App. A (*Doe v. Gonzales*, No. 05-4896 (2d Cir.), Order dated Sept. 20, 2005); *Doe v. Gonzales*, No. 05-1256 (D. Conn.), Public Ruling (hereinafter "Op.") (attached as App. A to Plaintiffs' Memorandum in Opposition to Appellants' Emergency Motion for a Stay Pending Expedited Appeal, filed Sept. 19, 2005); *Doe v. Gonzales*, No. 05-1256 (D. Conn.), Sealed Portion of Ruling (hereinafter "Sealed Op.") (attached as App. B to Plaintiffs' Memorandum in Opposition to Appellants' Emergency Motion for a Stay Pending Expedited Appeal, filed Sept. 19, 2005). Because the information that the stay was

Appendix C

September 21, 2005

Librarians Must Stay Silent in Patriot Act Suit, Court Says

By **ALISON LEIGH COWAN**

The librarians who challenged the nation's antiterrorism act must continue to keep quiet about their role in the case while a federal appeals court reviews the order of confidentiality that bars them from speaking out, the court ruled yesterday.

A three-judge panel of the United States Court of Appeals for the Second Circuit in Manhattan handed the federal government a partial victory yesterday in agreeing to a temporary stay of a lower court ruling that would have allowed the plaintiffs, as of today, to discuss the case. Government lawyers had argued that they needed the stay to give them time to appeal the lower court decision.

At least two members of the appellate panel echoed those arguments. "Absent a stay, this appeal is moot," Judge Sonia Sotomayor commented during the questioning.

In the case involved in the dispute, the F.B.I. sent a library consortium in Connecticut a demand, known as a national security letter, that it turn over patron information and not disclose the request publicly.

Lawyers for the American Civil Liberties Union have argued that the consortium's constitutional right to free speech was violated because the confidentiality order prevented it from participating in the debate over the USA Patriot Act while Congress was considering whether to reauthorize the law.

Emerging from the courthouse yesterday, Ann Beeson, the lead lawyer for the civil liberties group, called the appeals court ruling "extremely frustrating." She said it was unfair that "the government can say all they want about the Patriot Act," but not people like the plaintiffs who have firsthand knowledge of its reach. She said she took some comfort from the appellate court's promise to expedite the appeal.

The case landed in Federal District Court in Bridgeport this summer, with government lawyers citing national security as the grounds for sealing large parts of the record.

On Sept. 9, Judge Janet C. Hall ruled in Bridgeport that the nondisclosure provision in the national security letter violated the plaintiffs' First Amendment rights. She said she would allow the plaintiffs to identify themselves, but gave the government until yesterday to appeal.

Though the plaintiffs' organization has not been named in the various proceedings, a close reading of the court record suggests that it is Library Connection in Windsor, Conn.

A search of a court-operated Web site offered a pointer to the plaintiffs' identity. There, a case numbered 3:2005cv01256 is listed under the caption, "Library Connection Inc. v. Attorney General."