

U.S. Department of Justice

United States Attorney
Southern District of New York



66 Chambers Street
New York, New York 10007

April 26, 2004

BY HAND

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

The government originally gagged the ACLU from disclosing the text that appears below in white on black background, arguing that its disclosure would pose a threat to national security. After the ACLU objected, the Court lifted the gag order on that text. The ACLU remains gagged from disclosing the blacked out text below.

Re: ACLU et al. v. Ashcroft
04 Civ. 2614 (VM)

COMPLAINT FILED UNDER SEAL

LETTER TO BE FILED UNDER SEAL

Dear Judge Marrero:

On behalf of the parties, the Government respectfully submits this letter in connection with the above-captioned action filed under seal, and pursuant to the Court's directive at the initial pre-trial conference held on April 23, 2004.

As stated by the Government at the conference, the Government believes that the filing of the complaint in this action raises [redacted] concerns. In an effort to allow the public to know that 18 U.S.C. § 2709 is being challenged, [redacted] however, the Federal Bureau of Investigation (FBI) has reevaluated its position as to what information can be disclosed [redacted]

Accordingly, the Government has withdrawn its objection to the public filing of the enclosed redacted complaint, which discloses solely a facial challenge to the constitutionality of 18 U.S.C. § 2709 by plaintiff American Civil Liberties Union ("ACLU"). The redacted complaint does not disclose [redacted]

The Government has also withdrawn its objection to the public filing of the enclosed redacted motion to file the complaint under seal. Again, the redacted motion does not

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disclose [REDACTED]

The Government does not believe that disclosure by the ACLU of its allegations in the enclosed redacted complaint and motion would constitute a violation of 18 U.S.C. § 2709(c). Defendants have agreed that neither they nor their agents will seek to impose any legal sanction or penalty on the ACLU (or its attorneys) for filing publicly the enclosed redacted complaint and motion to file the complaint under seal, or for otherwise disclosing in any form the allegations in these two redacted documents.

The parties will continue to file papers under seal in this action, but will attempt to negotiate a procedure for the public filing of redacted papers that disclose solely a facial challenge to the constitutionality of 18 U.S.C. § 2709 by plaintiff ACLU.

The parties respectfully propose the following briefing schedule for their respective motions concerning the complaint: plaintiffs' summary judgment motion to be filed by May 17, 2004; the Government's opposition to plaintiffs' motion and its cross-motion to dismiss the complaint or for summary judgment to be filed on June 7, 2004; plaintiffs' reply papers in support of their motion and opposition to the Government's cross-motion to be filed on June 28, 2004; and the Government's reply papers in support of its motion to be filed on July 19, 2004.

Thank you for your consideration of this submission.

Respectfully,

DAVID N. KELLEY
United States Attorney

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cc: Jameel Jaffer, Esq.