



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

May 27, 2004

BY HAND

LETTER TO BE FILED UNDER SEAL

Honorable Victor Marrero  
United States District Judge  
United States Courthouse  
40 Centre Street, Room 314  
New York, New York 10007

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

Dear Judge Marrero:

The Government respectfully submits this letter in connection with the above-captioned action. On Wednesday, May 19, 2004, the Government provided Plaintiffs with a redacted version of papers in support of Plaintiffs' motion for summary judgment that could be filed on the public docket, pursuant to the Court's May 12, 2004 Order. On Friday, May 21, 2004, Plaintiffs advised the Government of redactions in the briefing papers that they dispute. The Government now writes in support of the disputed redactions sought. For the Court's convenience, the Government encloses those pages of Plaintiffs' papers that include disputed redactions, with disputed redactions marked in pink highlighter and undisputed redactions marked in green highlighter. Also for the Court's convenience, the Government encloses a complete copy of Plaintiffs' redacted papers, as made publicly available last week.

As an initial matter, the Government notes that this letter intentionally provides only brief discussion and argument, in order to avoid what we fear will be an endlessly perpetuating cycle of disputes over redactions -- including disputed redactions in letters addressing other disputed redactions. The Government stands ready to provide the Court with any further argument or information that the Court believes is necessary to decide the issues raised by these particular disputed redactions.

The Government also notes that the redactions sought comprise only a small portion of Plaintiffs' brief and supporting papers. The redacted papers that are publicly available make clear the scope of and bases for Plaintiffs' facial challenge to 18 U.S.C. § 2709.

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Disputed Redactions in Plaintiffs' Memorandum of Law

Page 2, ¶ 1, Lines 2-3 -- [REDACTED]

[REDACTED]

Page 2, ¶ 1, Lines 5-6 -- [REDACTED]

[REDACTED]

[REDACTED] If the disputed words in lines 2-3 of this paragraph remain redacted, the Government would not oppose removing the disputed redaction highlighted in pink from these two phrases in lines 5-6.

Page 5, ¶ 3 (second full paragraph), Line 2 -- Redaction is sought for the reasons set forth above with respect to the wording on page 2, ¶ 1, lines 2-3.

Page 9, ¶ 2 (first full paragraph), Lines 1-3 -- Redaction is sought for the reasons set forth above with respect to the wording on page 2, ¶ 1, lines 2-3. If the first full sentence and first clause of the second sentence (the first five words) remain redacted, the Government would not oppose removing the redaction of the remaining eleven words highlighted in pink in the second sentence.

Page 14, ¶ 3 (second full paragraph), Lines 2-3 -- As an initial matter, the sentence is inaccurate. [REDACTED]

[REDACTED]

In any event, redaction is sought for the reasons set forth above with respect to the wording on page 2, ¶ 1, lines 2-3.

[REDACTED]

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The Government recognizes that the Court previously ruled that the following statement in Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Unseal Case and to File the Attached Redacted Documents on the Public Docket could be made publicly available: "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) . . ."

[REDACTED]

[REDACTED]

[REDACTED]

Page 17, § 2 (first full paragraph), Lines 1-2, 3 - Redaction is sought for the reasons set forth above with respect to the wording on page 2, § 1, lines 2-3.

[REDACTED]

Page 18, § 1, Lines 1-4 --

if the words "how the government is using" are redacted, the Government would not oppose removing the remainder of the pink highlighted redaction.

Page 20, § 3, Lines 1-4 -- Redaction is sought for the reasons set forth above with respect to the wording on page 2, § 1, lines 2-3.

[REDACTED] We also note that Plaintiffs' assertion is inaccurate.

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[REDACTED]

Page 21, ¶ 1, Lines 4-5 -- Redaction is sought for the reasons set forth above with respect to the wording on page 2, ¶ 1, lines 2-3.

[REDACTED]

Page 21, ¶ 2 (first full paragraph), Line 6 -- The Government does not oppose removal of this redaction.

Page 22, ¶ 1, Line 3 and ¶ 2 Lines 1-4 -- Redaction is sought for the reasons set forth above with respect to the wording on page 2, ¶ 1, lines 2-3.

[REDACTED]

Disputed Redactions in the [REDACTED] Declaration

Page 7, ¶ 30 -- [REDACTED]

[REDACTED] If the words "how the government is using" are redacted, the Government would not oppose removing the remainder of the pink highlighted redaction.

Disputed Redactions in the Romero Declaration

Page 6, ¶ 18 -- The Government does not oppose removal of this redaction.

Page 8, ¶ 21 -- The Government does not oppose removal of this redaction.

Page 9, ¶ 25 -- [REDACTED]

[REDACTED]

Disputed Redactions in the Beeson Declaration

Page 1, ¶ 3 -- Redaction is sought for the reasons set forth above with respect to the wording on page 2, ¶ 1, lines 2-3 of Plaintiffs' brief.

[REDACTED]

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[REDACTED] In addition,  
the statement is inaccurate.  
[REDACTED]

Page 3, ¶ 13 -- The Government does not oppose removal of this redaction, in light of the fact that the remainder of the paragraph is redacted.

Page 3, ¶ 16 -- Redaction is sought for the reasons set forth above with respect to the wording on page 2, ¶ 1, lines 2-3 of Plaintiffs' brief.  
[REDACTED]

Page 4, ¶ 21 -- The Government does not oppose removal of this redaction, in light of the fact that the remainder of the paragraph will be redacted.

Finally, we note that the Beeson Declaration includes as exhibits several pieces of prior correspondence to the Court in this case. The Government provided Plaintiffs with redactions of these exhibits on Wednesday, May 19, 2004, within the two-day period provided by the Court's May 12, 2004 Order. On Thursday, May 20, 2004, however, the parties agreed upon the redactions that would remain in the underlying correspondence, and sent redacted versions to the Court for public filing. The exhibits attached to the Beeson Declaration will be replaced with the redacted versions that were agreed upon by the parties on May 20, 2004.

We thank the Court for its consideration of this submission.

Respectfully,

DAVID N. KELLEY  
United States Attorney

By: Meredith E. Kotler  
MEREDITH E. KOTLER  
Assistant United States Attorney  
Telephone: (212) 637-2724

cc: Ann Beeson, Esq.