

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 06-3140-cv _____
Caption [use short title] _____

Motion For: Recall the Mandate _____

Set forth below precise, complete statement of relief sought: AMERICAN CIVIL LIBERTIES UNION V. DEPT. OF DEFENSE

Recall the mandate pending filing and disposition for certiorari and proposed legislation.

MOVING PARTY: Department of Defense
and Department of the Army

OPPOSING PARTY: American Civil Liberties Union, et al.

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: LEV L. DASSIN _____

OPPOSING ATTORNEY: Lawrence S. Lustberg, Esq. _____

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Court-Judge/Agency appealed from: Southern District of New York, Hon. Alvin K. Hellerstein

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought? Yes No

B. been obtained? Yes No

Is oral argument requested? Yes No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No

If yes, enter date: Not applicable.

Signature of Moving Attorney: _____ Date: _____

Heather K. McShain
Heather K. McShain, AUSA 5/28/09

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS
AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No

Has this relief been previously sought in this Court? Yes No

Requested return date and explanation of emergency:

Not applicable

Has service been effected? Yes No
[Attach proof of service]

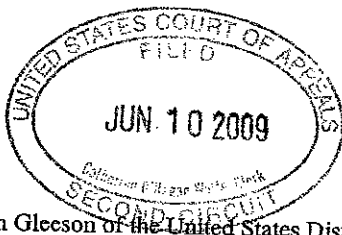
ORDER

Before: Hon. Joseph M. McLaughlin, Hon. Peter W. Hall, Circuit Judges, Hon. John Gleeson, District Judge*

Upon consideration of the motion filed on behalf of the Defendant-Appellants Department of Defense, et al., seeking to have this Court recall the mandate that issued on April 27, 2009, and upon consideration of the opposition thereto filed by the Plaintiff-Appellees ACLU, et al., it is hereby ORDERED that the mandate is recalled and shall hereafter be stayed pending disposition of the Petition for Certiorari to be filed on behalf of the Defendant-Appellants. An opinion will follow.

JUN 10 2009

Date



FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

by *Joy Fallek*
Joy Fallek, Administrative Attorney

* The Honorable John Gleeson of the United States District Court for the Eastern District of New York, sitting by designation.