

[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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MAJID KHAN and RABIA KHAN,	)	
as Next Friend,	)	
	)	
	)	
Petitioners,	)	
v.	)	No. 07-1324
	)	
ROBERT M. GATES,	)	
Secretary of Defense,	)	
Respondent.	)	

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**OPPOSITION TO MOTION TO FILE MOTION IN EXCESS OF PAGE  
LIMIT AND  
CROSS-MOTION TO HOLD MOTION IN ABEYANCE**

The respondent, Secretary of Defense Robert M. Gates, respectfully opposes petitioners' request to file a motion in excess of the page limits. Respondent also requests that this Court hold petitioners' motion in abeyance until it has resolved the motion filed by various news organizations that seeks the exact same relief sought by petitioners' motion. Finally, if this Court declines to hold petitioners' motion in abeyance, and given the length of petitioners' motion - which is nearly two times the length allowable under this Court's rules - the respondent seeks twenty-one days in which to prepare a response from the date the Court files petitioners' motion.

1. Petitioners' over-length motion, if filed, should be held in abeyance pending resolution of the motion filed by various news organizations to unseal the exact same

material that petitioners seek to unseal in their motion. In the over-length motion, petitioners seek to unseal material petitioners submitted to this Court in two motions filed in this Court in November and December 2007, and which this Court has sealed pursuant to a protective order entered in this matter. Petitioners' legal arguments are largely identical to those presented by the news organizations<sup>1</sup> and the relief sought by petitioners - unsealing of material filed by petitioners in the two motions - is *exactly identical* to the relief sought by various news organizations. *See* Mot. of the N.Y. Times at 2 (moving to "unseal the withheld portions of the motions and declarations filed by Khan"). That motion by the news organizations was filed over two months ago, has been fully briefed, and is awaiting disposition by this Court.

Because petitioners seek the same relief already sought in motions pending before this Court, addressing petitioners' motion now will waste the resources of the parties and the Court. Rather, this Court's resolution of the motion filed by the news organizations may address legal issues presented by petitioners that are identical to the issues presented by the news organizations; and it may grant some or all of the relief sought by petitioners, which is the same relief being sought by the news organizations. Thus, to the extent petitioners raise legal issues that duplicate the

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<sup>1</sup> Petitioners primarily argue, as the news organizations already argued, that the material was not properly classified. *See* News Organizations' Motion at 14-15. Petitioners' only unique legal argument is based on the First Amendment.

issues raised by the news organizations, further briefing on those issues is unnecessary. And because the relief sought in each motion is identical, this Court's resolution of the news organizations' motion may render petitioners' motion moot.

Further, petitioners were entitled to file a response to the news organizations' motion. Fed. R. App. P. 27(a)(3)(A) ("[a]ny party may file a response to a motion"). But petitioners took no part in that briefing. Thus, the relief now being sought by petitioners has already been the subject of full pleadings on a motion filed in this very case, yet petitioners failed to present any legal arguments at that time. Because petitioners did not seek to participate at that time in the motions briefing, they should not be heard now requesting the same relief until the news organizations' motion is resolved by this Court.

2. Petitioners' motion to file an overlength motion should in any event be denied. As we have explained, there has already been a full set of pleadings filed on a motion to seek the identical relief now sought by petitioners. Accordingly, petitioners had ample opportunity to present their position at the time that motion was briefed but declined to do so, and the legal issues presented by the news organizations have been fully aired before this Court. An over-length motion addressing the same relief sought by the prior pleading is not now warranted.

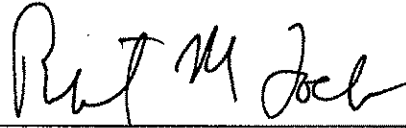
3. Given that petitioners' lodged pleading is nearly two times the page limit mandated by this Court's rules, if this Court accepts petitioners' over-length motion

for filing and does not hold it in abeyance, the government should be given twenty-one days in which to file a response from the date the Court files petitioners' motion.

Respectfully submitted,


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## CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2008, I served the foregoing "OPPOSITION TO MOTION TO FILE MOTION IN EXCESS OF PAGE LIMIT AND CROSS-MOTION TO HOLD MOTION IN ABEYANCE" upon counsel of record by e-mail and by causing copies to be sent by regular mail to:

J. Wells Dixon  
Gitanjali S. Gutierrez  
Center for Constitutional Rights  
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New York, NY 10012



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August E. Flentje