

CASE NOS.: 06-17132, 06-17137

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL, AND ERIK KNUTZEN, ON
BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS-APPELLEES,

V.

AT&T CORP.,

DEFENDANT-APPELLANT, AND

THE UNITED STATES,

INTERVENOR AND APPELLANT.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
THE HONORABLE VAUGHN R. WALKER, CHIEF DISTRICT JUDGE
CIVIL No. C-06-0672-VRW

MOTION OF PLAINTIFFS-APPELLEES TO EXPEDITE HEARING DATE

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Pursuant to Ninth Circuit Rules 27-12 and 34-3, Plaintiffs-Appellees hereby move the Court for an Order expediting oral argument on this appeal.

Good cause exists for this Court to hear oral argument on an expedited schedule under 28 U.S.C. § 1657. *See* Ninth Circuit Rules 27-12, 34-3. Under section 1657, “‘good cause’ is shown if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657(a).

Such is the case here. This case involves vital statutory and constitutional issues concerning the rights of hundreds of thousands if not millions of Americans. Plaintiffs-Appellees allege that AT&T Corp. and AT&T Inc. (collectively “AT&T”) continue to engage in a massive program of dragnet surveillance of electronic mail and telephone communications of its customers, in violation of multiple federal statutes governing electronic surveillance. Those statutes include the Federal Intelligence Surveillance Act, 50 U.S.C. § 1809, the Electronic Communications Privacy Act of 1986, 18 U.S.C. § 2511, and the Communications Act of 1934, 47 U.S.C. § 605. Appellees further allege the violation of the First and Fourth Amendments to the United States Constitution based on AT&T’s dragnet program of interception and surveillance. Finally, Appellees contend AT&T has violated California law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*).

On this appeal, the Government and AT&T ask this Court to determine whether the Executive may invoke the state secrets privilege to have this case dismissed at its very inception, prior to any discovery or any hearing on the merits, let alone trial. Indeed, pending the outcome of this appeal, the District Court has sharply limited the pending action. Dkt. No. 346. For example, the District Court has declined to consider Plaintiffs' motion for preliminary injunction given the pendency of this appeal. Appellees submit that this case therefore warrants priority above traditional civil appeals.

The United States, as Intervenor, supports expedited treatment of this appeal: it has separately asked this Court for similar expedited treatment of the case. *See* Government's Petition for Interlocutory Appeal at 3 ("If this petition is granted, we suggest that this case be expedited for briefing and argument.") On April 19, the Government reiterated its request to expedite the oral argument on this appeal, and to avoid the further delay of this action that would result if it were consolidated with *Al Haramain Islamic Foundation, Inc. v. Bush*, Case No. 06-36083. (Plaintiffs here likewise oppose consolidation with *Al Haramain*, and the further delay that consolidation would cause.)

Given these facts, and the ongoing nature of the violations alleged, the issues raised on this appeal are of the utmost concern to those harmed by AT&T's

conduct, and also to the Government. Appellees therefore respectfully request that this Court expedite oral argument in this case.

DATED: April 23, 2007

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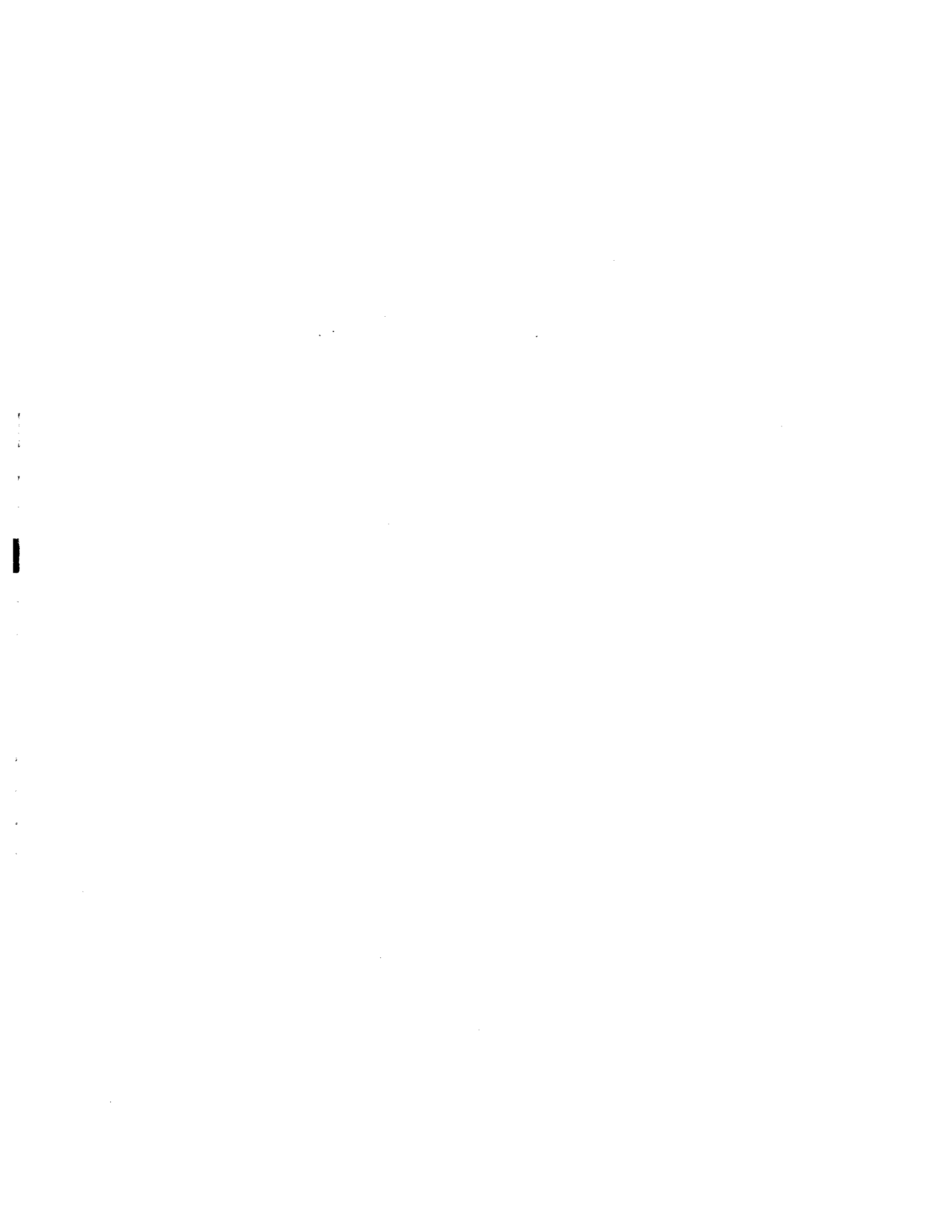
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CERTIFICATE OF SERVICE

I, Victor M. Gonzales, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 333 Bush Street, San Francisco, California 94104-2878.

On April 23, 2007, I served the following document(s):

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Victor M. Gonzales

