UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TEXAS EQUUSEARCH MOUNTED SEARCH AND RECOVERY TEAM, RPSEARCH SERVICES INC., and EUGENE ROBINSON, Petitioners v. FEDERAL AVIATION ADMINISTRATION, Respondent.	Case No. 14-1061

PETITIONERS' EMERGENCY MOTION FOR A STAY PENDING REVIEW OR IN THE ALTERNATIVE TO EXPEDITE REVIEW

Brendan M. Schulman
Selina M. Ellis
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100
bschulman@kramerlevin.com
sellis@kramerlevin.com

Dated: May 21, 2014

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

Petitioners respectfully move this Court, pursuant to Federal Rule of Appellate Procedure 18 and 49 U.S.C. § 46110(c), for a stay of an agency order pending review or, in the alternative, to expedite review.

INTRODUCTION

This motion presents the Court of Appeals with a situation where granting a stay could mean the difference between life and death for a missing child. Respondent Federal Aviation Administration ("FAA") has deemed it "illegal" for Petitioner Texas EquuSearch Mounted Search and Recovery Team ("Texas EquuSearch"), a non-profit organization, to use camera-equipped radio-control model aircraft to assist in its volunteer searches for missing people. The agency has ordered that Petitioners' use of this tool "stop immediately." The FAA has issued this directive in the absence of any law or regulation that actually makes such use illegal, and despite the benefits of this model aircraft use to families, communities, taxpayers, and to the criminal justice system.

Every single factor that this Court considers when deciding a stay application weighs overwhelmingly in favor of issuing one here, including a high likelihood of success on the merits. A stay of the order should be granted so as to avoid irreparable harm to Petitioners as well as to the families whose loved ones' lives are at stake.

STATEMENT OF FACTS

Texas EquuSearch

Petitioner Texas EquuSearch is one of the best-known volunteer, non-profit search-and-rescue organizations in the world. Miller Aff. ¶ 2.[1] It was founded by Tim Miller, whose daughter Laura was tragically abducted and murdered in 1984. Mr. Miller has since devoted his life to assisting families whose loved ones have gone missing, by organizing volunteers to search relevant land areas and bodies of water. *Id*.

Since its founding, Texas EquuSearch has been involved in over 1,400 searches in 42 states and eight foreign countries, and has found over 300 missing people alive. *Id*. at ¶ 3. In less fortunate cases, searches have found remains, helping families to end the agony of not having answers, permitting closure, and enabling the human dignity of a funeral. When a disappearance is the result of a crime, early discovery of remains benefits the justice system by preventing the deterioration of forensic evidence. *Id.*

Texas EquuSearch has conducted searches at the request of the families in the widely-publicized disappearances of Stacey Petersen (Illinois), Caylee Anthony (Florida), Natalee Holloway (Aruba), and Lauren Spierer (Indiana), among many

[1] The facts set out in this motion are supported by the accompanying affidavits of Tim Miller ("Miller Aff.") and Eugene Robinson ("Robinson Aff.") as well as documents annexed directly to this motion ("Exh.").

others. *Id*. at ¶ 4. No family is ever charged a fee for these searches or asked to reimburse the organization's costs, which are funded by donations. *Id*.

The work of Texas EquuSearch is of unquestionable merit and value to the nation. Tim Miller is the recipient of the "Point of Light" Award by former President George W. Bush, the Jefferson award from the City of Houston, the National Daughters of the American Revolution Community Service Award, and countless others. *Id*. at ¶ 5.

The Use of Model Aircraft

A lightweight radio-controlled model aircraft, equipped with a small digital camera, is the single most powerful tool Texas EquuSearch can use in the crucial early hours of its search efforts. Miller Aff. ¶ 6. Flown at very low altitudes by trained volunteers, and in the same manner as a hobbyist's model, the model aircraft provides aerial photographs of a square mile in less than 10 minutes. The images enable searchers to quickly focus on areas of interest, such as fresh tire tracks that are not readily visible on foot, to skip clear areas, to avoid hazards, and to identify items such as a shoe or colored clothing that offer important clues. *Id*.

Petitioners have been using model aircraft successfully in searches since 2006. *Id*. at ¶ 7. Indeed, to date, photographs taken by the Texas EquuSearch model aircraft have directly revealed the location of remains of eleven deceased missing people. *Id*. The model aircraft is so effective that it replaces the work of

an estimated 100 volunteers on the ground. *Id*. In some cases, a model aircraft is the only way to obtain aerial imagery because of terrain or other hazards to manned aircraft (which are often not available). Robinson Aff. ¶ 5.

This technology has saved lives. The same camera-equipped Spectra model aircraft used by Texas EquuSearch was used by a volunteer in a foreign country to locate and rescue abducted children who were to be sold into sex slavery and eventually murdered, if not for the use of the model aircraft. *Id.* at ¶ 8.

The model aircraft used by the Texas EquuSearch Team resembles, in construction and operation, a hobbyist's radio-control model aircraft. *Id.* at ¶ 3. It is made of foam and plastic, uses a battery-powered motor, and weighs under five pounds. *Id*. Its use is guided by stringent safety parameters, contained in co-Petitioner RPSearch Services Inc.'s Field Operations Procedures. *Id*. at ¶ 7.

The Agency Order and Its Impact

Notwithstanding the utter absence of any applicable regulation, the FAA on February 21, 2014, ordered Texas EquuSearch and its volunteer (co-Petitioner Eugene Robinson) to cease using model aircraft technology, declaring its use for search and rescue purposes "an illegal operation" that must "stop immediately." Exh. A (the "Order"). This written order follows a history of oral telephone communications by the FAA, in which the agency has harassed and interfered with members of Texas EquuSearch's volunteer team before, during, and after search

and rescue activities. Miller Aff. ¶ 8; Exh. B at 4-5. As a result of the FAA's Order, since February 21, Petitioners have ceased all use of model aircraft in search and rescue activities, notwithstanding constant demand. Miller Aff. ¶ 9; Robinson Aff. ¶ 9. Approximately eighty percent of requests to the organization are situations in which a model aircraft would be of enormous benefit. Miller Aff. ¶ 9.

As just one example of an emergency situation, Khai Nguyen, a mentally challenged individual who has diabetes and is unable to communicate effectively, walked away from a Katy, Texas assisted housing facility on April 29. Miller Aff. ¶ 11. Texas EquuSearch organized 14 volunteer searchers who spent a day searching a large area consisting of fields, open areas, water features and building structures. Mr. Nguyen was eventually located, in critical condition, by a random passer-by in the area. The model aircraft would have been very effective at searching this area and would likely have located Mr. Nguyen in a shorter amount of time. But for the passer-by who happened upon him by chance, he might have died even as Texas EquuSearch was searching the area. Other examples are provided in Mr. Miller's Affidavit, ¶¶ 10-15.

No Available Agency Remedy; Agency Stay Denied

On March 17, 2014, hoping for the quickest possible resolution, counsel for Petitioners wrote to the Chief Counsel of the FAA requesting that the Order be overturned or rescinded, and also requesting a legal interpretation confirming that

model aircraft use for volunteer search and rescue purposes is not currently prohibited by any federal aviation regulation. Exh. B. The agency did not respond, forcing Petitioners to file a Petition for Review prior to the expiration of the 60-day statutory period in 49 U.S.C. § 46110. On April 18, counsel again wrote to the FAA's Chief Counsel, moving for an agency stay of the Order pursuant to Federal Rule of Appellate Procedure 18 and requesting cooperation on expedited briefing. Exh. C. On May 2, 2014, Acting Chief Counsel Jerome Mellody rejected the motion for a stay, instead confirming the agency's position that the Order "does accurately reflect the FAA's authority to regulate 'model aircraft.'" Exh. D.

Mr. Mellody also foreclosed the possibility of further agency review by asserting that the FAA does not consider the Order to have been issued pursuant to its internal delegation protocols and 14 C.F.R. § 13.20, thus leaving the United States Court of Appeals as the only avenue for relief. *Id*. Mr. Mellody also refused to confer on an expedited briefing schedule, and provided no response at all to Petitioners' request for a legal interpretation. *Id*. We provided the FAA's counsel of record with notice of Petitioners' intent to file this motion, on May 20, 2014, by telephone and email.

ARGUMENT

I. THE FAA'S ORDER SHOULD BE STAYED

This Court has jurisdiction pursuant to Section 46110 of the Federal Aviation Act because Petitioners have a "substantial interest" in an order issued by the FAA. 49 U.S.C. § 46110(a); *see also CSI Aviation Servs., Inc. v. U.S. Dep't of Transp.*, 637 F.3d 408, 411 (D.C. Cir. 2011). This Court is authorized to "grant interim relief by staying [the agency's] order." 49 U.S.C. § 46110(c). That equitable remedy is warranted when "(1) the party seeking the injunction has a substantial likelihood of success on the merits; (2) the party seeking the injunction will be irreparably injured if relief is withheld; (3) an injunction will not substantially harm other parties; and (4) an injunction would further the public interest." *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 670 (D.C. Cir. 2005); *accord Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Each of these four factors is met here.

A. Petitioners Are Very Likely to Succeed on the Merits

To satisfy the first factor in the analysis of a stay pending appeal, "it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of the hardships lean decidedly toward plaintiff) "it will ordinarily be enough that the plaintiff has raised substantial questions going to the merits so serious, substantial,

difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." *Citizens for Responsibility & Ethics in Wash. v. Cheney*, 577 F. Supp. 2d 328, 335 (D.D.C. 2008) (quoting *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977)). Petitioners can demonstrate not only "substantial questions going to the merits," but also a very high likelihood of success.

For the past 100 years, citizens have always been free to fly model airplanes without obtaining a pilot's certificate, without obtaining airworthiness certification of their models, and without complying with any of the federal aviation regulations that were promulgated to govern manned passenger aircraft operations. The FAA has never issued a regulation concerning model aircraft. On the contrary, over the past three decades it has repeatedly confirmed that these devices are not subject to federal aviation regulations.

On June 9, 1981 the FAA released Advisory Circular 91-57 ("AC 91-57") which provided "voluntary" guidance on "Model Aircraft Operating Standards," such as a request that model aircraft operators fly their devices below 400 feet.[2] Exh. I at Attachment 3. AC 91-57 makes no distinction between model aircraft flown for hobby purposes and model aircraft flown for any other purpose. There is

[2] Texas EquuSearch's operations comply in all respects with this voluntary guidance. Robinson Aff. ¶ 7.

no indication that any specific authorization is required to operate a model aircraft. Nor does it suggest that any regulations, such as those relating to pilot certification, airworthiness, or air traffic clearance, apply to model aircraft. These guidelines are expressly "voluntary," confirming that no aviation regulations apply.

In the decades that followed, the FAA expressed no interest in model aircraft operations, neither applying any regulations to their use, nor becoming involved in the mishaps. Incidents involving injuries or property damage have historically been resolved as state tort claims without FAA involvement. *See, e.g.*, *Rowe v. Striker*, No. 07CA009296, 2008 WL4901702, at *3 (Ohio Ct. App. Nov. 17, 2008) (applying state negligence principles to a personal injury claim involving a model aircraft).

In August 2001, the FAA expressly reaffirmed the lack of regulations, in response to an inquiry made by a company concerning its proposed use of "radio controlled blimps and aircraft" up to twenty-two feet in length operated in Class B airspace for purposes of commercial aerial photography.[3] Exh. E. The request for a "ruling" was escalated to Michael A. Cirillo, Program Director for Air Traffic Planning and Procedures in the Washington D.C office. In November 2001, Mr.

[3] Class B airspace is defined as "that airspace from the surface to 10,000 feet MSL surrounding the nation's busiest airports in terms of IFR operations or passenger enplanements." *See* FAA Aeronautical Information Manual, Section 3-2-1, *available at* https://www.faa.gov/air_traffic/publications/atpubs/aim/aim0302.html

Cirillo responded in a memorandum addressing "radio controlled airships and aircraft [that would] operate in Class B airspace":

> The aircraft described and pictured in the attachments to your memorandum appear to be model aircraft that do not require compliance with Federal Aviation Regulations. ***Model aircraft do not require a type certificate, airworthiness certificate, or registration. Federal Aviation regulations do not apply to them.*** Specifically, 14 Code of Federal Regulations (CFR) Part 21, Certification Procedures for Products and Parts; 14 CFR Part 43, Maintenance, Preventative Maintenance, Rebuilding and Alteration; and ***14 CFR 91, General Operating and Flight Rules, do not apply to model aircraft. Model aircraft may operate in controlled airspace without air traffic control authorization***, transponders, or altitude reporting equipment.

Exh. F (emphasis added). This same guidance was reiterated to the business owner again in 2004. Exh. G.

The lack of regulation was also confirmed by the FAA's very own researchers. In September 2009, the FAA sponsored and published an "Unmanned Aircraft System Regulation Review" performed by the Center for General Aviation Research (CGAR). Final Report No. DOT/FAA/AR-09/7, *available at* www.tc.faa.gov/its/worldpac/techrpt/ar097.pdf . The report in several places refers to model aircraft as "unregulated flying devices" that were "not contemplated by the authors of [the] regulations," and that "remain [] unregulated." *Id*. at 6.

In 2007, the FAA's interests shifted, apparently in response to the overseas use of large unmanned aircraft for military purposes and growing interest in using these high-altitude devices in the United States. It issued a new policy

memorandum defining "unmanned aircraft" to include "a remotely controlled model aircraft" of any size, and stated:

> The current ***FAA policy*** for UAS operations is that ***no person may operate*** a UAS in the National Airspace System without specific authority. For UAS operating as public aircraft the authority is the COA, for UAS operating as civil aircraft the authority is special airworthiness certificates, and ***for model aircraft the authority is AC 91–57.*** The FAA recognizes that people and companies other than modelers might be flying UAS with the mistaken understanding that they are legally operating under the authority of AC 91–57. AC 91–57 only applies to modelers, and thus ***specifically excludes its use by persons or companies for business purposes.***

Exh. H (Unmanned Aircraft Operations in the National Airspace System, Docket No. FAA-2006-25714, 72 Fed. Reg. 29,6689, 29,6690 (Feb. 13, 2007) (emphasis added) (the "Notice 07-01").

The new "specific authority" requirement for model aircraft and the "business purpose" prohibition have no basis in any regulation. Because this new position is articulated only in a policy statement, not as a regulation pursuant to the 5 U.S.C. § 553 notice-and-comment rulemaking process, it is unenforceable.

It is well established that an agency policy statement issued without notice and comment rulemaking is in no way binding on the public. *See, e.g.*, *Prof'ls & Patients for Customized Care v. Shalala*, 56 F.3d 592, 595 (5th Cir. 1995) ("a statement of policy may not have a present effect: a general statement of policy is one that does not impose any rights and obligations"); *Syncor Int'l Corp.*

v. Shalala, 127 F.3d 90, 94 (D.C. Cir. 1997) ("[P]olicy statements are binding on neither the public nor the agency.") (internal citations omitted).

If, despite its label as "policy," Notice 07-01 was intended as a binding new rule concerning the operation of model aircraft, it fails for lack of the required notice and comment rulemaking required by the Administrative Procedures Act. *See Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec.*, 653 F.3d 1, 11 (D.C. Cir. 2011); *Croplife Am. v. EPA*, 329 F.3d 876, 883 (D.C. Cir. 2003).

To the extent Notice 07-01 reflects a change in an FAA statutory or regulatory interpretation, it too fails under the doctrine in *Alaska Prof'l Hunters Ass'n, Inc. v. FAA*, 177 F.3d 1030 (D.C. Cir. 1999), which established that an agency is only permitted to change an existing interpretation through notice and comment rulemaking. "Once an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and comment rulemaking." *Id*. at 1033-34 (citing *Paralyzed Veterans of Am. v. D.C. Arena, L.P.*, 117 F.3d 579, 586 (D.C. Cir. 1997)); *see also Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982, 1006 (D.C. Cir. 2013) (Edwards, J., concurring); *Transp. Workers Union of Am. v. Transp. Sec. Admin.*, 492 F.3d 471, 475 (D.C. Cir. 2007) ("[A]n agency cannot

significantly change its position, cannot flip-flop, even between two interpretive rules, without prior notice and comment.").

Thus, no matter how the FAA's policy statements are viewed, model aircraft remain free of regulation. Petitioners' likelihood of success on the merits is confirmed by a recent National Transportation Safety Board ("NTSB") decision dismissing a proposed civil penalty sought by the FAA against a model aircraft operator. In *Huerta v. Pirker*, Docket No. CP-217 (NTSB Mar. 6, 2014), the first ever attempt in United States history by the FAA to impose a penalty on a model aircraft operator, the NTSB administrative law judge dismissed the penalty. Exh. I. Judge Geraghty held that the FAA "has not issued an enforceable FAR regulatory rule governing model aircraft operation" and that Notice 07-01 distinguishing the "business" use of a model aircraft is "a Policy Notice/Statement and hence non-binding, or . . . an invalid attempt of legislative rulemaking, which fails for non-compliance with the requirement of 5 U.S.C. Section 553, Rulemaking." *Id.* at 4, 8. Although the *Pirker* decision is subject to a pending appeal by the FAA to the full NTSB Board, and is considered non-final, its firm conclusion is indicative of Petitioners' high likelihood of success on the merits here.

Even if Notice 07-01 were somehow binding on model aircraft operators, which it is not, the operations conducted by Petitioners fall outside of any restrictions articulated by the FAA. The organization does not use model

aircraft for a "business" purpose. The purpose is humanitarian: to save a life when possible, and to ease the suffering of families by bringing closure when that life can no longer be saved. The model aircraft operator is an unpaid volunteer, and the model aircraft's use is donated by non-profit Petitioner RFSearch Services. Robinson Aff. ¶ 4. Advisory Circular 91-57 does not limit the purposes to which a model aircraft may be operated by any of the Petitioners, nor does any federal regulation. The distinction that the FAA now draws between Texas EquuSearch's use, and that of a hobbyist, is entirely arbitrary and capricious, and in violation of the Administrative Procedures Act and due process principles.

Finally, Petitioners are also likely to succeed on the merits because the FAA lacks statutory authority to regulate conduct at lower altitudes in which Petitioners operate model aircraft. Congress delegated to the agency only the power to regulate conduct in "navigable airspace," defined generally in 14 C.F.R. § 91.119 as the airspace above 500 feet above ground level and within approach paths to airports. *See, e.g.*, 49 U.S.C. §§ 40101(d)(4), 40103(b)(1), 44501(a), 44718 (a)(2), (b) (each referring to the FAA's authority to regulate "navigable airspace"). An agency's regulatory authority is circumscribed by the scope specifically delegated by Congress. *See La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Petitioners operate their model aircraft outside of statutory "navigable airspace," namely at 400 feet altitude or below, away from airports.

Robinson Aff. ¶ 6. This is another way in which Petitioners' activities are not subject to FAA regulation.

Because there is no legal basis whatsoever to prohibit the operation of a model aircraft for volunteer search and rescue activities, Petitioners easily satisfy the "likelihood of success" standard for obtaining a stay.

B. The Order Causes Ongoing Irreparable Harm

The FAA's Order poses several forms of irreparable harm to Texas EquuSearch. First, the Order poses irreparable economic harm. A model aircraft replaces the work of approximately 100 volunteers, each of whom costs the organization money while on site, including travel, lodging costs, volunteer gasoline reimbursements, and in some cases food. Miller Aff. ¶ 7. Without the model aircraft, searches take longer, require more volunteers, and cost Texas EquuSearch thousands of dollars more in expenses. *Id*. Although this impact is financial, it is considered *per se* irreparable harm because Texas EquuSearch will never be able to recover these monetary damages from the FAA. *See Smoking Everywhere, Inc. v. FDA*, 680 F. Supp. 2d 62, 77 n.19 (D.D.C. 2010) (finding that economic loss is *per se* irreparable harm when caused by a government agency because damages are unrecoverable due to sovereign immunity), *aff'd sub. nom. Sottera, Inc. v. FDA*, 627 F.3d 891 (D.C. Cir. 2010); *Feinerman v. Bernardi*, 558 F. Supp. 2d 36, 51 (D.D.C. 2008) ("But where, as here, the plaintiff in

question cannot recover damages from the defendant due to the defendant's sovereign immunity . . . any loss of income suffered by a plaintiff is irreparable *per se*.").

Second, the organization also suffers reputational harm, which has an impact on its very existence. By achieving a high success rate in its search efforts, Texas EquuSearch is able to attract additional donations that enable it to conduct future searches and fulfill its organizational mission. Miller Aff. ¶ 17. Those donations are needed for the organization to exist, because it does not charge for its services. The organization is currently seriously in debt and in danger of going broke or having to severely curtail its activities. *Id*. The FAA's interference with the organization's ability to execute on its mission in the most effective manner threatens the existence of the organization. *See Patriot, Inc. v. U.S. Dep't of Hous. & Urban Dev.*, 963 F. Supp. 1, 5 (D.D.C. 1997) ("economic harm rises to the level of irreparable harm where it threatens the 'very existence of [plaintiffs'] business'" and a plaintiff may also "demonstrate[] irreparable harm in damage to their business reputation." (citing *Honeywell, Inc. v. Consumer Product Safety Comm'n*, 582 F. Supp. 1072, 1078 (D.D.C. 1984))). The allegation that Texas EquuSearch is engaged in "illegal" conduct is also damaging to its reputation as well because the organization works cooperatively with law enforcement agencies whose trust it has earned. Miller Aff. ¶ 17. Of course, the most severe irreparable harm of all is

posed to missing persons whose lives are at risk of loss, but missing persons can never be joined as parties here.

C. Neither the Agency Nor Any Third Parties Will Suffer Any Harm if the Order Is Stayed

Petitioners easily satisfy the third factor in the analysis, that "an injunction will not substantially harm other parties." A stay will pose no harm to anyone because, as the FAA must readily admit, anyone may legally operate a model aircraft, in the same manner as Texas EquuSearch, in the same locations, for recreational or hobby purposes. *See* Exh. H at 6690. A change in the purpose of the operation from recreational to humanitarian does not harm anyone; it *benefits* families, communities and taxpayers. *See Smoking Everywhere*, 680 F. Supp. 2d at 77 (finding no harm to third parties in case where FDA banned import of electronic cigarettes because they were not "any more an immediate threat to public health and safety than traditional cigarettes, which are readily available to the public").

D. The Public Interest Favors a Stay

"In exercising their sound discretion, courts of equity should pay particular regard for the public consequences." *Gordon v. Holder*, 826 F. Supp. 2d 279, 297 (D.D.C. 2011) (citation and internal quotation marks omitted) (granting preliminary injunction where potentially unconstitutional law would have severe economic effects). Volunteer organizations such as Texas EquuSearch are a recognized essential component of community response to the needs of families

with missing loved ones. Miller Aff. ¶ 5. According to the FBI's National Crime Information Center, an average of 1,700 people are reported missing each day in the United States.[4] Many of them are at grave risk in emergency situations: lost children, stranded hikers, mentally ill, psychologically troubled or intoxicated individuals, or victims of abduction or other crimes. The sheer number of missing people, combined with the challenges of searching in the vast open areas of our country's geography, overwhelm law enforcement and other taxpayer funded resources. A stay of the Order, which will permit Texas EquuSearch to resume its use of this technology, is overwhelmingly in the public interest.

II. IN THE ALTERNATIVE, REVIEW OF THE FAA'S ORDER SHOULD BE EXPEDITED

The same concerns that weigh in favor of a stay also compel an expedited review in the event that the Court does not grant a stay. Petitioners' request to the FAA to coordinate the briefing schedule was rejected. Exh. D. Should a stay not be granted, Petitioners ask in the alternative that the Court set oral argument on the Petition for September 30, 2014 with the following briefing schedule:

Petitioners' Opening Brief	July 14, 2014
Respondent's Brief	August 13, 2014
Petitioners' Reply Brief	August 27, 2014

[4] *See NCIC Missing Person and Unidentified Person Statistics for 2013*, http://www.fbi.gov/about-us/cjis/ncic/ncic-missing-person-and-unidentified-

CONCLUSION

For the foregoing reasons, this Court should grant Petitioners' motion to stay pending review, or in the alternative, to expedite review, and grant such other and further relief as the Court may deem just and proper. With respect to the time exigencies involved, because of the urgent nature of Petitioners' activities we respectfully ask the Court to rule on our motion as soon as possible after briefing is complete.

---

person-statistics-for-2013 (last visited May 20, 2014).

Date: May 21, 2014

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Brendan M. Schulman
Brendan M. Schulman
Selina M. Ellis

1177 Avenue of the Americas
New York, NY 10036
Tel: (212) 715-9100
Fax: (212) 715-8220
bschulman@kramerlevin.com
sellis@kramerlevin.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2014, the foregoing document was served on the following party or counsel of record electronically through the United States Court of Appeals for the D.C. Circuit's CM/ECF system:

Abby C. Wright
Michael S. Raab
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

/s Brendan M. Schulman

Brendan M. Schulman
Counsel for Petitioners