

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

\_\_\_\_\_  
IN RE PETITION OF LUKE NICTER  
\_\_\_\_\_

)  
) Misc. No. 12-74 (RCL)  
)

**MOTION FOR NUNC PRO TUNC EXTENSION OF TIME**

Counsel for the government respectfully requests a sixty day extension of time, *nunc pro tunc*, in which to respond to this miscellaneous action. With the extension, the government's response would be due May 4, 2012. Good cause exists to support this request, as set forth below:

1. On February 7, 2012, the Court ordered that a series of correspondence between the court and a university professor be docketed as a new miscellaneous action petitioning for the unsealing of certain documents set forth in the correspondence. The order waived the filing fee, directed the Clerk of the Court to serve a copy on the Department of Justice, and ordered the government to respond within thirty days. *See* Order (ecf. #2).

2. The Court's order was apparently served on the U.S. Attorney's Office for the District of Columbia, but due to the subject matter (wiretaps in a criminal case), it was initially directed to the criminal section of that office. The Civil Chief of U.S. Attorney's Office learned of the filing, and contacted undersigned counsel near the end of February. The matter was then transferred to the Federal Programs Branch in the Justice Department's Civil Division.

3. Although undersigned counsel skimmed the materials, including the correspondence, she failed to notice that the court had set a thirty day response time that made the government's response due March 5, 2012. That time has now passed. Accordingly, counsel seeks this extension of time *nunc pro tunc*.

4. The government requires sixty additional days from March 5, 2012 in order to formulate and submit its response. Counsel will need to review the materials at issue, and to determine their status. For example, it is possible that some of the material in question is not only sealed by the court, but also protected by grand jury secrecy. Determining whether or not the records are subject to release will depend on a variety of factors, and will require consultation within the Department. Accordingly, counsel requests sixty days from March 5<sup>th</sup> – until May 4, 2012 – in which to file the government’s response to the petition.

5. Counsel attempted to contact Mr. Nichter to obtain his consent to this request. By the end of the day on March 16, 2012, Mr. Nichter had not yet responded to a voicemail message. However, since the correspondence on this issue dates back to May 2009, petitioner should be not be unduly prejudiced by an additional delay of sixty days.

Dated: March 16, 2012

Respectfully submitted,

STUART F. DELERY  
Acting Assistant Attorney General

IAN HEATH GERSHENGORN  
Deputy Assistant Attorney General

RONALD C. MACHEN, JR.  
United States Attorney

/s/ Elizabeth J. Shapiro  
ELIZABETH J. SHAPIRO  
D.C. Bar #418925  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Tel: (202) 514-5302  
Fax: (202) 616-8460  
elizabeth.shapiro@usdoj.gov  
Attorneys for the United States

