

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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JAN 23 1985
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STATES COURT OF APPEALS

CHRISTIAN DAVID,

Petitioner/Appellant,

v.

U. S. DEPARTMENT OF STATE,

Respondent/Appellee

:
:
Case No. 85-5118
:
:

OPPOSITION TO RESPONDENT/APPELLEE'S
EMERGENCY MOTION TO DISMISS APPEAL OR
AFFIRM SUMMARILY ORDER OF THE DISTRICT
COURT DENYING HABEAS CORPUS

Petitioner/Appellant respectfully submits that it would be improper under the General Rules of this Court to grant Respondent/Appellee's emergency motion to dismiss appeal for the reason that said motion does not state sufficient grounds under General Rule 6(j) to support emergency action by the Court. Respondent/Appellee makes no claim in its motion that it will suffer irreparable harm if relief is denied. Petitioner/Appellant is currently in the custody of federal authorities and will remain in custody under current circumstances, and will be susceptible to extradition if that action is ultimately found to be proper. Time delay for the purpose of providing David due process to pursue all legal rights available to him does not constitute irreparable harm to the government, rather it is in the interest of the government to see that due process is upheld.

French authorities will suffer no harm pending the outcome of this appeal because they have stated that they are free to try David when they receive him. Respondent/Appellee makes no

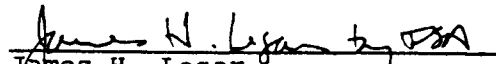
argument as to the public interest involved, and David has previously stated in his motion for an emergency order circumstances which tilt the matter of public interest to his side.

Petitioner/Appellant relies on new grounds and new legal arguments in his petition for habeas corpus relief as more fully developed in his reply to Respondent's answer to order to show cause, a copy of which is attached hereto and incorporated herein. David's new arguments are substantial and are not susceptible to emergency dismissal without the opportunity for submitting a brief of the issues on appeal.

Petitioner/Appellant is entitled to seven days to file a response in opposition to a motion for summary affirmance pursuant to Rule 6(b) of the General Rules of this Court. Lead counsel for David has been required to travel to New York City on behalf of his client and he needs the time provided in the rule to prepare his opposition to the motion for summary affirmance.

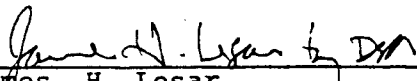
WHEREFORE the Petitioner/Appellant respectfully urges the Court to deny the motion for emergency dismissal of the appeal and to take the motion for summary affirmation under advisement pending filing of Petitioner/Appellant's opposition thereto within seven days.

Respectfully submitted,


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CERTIFICATE OF SERVICE

The foregoing opposition to Respondent/Appellee's emergency motion to dismiss appeal was handdelivered to John C. Martin, Esq. Assistant United States Attorney at his office, Room 6400, United States Courthouse, Washington, D.C. this January 23, 1985.


James H. Lesar