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

SHELLY PARKER, et al.,	)	Case No. 04-7041
	)	
Appellants,	)	
	)	
v.	)	
	)	
DISTRICT OF COLUMBIA, et al.,	)	
	)	
Appellees.	)	
	)	

MOTION TO ISSUE BRIEFING SCHEDULE AND SET ORAL ARGUMENT ON THE MERITS

Pursuant to the Court's Order of August 25, 2004, appellants Shelly Parker, Dick Heller, Tom G. Palmer, Gillian St. Lawrence, Tracey Ambeau, and George Lyon, by and through undersigned counsel, hereby move the Court to issue a briefing schedule and set the matter for oral argument on the merits in the above-captioned case.

This motion is made on the following grounds:

1. The Court has issued its opinion in Seegars v. Ashcroft, No. 04-5016;
2. The legal rationale of Seegars, as applied to the distinctive facts of Parker, directs that the Parker appellants have standing, because the record shows Parker appellants, unlike the Seegars plaintiffs, have been repeatedly, personally, and explicitly threatened with prosecution; and
3. The District Court rejected challenges to appellants' standing in this matter.

Wherefore, appellants respectfully request that the motion be granted and a briefing schedule be issued for prompt and complete resolution of this appeal on the merits.

INTRODUCTION

On February 8, 2005, this Court rejected a pre-enforcement challenge to the District of Columbia's complete ban on the possession of pistols and functional firearms within the home, on the grounds that the plaintiffs in that case lacked standing to assert their claims. Although the Court accepted that the proposed conduct arguably implicated a zone of constitutionally protected interest, and accepted that plaintiffs were sincere in their intention to violate the law, the Court also found that plaintiffs in that case did not demonstrate a sufficiently credible threat of prosecution should they violate the law. Seegars v. Ashcroft, No. 04-5016.

The evidentiary record in this case differs significantly from that in Seegars. For purposes of this motion, the key difference is that unlike in Seegars, plaintiff-appellants in the instant matter ("Parker appellants") have been repeatedly subjected to specific threats of prosecution. Defendants-appellees made it very clear, in response to direct questioning by the District Court, that the Parker appellants, specifically, would be prosecuted if they acted on their sincere and unquestioned desire to possess pistols and/or functional long guns in the District of Columbia. Moreover, defendants-appellees gave a newspaper interview where, in discussing the Parker appellants, they labeled the Parker appellants an undesirable public hazard and vowed that the challenged laws would be enforced. Furthermore, unlike Seegars, the District Court in Parker correctly rejected defendants-appellees' standing defense.

Defendants-appellees' repeated and specific vows to prosecute the Parker appellants plainly satisfy the Court's just-announced Seegars standards for proceeding with a pre-enforcement challenge. The Parker appeal should therefore proceed.

PROCEDURAL HISTORY

This case was filed, fully briefed, and stood ready for decision by the District Court before the Seegars plaintiffs initiated their parallel action. However, owing to delays and circumstances entirely beyond Parker appellants' control, the Seegars case reached this Court first. Accordingly, on August 25, 2004, the instant case was ordered held in abeyance pending the outcome of Seegars, and the parties in the instant case were ordered to submit briefing regarding the future of this litigation within thirty days of the decision in Seegars.

On February 8, 2005, this Court ordered the Seegars matter dismissed in its entirety on the grounds that none of the Seegars plaintiffs had standing to assert their claims, and reversed the District Court's determination of the case's substantive merits. Parker appellants now respectfully request that the Court hear their case, because given the unique facts of their case, they plainly have standing under the rule announced in Seegars.

STATEMENT OF FACTS

The first threat to prosecute the Parker appellants for violation of the District of Columbia's gun bans appeared on the front page of the *Washington Times* two days after the filing of this lawsuit. Defendants-appellees, communicating both through official spokesperson Tony Bullock and Deputy Mayor for Public Safety and Justice Margret Nedelkoff Kellems, reiterated the defendants-appellees' zealous commitment to enforcing the laws, as well as a belief that the Parker plaintiffs would pose a danger to themselves and to others, including children, "which is not what we want." See Exhibit A, Ward, Jon, "Residents Challenge District's Gun Ban," *Washington Times*, February 12, 2003, p. A1 (quoting Mr. Bullock).

The *Washington Times* attributed the following remarks to defendants' spokespersons:

> Mayor Anthony A. Williams' office said the city would not budge.
>
> "The last thing this city needs is more handguns," spokesman Tony Bullock said. "You're not going to see any will on the part of this mayor to relax the gun laws in the District."
>
> "The mayor's policy is very clear," Mrs. Kellems said. "He does not support abolition of our very strict gun-control laws. Gun ownership is not a means to control crime, and it's not a good thing for the city and its social structure."
>
> "We have to maintain the deterrent effect of the gun laws," Mr. Bullock said.
>
> "I think it's a real myth that people would be able to arm themselves and avoid being shot," he said. "Chances are very good that they would accidentally shoot themselves or that the gun would find its way into the hands of a child, which is not what we want."

Exhibit A.

It is a well-known, generally accepted matter within this community that the District of Columbia actively enforces its firearms laws. Defendants-appellees' unambiguous front-page reaction to the lawsuit confirms as much, yet the record in this case goes beyond such understandings. Unlike in Seegars, the Parker appellants filed a motion for summary judgment, complete with thirty-four separate assertions of undisputed material facts. Last among these was the assertion that "Defendants actively enforce D.C. Code §§ 7-2502.01(a), 7-2502.02(a)(4), 7-2507.02, and 22-4504." Defendant-appellees did not contest this assertion. The District Court was thus free to assume that this fact was admitted by the defendants. D.C. LCvR 7.1(h), 56.1.

Moreover, while the defendants-appellees never even raised the issue of standing at any point in the proceeding below (the District Court raised the issue sua sponte during the summary judgment hearing), they confirmed, in response to a direct question by the District Court, that

these specific plaintiffs-appellants would, in fact, be fully prosecuted were they to follow through on their undisputed desire to acquire prohibited firearms.

At the outset of oral argument, the District Court clearly expressed its understanding that the Parker appellants would be prosecuted for violating the challenged statutes:

> MR. GURA: . . . We can resolve this [standing] question very easily if opposing counsel would tell us that the city has no plans to enforce this law, that my clients are free to possess firearms.
>
> THE COURT: I can probably answer that question for the city.

(T., p. 6, l. 16-21, attached hereto as Exhibit B.)

In fact, the District Court, did not answer the question for the city – its counsel did:

> MS. MULLEN: . . . what plaintiffs have alleged here is abstract.
>
> THE COURT: Why is it abstract? The city is not going to essentially grant immunity to these people. If they go out and take steps to possess firearms, they'll be prosecuted, I assume. They're not going to get a free ride because they're a plaintiff in this case, are they?
>
> MS. MULLEN: No, and I think that Your Honor is correct, but I don't think the fact that if, in fact, they break the law and we would enforce the law that they're breaking, that that necessarily confers automatic standing on them in this case. . .

(T., p. 8, l. 17 - p. 9, l. 3 (emphasis added).) Plaintiffs-appellants Heller, St. Lawrence, and Lyon were present in the court room to hear the city's attorney confirm that they would, in fact, be prosecuted if they were to act on their present intention to possess pistols or other functional firearms within their homes.

Notwithstanding the direct threats to prosecute the Parker appellants relayed in open court, and the defendants' decision not even to raise standing as a basis for dismissing plaintiffs-appellants' claims, the District Court allowed the defendants the courtesy of re-opening the

record for further briefing on that question. Atypically, the Court asked the plaintiffs to file a brief justifying their standing, with a responsive pleading by the defendants. Subsequently the District Court sought, and received, a reply from the plaintiffs.

Having entertained extensive argument, both oral and written, on the question of standing, the District Court was obviously satisfied that the plaintiffs had, in fact, standing to pursue their challenge. The District Court's opinion of March 31, 2004, reached the substantive merits of plaintiffs' claims without even commenting on the defendants' belated assertion that plaintiffs lacked standing. The Court commended plaintiffs for "extol[ling] many thought-provoking and historically interesting arguments," Opinion, March 31, 2004, at p. 15, which, regrettably, it did not accept. This appeal timely followed on April 6, 2004.

ARGUMENT

This Court's legal analysis of standing in Seegars produces a different outcome on the unique facts of Parker, because the record shows that, unlike the Seegars plaintiffs, the Parker plaintiffs have been personally and unambiguously threatened with prosecution if they exercise what they believe to be their constitutional right to possess pistols and/or functional long guns in their homes within the District of Columbia.

I. DEFENDANTS-APPELLEES' STATEMENTS ABOUT PARKER APPELLANTS, IN THE MEDIA AND IN OPEN COURT, DEMONSTRATE AN UNWAVERING INTENT TO PROSECUTE PARKER APPELLANTS FOR ANY VIOLATIONS OF THE CHALLENGED STATUTES.

Whatever the defendants in Seegars did or did not say about the Seegars plaintiffs in that other case is irrelevant to the standing issue in this case. The record here is replete with specific declarations of intent to prosecute the Parker appellants that leave no room for speculation.

Defendants-appellees implicitly – but nevertheless very clearly and unambiguously – threatened to prosecute the Parker appellants by making statements, in specifically discussing the Parker appellants' intent to possess guns, such as "[c]hances are very good that they would accidentally shoot themselves or that the gun would find its way into the hands of a child, which is not what we want;" "[t]he last thing this city needs is more handguns;" "[w]e have to maintain the deterrent effect of the gun laws" and "you're not going to see any will on the part of this mayor to relax the gun laws in the District." (Exh. A.)

If, indeed, the Parker appellants' "very good chances" of shooting themselves and arming children are "not what we want," and "the mayor's policy is very clear" in that he will not show "any will . . . to relax the gun laws," (Exh. A), one simply cannot avoid the conclusion that the city has a present and specific intent to prosecute the Parker appellants. After all, if the possibility of prosecution really were speculative, the Mayor's spokesperson would presumably have said something more like: "The last thing this city needs is more handguns, and we have to maintain the deterrent effect of the gun laws, but we have not yet decided whether we will prosecute these people." Parker appellants reasonably took the city's statements in the newspaper as a threat to prosecute them should they possess firearms within their homes.

Notably, the District Court clearly expressed its understanding that Parker appellants faced imminent prosecution if they were to act on their unchallenged, sincere, present intent to possess prohibited firearms. Indeed, the District Court asked the defendants-appellees, directly, whether or not this assumption was correct: "If they go out and take steps to possess firearms, they'll be prosecuted, I assume. They're not going to get a free ride because they're a plaintiff in this case, are they?" (T., p. 8, l. 20-23.) Responding to the Court's question, the defendants-

appellees answered, "no." (T., p. 8, l. 24.) To the Court's assumption that the Parker appellants would be prosecuted, the defendants-appellees answered, "Your Honor is correct." (T., p. 8, l. 24-25.)

Remarkably, counsel for defendants-appellees then suggested that even if Parker appellants were prosecuted, they would still lack standing to challenge the laws. In framing this prospect, defendants-appellees referred to "the fact that if, in fact, they break the law and we would enforce the law that they're breaking." (emphasis added). Whatever the merits of defendants-appelees' argument that their actual prosecution of the Parker appellants would not create a constitutional "case or controversy," opposing counsel was clearly comfortable referring to the certainty of Parker appellants' prosecution as a "fact."

It is true that Parker appellants did not possess this sort of hard evidence of defendants-appellees' intent to prosecute them prior to filing their lawsuit. However, just two days after the Parker appellants filed their complaint, their fear of prosecution proved to be true on the front page of the newspaper. The District Court was evidently persuaded, no doubt influenced by defendants-appellees, who unambiguously confirmed – on the record in open court – their threat to prosecute the Parker appellants. Rarely is formal discovery this effective in proving actionable conduct by the city.

Defendants-appellees' threat did not represent new policy. It reflected the policy that existed when the Parker appellants filed this lawsuit. In that sense, the Parker appellants were always justified in fearing that they would be prosecuted. But if there were any doubt on that score, defendants-appellees' straightforward admission at oral argument surely confirmed the threat.

II. BECAUSE DEFENDANTS-APPELLEES HAVE SPECIFICALLY AND PERSONALLY THREATENED PARKER APPELLANTS WITH PROSECUTION, AND BECAUSE PARKER APPELLANTS HAVE CREDIBLY ALLEGED AN INTENT TO ENGAGE IN PROSCRIBED CONDUCT, PARKER APPELLANTS HAVE STANDING TO PURSUE THEIR SECOND AMENDMENT CLAIMS IN THIS COURT.

> When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.

Seegars v. Ashcroft, No. 04-5016 (slip op. at 5) (quoting Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979)) (other citations omitted).

In Seegars, the Court accepted that "the conduct that plaintiffs would engage in is at least arguably affected with a constitutional interest," Seegars, slip op. at 12, and accepted the "assurance of [plaintiffs'] conditional intent to commit acts that would violate the law," Seegars, slip op. at 13, but nonetheless found plaintiffs had no standing to assert a pre-enforcement challenge because they failed to demonstrate a credible threat of prosecution. "[P]laintiffs allege no prior threats against them or any characteristics indicating an especially high probability of enforcement against them." Seegars, slip op. at 12.

But in requiring plaintiffs to show more than "a conventional background expectation that the government will enforce the law," Seegars, slip op. at 9, this Court also confirmed the long-standing principle that "actual threats of arrest made against a specific plaintiff are generally enough to support standing as long as circumstances haven't dramatically changed." Seegars, slip op. at 7 (citing Steffel v. Thompson, 415 U.S. 452, 459 (1974)).

The rather blunt statements in this case, in the newspaper and in open court, about what defendants-appellees would do to Parker appellants specifically if they violated the challenged

law, go far beyond anything submitted on the record in Seegars. Defendants-appellees' threats are "actual" and "specific," Seegars, slip op. at 7, rising well above a mere "conventional background expectation that the government would enforce the law." Seegars, slip op. at 9 (citation omitted). One can hardly imagine a more specific threat of prosecution than the threat conveyed in a front page newspaper article quoting the Mayor's spokesperson and Deputy Mayor. Still, if any question remained, it was explicitly resolved by direct threats on the record in federal court by the city's attorneys.

In hindsight, had it anticipated the Seegars opinion, the Mayor's office might have been more circumspect in speaking with the press, and opposing counsel might wish to have answered the Court's questions about their intent to prosecute the Parker appellants differently. Perhaps counsel would now respond, "if these plaintiffs break the law, they could be prosecuted. But whether they're actually prosecuted depends on a number of variables. We hope and intend to enforce all of our laws. Still, I am not prepared to speculate about the likelihood that these particular plaintiffs will get a free ride."

But this was not the answer. The answer was "no" to immunity, and "Your Honor is correct" in response to the Court's observation that "if they go out and take steps to possess firearms, they'll be prosecuted." For emphasis, defendants-appellees referred to "the fact" that Parker appellants would be prosecuted if they were to break the law. Yet as this Court observed,

> To require litigants seeking resolution of a dispute that is appropriate for adjudication in federal court to violate the law and subject themselves to criminal prosecution before their challenges may be heard would create incentives that are perverse from the perspective of law enforcement, unfair to the litigants, and totally unrelated to the constitutional or prudential concerns underlying the doctrine of justiciability.

Navegar, Inc. v. United States, 332 U.S. App. D.C. 288, 103 F.3d 994, 1000-01 (D.C. Cir. 1997).

Parker appellants further observe that the threats leveled against them far exceed the threats found sufficient to create standing in Navegar, as described by the Seegars court. In Navegar, this Court found that firearms manufacturers whose products were specifically targeted by name in the statute had standing to pursue a pre-enforcement challenge, while firearms manufacturers whose arms were not clearly targeted could not maintain a credible threat of prosecution. The statutes challenged here are far broader than the ones for which standing was approved in Navegar. Here, the defendants-appellees prohibit all pistols and all functional long arms, without exception. There is no question but that the Parker appellants' firearms, the ones they already own and would purchase,[1] are covered by the challenged provisions.

Moreover, the Seegars court placed additional weight on the imminence of prosecution in Navegar because "agents of the Bureau of Alcohol, Tobacco, and Firearms had visited the plaintiff gun manufacturers, alerted them to the prohibitions in question, and conducted inventories of their firearms stocks, including those of weapons about to be barred." Seegars, slip op. at 13-14 (citing Navegar, 103 F.3d at 997, 1001.) BATF agents do not direct prosecutions. Law enforcement officers routinely conduct searches and warn of legal violations in cases that never find their way to court. There was no guarantee in Navegar, from the White House or the Attorney General, that any manufacturers would, in fact, be prosecuted. The threats

[1]The record is undisputed that all plaintiffs intend to possess pistols and/or functional long guns within their homes in violation of the law. Mr. Heller already possesses a pistol within the District of Columbia, at his workplace as a Special Police Officer in the Thurgood Marshall Federal Judicial Center, and has had his application to keep the pistol at home denied by defendants. Messrs. Heller, Lyon, and Palmer already own firearms located outside the District of Columbia. Ms. St. Lawrence owns and possesses within her District of Columbia home a licensed, but disassembled, long arm, which she would like to render operative.

leveled at Parker appellants are far more concrete as they come from the highest level of the city's government, and from high-ranking attorneys in the prosecutor's office.

The District Court, not the defendants-appellees or their *amici*, raised the standing issue in the proceedings below . The Court heard extensive argument on the issue, and even re-opened the record for the topic's further exploration. Yet in the end, the Court was clearly persuaded that the case should be decided on its merits. The Court was entitled, in forming its views on the issue of standing, to rely upon the defendants-appellees' repeated assertions that the Parker appellants would, in fact, be prosecuted. To the extent that determination played a role in the Court's rejection of the defendants-appellees' belatedly asserted standing defense, it was a factual determination that falls within the unique purview of the trial judge.

III. DEFENDANTS-APPELLEES' FAILURE TO RAISE STANDING IN THIS CASE DEMONSTRATES THEIR UNAMBIGUOUS INTENT TO PROSECUTE PARKER APPELLANTS.

Parker appellants pursued a different strategy than did their Seegars counterparts. Parker appellants filed suit against the District of Columbia and its Mayor, challenging the latters' enforcement of unconstitutional statutes. Unlike Parker, Seegars counsel named the Attorney General of the United States as a defendant, in addition to the city's Mayor, but not the District of Columbia.

Defendants-appellees failed to raise standing as an issue in Parker. Standing was raised only in Seegars, and only by Attorney General Ashcroft, who had nothing to do with enforcement of the challenged provisions. By contrast, defendants-appellees asserted a standing defense in this case only when prompted to do so by the District Court during the oral argument. Mayor

Williams raised standing in Seegars only insofar as the Mayor's response to that case consisted primarily of adopting Ashcroft's pleadings by reference:

THE COURT: You didn't raise [standing] as a basis for your motion to dismiss.

MS. MULLEN: No, we did not. . . .

(T., p. 7, l. 21-23.)

THE COURT: When were you planning to raise it? Had I not raised it, were you going to raise it today?

MS. MULLEN: No, I was not planning on raising it today.

THE COURT: When were you going to raise it? On appeal?

MS. MULLEN: The issue was raised in the Seegars case as it applied to the U.S. We didn't raise it in the Parker case, and I can address that briefly, but it's not anything that we have presented to the Court thus far. I don't believe that they have standing, and we adopted, incorporated the arguments that were presented [by Ashcroft] in the Seegars case . . .

(T., p. 8, l. 3-14 (emphasis added)).

THE COURT: I guess I'm just curious and somewhat confused. When was the city going to raise standing? If the city is concerned that there's a lack of standing, when were you going to assert that argument? I raised it just because of my curiosity about it. When was the city planning to either argue lack of standing or raise the issue?

MS. MULLEN: Well, I think what happened was, the cases were thought to be companion cases, and therefore, by adopting the argument that was presented by the United States government in the Seegars case, that we had incorporated that same rationale in part, although it was never explicitly briefed.

(T., p. 9, l. 5-16.)

THE COURT: Is it the city's argument that there's no standing at all?

MS. MULLEN: Yes. We would agree with the position that we took in the Seegars case, and that is that there's no standing, and in that case we adopted –

THE COURT: But you raised standing precisely?

MS. MULLEN: Yes, in Seegars, we did. Well, actually, we adopted the government's argument.

THE COURT: The federal government's argument.

MS. MULLEN: Right, the federal government's argument in the Seegars case, but Your Honor is correct. It wasn't briefed in this matter, but standing

THE COURT: But you're asking me now to essentially adopt the federal government's argument in the Seegars case, then?

MS. MULLEN: Yes.

(T., p. 45, l. 16 - p. 46, l. 5.)

THE COURT: I'm curious. Had I not raised the issue, were you going to raise it this morning?

MS. MULLEN: No, I had not intended on raising it this morning.

(T., p. 46, l. 9-12.)

Defendants-appellees' *amici*, the Violence Policy Center and the Brady Center to Prevent Gun Violence, represented by the Mayer, Brown; and Wilmer, Cutler firms, respectively, likewise failed to raise standing in their voluminous briefing:

THE COURT: I don't recall if you, in your brief, address the issue of standing or not. I don't recall.

MR. NOSANCHUK: We did not address the issue of standing.

THE COURT: Is there standing here?

MR. NOSANCHUK: No. I would agree with the court.

THE COURT: Everyone recognizes on this side there's no standing, but no one raised it. I find it mystifying.

MR. NOSANCHUK: Right. Well, Your Honor, we would, obviously, be happy to submit supplemental briefing.

THE COURT: No. I was just asking questions. I'm not trying to signal my opinion that there's not standing. It was just a legitimate question to ask. So I hope I'm not sending the wrong signals to everyone that there's no standing here. But, I mean, constitutional scholars and lawyers of long standing and no one raised it? Don't turn your head away. I mean, if I hadn't raised it, it was not going to be raised?

(T., p. 73, l. 3-19.)

It is self-evident why defendants-appellees and their *amici* never thought to raise a standing defense in the Court below. Long before they responded to the complaint, defendants-appellees had already proclaimed on the front page of a major daily newspaper that Parker appellants were a menace to society who should expect no quarter from the city's zealous prosecution efforts. During argument, they candidly confirmed that Parker appellants would be prosecuted. Thus, it simply never occurred to defendants-appellees or their *amici* to make a standing defense, because as they made clear in the newspaper and in the court room, they had already made up their minds to prosecute the Parker appellants. The failure to assert a standing defense (at least without being prompted by the trial judge) can, and in this case does, confirm the existence of standing where defendants have it within their power to create a case or controversy, i.e., by vowing to prosecute a specific plaintiff.

CONCLUSION

The "threat of prosecution" in this matter is not merely "credible" – it is an absolute certainty, proclaimed on the front page of the *Washington Times*, and declared directly and specifically in open court, where it was even labeled as a "fact" by the defendants-appellees. The record demonstrates far more than "a conventional background expectation that the government will enforce the law," Seegars, slip op. at 9. Defendants-appellees have confirmed "actual threats," Seegars, slip op. at 7, against the Parker appellants, "indicating an especially high probability of enforcement against them" specifically. Seegars, slip op. at 13.

> A credible threat of imminent prosecution can injure the threatened party by putting her between a rock and a hard place--absent the availability of preenforcement review, she must either forego possibly lawful activity because of her well-founded fear of prosecution, or willfully violate the statute, thereby subjecting herself to criminal prosecution and punishment. In such situations the threat of prosecution provides the foundation for justiciability as a constitutional and prudential matter, and the Declaratory Judgment Act provides the mechanism for seeking preenforcement review in federal court.

Navegar, 103 F.3d at 998 (citations omitted).

As this Court recognized in Seegars, the conduct in which Parker appellants intend to engage is at least arguably protected by the Bill of Rights. Considering the defendants-appellees well-known policy of prohibiting such conduct, together with their clearly expressed intent to prosecute the Parker appellants specifically, this case presents the most important sort of "case or controversy" that the federal courts are charged with adjudicating: a case that seeks to define and enforce the meaning of a core constitutional right and, in so doing, might end the categorical and absolute suppression of such an individual right within this jurisdiction.

Plaintiffs-appellants respectfully pray that a briefing schedule be issued forthwith, and the matter set for oral arguments, on the substantive merits of plaintiffs-appellants' claims.

Dated: February 16, 2005

Respectfully Submitted,

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CERTIFICATE OF SERVICE

On this, the 16th day of February, 2005, I served a true and correct copy of the foregoing Motion to Issue Briefing Schedule and Set Oral Argument on the Merits on the following by **personal, hand delivery** :

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 16th day of February, 2005.

_____
Alan Gura