

S.D.N.Y. -N.Y.C.
12-cv-331
Forrest, J.

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 2nd day of October, two thousand twelve.

PRESENT: DENNY CHIN,
RAYMOND J. LOHIER, JR.,
CHRISTOPHER F. DRONEY,
Circuit Judges.

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CHRISTOPHER HEDGES, DANIEL ELLSBERG,
JENNIFER BOLEN, NOAM CHOMSKY, ALEXA
O'BRIEN, US DAY OF RAGE, KAI WARGALLA,
HON. BRIGITTA JONSDOTTIR M.P.,
Plaintiffs-Appellees,

-v.-

12-3176 (L)
12-3644 (CON)

BARACK OBAMA, individually and as
representative of the United States of
America, LEON PANETTA, individually and
in his capacity as the executive and
representative of the Department of
Defense,
Defendants-Appellants.

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In this case, the government appeals from the district court's September 12, 2012, grant of a permanent injunction barring the government from enforcing an act of Congress, § 1021(b)(2) of the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, 125 Stat. 1298 (Dec. 31, 2011) (the "NDAA"). The government moves for a stay of the district court's order pending appeal. On September 17, 2012, an applications

judge granted a temporary stay pending a decision on the motion by a motions panel. See Fed. R. App. P. 8(a)(2)(D). We are that motions panel.

For the following reasons, we conclude that the public interest weighs in favor of granting the government's motion for a stay. First, in its memorandum of law in support of its motion, the government clarifies unequivocally that, "based on their stated activities," plaintiffs, "journalists and activists[,] . . . are in no danger whatsoever of ever being captured and detained by the U.S. military." (Mot. for Stay 1). Second, on its face, the statute does not affect the existing rights of United States citizens or other individuals arrested in the United States. See NDAA § 1021(e) ("Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States."). Third, the language of the district court's injunction appears to go beyond NDAA § 1021 itself and to limit the government's authority under the Authorization for Use of Military Force, Pub L. 107-40, 115 Stat. 224 (Sept. 18, 2001). In light of these and other factors, see In re World Trade Ctr. Disaster Site Litig., 503 F.3d 167, 170 (2d Cir. 2007), we conclude that the interests of justice would best be served by granting a stay of the district court's permanent injunction.

Upon due consideration, it is hereby ORDERED that the government's motion is GRANTED. The district court's order dated September 12, 2012, is stayed pending a decision on the appeal by a merits panel.

The parties are directed to file their briefs on the following expedited schedule: Appellants are to file their brief on or before November 2, 2012; Appellees' brief in opposition shall be filed on or before December 3, 2012. Appellants shall file any reply brief by December 13, 2012. The Clerk of the Court is directed to place the case on the argument calendar for the first available week after the filing of appellees' opposition brief.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, CLERK


Catherine O'Hagan Wolfe

The signature is written in blue ink over a circular official seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".