

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5142**September Term, 2016****1:12-mc-00100-EGS****Filed On:** August 11, 2017

United States Department of the Treasury,

Appellant

v.

Dennis Black, et al.,

Appellees

Consolidated with 17-5164**BEFORE:** Millett, Pillard, and Wilkins, Circuit Judges**ORDER**

Upon consideration of the emergency motion for stay pending appeal, which includes an alternative request for mandamus relief, the response thereto, and the reply; the court's July 26, 2017 order, and the response thereto; and the motion to dismiss, for summary affirmance, or denial of any mandamus petition, the response thereto, and the reply, it is

ORDERED that the motion to dismiss for lack of jurisdiction be denied. The district court's June 7, 2017 and July 12, 2017 orders are final and reviewable under 28 U.S.C. § 1291. The district court's orders in this free-standing litigation over subpoenas directed to the Department of the Treasury concluded the case and directed release of the privileged documents. There is nothing more for the district court to do in the case. See Linder v. Dep't of Defense, 133 F.3d 17, 22 (D.C. Cir. 1998). Contrary to the appellees' argument, the appellant need not be held in contempt to render the judgment final given the unique separation of powers concerns embedded in the presidential communications privilege. See U.S. v. Nixon, 418 U.S. 683, 708 (1973). In addition, the contempt requirement is ill fitted to the situation at present where the party that holds the documents – the Department of the Treasury – is neither making the decision

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to assert the privilege, nor empowered to release the documents. Those decisions are vested in the Office of the President. It is

FURTHER ORDERED that the motion for summary affirmance be denied. The merits of the parties' positions are not so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). It is

FURTHER ORDERED that appellant's motion for stay be granted. Appellant has satisfied the requirements for a stay pending appeal. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2017). It is

FURTHER ORDERED that the alternative request for mandamus relief and motion for denial of mandamus be dismissed as moot. It is

FURTHER ORDERED, on the court's own motion, that these consolidated cases be expedited and that the following briefing schedule and format apply:

Appellant's Brief (not to exceed 13,000 words)	August 28, 2017
Joint Appendix	August 28, 2017
Appellees' Brief (not to exceed 13,000 words)	September 15, 2017
Appellant's Reply Brief (not to exceed 6,500 words)	September 22, 2017

The Clerk is directed to schedule these consolidated cases for oral argument on the first available date following the completion of briefing. The parties will be informed later of the date of oral argument and composition of the merits panel. All issues and arguments must be raised by appellant in the opening brief. The court ordinarily will not consider issues and arguments raised for the first time in the reply brief.

To enhance the clarity of their briefs, the parties are urged to limit the use of abbreviations, including acronyms. While acronyms may be used for entities and statutes with widely recognized initials, briefs should not contain acronyms that are not

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widely known. See D.C. Circuit Handbook of Practice and Internal Procedures 41 (2017); Notice Regarding Use of Acronyms (D.C. Cir. Jan. 26, 2010).

Parties are directed to hand deliver the paper copies of their briefs to the Clerk's office on the date due. All briefs and appendices must contain the date that the cases are scheduled for oral argument at the top of the cover. See D.C. Cir. Rule 28(a)(8).

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Robert J. Cavello
Deputy Clerk