

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JONATHAN CORBETT,

Petitioner,

v.

TRANSPORTATION SAFETY
ADMINISTRATION,

Respondent.

No. 12-15893

**RESPONDENT'S MOTION TO FILE BRIEF FOR RESPONDENT
EX PARTE AND UNDER SEAL**

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rule 26.1-1, the undersigned counsel certifies that, to the best of her knowledge, the following constitutes a complete list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case or appeal:

Bandstra, Hon. Ted E.

Bhattacharyya, Rupa

Cooke, Hon. Marcia G.

Corbett, Jonathan

Delery, Stuart F.

Edmondson, Hon. James L.

Fay, Hon. Peter T.

Ferrer, Wifredo A.

Grauman, Jesse

Lothman, Laura G.

McCarthy, Andrea W.

Mead, Joseph W.

Moore, Hon. K. Michael

Napolitano, Janet

Pistole, John

Schraibman, Sandra M.

Schultz, Anne R.

Stern, Mark B.

Swingle, Sharon

Tjoflat, Hon. Gerald B.

Turnoff, William

Wells, Carlotta P.

/s/ Sharon Swingle

Sharon Swingle

Counsel for Respondent

Respondent, the Transportation Safety Administration, respectfully moves for leave to file the Brief for Respondent *ex parte* and under seal. The Brief for Respondent contains Sensitive Security Information (SSI). Information is designated as SSI if its disclosure could be detrimental to the security of transportation, and SSI is protected from public disclosure under 49 U.S.C. § 114(4) and 49 C.F.R. Part 1520. Petitioner has not been given access to SSI, nor is he entitled to seek access under the statutory provision provided limited rights of access to SSI for certain litigants, which applies only in “civil proceedings in the United States District Court.” Pub. L. No. 109-295, § 525(d), 120 Stat. 1355, 1382 (Oct. 4, 2006).

Respondent previously moved in this Court to file the volume of the administrative record containing SSI *ex parte* and under seal. *See Corbett v. TSA*, No. 12-15893, Motion for Leave to File Portions of the Administrative Record Under Seal and Portions *Ex Parte* and Under Seal (11th Cir. filed Mar. 25, 2013). The Court granted the government’s motion, and the SSI volume of the administrative record was filed *ex parte* and under seal. *Corbett v. TSA*, No. 12-15893, Order, at 2 (11th Cir.

June 5, 2013).

For the same reasons that the SSI volume of the administrative record needed to be filed *ex parte* and under seal to protect aviation security, the portions of the government's brief that contain SSI must be filed *ex parte* and under seal. Accordingly, the government respectfully requests that the lodged Brief for Respondent, which contains SSI, be filed *ex parte* and under seal.

The government also respectfully seeks leave to file additional versions of the Brief for Respondent that can be served on petitioner and publicly filed. As the Court is aware, petitioner has been given access to For Official Use Only (FOUO) information, which also cannot be publicly disclosed. Within fourteen days of the filing of the Brief for Respondent, the government will produce a version of the Brief for Respondent that has been redacted to remove all SSI, but which still contains any FOUO information. The FOUO Brief for Respondent can be filed under seal and served on petitioner. The government will also produce a public version of the Brief for Respondent that redacts both SSI and FOUO information,

which can be filed on the public docket.

CONCLUSION

For the foregoing reasons, the government seeks leave to file the lodged Brief for Respondent *ex parte* and under seal. The government seeks leave to provide, within fourteen days of the filing of the *ex parte* brief, a public version of the Brief for Respondent that can be filed publicly, and a version of the Brief for Respondent containing FOUO information, which can be filed under seal and served on petitioner.

Respectfully submitted,

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/s/ Sharon Swingle

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NOVEMBER 2013

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2013, I filed and served the foregoing Respondent's Motion to File Brief for Respondent *Ex Parte* and Under Seal by filing it with the Court through the CM/ECF system and by serving the following party by electronic mail:

Jonathan Corbett
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Miami Beach, FL 33139
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Exhibit A to this motion, the lodged Brief for Respondent, was sent to the Court by overnight delivery, postage prepaid. Exhibit A was not served on petitioner, who has not been cleared to have access to Sensitive Security Information.

/s/ Sharon Swingle

Sharon Swingle
Counsel for Respondent

EXHIBIT A

Brief for Respondent