

FILED

OCT 05 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT M. NELSON; et al.,

Plaintiffs - Appellants,

v.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION, an Agency
of the United States; et al.,

Defendants - Appellees.

No. 07-56424

D.C. No. CV-07-05669-ODW
Central District of California,
Los Angeles

ORDER

Before: B. FLETCHER, REINHARDT, and BERZON, Circuit Judges.

This is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply.

Appellants' emergency motion for a temporary injunction is granted to the extent set forth below. Appellees are enjoined, through October 12, 2007, or until further order of the court, whichever is earlier, from requiring appellants to submit the questionnaires for non-sensitive positions, including the authorization forms for release of information. In the meantime, the court will consider whether to extend the temporary injunction until the appeal of the denial of the preliminary injunction is resolved.

07-56424

The complaint in this case and the motion for a preliminary injunction were filed on August 30, 2007. Plaintiffs advised the district court from the outset that relief was needed by October 5, 2007. The district court decided the motion on October 3, 2007. The motion for an emergency injunction pending appeal was filed in this court the next day, on the afternoon of October 4, 2007. The motion, responses and exhibits consist of 984 pages. Appellants allege that they can be terminated from employment if they do not comply with appellees' requirement that they submit the completed authorization forms and the questionnaires for non-sensitive positions by the close of business today, October 5, 2007.

The court has not had the opportunity to consider fully the voluminous material filed in connection with the emergency motion. As far as we can determine in the short time available, appellants likely raise serious legal and constitutional questions, and show the probability of irreparable harm. What is quite clear is that the balance of hardships tips strongly in their favor. Most of the appellants have worked for Jet Propulsion Laboratories for many years, and the government has been considering and planning the implementation of the new requirements for well over a year. We, therefore, grant a temporary injunction through October 12, 2007. *See Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113,

07-56424

1120 (9th Cir. 2005); *see also Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983), *rev'd in part on other grounds*, 463 U.S. 1328, 464 U.S. 879 (1983). The court will consider whether to issue an injunction pending appeal on or before at that date.

Appellants' motion to expedite this appeal is granted.

If they have not already done so, within 5 calendar days of the filing date of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the district court that shall be included in the record on appeal.

The briefing schedule is set as follows: the opening brief is due not later than October 25, 2007; the answering brief is due November 8, 2007 or 14 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 7 days of service of the answering brief. *See* 9th Cir. R. 3-3(b).