

No. 13-17430

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIETNAM VETERANS OF AMERICA et al.,

Plaintiffs-Appellants,

v.

CENTRAL INTELLIGENCE AGENCY, et al.

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**APPELLEE'S RESPONSE TO APPELLANTS'
MOTION TO EXPEDITE APPEAL**

STUART F. DELERY
Assistant Attorney General

MELINDA HAAG
United States Attorney

MARK B. STERN
(202) 514-5089

CHARLES W. SCARBOROUGH
(202) 514-1927

Attorneys, Appellate Staff
Civil Division, Room 7244
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

The federal defendants-appellees do not oppose appellants' motion to expedite this appeal. However, appellants made no representation to this Court that their motion was unopposed, and the federal defendants therefore had a right to file a response to that motion. On December 16, 2013, the Clerk's Office entered an order granting appellants' motion before requesting or receiving a response from the government. Although the government does not oppose expedition, the schedule proposed by appellants and adopted by the Court's order does not account for the possible filing of a cross-appeal. Because the Solicitor General has not yet determined whether to authorize a cross-appeal in this case, we do not at this time ask that the Court enter a different briefing schedule. We ask, however, that the Court amend its order to note that an alteration to the schedule will be necessary if the Solicitor General determines to authorize a cross-appeal.

The district court entered judgment on November 19, 2013, and appellants filed a notice of appeal on November 26, 2013. That filing does not alter the 60-day period allotted for the federal defendants to file a cross-appeal, *see* Fed. R. App. 4(a)(3), and it does not constrain the Solicitor General's ability to engage in the consultation necessary to determine whether to authorize an appeal in this case. That process is under way in this case, but a notice of cross-appeal is not due until January 21, 2014 (January 18 is a Saturday, and January 20 is a federal holiday). If

the Solicitor General authorizes a cross-appeal, it will be necessary to amend the briefing schedule to provide for an additional brief by the United States.

Finally, while we do not oppose reasonable expedition in this appeal, we note that there is no basis for proceeding on an emergency basis in this case. Plaintiffs filed this action in January 2009, and at no point sought a preliminary injunction or any other form of “emergency” relief in district court, and there is no need for this Court to proceed on a highly expedited basis in this appeal. While we do not object to the Court’s order calendaring this case for oral argument as soon as possible, this Court should not shorten the normal deadlines for appellate briefing, including possible briefing on a cross-appeal.

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

MELINDA HAAG
United States Attorney

MARK B. STERN
(202) 514-5089
CHARLES W. SCARBOROUGH
(202) 514-1927
Attorneys, Appellate Staff
Civil Division, Room 7244
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

DECEMBER 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Charles W. Scarborough
CHARLES W. SCARBOROUGH