

ORAL ARGUMENT SCHEDULED FOR APRIL 21, 2005

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

SIBEL EDMONDS,)
)
 Appellant,)
)
 v.) No. 04-5286
)
 UNITED STATES DEPARTMENT)
 OF JUSTICE, *et al.*,)
)
 Appellees.)
 _____)

MOTION TO OPEN THE COURTROOM AND TO BE HEARD
BY *AMICI CURIAE* PROJECT ON GOVERNMENT OVERSIGHT
AND PUBLIC CITIZEN, INC.

Amici Curiae Project On Government Oversight, and Public Citizen, Inc., respectfully move the Court to open the courtroom to *amici* and the public, and request to be heard on this motion prior to the oral argument scheduled for April 21, 2005 at 9:30 a.m. In support of this motion, *amici* state:

1. On the afternoon of April 20, 2005, counsel for *amici* learned that the courtroom will be closed for the oral argument in this case. *Amici* is not aware of any written Order closing the courtroom, but the oral argument calendar posted on the Court's web site indicates "courtroom closed." [Http://pacer.cadc.uscourts.gov/common/courtrm/60day.html](http://pacer.cadc.uscourts.gov/common/courtrm/60day.html) (accessed April 20, 2005). When undersigned counsel telephoned the clerk's office for more information, he was informed by the deputy clerk that the courtroom would be closed to everyone except counsel whose names appear on the briefs. The deputy clerk was unable to say whether counsel for *amici* would be admitted to the courtroom.

2. *Amici* object to the closing of the courtroom. *Amici* wish to attend the argument.
3. *Amici* have reviewed Appellant’s “Emergency Motion to Open Oral Argument” and adopt the argument and citations therein. In addition, *amici* respectfully direct the Court to *In re Washington Post Co.*, 807 F.2d 383 (4th Cir. 1986) (national security concerns do not overcome First Amendment right of access to justify closure of criminal plea proceedings), and *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984) (presumption of openness in court proceedings extends to civil cases). *Amici* also note that the briefs in this case were *not* filed under seal, and, because the oral argument presumably will cover many of the points discussed in the briefs, closing the courtroom would appear to be without foundation, or, at the least, not the least restrictive means for protecting classified information.
4. In this regard, *amici* note that closing the courtroom for the entire oral argument in this case goes far beyond the procedure suggested by counsel for the government in his April 12, 2005 letter to the Clerk. In that letter, counsel for the government reminded the Court that the government has filed a Sealed Supplemental Index in this case, but stated that the government “is prepared to argue this case publicly, in an open courtroom, without referring to the classified information itself.” Government counsel suggested that if the Court wishes to discuss the classified information, that the court follow the procedure used in *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192 (D.C. Cir. 2001), where the argument was open to the public to the extent it concerned legal issues and matters of public record and was closed (to the public and to counsel) only for that portion that concerned classified information that was part of the sealed record.

Wherefore, *amici* respectfully request that the Court open the oral argument to *amici* and the public, and that *amici* be heard on this motion prior to the oral argument scheduled for April 21, 2005 at 9:30 a.m.

Dated: April 20, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 20, 2005, a true and correct copy of this motion was sent electronically to the following counsel of record in this case:

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