In the District of Columbia Court of Appeals

DANIEL W. CHOI, Appellant, v. UNITED STATES OF AMERICA, Appellee.	No. 12-CT-687 2011 CDC 16050

MOTION TO EXPEDITE APPEAL

Pursuant to Rule 27, appellant hereby moves for the expedition of this appeal, which challenges, as unauthorized under the applicable statute and violative of his First Amendment rights, a condition of pretrial release prohibiting him from being near the White House.

1. Appellant was arrested at a peaceful demonstration on the White House sidewalk and is charged with Incommoding, in violation of D.C. Code § 22-1307, and Failure to Obey a Lawful Order, in violation of 18 DCMR § 2000.2. Appellant is a West Point graduate and combat veteran who was discharged from the U.S. Army under the "Don't Ask, Don't Tell" policy after he announced on the Rachel Maddow Show that he was gay. He has subsequently been a gay rights activist, and that was the context of his arrest. He was later present by invitation when President Obama signed into law the bill repealing the "Don't Ask, Don't Tell" policy. *See* http://en.wikipedia.org/wiki/Dan_Choi.

2. Appellant was released pretrial on conditions, one of which is that he must "stay away from . . . [the] 1600 block of Pennsylvania Ave NW, Washington, DC.

Including adjacent sidewalks." Order of August 22, 2011. Appellant's motion to review that Magistrate Judge's order was denied by a Superior Court Judge on April 25, 2012.

3. Appellant filed his notice of appeal *pro se* on May 21, 2012. Undersigned counsel entered his appearance today. Appellant's trial is currently scheduled for July 9, 2012, but on June 22 the government filed a motion to continue the trial to "a date convenient to the government, the defendant, and the court," because an essential government witness will be out of the country for most of July.

4. The relevant statute authorizes the Superior Court to impose as a condition of pretrial release only the "[l]east restrictive . . . conditions, that the judicial officer determines will reasonably assure . . . the safety of any other person and the community." D.C. Code § 23-1321(c)(1)(B). The order requiring appellant to stay away from the White House cannot plausibly be justified as reasonably necessary to assure the safety of any other person or the community. Appellant has never been convicted of any crime, or charged with any crime actually involving public safety.[*]

---

[*] Appellant was arrested because some other members of a group that he was with failed to keep moving while holding signs in the central 20 yards of the White House sidewalk, in violation of a regulation that provides:

> No signs or placards shall be held, placed or set down on the center portion of the White House sidewalk, comprising ten yards on either side of the center point on the sidewalk; *Provided, however,* that individuals may demonstrate while carrying signs on that portion of the sidewalk if they continue to move along the sidewalk.

36 C.F.R. § 7.96(g)(5)(vii). As the D.C. Circuit explained when it upheld that regulation:

> The asserted governmental interest in imposing additional restrictions for demonstrations within the "center zone" is that of preserving unimpaired the public's view of the Presidential Mansion from Pennsylvania Avenue and Lafayette Park. No considerations of security or safety are at stake; the governmental interest derives wholly from aesthetic concerns.

White House Vigil for the ERA Committee v. Clark, 746 F. 2d 1518, 1534 (D.C. Cir. 1984) (footnotes omitted).

5. More important, the stay-away order infringes appellant's First Amendment right to engage in peaceful assembly and expression in one of the most important public forums in the nation. As this Court has explained, "'the general concepts of First Amendment freedom are given added impetus as to speech and peaceful demonstration in Washington, D.C., by the clause in the Constitution which assures citizens of their right to assemble peaceably at the seat of government and present grievances.'" *Wheelock v. United States*, 552 A.2d 503, 506 (D.C. 1988) (quoting *A Quaker Action Group v. Morton*, 516 F.2d 717, 724 (D.C. Cir. 1975)). A court order restraining the exercise of such First Amendment rights, such as the order challenged here, is subject to a particularly "stringent application of general First Amendment principles," *Madsen v. Women's Health Center, Inc*., 512 U.S. 753, 765 (1994), and must "burden no more speech than necessary." *Id*. Indeed, "[i]t has long been established that the loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). For that reason, appeals from orders constituting prior restraints on expression should be expedited. *See, e.g., National Socialist Party of America v. Village of Skokie*, 432 U.S. 43, 44 (1977).

6. This Court's Rules 4(c) and 9(a) also recognize the need for expedition in appeals challenging conditions of pretrial release. While those rules apply to cases involving detention, which is obviously a much greater loss of liberty than the restriction involved here, the stay-away order imposed upon appellant nevertheless involves the loss of an important aspect of liberty — certainly one that is quite important to him — for an extended period of time.

CONCLUSION

For the foregoing reasons the motion should be granted and the appeal should be expedited.

Respectfully submitted,

_____
Arthur B. Spitzer
D.C. Bar. No. 235960
American Civil Liberties Union
of the Nation's Capital
4301 Connecticut Avenue, N.W., Suite 434
Washington, D.C. 20008
Tel. 202-457-0800
Fax 202-457-0805

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Expedite Appeal was served upon

Elizabeth Trosman, Esq.
Assistant U.S. Attorney
555 4th Street, N.W.
Washington, DC 20001

by first-class mail this 25th day of June, 2012.

_____
Arthur B. Spitzer