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December 18, 2013

Office Of The Clerk
United States Court Of Appeals For The Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Time-Sensitive Request for a Ruling on the Government's Motion to File an Oversized Brief in No. 13-1816, *United States v. Auernheimer*

This case has been stayed for over five months because the Court has yet to rule on the Government's request to file an oversized brief. In light of the unique circumstances of this important case, appellant Andrew Auernheimer respectfully urges this Court to accept the briefs filed in this case as soon as possible, lift the stay of the briefing schedule immediately and schedule this matter for prompt resolution by a merits panel.

This is a high-profile criminal appeal that has received widespread national media attention, including a front-page Washington Post story that questioned whether the defendant's conduct was a crime. *See* Jerry Markon, *As Cyberthreats Mount, Hacker's Conviction Underscores Criticism Of Government Overreach*, Washington Post, April 29, 2013 at A1. All of the attorneys for Auernheimer are representing him pro bono.

On August 5, 2013 – over five months ago – the United States asked for leave to file an oversized appellee's brief in this case and for a stay of the briefing schedule. Among the reasons the United States cited for doing so was that Auernheimer's opening brief "raises serious substantive challenges to the Government's prosecution." United States' Motion For a Word Limit Extension to 26,500 Words & a Stay of the Briefing Schedule at 1.

On August 5, 2013, this Court granted the government's request to stay the briefing schedule to consider the request to file an oversized brief. But on August 6, 2013, the Government withdrew its request for a stay after conferring with undersigned counsel. And although more than five months have passed since then, the Court has not yet lifted the stay nor ruled on the Government's motion to

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Office Of The Clerk
United States Court Of Appeals For The Third Circuit
December 18, 2013
Page 2 of 4

file an oversized brief. Notwithstanding the stay, the parties diligently completed briefing in this case, with the United States filing its oversized brief on September 20, 2013 and Auernheimer filing an oversized reply brief on October 25, 2013. Neither party objects to the brief filed by the other side.

Undersigned counsel hereby urges this Court to lift the stay, grant the Government's and Auernheimer's request to file oversized briefs, and schedule this case for oral argument at the soonest available merits panel.

Any further delay causes unwarranted prejudice to Auernheimer, who is currently in custody serving a 41-month prison sentence. Since Auernheimer's primary argument is that he was convicted of conduct that is not a crime, any further delay in the resolution of his appeal extends the time he is wrongly incarcerated.

Respectfully submitted,

/s/ Hanni M. Fakhoury

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Office Of The Clerk
United States Court Of Appeals For The Third Circuit
December 18, 2013
Page 3 of 4

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Office Of The Clerk
United States Court Of Appeals For The Third Circuit
December 18, 2013
Page 4 of 4

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system on December 18, 2013.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 18, 2013

Respectfully submitted,

By: /s/ Hanni Fakhoury
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