

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MAXWELL HODGKINS, et al.)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 09-00587 (JR)
)	
ERIC HOLDER,)	
Attorney General of the)	
United States)	
)	
Defendant.)	
)	

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ CITATION TO NEWLY-DECIDED
CONTROLLING AUTHORITY**

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *Ord v. District of Columbia*, — F.3d —, 2009 WL 4408200 (D.C. Cir. Dec. 4, 2008), supports dismissal of plaintiffs’ claims for lack of standing. The D.C. Circuit confirmed its long-standing precedent that a plaintiff will not have standing to bring a preenforcement challenge to a criminal statute unless they can “demonstrate that their prosecution results from a special law enforcement priority, namely that they have been ‘singled out or uniquely targeted by the . . . government for prosecution.’” *Id.* at *3 (quoting *Parker v. District of Columbia*, 478 F.3d 370, 375 (D.C. Cir. 2007)).

Ord was found to meet this standard because (1) the District of Columbia’s issuance of a warrant for his arrest under the challenged provision, (2) the District of Columbia’s concession, on appeal, that this warrant was “sufficient to show . . . a special priority,” (3) Ord’s allegations of bad faith, specifically the District of Columbia’s alleged attempt to avoid judicial review of the challenged provision by declaring a *nolle prosequi* after Ord asked the D.C. Superior Court to quash the warrant, and (4) the arrests of Ord’s employees under the same provision. *Id.* at *5.

Plaintiffs in this case can point to no such circumstances. Accordingly, as *Ord* confirms, this case must be dismissed.

Dated: December 20, 2009

Respectfully submitted,

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