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6  
7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA

9 United States of America,  
10 Plaintiff,

11 v.

12 Daniel Rigmaiden,  
a.k.a. Steven Travis Brawner,  
13 a.k.a. Travis Rupard, and  
a.k.a. Patrick Stout,

14 Defendant.

CR 08-814-PHX-DGC

**RESPONSE TO DEFENDANT'S  
MOTION FOR STAY PENDING  
APPEAL OF ORDER DENYING  
"MOTION FOR COURT ORDER  
PROHIBITING VINDICTIVE  
SUPERSEDING INDICTMENT"  
PURSUANT TO FRAP 8(a)(1)(A)**

**(Request for Hearing)**

**(Filed Under Seal)**

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18 The United States, by and through undersigned counsel, hereby responds to defendant's  
19 response to defendant's Motion for Stay Pending Appeal of Order Denying "Motion for Court  
20 Order Prohibiting Vindictive Superseding Indictment" Pursuant to FRAP 8(a)(1)(a) as follows.  
21 In light of defendant's intent to immediately file an appeal with respect to any denial of his  
22 substantive pending motion regarding a superseding indictment, the government requests that  
23 the Court set a date and time for a hearing in order for the government, and the defendant if he  
24 chooses, to fully document the record leading up to the filing of a superseding indictment in this  
25 case and any dispositive Order. In light of the precedent set forth in United States v. Griffin, 617  
26 F.2d 1342 (9<sup>th</sup> Cir. 1980), it may ultimately be appropriate for the Court to grant a stay of the  
27 proceedings in this Court should this Court deny defendant's substantive motion relating to the  
28 superseding indictment. As of this date, the motion for a stay is premature as the Court has not

1 ruled on the pending motion regarding the superseding indictment. To the extent that  
2 defendant's substantive motion requested that the government be ordered to not seek a  
3 superseding indictment in this case, that request is moot as a superseding indictment was  
4 returned on January 27, 2010.

5 Respectfully submitted this 3<sup>rd</sup> day of February, 2010.

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7 DENNIS K. BURKE  
8 United States Attorney  
9 District of Arizona

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11 FREDERICK A. BATTISTA  
12 Assistant U.S. Attorney

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on February 3, 2010, I caused the attached document to be filed under  
15 seal with the Clerk's Office and a copy to be mailed to defendant and defendant's shadow  
16 counsel Philip A. Seplow at the following addresses:  
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18 Daniel Rigmaiden  
19 Agency No. 10966111  
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21 Post Office Box 6300  
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