

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

## MOTION INFORMATION STATEMENT

Docket Number(s): 15-3775

Caption [use short title]

Motion for: Request that electronic appendices previously filed suffice for the en banc and clarification of word limitation for en banc brief. Zarda v.

Set forth below precise, complete statement of relief sought:

The Court kindly granted an extension of the filing of this appeal until 4/21/17. I ask for a brief extension until the 4/24/17, the following Monday for the reasons set forth in the declaration.

Altitude Express

MOVING PARTY: Estate of Zarda Plaintiff Defendant Appellant/Petitioner Appellee/RespondentOPPOSING PARTY: Altitude ExpressMOVING ATTORNEY: Gregory Antollino, Esq.OPPOSING ATTORNEY: Saul Zabell

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: ENDY- Joseph Bianco

## Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

 Yes  No (explain): \_\_\_\_\_

## FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

 Yes  No  
 Yes  No

Opposing counsel's position on motion:

 Unopposed  Opposed  Don't Know

Has request for relief been made below?

Does opposing counsel intend to file a response:

Has this relief been previously sought in this Court?

 Yes  No  Don't Know

Requested return date and explanation of emergency: \_\_\_\_\_

Is oral argument on motion requested?

 Yes  No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

 Yes  No If yes, enter date: \_\_\_\_\_

Signature of Moving Attorney:

Date: 5/26/17Service by:  CM/ECF  Other [Attach proof of service]

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

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ESTATE OF ZARDA,

Plaintiff-Appellant,

**DECLARATION IN  
SUPPORT OF  
MOTION**

-against-

ALTITUDE EXPRESS, et ano.

15-3775

Defendants-Appellees

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GREGORY ANTOLLINO, an attorney admitted to this court who represents,

with Steven Bergstein, appellant at trial and am lead counsel on appeal, does hereby declare under penalty of perjury of the United States as follows:

1. At the panel stage, I was granted leave to file two CD's containing the electronic evidence that was submitted at summary judgment and trial. There are essentially two of importance: The video of Donald Zarda and Rosana Orellana making a tandem skydive jump and the recording of plaintiff being terminated.

2. I make this declaration in support of Appellant's motion to deem the electronic appendix filed with the original appeal as part of the en banc appendix and a bit of other relief. The original appeal, including the summary judgment motion, contained this videos and others; the recording is also transcribed in a deposition, but the video tells a story about how the work that plaintiff did that words cannot. Leave was granted to file this electronic appendix in the original appeal by Droney, J.

3. We are not shy of the work for the extraordinary grant of an en banc for this very important question, and I'm working this holiday weekend to accommodate a trial later this month. But the electronic appendix - on 12 disks - took several hours to

burn. If they have not been disposed of, they can be used again without prejudice to the defense. They are also available on YouTube.

4. This evidence we deem necessary because it convey statements that were mentioned as evidence in both the lower court and the oral argument on the question of sexual orientation discrimination. The question in the en banc appeal is whether sexual orientation discrimination is sex discrimination under Title VII, but we were subject to a high standard – “but for” – under the New York State Executive Law, a claim we have abandoned. It is nevertheless logical that we show the en banc Court the evidence demonstrating sexual orientation discrimination, which is, in part, on the electronic appendix. The defense is not prejudiced in the least.

5. We will be shortening the paper appendix, but the electronic appendix was submitted at summary judgment on that Title VII, and we cannot include the videos and recording in the paper.

6. As for one other point, the rules *as far as I can see* do not prescribe a limit to the length of an en banc appeal. Less is more and I don’t expect to exceed the 14,000 allowed for a principal brief, but the Court should indicate whether there is a different word limit.

Thank you for your consideration.

Dated: New York, New York  
May 26, 2017

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*Greg S. Antollino*  
GREGORY ANTOLLINO, ESQ.