

THE AL-HARAMAIN STALL TIMELINE

With the news that Bush's DOJ submitted "inaccurate" information to Judge Vaughn Walker, I wanted to look at the recent timeline on the al-Haramain suit to identify the ways Bush and Obama/Dead-Enders postponed alerting Walker to this fact up until the moment it became clear he would get to review the wiretap log from al-Haramain. I'm guessing Obama discovered at least several weeks ago (February 11?) that the information provided to Walker was "inaccurate" and much of the actions since have been an attempt to avoid having to admit to Walker that he had received "inaccurate" information. (Though Bush no doubt knew this fact—and was trying to hide it—much longer.)

January 5, 2009: Walker announces he'll review the wiretap log to see if al-Haramain was wiretapped illegally. He sets the following deadlines:

- January 19 (14 days): "defendants shall arrange for the court security officer/security specialist assigned to this case in the Litigation Security Section of the United States Department of Justice to make the Sealed Document available for the court's in camera review. If the Sealed Document has been included in any previous classified filing in this matter, defendants shall so indicate in a letter to the court."
- February 13: Clearance for

al-Haramain's lawyers.

- February 19 (45 days): "Defendants shall review the Sealed Document and their classified submissions to date in this litigation and determine whether the Sealed Document and/or any of defendants' classified submissions may be declassified, take all necessary steps to declassify those that they have determined may be declassified and, no later than forty-five (45) days from the date of this order, serve and file a report of the outcome of that review."

January 9, 2009: al-Haramain's attorney, Jon Eisenberg emails DOJ's lead attorney, Anthony Coppolino, to confer on joint statement on how to proceed with case.

January 12, 2009: Coppolino asks Eisenberg for a proposal.

January 13, 2009: Eisenberg emails Coppolino a plan.

January 15, 2009: Coppolino emails he hopes to respond the following day, first raises possibility of separate statements.

January 16, 2009, 8:21 PM: Bush appeals Walker's January 5 order.

January 17, 2009: Eisenberg leaves email and voicemail about appeal.

January 19, 2009, 10:56 PM: DOJ files for a stay.

In separate filing, Bush DOJ tells Walker he already has the Sealed Document.

The Sealed Document at issue in this case has been lodged previously in this action with the appropriate court security officers.

January 20, 2009: Obama inaugurated President.

February 2, 2009: Eric Holder confirmed as Attorney General; as of this moment, he had not been read into the illegal wiretap program.

February 11, 2009: DOJ argues its case for a stay, and requests an interim stay before al-Haramain's lawyers get their clearance and the government submits its classification review.

The Government also requests that at least an interim stay be entered by February 13, 2009—the date after which further proceedings may commence under the January 5 Order.

It asks for an immediate answer so it can request a stay from the Appeals Court.

The Government respectfully requests that the Court indicate how it will proceed by 3 pm on February 13, 2009. In order to protect its interests, the Government plans to seek relief from the Ninth Circuit before the close of business that day in the absence of relief from this Court.

It also reports that the Government expects the materials included in the classification review will remain classified.

Plaintiffs also contend that the declassification review ordered by the Court may also foreclose any harm to the Government. See Pls. Opp. (Dkt. 69) at 10 n. 1. The Court ordered that process to be completed by February 19, 2009,

the Government expects that the relevant information at issue in the privilege assertion will remain classified, if not all of the information contained in prior classified submissions.

February 19, 2009: DOJ asks for an extension on the classification review, explaining:

The Government can report today, as we indicated in a filing made on February 11, 2009, that we expect the relevant information at issue in the privilege assertion to remain classified.

[snip]

The Government anticipated being prepared to file on time, but additional review and consultation is required to complete the forthcoming submission to the Court.

February 20, 2009: Walker grants DOJ request for more time to prepare the classification review, agrees to new deadline of February 27.

February 27, 2009: The following happens, apparently in this order.

- Obama speaks by phone with George Bush, reportedly to tell him of his Iraq withdrawal decision.
- 9th Circuit refuses DOJ's request for a stay.
- DOJ submits a filing basically warning that they will appeal any decisions Walker makes on sharing classified information.
- DOJ submits its delayed classification review, admitting that:

The Government's ex parte, in camera classified submissions also address an inaccuracy contained in a prior submission by the Government, the details of which involve classified information that cannot be set forth on the public record.

- DOJ submits four classified declarations (presumably correcting the previous "inaccuracy"), from:
 - Anthony J. Coppolino of the Department of Justice
 - Andrea M. Gacki of the Department of the Treasury, Office of Foreign Assets Control (note, Gacki had previously served as a DOJ defense attorney on this case, representing FBI)
 - John F. Hackett of the Office of the Director of National Intelligence
 - Joseph J. Brand of the National Security Agency