

THE SECRET STATE CONTINUES TO CRUMBLE

In yet another sign that the counter-terrorist state built on executive secrets continues to crumble, the DC Circuit Court just ruled that judges—and not the government—will get to determine whether classified information would be helpful to detainee habeas corpus petitions. (h/t scribe) And if that information is helpful, then the detainee lawyers will get that information.

In a ruling that may give lawyers for Guantanamo Bay detainees expanded opportunities to challenge the government's reasons for keeping them confined, the D.C. Circuit Court on Friday spelled out new rules on when the prisoners' lawyers get to see secret information in government files. The ruling in *Al Odah v. U.S.* (05-5117) and consolidated cases can be found [here](#).

Of particular importance, the Circuit Court said that merely because the government contends that secret data will not bolster the detainees' challenges does not control when a federal judge must provide access to that information for the detainees' lawyers. Those lawyers, the Court indicated, may be allowed by a judge to get the withheld information itself – or a substitute that reveals the substance without showing how the government collected it – if the judge finds it would be helpful to the detainees' challenge. That is the judge's job, not the government's, the panel ruled.

While the Court has given the Administration an opportunity to ask for a review from the full

Court, this is yet another example of an Article III Court telling Article II that the Executive cannot deprive litigants access to the Courts simply by saying the material at issue is too secret for the Courts.

As scribe pointed out in email, this ruling is no doubt going to be of interest to Judge Walker, if he does end up ruling that al-Haramain is an aggrieved party. As I reported last week, the Obama Administration has threatened to take its secrets and go home if Walker rules that al-Haramain's lawyers get to see some of the material in the case.

Because, for the moment at least, the DC Appeals Court says the Obama Administration can't take its secrets and go home.