

EXTENSION AND DELAY IN AL-HARAMAIN

As covered here and here, a Motion For Summary Judgment is pending in *al-Haramain v. Obama*, set in front of Judge Vaughn Walker in NDCA. Just to keep you apprised of the status, there has been a stipulation and order entered to extend certain time limits previously set in the matter.

Counsel for the Government Defendants has conferred with counsel for plaintiffs and sought agreement on a short two-week extension of the briefing schedule and a modification of the hearing date due to the press of business and other scheduling conflicts arising after the plaintiffs filed their motion. To facilitate this agreement, counsel for Government Defendants advised plaintiffs' counsel that the Government does not presently anticipate submitting classified information in support of the Government's position in response to plaintiffs' motion or with any cross motion.

The one useful tidbit here is the government's avowal that they do not intend to submit or rely on any classified information in their pleading. Certainly not shocking, in fact it is predictable. It is however important because neither we nor the plaintiffs want to delay things even further. There is no reason to give the government another month of delay on top of the delay that would be caused by classified filings, which would of course require proceedings to arrange for plaintiffs to review them under secure conditions per Judge Walker's previous putative protective order.

One further reason why Coppolino likely isn't going to do any further classified filing is because Judge Walker has indicated that if the

plaintiffs review anything classified, they will probably get to review everything classified, both past and present. That would be crucial because it would mean the plaintiffs get to see the February 2009 filings correcting the so-called "inaccuracy," which you can be sure the government does not want them to see. Obama, Holder and Coppelino will probably do just about anything to avoid plaintiffs seeing those "corrections".

Assuming the government, through lead attorney Tony Coppelino, actually keeps his word and relies on information solely within the public domain, however, it increases the likelihood they will merely restate the same tired old defense that they are entitled to dismissal on state secrets grounds. Yes, I know, how shocking they could once again spew the same old junk. They cannot, however, materially contest the facts proffered by the plaintiff in the motion for summary judgment, because under the rules governing handling and disposition of such motions, specifically Rule 56, that would create a disputed fact set that then gets set for trial to resolve, and the government wants no part of that.

The functional nuts and bolts of the Order are as follows:

1. The Government Defendants' response to plaintiffs' partial motion for summary judgment (and any cross motion) is due on August 20, 2009.
2. Plaintiffs' reply in support of their motion (and opposition to any cross motion) is due on September 8, 2009.
3. If the Government Defendants file a cross motion, any reply in support thereof would be due on September 14, 2009.
4. The matter will be heard on Friday, September 25, 2009 at 10:00 a.m.

So that is the new briefing schedule and the hearing/oral argument will be held on September 23rd (not the 25th as was originally asked for by the government) at 10:00 am Pacific time. Also note the mention that the government may "file a cross motion" for summary judgement. The government is undoubtedly saying this is simply to set up the case for dismissal should Judge Walker deny plaintiffs' summary judgment motion. I figure this means they are trying to finagle a way to set up a better path for immediate appeal.

As they say in show biz, stay tuned.