

AL-HARAMAIN WILL NOT APPEAL 9TH CIRCUIT DECISION IMMUNIZING ILLEGAL WIRETAPPING

The single best chance to hold the government accountable for its illegal wiretapping, the al-Haramain suit, is over.

Our goal was for the judiciary to rule that the president may not disregard an act of Congress in the name of national security.

[snip]

Ironically, although we had sought a judicial pronouncement that the president may not violate FISA, the 9th Circuit instead proclaimed that he can get away with it.

[snip]

We have decided not to challenge the 9th Circuit's ruling in the U.S. Supreme Court. We feel that, given the Supreme Court's current ideological tilt, it is better to leave other courts free to disagree with the 9th Circuit than to risk a bad ruling by the current Supreme Court.

The *Al-Haramain* case is over. Perhaps someday another court will adjudicate the scope of the president's domestic wiretapping powers in a national climate less charged by post-9/11 fears.

With these words, Jon Eisenberg, the lawyer representing al-Haramain in its suit against the government for violating FISA, publicly described his decision not to appeal the 9th Circuit's finding that the government is immune from penalties for violating FISA.

The resolution of the al-Haramain case has been little noted in the halls of DC. But it really underlies the entire debate about the FISA Amendments Act extension.

Because as shitty as the law just renewed is, the government also now knows that they don't even have to follow that law. They are effectively immune from the law.