

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

Any party may provide additional information **in confidence** directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

9th Circuit Case Number(s):	<input type="text" value="11-15468"/>		
District Court/Agency Case Number(s):	<input type="text" value="3:07-cv-00109-VRW"/>		
District Court/Agency Location:	<input type="text" value="N.D. California, San Francisco"/>		
Case Name:	<input type="text" value="Al-Haramain Islamic Foundation, et al."/>	v.	<input type="text" value="Barack H. Obama, et al."/>

Please briefly describe the dispute that gave rise to this lawsuit.

Plaintiffs alleged that they were subject to warrantless electronic surveillance in violation of the Constitution and the Foreign Intelligence Surveillance Act, 50 U.S.C 1801, et seq. (FISA). Plaintiffs sought damages and equitable relief.

(Please continue to next page.)

Briefly describe the procedural history, the result below, and the main issues on appeal.

The Government asserted the state secrets privilege, and moved for dismissal or summary judgment. The district court denied the Government's motion, relying on the fact that plaintiffs had reviewed a classified document that, they claim, shows they were surveilled. The Ninth Circuit reversed and remanded on the Government's interlocutory appeal, holding that the state secrets privilege was properly asserted and that the Government's inadvertent disclosure of a classified document did not vitiate the state secrets privilege. The court of appeals remanded the matter to the district court for the district court to address in the first instance plaintiffs' claim that the state secrets privilege is displaced by the FISA in the context of this case.

On remand, the district court ruled that the FISA displaces the state secrets privilege in the context of electronic surveillance. The court ruled that it could determine on the basis of public information that plaintiffs were subjected to warrantless electronic surveillance. On that basis, the court entered summary judgment for plaintiffs on their FISA claim. The court subsequently entered final judgment for plaintiffs, awarding \$40,800 in damages and \$2,537,399.45 in attorney's fees and expenses.

The issues on appeal include whether the district court committed legal error in holding that the FISA provides a waiver of the Government's sovereign immunity with respect to money damages and attorney's fees, and in holding that the FISA displaces the state secrets privilege.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Provide any other information that might affect the suitability of this case for mediation.

This matter touches upon fundamental legal issues that may be difficult if not impossible to compromise. It is also not clear that any viable settlement could take place absent vacatur of the district court's legal rulings. The government is unwilling to state, however, that it would refuse to participate in mediation.

SERVICE LIST--COUNSEL FOR PLAINTIFFS:

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**CERTIFICATION OF COUNSEL**

I certify that:

- ☐ a current service list with telephone and fax numbers and email addresses  
☒ is attached (see 9th Circuit Rule 3-2).

- ☐ I understand that failure to provide the Court with a completed form and  
☒ service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

**Note:** Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.