

# ON THE AL-HARAMAIN DECISION

Thanks to bmaz for sitting in a crappy rental car in SF for the last month and a half waiting for Vaughn Walker to make a peep. As he reported, Walker has ordered the government and the al-Haramain team to figure out a way to move forward with the litigation.

Accordingly, the parties are hereby ordered to meet and confer regarding the entry of an appropriate protective order which shall be entered herein before the court rules on the merits.

Frankly, that order is largely a punt. The government and al-Haramain have been squabbling about access for months now, there's no reason to expect them to be able to come to a resolution, even if Walker pointed them to an approach he seems to think will work. He could have just ordered them to follow that approach, but did not.

But here are the two aspects of the order that are not a punt. First, Walker makes it clear he has read all the documents submitted in this case.

The court has, in keeping with its orders dated January 5 (Doc #537/57), February 13 (Doc #562/71) and February 19 (Doc #566/75), reviewed the Sealed Document and the parties' various submissions on the subject of appropriate measures to prevent disclosure of classified information while allowing "both parties [] access to the material upon which the court makes a decision."

And he has said, clearly, that it's time to get this litigation moving.

The court will then consider the submissions and enter a protective order under which this case may resume forward progress.

In other words, Walker has said, "I've read the secret evidence in this case and now I want you guys to figure out how to move forward with this case."

Which pretty much implies that, having read the evidence, Walker believes it will move forward. Unless I'm misreading these tea-leaves (which I doubt, because the tea-leaves have been reading the same way since well before January), Walker is prepared to rule that al-Haramain is an aggrieved party. Meaning, Walker is convinced the government wiretapped al-Haramain illegally.

Not a surprise, in the least, but it's nice we're finally getting around to this.

So why the punt, and why the delay?

First, a wildarsed guess. I think the delay may have related to the third of the related warrantless wiretap cases before Walker. You'll recall the filing submitted two weeks ago, once again making expansive claims of privacy and claiming the government is immune from suit. Well, given the way all these cases interlock, I suspect Walker may have wanted everything in his hands, so he was sure he could move forward on all three in a sensible fashion. So, he gets the last filing on April 3, works through how all three cases work together, and now we get today's punt.

So why the punt? Why now?

Partly, I think Walker is giving the government one more chance to be reasonable in an attempt to avoid appeals further down the road (and note—he makes it clear those appeals will take place further down the road).

But he's also called the government's bluff. Last we heard in this case, after all, the government was squawking like Cheney,

threatening to come take its documents away if Walker tried to give them to al-Haramain. But what's it going to do now, if Walker has his ruling on the merits all but written now? Take Walker's rulings away? Take his notes? In other words, Walker has read the documents—documents that likely impact not just this suit, but also the other suits against the government. And the government can't take his review of those documents away at this point.

So we may not have a ruling until after May 8. And we—since we're not cleared—may not get to see Walker's ruling, in this case. But I'm guessing we'll see reflections of it in the two other suits currently pending before Walker.