

BREAKING! JUDGE WALKER GETS READY TO PENALIZE THE GOVERNMENT IN AL- HARAMAIN

Judge Walker appears to have lost his patience with the government's obstinance in al-Haramain.

He just gave the government one week to explain why he shouldn't just rule in al-Haramain's favor and impose penalties.

As the court understands the situation:

1. The United States has completed suitability determinations for two of plaintiffs' attorneys and found them suitable for TS/SCI clearances, but government officials in one or more defendant agencies, including the NSA Director (Doc #626/89 at 16), are refusing to cooperate with the court's orders because, they assert, plaintiffs' attorneys do not "need to know" the information that the court has determined they do need to know.

2. Defendants have refused to agree to any terms of the protective order proposed by plaintiffs and have refused to propose one of their own. Doc #626/89 at 35.

Defendants are now ordered to show cause why, as a sanction for failing to obey the court's orders:

- (1) defendants should not be prohibited, under FRCP 37(b)(2)(ii), from opposing the liability component of plaintiffs' claim under 50 USC § 1810 — that is, from denying that plaintiffs are "aggrieved persons" who were subjected to electronic surveillance; and

(2) the court should not deem liability under 50 USC § 1810 established and proceed to determine the amount of damages to be awarded to plaintiffs.

Defendants shall submit written response to this order no later than May 29, 2009.

All good questions, Judge Walker.

I rather suspect the Administration would prefer just to pay damages than to go forward with this (particularly with Judge Walker in such a peeved mood). But if Walker rules in al-Haramain's favor, what does that do for the retroactive immunity case?