

OBAMA DOJ ASKS FULL PANEL TO REVIEW JEPPESEN

When the al-Haramain hearing last week turned to questions of next steps, DOJ's Anthony Coppelino played for time.

THE COURT: All right. What I would suggest is a – and I'm going to ask the clerk to backstop me here. We have a special setting for hearing this motion – we could hear it on the – How's the 5th of August?

(Attorney Coppelino shaking his head.)

THE COURT: Mr. Coppelino says no.

MR. COPPOLINO: Well, really, the first two weeks of August are quite bad for me. I was going to suggest, perhaps, the first Thursday that I could do; it would be the 20th.

THE COURT: Doesn't have to be on a Thursday unless we have to work around a trial.

MR. COPPOLINO: Okay. My preference would be the 28th or 21st. Looks like you are not available the following week, at least according to that calendar (pointing), at least.

THE CLERK: That's correct.

MR. COPPOLINO: So I would ask the Court, if it's possible, and depending on Mr. Eisenberg's schedule, no sooner than, say, the 21st or then after Labor Day.

MR. EISENBERG: Your Honor, I'm going to be mired in work throughout July and August; it doesn't matter to me what date you choose. It's going to be a tough summer; I'm prepared to deal with that.

THE COURT: All right.

MR. COPPOLINO: Plus, you need to build in time for his reply because if he files on the 30th, I would need July because we have the Jewel hearing on the 15th. So I think I need at least the end of July – he gets to reply, if it's his motion, so I think, unfortunately, if it's okay, we are into September.

THE COURT: What does September 2 look like?

I suspect that when Coppolino pushed al-Haramain out into September, he knew this was coming (from an ACLU press release).

The Justice Department today argued that the victims of the "extraordinary rendition" program should not have their day in court, asking a federal appeals court to block a landmark case the court had earlier ruled could go forward. In April, the Ninth Circuit Court of Appeals ruled that an American Civil Liberties Union lawsuit against Boeing subsidiary, Jeppesen DataPlan Inc., for its role in the Bush administration's unlawful "extraordinary rendition" program could proceed, but today the government asked the appeals court's full panel of judges to rehear that decision.

"The Obama administration has now fully embraced the Bush administration's shameful effort to immunize torturers and their enablers from any legal consequences for their actions," said Ben Wizner, staff attorney with the ACLU National Security Project, who argued the case for the plaintiffs. "The CIA's rendition and torture program is not a 'state secret;' it's an international scandal. If the Obama administration has its way, no torture victim will ever

have his day in court, and future administrations will be free to pursue torture policies without any fear of liability."

In April, the appeals court reversed a lower court dismissal of the lawsuit, brought on behalf of five men who were kidnapped, forcibly disappeared and secretly transferred to U.S.-run prisons or foreign intelligence agencies overseas where they were interrogated under torture. The Bush administration had intervened, improperly asserting the "state secrets" privilege to have the case thrown out. The appeals court ruled, as the ACLU has argued, that the government must invoke the "state secrets" privilege with respect to specific evidence, not to dismiss the entire suit.

Much depends on the Jeppesen decision, in both Jeppesen itself, the Jewel suit, and on al-Haramain. So long as the Administration cannot invoke state secrets over "information" rather than discrete pieces of evidence, the government will, slowly but eventually, be held accountable for the crimes committed under Bush. And I suspect that Vaughn Walker's proposal to decide the al-Haramain on the information in the public record depends in the ability to protect "information" rather than "evidence."

I look forward to our legal resident of the 9th for his take on this—I don't think the full panel will reverse the Jeppesen decision. But I guess you gotta go through the 9th to get to Anthony Kennedy.

Update, from bmaz:

Good luck with that [colorful language omitted] this is the 9th circuit bitchez, not one of your jimmed up east coast gigs.

Wonder how many microseconds it will

take Jay Bybee to run like hell the
other way from this?? Heh.