STUNNING AL-HARAMAIN FILING SHAMES OBAMA; SHOWS DUPLICITY OF OFFICIALS

In early June, a critical hearing was held in front of Judge Vaughn Walker in the al-Haramain warrantless wiretapping case. As a result of that hearing, Judge Walker entered an order commanding the attorney for plaintiffs al-Haramain et. al to file a motion for summary judgement. Hot off the press, the motion was filed minutes ago, and it is a stunning demonstration of just how disingenuous and two faced President Obama and his administration have been on the seminal issues of warrantless wiretapping, protection of Constitutional rights, transparency and accountability.

The first words in the main body of the motion are a stark reminder to President Obama and Attorney General Eric Holder of the very words and promises they have spoken in the past on the issue of illegal wiretapping:

> "Warrantless surveillance of American citizens, in defiance of FISA, is unlawful and unconstitutional."
> President Barack Obama, December 20, 2007
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> "We owe the American people a reckoning."
> Attorney General Eric Holder, June 13, 2008

Apparently those words only were operative during the election, because that sure is not what Obama and Holder are saying and doing now. Instead, in pretty much as big of a Constitutional about face as is imaginable, Obama has decided to turn his back on his words

and promises and throw his lot in with Bush and Cheney by asserting state secrets to protect the government from inquiry and accountability on its illegal and unconstitutional acts. It is not radical left wing bloggers saying that, it is distinguished US Senator Russell Feingold:

> Of State Secrets, he said the Administration's repeated assertion of State Secrets in litigation was reminiscent of the Bush Administration. He alluded to the cases before Vaughn Walker, and complained that the invocation of State Secrets would prevent Americans from finding out what really went on with the warrantless wiretap program

Senator Feingold is exactly right in his quote. The Ninth Circuit Court of Appeals has also slapped Obama hard on his continuation of the Bush/Cheney policy. And lest there be any illusion that Bush wiretapping program was legal, the following uncontroverted facts from the motion for summary judgment dispatch that notion:

> On May 15, 2007, in testimony before the Senate Judiciary Committee, and on May 22, 2007, in written answers to follow-up questions by Senator Patrick Leahy, former Deputy Attorney General James B. Comey made the following statements demonstrating that defendants knew the warrantless surveillance program was unlawful yet continued it for several weeks in 2004 without the DOJ's approval:
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> • As of early March of 2004, Comey and Attorney General John Ashcroft had determined that the program was unlawful.
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> • During a meeting at the White House on March 9, 2004, two days before the DOJ's periodic written certification of the

> program was due, Comey told Vice-President Dick Cheney and members of his and President Bush's staffs that the DOJ had concluded that the program was unlawful and that the DOJ would not re-certify it.
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> • On March 10, 2004, while Ashcroft was hospitalized, two White House officials went to Ashcroft's bedside and attempted to obtain the written certification from Ashcroft, but he refused.
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> • Despite the advice that the program as then constituted was unlawful, President Bush did not direct Comey or the FBI to discontinue or suspend any portion of the program.
> (citations omitted)

The program was illegal from the start, and by all accounts remains so to this date under President Obama. But the most critical, and definitively illegal, period during the existence of the warrantless wiretapping program was following the infamous Ashcroft "Hospital Incident". As the "Statement of Relevant Facts" in the al-Haramain Motion for Summary Judgment lays out, this was precisely the period the al-Haramian attorneys were under illegal surveillance.

The foregoing is not just troubling because of the illegal acts committed upon plaintiff al-Haramain and its licensed attorneys, it is a damning comment on the credibility and honesty of President Barack Obama, Attorney General Eric Holder and the people they have brought on board to serve in our name.

The Bush Cheney surveillance program was legally defended in a "White Paper" issued by the Bush Department of Justice on January 29, 2006. It was a scurrilous and convoluted argument typical of the cravenly politicized Bush DOJ. Take a look at what some of the other officials serving in the Obama Administration used to say about

the illegal Bush/Cheney surveillance program on page 21 of the motion for summary judgment. The really damning section, however, is contained in pages 26-28 of the motion:

> Again, not even President Obama or members of his administration agree with the White Paper's radically expansive theory of inherent presidential power. Principal Deputy Solicitor General Neal Katyal has said: "Claims of 'inherent' power . . . fall flat given the fact that FISA has been enacted." Katyal & Caplan, supra at 1034. Solicitor General Elena Kagan has called the Bush administration's legal opinions justifying the TSP "expedient and unsupported," written by "lawyers who failed to respect the rule of law" and who do not understand that "the law and its precepts reign supreme, no matter how high and mighty the actor and no matter how urgent the problem." Elena Kagan, Address to Cadets at the United States Military Academy at West Point (Oct. 17, 2007), available at http://judiciary.senate.gov/nominations/ElenaKagan/upload/Kagan-Question-13d-Part- 1.pdf. President Obama's nominee for Assistant Attorney General for the DOJ's Office of Legal Counsel, Dawn E. Johnsen, has written that the White Paper's inherent power theory is "extreme and implausible." Dawn E. Johnsen, What's a President To Do? The Constitution In the Wake of Bush Administration Abuses, 88 Boston U. L. Rev. 395, 405 (2008). Johnsen adds: "The Bush administration's 'unitary executive' and Commander-in-Chief theories, in my view, are clearly wrong and threaten both the constitutionally prescribed balance of powers and individual rights."
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> In an amicus curiae brief filed in another TSP lawsuit, Associate Deputy

> Attorney General Donald B. Verrilli, Jr. (then co-chair of Jenner & Block's appellate and Supreme Court practice) compellingly debunked the Bush administration's inherent power theory, calling it "particularly dangerous because it comes at the expense of both Congress's and the judiciary's powers to defend the individual liberties of Americans." Brief for Amici Curiae Center for National Security Studies and the Constitution Project, ACLU v. NSA, 493 F.3d 644 (6th Cir. 2007), 2006 WL 4055623, Verrilli said that in the Steel Seizure Case "the Supreme Court established that Congress can, even during time of war, regulate the 'inherent power' of the President through duly enacted legislation. That is precisely what FISA does. In authorizing warrantless electronic surveillance in direct violation of FISA, the President is acting not only with power that is at its 'lowest ebb,' he is acting in violation of his constitutional duty to enforce the law as enacted by Congress," Id. "Our Constitution was established to end — not enshrine — this kind of executive overreaching. . . . The NSA surveillance program upends the balance among the three
> branches of government, and thereby threatens bedrock liberties the constitution and the Bill of Rights are designed to protect." Id. at *14-15.
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> President Obama himself has acknowledged: "The Supreme Court has never held that the president has such [inherent] powers." Charlie Savage, Barack Obama's Q&A, BOSTON GLOBE, Dec. 20, 2007. President Obama expressly rejected the inherent power theory when he stated: "Warrantless surveillance unconstitutional." Id. (some citations omitted)

The *amicus* brief filed by now Assistant Attorney General Donald Verrilli (who is a driving force behind Obama's legal positions on wiretapping in general and the consolidated cases in front of Judge Vaughn Walker in particular) is extremely telling. It was filed in the Sixth Circuit appeal from the famous *ACLU v. NSA* case where Judge Anna Diggs Taylor found the Bush/Cheney program illegal and unconstitutional.

All in all, the motion for summary judgment filed by plaintiffs al-Haramain et. al is one fantastic read, a concise set of proof of the case for entry of judgment against the government, and a damning blow to the credibility and honesty of Barack Obama, Eric Holder and other key members of the Obama Administration. Their actions are directly contrary to what they promised the nation when seeking office, and are not the standard of conduct the United States was founded upon nor deserves.