

GOVERNMENT REMAINS BELLIGERENT IN AL- HARAMAIN; WILL FIGHT ON

Yes, I know, it was hard to see this coming. As Condi Rice would say, “who could have expected”? Nevertheless, here it is. As you may recall, back at the end of March, Judge Vaughn Walker entered his somewhat earth shattering order granting summary judgment to Plaintiffs al-Haramain (see: [here](#) and [here](#)) and on April 16 Plaintiffs lodged their proposed form of judgment (see also: [here](#)).

Well, last Friday the government, by and through their ubiquitous attorneys the Department of Justice, filed their response to Plaintiffs’ proposed judgment. To put it mildly, the government is *not* consenting to the entry of judgment and is *not* going quietly into the night. The government did not just object to Plaintiffs’ judgment, they have lobbed another giant thumb in your eye belligerent pile of repetitive argument on Judge Walker:

Although the Court has made a finding of liability as to plaintiffs’ FISA claim (with which the Defendants respectfully disagrees), plaintiffs cannot merely rely on that determination at this stage. Rather, the entry of damages and other equitable relief is a separate matter, and plaintiffs have failed to demonstrate that there is any basis for the Court to award them the amount of liquidated damages they seek, punitive damages, or the other forms of relief set forth in plaintiffs’ proposed judgment.

For those not familiar with reading between the double spaced lines of legal pleading, the

government is continuing to object to everything up to, and including, the Plaintiffs' right to exist as plaintiffs in the first place. They will not consent to judgment; they will not agree to pay. They are not going to stop at go; they are not going to pay \$200.

The government is fighting how long the surveillance occurred:

While the \$100 per day of violation is an alternative amount of liquidated damages under Section 1810, that alternative turns on the fact issue of how many days the purported violation occurred. Thus, the total amount sought for daily damages must be supported not merely by a finding that plaintiffs had been intercepted, but on how many days that any violation of FISA Section 1809 occurred.

The government does not admit that plaintiffs were illegally surveilled, but argues if they were they were not illegally surveilled for the number of days claimed by plaintiffs. Gosh, if you didn't know better, you might think the government is suddenly arguing the merits. But, of course, they will not admit to that either.

The government is fighting on even the availability of punitive damages:

In addition, even if punitive damages were available against the United States under Section 1810(b), plaintiffs' proposed judgment fails to establish any factual basis for such an award. See *Molzoff v. United States*, 502 U.S. 301, 309 (1992) (punitive damages "embodies an element of the defendants's conduct that must be proved before such damages are awarded").

The government is fighting over whether the illegal fruits of their illegal surveillance can be suppressed and/or scrubbed:

As a threshold matter, the equitable relief plaintiffs seek as to alleged documents and information is not authorized by the cause of action at issue here.

...

Nor does § 1806(g) authorize the expungement remedy that plaintiffs seek. That subsection only provides for suppression of evidence unlawfully acquired by electronic surveillance of an aggrieved person with standing in an ongoing proceeding.

...

Plaintiffs have not alleged or shown that they are facing any threat of irreparable harm, let alone a real and immediate threat of irreparable harm, from the alleged existence of the allegedly unlawful electronic surveillance in the Government's files and records. As noted above, plaintiffs' request is not made in the context of any ongoing proceeding against them, nor have they made any showing of any anticipated action against them. Finally, balancing the relevant interests would again require disclosure of whether or not plaintiffs were in fact subject to electronic surveillance, whether any information derived from such surveillance exists and what it may indicate information that the Ninth Circuit found is protected by the state secrets privilege.

Hell, the government is even fighting and denying that Judge Walker even has the power to declare their conduct illegal:

Paragraph six (6) of plaintiffs' proposed judgment also seeks the "equitable relief" of a declaratory judgment that the "defendants' warrantless surveillance of plaintiffs was unlawful as a violation of FISA."

See Dkts. 723/117 at 3. The Court lacks jurisdiction to enter such relief. Section 1810 does not authorize the entry of any equitable declaratory or injunctive relief.

Oh, and the government does not think plaintiffs are entitled to attorney fees either and certainly not at this point. The bad faith joke of a judgment the government is willing to have Vaughn Walker sign is attached to the tail of their extended whining. Read it and laugh. Funny thing is, if you didn't know better, you would say the government is actually fighting on the merits right now.

So, in sum, the government is not remotely close to conceding judgment, paying and walking away. And they are still determined to spit in Judge Walker's eye at every possible opportunity; and sure have done so here. To me, based on my experience with courts and advocacy, the DOJ's attitude is so malignant and unsophisticated that the only explanation is that they are desperately trying to get Judge Walker to lash out at them in order to contaminate the record. It is either that or Coppolino, Hertz, Letter et. al are such crappy lawyers they simply do not know better and, as craptastic as some of their work has been in this case, I do not buy that they are that poorly skilled.

And so we move on with the further litigation of *al-Haramain v. Obama*. The next activity expected in the case is this Friday, May 7 when the court has set Plaintiffs' brief in support of punitive damages as being due. After reading this tripe by the government, I have a feeling the Plaintiffs may have more than a few things to say.