

ATTACHMENT 1

**DEFENDANTS' MOTION TO PREVENT
PLAINTIFFS' ACCESS TO THE
SEALED CLASSIFIED DOCUMENT**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC FOUNDATION,)
INC., an Oregon nonprofit)
corporation, et al.,)
Plaintiffs,)
vs.)
GEORGE W. BUSH, President of the)
United States, et al.,)
Defendants.)

No. CV-06-274-KI
April 7, 2006
Portland, Oregon

TELEPHONE CONFERENCE
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GARR M. KING
UNITED STATES DISTRICT COURT JUDGE

040706king

2 FOR THE PLAINTIFFS: Steven Goldberg
3 Attorney at Law
4 621 S. W. Morrison
Suite 1450
Portland, OR 97205
5
6 Jessica Ashlee Albies
7 Attorney at Law
8 P. O. Box 42604
9 Portland, OR 97242
10 FOR THE DEFENDANTS: Anthony J. Coppolino
11 U.S. Department of Justice
12 20 Massachusetts Avenue, NW
13 Room 6102
14 Washington, DC 20530
15
16 Andrea Marie Gacki
17 U.S. Department of Justice
18 20 Massachusetts Avenue, NW
19 Room 7334
20 Washington, DC 20001
21
22 Andrew H. Tannenbaum
23 U.S. Department of Justice
24 20 Massachusetts Avenue, NW
25 P. O. Box 883
Washington, DC 20044
James L. Sutherland
U.S. Attorney's Office
701 High Street
Eugene, OR 97401
COURT REPORTER: Nancy M. Walker, CSR, RMR, CRR
United States District Courthouse
1000 S. W. Third Avenue, Room 301
Portland, OR 97204
(503) 326-8186

Proceedings recorded stenographically,
computer-aided transcription

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1 P R O C E E D I N G S
2 THE CLERK: Good afternoon, Counsel.
3 Mr. Coppolino, can you hear me?
4 MR. COPPOLINO: Yes, I can.

5 040706king
THE CLERK: Miss Gacki?
6 MS. GACKI: Yes.
7 THE CLERK: Mr. Tannenbaum?
8 MR. TANNENBAUM: Yes.
9 THE CLERK: Mr. Sutherland?
10 MR. SUTHERLAND: Yes.
11 THE CLERK: Mr. Goldberg?
12 MR. GOLDBERG: Yes.
13 THE CLERK: And Miss Albies?
14 MS. ALBIES: Yes.
15 THE CLERK: Thank you.
16 Your Honor, this is the time set for a telephone
17 conference in Civil Case No. 06-274-KI, Al-Haramain
18 Islamic Foundation, et al. versus Bush, et al.
19 Counsel, there is a court reporter present, so
20 please be sure to state your name before you speak, and
21 here is Judge King.
22 THE COURT: Good afternoon. I scheduled this
23 conference to discuss the letter of April 5th, 2006 that
24 I received from Mr. Goldberg and Mr. Coppolino.
25 There is a court reporter present. The

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1 conference is being taken down by the court reporter.
2 I've had a request from the press to participate in this
3 telephone conference. I have advised them that my
4 practice is when I have a telephone conference or a
5 telephone hearing, the only parties on the phone are
6 parties or their attorneys, but that this is a matter of
7 public record and that anyone may request a transcript
8 from the court reporter. So I just want you to be aware

9 that a transcript will be made of this and will be
10 available.

11 MR. GOLDBERG: Your Honor, this is Steve
12 Goldberg. You're kind of cutting in and out on our
13 reception here.

14 THE COURT: Okay. Are any of you on a speaker
15 phone?

16 MR. GOLDBERG: We are on a speaker phone here.

17 THE COURT: Well, that sometimes is a problem.

18 MR. GOLDBERG: It's better now, it sounds like.

19 THE COURT: All right. Let's see what we can do
20 here. Let me go through what I said before.

21 MR. COPPOLINO: I certainly heard it here, Your
22 Honor, Tony Coppolino at the Justice Department, if you'd
23 like to avoid that, but I'm not if the others did.

24 MR. GOLDBERG: No. We heard as well, Judge.

25 THE COURT: That's fine. I don't have to go

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1 through it.

2 Let's go through the letter here. There is an
3 issue regarding the discovery deadline. Let me tell you
4 what my normal practice is. I set a deadline by which
5 discovery is to be completed. I set a date by which
6 dispositive motions are to be filed. Generally that date
7 is 30 days after completion of discovery.

8 I don't restrict a party's ability to file a
9 dispositive motion earlier than the final date for filing
10 the dispositive motion. If one is filed earlier and a
11 party feels they need discovery in order to respond, then

12 they have to file a request to defer hearing on the
13 dispositive motion and defer response. So that's the way
14 it would normally be done in this case.

15 Now, what I see here is that the parties have
16 agreed, subject to my approval, that any dispositive
17 motion to be filed by the defendants would be filed by
18 June 9th, 2006.

19 Is that the agreement of the parties?

20 MR. COPPOLINO: It is, Your Honor, Anthony
21 Coppolino, Department of Justice. It is if it's
22 acceptable to the Court. This is also the date which our
23 response to the Complaint would be extended to as well,
24 and the date on which we would file a dispositive motion
25 in lieu of an Answer.

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1 MR. GOLDBERG: I just want to clarify, Your
2 Honor. It's my understanding that we were extending the
3 date to respond to the Complaint to that date. And if
4 they choose to file a dispositive motion, that's fine.
5 If they choose to file an Answer, that's fine. Whatever
6 they choose is fine with us.

7 THE COURT: All right. Well, any filing they're
8 going to make in response to the Complaint or a
9 dispositive motion will be filed by June 9th.

10 Now, with regard to the discovery deadline of
11 June 30th requested by the plaintiffs, plaintiffs are
12 free at this point to serve requests for production. If
13 the defense wants to defer, they're going to have to make
14 that request. If they want additional time, they're
15 going to have to make that request. Otherwise, they're

16 due within 30 days of the service. So that would mean
17 that 30 days from now they would have to respond to any
18 request for production, interrogatories, or requests for
19 admissions.

20 Now, what do you want me to do at this point,
21 Mr. Goldberg, regarding discovery?

22 MR. GOLDBERG: Nothing. I think all I wanted to
23 make sure was that we're free to go ahead and serve our
24 requests. It sounds like we are, and that's what we'll
25 do.

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1 THE COURT: Okay. The last issue raised is
2 document storage. It appears that you have agreed that
3 the document may be stored in the SCIF maintained by the
4 FBI offices in Portland under the terms set forth in the
5 letter. The area where you disagree is the access of
6 plaintiffs' counsel to the document.

7 What is plaintiffs' position?

8 MR. GOLDBERG: Plaintiffs' position is that we
9 certainly are agreeable to protective orders being issued
10 by the Court which sets appropriate restrictions, as we
11 say in the letter, regarding dissemination, publication,
12 use of the document in litigation.

13 But I want to be certain that as we proceed in
14 this litigation, that we should be able to have access to
15 the document, if necessary, either in terms of preparing
16 discovery requests, responding to any requests they may
17 serve, certainly in terms of responding to any
18 dispositive motions which are served, so some

19 procedure -- and, again, we're certainly willing to agree
20 to some kind of protective order at this point being set
21 forward -- or being set forth. But I sense, at least
22 from the defendants' attorney, is that they have a
23 problem with us having any access to the document.

24 I've raised with Mr. Copolino, I have no idea,
25 after we -- after the Court ordered that the document be

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1 faxed to the Government and that happened, I have no idea
2 whether the Government's attorneys or any of them have
3 access to the document or if they've seen the document.
4 I know, however, my primary concern right now is that we
5 be allowed to have access to it if we need it as this
6 litigation proceeds.

7 THE COURT: All right. Now, defendants have
8 proposed in the letter that they brief this issue to the
9 Court on a mutually agreeable schedule.

10 Mr. Goldberg, how do you feel about some briefing
11 on this?

12 MR. GOLDBERG: Well, if they want to raise an
13 issue, as long as we can respond to it, that's fine.

14 You know, I think our basic argument is going to
15 be to the Court that ultimately this document is within
16 the Court's and is subject to the Court's control. And
17 the Court, as I said, can certainly set whatever
18 restriction or protection it wants in terms of a
19 protective order. I think the defendants' position again
20 is going to be that we shouldn't have any access to it.

21 If they want to brief it, obviously we want to be
22 able to respond to it.

23 THE COURT: All right. The question of access is
24 a separate question from where it should be located. It
25 appears that the parties have agreed that it be

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1 maintained at the SCIF -- excuse me. It will be located
2 or stored at the SCIF maintained by the FBI offices in
3 Portland, under those conditions. I'm prepared to enter
4 an order to that effect, if both parties agree, and then
5 resolve the issue of plaintiffs' access.

6 Do you want me to enter an order at this time on
7 the storage of the document?

8 MR. GOLDBERG: This is Goldberg. That's fine
9 with me. We've agreed to that.

10 THE COURT: Mr. Coppolino?

11 MR. COPPOLINO: Yes, Your Honor, we've agreed to
12 those terms and conditions. Once you've entered that
13 order, I will make arrangements for that to be carried
14 out.

15 THE COURT: All right.

16 Now, I think I do want briefing on the issue of
17 the plaintiffs' continued access. You have the basic
18 question. I don't know what the Government's position
19 will be as to whether or not the plaintiff should have
20 access to the document at all.

21 Then you have a question, I take it, of if it is
22 conceded, agreed, or determined by the Court that
23 plaintiff should have access, then whatever safeguards
24 are necessary regarding that access. And what I would
25 like to see from both of you is a proposed protective

1 order in the event the Court determines that the
2 plaintiff is entitled to access.

3 Now, do you feel there are any other issues you
4 want to brief, Mr. Coppolino?

5 MR. COPPOLINO: No, Your Honor. We are going to
6 be briefing a response to The Oregonian's motion to
7 unseal, which I believe is due next Friday. I think the
8 issues you just outlined regarding continued
9 access -- oh, I would mention, too, Your Honor, I would
10 expect that we would fold into our position on continued
11 access the issue of return of any copies of the document
12 that are being maintained by the plaintiffs. So I would
13 likely -- my motion would cover that topic as well.

14 THE COURT: Yes. Furnish a motion and a memo in
15 support.

16 When can you have that to the Court?

17 MR. COPPOLINO: Well, Your Honor --

18 THE COURT: I'm not pushing for it at this point,
19 and I don't know that anybody is pushing to get it. I
20 mean --

21 MR. COPPOLINO: May I ask, would it be too late
22 to say May 26th, or is that too late, Your Honor? We
23 have briefs due in other cases in this area on the 28th
24 of April and the 19th of May.

25 THE COURT: The only issue I see is whether

2 to respond to anything that you have filed. You're not
3 going to file a motion until June 9th, so it doesn't look
4 like it.

5 How do you feel about May 26th, Mr. Goldberg?

6 MR. GOLDBERG: That sounds fine. I'm just trying
7 to see how much time we'll have to respond. I have a
8 case scheduled the week of June 12th. But we have enough
9 people working on this, so we should be able to respond.

10 THE COURT: All right. May 26th to file your
11 brief, Mr. Coppolino.

12 And your response, Mr. Goldberg?

13 MR. COPPOLINO: Thank you, Your Honor.

14 THE COURT: And, Mr. Goldberg, you'll respond by
15 what date?

16 MR. GOLDBERG: I was going to say, could we have
17 until June 20th? That's a little bit more than two
18 weeks, but that will at least give me a day after we
19 return to look at the documents.

20 THE COURT: Okay. You can have until June 20th.

21 Mr. Coppolino, you can have 10 days for a reply.

22 MR. COPPOLINO: Thank you.

23 MR. GOLDBERG: Your Honor, may I raise one other
24 question? This is Goldberg.

25 THE COURT: Sure.

1 MR. GOLDBERG: As part of this, and perhaps this
2 should be discussed in the motion, but I think it's
3 important for us to at least understand whether or not
4 the government attorneys and whether or not any of the

5 Department of Justice attorneys have access to this
6 document.

7 THE COURT: Well, that's something I'm going to
8 want to know. If there is some argument that the
9 plaintiff should not have access to it, I'm going to want
10 to know what access the defense has to it, has had to it,
11 and expects to have in the future.

12 MR. COPPOLINO: We'll address that, Your Honor.

13 THE COURT: Okay.

14 MR. GOLDBERG: Thank you.

15 THE COURT: All right. Anything else?

16 MR. GOLDBERG: How was your vacation?

17 THE COURT: Well, it was good. Thank you. I
18 enjoyed getting away. I'm happy to be back. So it's
19 good.

20 And as you have probably figured out, I'm
21 generally receptive to schedules that the parties have
22 worked out, so long as they agree and as long as they
23 don't -- that they aren't too far in the future.

24 So just, as you've been doing, confer on these
25 things before we get on the telephone, see what you can

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1 agree to, and that will limit the decisions I have to
2 make.

3 Okay. Thank you.

4 MR. COPPOLINO: Thank you, Your Honor.

5 MR. GOLDBERG: Thank you, Your Honor.

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8 (Proceedings concluded.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature is not certified.

NANCY M. WALKER, CSR, RMR, CRR
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DATE

12 Official Court Reporter 040706king
13 Oregon CSR No. 90-0091
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