

ATTACHMENT 2

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

STEVEN GOLDBERG, Attorney at Law

621 S.W. Morrison St., Suite 1450

Portland, Oregon 97205

Phone: (503)224-2372

Fax: (503)224-1123

Email: goldberg@goldbergmechanic.com

March 20, 2006

By Facsimile (503-326-8239)

The Honorable Garr M. King
U.S. District Court Judge
1000 S.W. Third Ave.
Portland, OR 97204-2902

**RE: Al-Haramain Islamic Foundation, Inc., et al. v. Bush, et al.
Civil No. 06-274-KJ**

Dear Judge King:

We received defendants' March 17th fax to the Court at 5:04 p.m. on Friday afternoon. We strenuously object to any *ex parte* contact by defendants' attorneys with the Court. Further, we request that all proceedings in this matter, including the status conference set for this morning at 11:00 a.m., be reported.

At approximately 10:00 a.m. on March 17th, we received a phone call from Mr. Tannenbaum and Andrea Gacki from the Department of Justice, advising us that the document which had been filed by plaintiffs with the court under seal had "not been properly secured." Defendants advised that they intended to contact the court *ex parte* and have the document seized and somehow secured by the F.B.I. We received a series of further phone calls during the day. Each time the attorneys advised that they intended to contact the court *ex parte*, and each time we objected to any such contact by defendants' attorneys.

We understand that the document at issue is classified. Our hope is that the Court has read the document, and plaintiffs absolutely have no objection to providing a copy of the document to defendants' attorneys per their representation that they "cannot be sure what it contains." It is our position that the document is evidence supporting the allegations in the Complaint. Perhaps of even greater concern, the document may be evidence of criminal acts committed by the defendants, specifically including the F.B.I. 50 U.S.C. §1809. Hence our concern about any involvement by the F.B.I. in the "securing" of the document.

This lawsuit was filed three weeks ago. There has been widespread press coverage of this

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litigation. Nonetheless, there has been no reported disclosure of the document either by plaintiffs or by any court personnel.

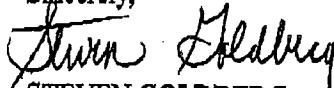
Plaintiffs have no objection to the Court appropriately safeguarding the document; that is precisely why we filed the motion to keep the document under seal. We do request that those safeguards provide for review of the document by plaintiffs' attorneys whenever necessary as this litigation proceeds. See, for example, *U.S. v. Mora*, 833 F.Supp. 752 (E.D. Mo. 1993).

The relevant regulations cited by defendants make two points clear. First, per 28 C.F.R. §17.17(c)(4), the document is to be kept at "a court facility." Second, the appropriateness of what must be done to safeguard the document must be subject to the Court's supervision. It is for that reason that we, again, urge the Court to review this document if it has not already done so. It is plaintiff's position that the conversations discussed in the document are relatively benign and certainly do not implicate any conceivable national security concerns. The document itself is relevant to the question of whether defendants engaged in warrantless electronic surveillance. However, independent of this lawsuit, defendants have already admitted that they engaged in this conduct.¹

Finally, we request that the status conference also be used to discuss a discovery schedule in this case. Plaintiffs are anxious for discovery to proceed, and intend to immediately serve defendants with requests for production of documents and for admissions.

Thank you for your consideration.

Sincerely,


STEVEN GOLDBERG
THOMAS H. NELSON
ZAHA HASSAN
Of Attorneys for Plaintiffs

SG: sr
cc: Mr. Coppolino & Mr. Tannenbaum

¹President Bush, Radio Address (Dec. 17, 2005), transcript available at: <http://www.whitehouse.gov/news/releases/2005/12/20051217.html> ("In the weeks following the terrorist attacks on our nation, I authorized the National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al Qaeda and related terrorist organizations.")