

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CIVIL MINUTE ORDER

VAUGHN R. WALKER
United States District Chief Judge

DATE: January 23, 2009

COURTROOM DEPUTY: Cora Klein

Court Reporter: Lydia Zinn

**MDL No: 06-1791 VRW IN RE NATIONAL SECURITY AGENCY
TELECOMMUNICATIONS RECORDS LITIGATION**

This relates to: C07-0109 VRW AL-HARAMAIN ISLAMIC FDN v GEORGE BUSH et al

COUNSEL FOR PLAINTIFF:

Jon Eisenberg
Steven Goldberg

COUNSEL FOR DEFENDANT:

Antony Coppolino
Tim Stinson

PROCEEDINGS:

1. Further CMC
2. Set briefing on govt's request for certification re Section 1292(b) interlocutory appeal.

RESULTS:

The Court set the following briefing schedule:

Al-Haramain's brief in opposition is due 2/6/2009;
Govt's reply(if any) due 2/13/2009.
No hearing without further order of the court.

Further the Court Orders :

I just want the record to be clear we're going to proceed with briefing on the 1292(b) interlocutory appeal request of the government and the government's request to stay these proceedings pending an interlocutory appeal. I want, to the extent it's helpful to the parties, the record to be clear. I am in agreement with the plaintiffs position that the notice of appeal that the government has filed is a nullity, because it is not an appeal from an appealable order. Under any of the theories that the government has articulated. Collateral order doctrine, 1292(a)(1), or any other ground of appeal because it does not appear to be a final judgment or a final order appealable to the court of appeals. To the extent the government wants to seek relief based upon the present record in the court of appeals, on that determination, you may do so Mr. Coppolino. Although I suspect probably that it would make sense to wait until the outcome of the 1292(b) motion, but that's entirely a matter for you to decide. And in the meantime, Mr. Eisenberg, if you want to proceed in

the court of appeals to seek any relief, you may to do so. But I'm going to await the briefing on the 1292(b) issue, and make a determination whether to stay these proceedings further.

However, the directives of the January order in this case with respect to clearances for Mr. Eisenberg and his colleagues and the government's review of the sealed document to determine if it or a portions of it may be declassified remain in effect.