

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ABDEL MONIEM ALI EL-GANAYNI, )  
)  
Plaintiff, )  
)  
v. )  
)  
UNITED STATES DEPARTMENT OF )  
ENERGY, and JEFFREY F. KUPFER, )  
Acting Deputy Secretary of Energy, )  
)  
Defendants. )

Civil Action No. 2:08-cv-881

The Honorable Terrence F. McVerry

**NOTICE OF FILING**

Defendants United States Department of Energy and Jeffrey F. Kupfer, Acting Secretary of Energy, file a copy of the certification and determination ("the decision") issued by Samuel W. Bodman, Secretary of Energy, on November 24, 2008, regarding the security clearance of plaintiff Dr. Abdel-Moniem Ali El-Ganayni. See Exhibit A. In his decision, Secretary Bodman (1) certifies that, in accordance with Section 9 of Executive Order No. 10865 and Section 5.2(d) of Executive Order No. 12968, the procedures set forth in Sections 3,4, and 5 of Executive Order No. 10865, in Section 5.2(a) of Executive Order No. 12968 and in the Department of Energy's regulations at 10 C.F.R. §§ 710.26 - 710.30 "cannot be made available to Dr. El-Ganayni without damaging the interest of national security by revealing classified information," (2) determines that, in accordance with Section 5.2(e) of Executive No. 12968, "the procedures prescribed by subsection (a) of Section 5.2 of the Executive Order cannot be invoked in a manner consistent with national security," and (3) terminates Dr. El-Ganayni's access to classified information in the interest of national security. Exhibit A. The Secretary's certification and determinations "supersede the certification and determination made by Acting Deputy Secretary Jeffrey F.

Kupfer in this matter on May 19, 2008." Id.

On November 20, 2008, this Court determined that the certification made by Acting Deputy Secretary Kupfer violated Section 7.2(c) of Executive Order No. 12968 by "diminishing or otherwise affecting" the denial and revocation procedures provided to individuals covered by Executive Order No. 10865. Memorandum Order, at 10. The Court found that under the circumstances of this case, "only the Secretary of Energy (agency head) is empowered to determine that the denial and revocation procedures for Dr. El-Ganayni 'cannot be invoked in a manner that is consistent with national security.'" Id. In view of the attached decision by the Secretary of Energy, plaintiff's claim in Count III should be denied as moot, and this case should be dismissed.

Respectfully submitted,

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