UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
v.	)	
GALE A. NORTON, et al.,	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO SUPPLEMENT MOTION TO AMEND PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY INTERIOR DEFENDANTS AND THEIR EMPLOYEES AND COUNSEL SHOULD NOT BE HELD IN CONTEMPT FOR DESTROYING E-MAIL (MARCH 20, 2002)

On December 13, 2004, Plaintiffs moved to amend a contempt motion filed on March 20, 2002 to add new allegations against new respondents. The original motion sought contempt sanctions against the Department of the Interior ("DOI") defendants on the grounds that DOI had overwritten computer tapes containing backup copies of Solicitor's Office e-mails that the Special Master ultimately ruled defendants should have reviewed to determine whether they contained information responsive to Plaintiffs' Third Formal Request for Production of Documents. The Motion to Amend sought contempt sanctions against the DOI and eight individuals, apparently for alleged overwriting of backup tapes containing copies of e-mails of other DOI components. Plaintiffs now have moved to supplement the Motion to Amend, alleging that Bureau of Indian Affairs (BIA) e-mails or trust records have been

destroyed. However, plaintiffs have not provided a shred of evidence that any trust records or BIA e-mails have been destroyed. Indeed, the exhibits to the plaintiffs' motion refute plaintiffs' allegations.

The Motion to Supplement should be dismissed. First, plaintiffs have not presented a *prima facie* case of contempt. Plaintiffs' charges that BIA records or e-mails have been destroyed are totally unsupported. Further, plaintiffs' filing does not state who it is they believe should be charged with contempt for the claimed destruction of BIA e-mails, and does not describe with specificity any other conduct which allegedly constitutes the contempt charged. Consequently, the motion does not comply with the Court's directive at the March 15, 2002 hearing that the plaintiffs state "individual defendant by individual defendant" specific contempt charges and evidence supporting those charges. Transcript of March 15, 2002 Status Hearing, at 21:8-14. Plaintiffs have not identified a court order that was violated, and thus the motion fails to allege an essential element of civil contempt or of criminal contempt under 18 U.S.C. § 401(3). Moreover, the alleged violations concern completed past conduct, and civil contempt remedies would therefore not be available in any event.

Second, sovereign immunity precludes the imposition of civil penalties or criminal sanctions against individual respondents in their official capacity. In any event, even if the Motion to Supplement had any merit, plaintiffs' apparent request that the matters raised by the motion or by the Motion to Amend be folded into the 2002 motion should be denied. The motions raise different issues.

I. Plaintiffs Have Not Presented a *Prima Facie* Case of Contempt.

A. Plaintiffs' Allegations Lack Evidentiary Support

Plaintiffs' Motion to Supplement addresses a report filed by defendants on January 31, 2005, advising that e-mails on two of BIA's 12 servers, Mail 1 and Mail 2, had not been "live captured" by ZANTAZ between July 24, 2004 and December 10, 2004.[1] Plaintiffs assert repeatedly that defendants, defense counsel, or ZANTAZ have destroyed BIA e-mails or trust records.[2] Plaintiffs have cited no evidentiary support for these charges. In fact, the allegations in the Motion to Supplement are contradicted by the exhibits plaintiffs decided for some reason to attach to the motion. A memorandum dated January 31, 2005 from Pat Maloney, Chief of BIA's System Division, to Brian Burns, Deputy Assistant Secretary, Exhibit 6 to the Motion to Supplement, states:

> We have no reason to believe that e-mail messages were lost since they were saved on daily incremental and weekly full backup tapes which included transaction logs. These tapes were shipped to ZANTAZ via FED EX on January 25, 2005 for restoration into the ZANTAZ Digital Safe.

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[1] Plaintiffs claim that the events concerning the e-mails were "exposed by plaintiffs." Motion to Supplement at 6. This assertion is not true. Defendants notified the Court and plaintiffs of the matter on December 16, 2004, and stated that defendants would file a full report on the matter. *See* Defendants' Motion to Defer Consideration of Defendants' "Zantaz Motion" as to the Bureau of Indian Affairs, Docket Number 2787. Defendants filed the report on January 31, 2005. It is apparent from the Motion to Supplement that plaintiffs have no information about the matter other than defendants' reports.

[2] Motion to Supplement at 1 ("Zantaz' destruction of trust records," "their destruction of trust records"), 2 (alleging destruction of trust records by defendants and their counsel), 5 (alleging that no e-mail was being preserved from two BIA servers), 6 (alleging that defendants had admitted to spoliation, and that defendants had admitted that "e-mail, in fact, had been destroyed"), 8 (asserting that "errors led to two e-mail servers losing trust data" and alleging that problems "allowed the destruction of all the e-mails transmitted from the two BIA servers"), and 9 (asserting that Secretary Norton and her counsel "again have directed, or allowed, the spoliation of a massive and unquantifiable amount of trust data").

Motion to Supplement, Exhibit 6 at 3. Similarly, a memorandum dated January 31, 2005 from W. Hord Tipton, Chief Information Officer of the Department of the Interior, to James Cason, Deputy Secretary, states:

> BIA believes that no data was lost by the event and asserts the data was captured on 148 back-up tapes. These tapes were transferred to Zantaz for restoration to the Zantaz digital safe. The tapes were received and accounted for by Zantaz on January 25, 2005. Restoration is expected by May 25, 2005.

Motion to Supplement, Exhibit 5 at 1. Plaintiffs have not supplied any evidence indicating that the statements by Mr. Maloney and Mr. Tipton are not correct and have not supplied any other evidence bearing upon their repeated claims that e-mails were lost or destroyed. Thus, all of the information which plaintiffs have supplied on the matter contradicts plaintiffs' assertions. The Motion to Supplement refutes itself.

Plaintiffs also assert that three certifications filed on October 26, 2004 concerning implementation of the ZANTAZ system at BIA, as well as at the Bureau of Land Management, were knowingly false, because ZANTAZ was not in fact live capturing e-mails from BIA's Mail 1 and Mail 2 servers.[3] Plaintiffs assert that:

> at the time the "certifications" were executed and filed with this Court, each certifier knew that the representations were false and materially misleading and that the filing was intended to deceive this Court into making a decision on a record that is utterly false. There is powerful evidence in the record of this knowing and willful deception.

Motion to Supplement at 5. However, the evidence on this issue that plaintiffs include as exhibits to the Motion to Supplement points to the opposite conclusion, that ZANTAZ and the Department of the

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[3] The certifications are Exhibits 2, 3 and 4 to the Motion to Supplement.

Interior did not know of the problem with the two BIA servers until December 9, 2004. The problem was promptly corrected and the Court and plaintiffs were promptly notified after the problem was discovered.

Mr. Maloney provided an explanation of how the problem occurred, why the ZANTAZ tests did not identify the problem, and why Interior did not discover the problem for several months. Mail 1 and Mail 2 were new servers, first placed into production on July 24, 2004. Memorandum of Pat Maloney, Exhibit 6 to the Motion to Supplement, at 1. The initial installation of the ZANTAZ software was incorrectly configured. *Id.* The ZANTAZ standard test procedures examined e-mails sent to and from Mail 1 and Mail 2 to another server, RES 1. The tests indicated that the ZANTAZ capture was working properly, because RES 1 was sending to ZANTAZ all e-mails sent to or received from Mail 1 or Mail 2. *Id.* at 2. However, ZANTAZ did not have a test scenario examining e-mail sent by one user on Mail 1 to another user on Mail 1 (or examining e-mails transmitted entirely within Mail 2). Consequently, the tests did not identify that e-mails sent entirely within the two new servers were not being live captured and did not identify the configuration error. *Id.* at 2.

ZANTAZ states that after the tests were completed, its monitors did not find the problems with Mail 1 and Mail 2, "because a large number of messages continued to enter the Digital Safe and monthly traffic volumes continued to appear within a normal range." ZANTAZ report, Exhibit 7 to the Motion to Supplement, at 1. ZANTAZ discovered the problem on December 10, 2004, when BIA personnel contacted ZANTAZ managers, indicating that BIA was having problems with the configuration of Mail 1 and Mail 2. *Id.* The problem was corrected the same day. Motion to Supplement, Exhibit 6 at 1.

Plaintiffs have presented no evidence to contradict the explanation of Mr. Maloney and ZANTAZ of how the problem occurred, why it was not discovered in the ZANTAZ testing or by the ZANTAZ monitoring. Moreover, plaintiffs have absolutely no support for the charges that "each certifier knew that the representations were false and materially misleading and that the filing was intended to deceive this Court into making a decision on a record that is utterly false." Motion to Supplement at 5.

B. The Motion to Supplement Lacks Specificity

The Court prescribed the standards of specificity for contempt motions at a hearing on March 15, 2002, during which the Court directed plaintiffs to lay out "individual defendant by individual defendant specifications of what the contempt proceedings would be for those 39 people so that they each have an opportunity to address what the evidence is and what you are citing against any of those 39." 3/15/02 Tr. at 21:10-14. The Court reiterated that plaintiffs should state the specific charges a respondent would have to defend against and also "lay out what the, in your view, the evidence that would be supporting" the specific charges. *Id.* at 21:21-23. Finally, the court concluded that "you need to specify by person so that each of them can respond to what the specifications would be and what the evidence would be so that each of them can have an opportunity to have due process." *Id.* at 23:7-10.

The Motion to Supplement falls woefully short of the Court's directive. As discussed above, the allegations of misconduct are totally contradicted by the exhibits to the motion, and thus plaintiffs have not laid out the evidence supporting the specific charges. Moreover, plaintiffs do not identify

whom they seek to hold responsible for what they mistakenly believe is misconduct concerning the BIA e-mails.

C. Plaintiffs Have Not Established a Legal Basis for Contempt Sanctions

1. The Motion to Supplement Does Not Establish a Basis for Civil Contempt

It is unclear whether plaintiffs are seeking civil or criminal contempt sanctions, or what relief they are requesting. In any event, the Motion to Supplement does not meet the standards for civil contempt, which have been set forth in the contempt hearings in this case, *Cobell v. Babbitt*, 37 F. Supp. 2d 6 (D.D.C. 1999) ("*Cobell II*") and *Cobell v. Norton*, 226 F. Supp. 2d 1 (D.D.C. 2002) ("*Cobell VII*"), and other cases in this circuit. As the Court stated in *Cobell VII:*

> Two elements must be established before a party may be held in civil contempt for violating an order. *Armstrong v. Executive Office of the President*, 1 F.3d 1274, 1289 (D.C. Cir. 1993). First, the Court must have issued an order that is clear and reasonably specific. *Id.* at 1289; *Project B.A.S.I.C. v. Kemp,* 947 F.2d 11, 16-17 (1st Cir. 1991) (noting that in order for a party to be held in civil contempt, the court must have issued "a clear and unambiguous order that left no reasonable doubt as to what behavior was expected and who was expected to behave in the intended fashion."). In determining whether an order is clear and reasonably specific, courts apply "an objective standard that takes into account both the language of the order and the circumstances surrounding the issuance of the order." *United States v. Young,* 107 F.3d 903, 907 (D.C. Cir. 1997). *See also Project B.A.S.I.C.,* 947 F.2d at 16-17 (finding that "the party enjoined must be able to ascertain from the four corners of the order precisely what acts are forbidden [] or what acts are required."). Second, the putative contemnor must have violated the court's order. *Armstrong,* 1 F.3d at 1289 (recognizing that "civil contempt will lie only if the putative contemnor has violated an order that is clear and unambiguous.").

Cobell VII, 226 F. Supp. 2d at 21. Thus, a party seeking a finding of contempt must initially show, by clear and convincing evidence, that (1) a court order was in effect, (2) the order required certain conduct by the respondents, and (3) the respondents failed to comply with the court's order. *SEC v.*

Bilzerian, 112 F. Supp. 2d 12, 16 (D.D.C. 2000); *Petties v. District of Columbia*, 897 F. Supp. 626, 629 (D.D.C. 1995).

The Motion to Supplement does not demonstrate that the alleged activity violated a court order, and therefore the motion fails to meet a threshold test for civil contempt. Moreover, plaintiffs have not identified any relief to which they would be entitled. Even if BIA e-mails have been destroyed, which plaintiffs have failed to demonstrate, absent evidence of bad faith or willfulness, even a carefully drawn evidentiary inference is inappropriate. *See Johnson v. Washington Metropolitan Area Transit Authority*, 764 F. Supp. 1568, 1579-80 (D.D.C. 1991) ("Normally such inferences are not drawn unless there is evidence of 'evil intent, bad faith or willfulness,' ") (citing *Vick v. Texas Employment Com'n*, 514 F. 2d 734, 737 (5th Cir. 1975), and *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 587 F. Supp. 180, 208 (D.D.C. 1984)). Since the plaintiffs have not demonstrated how any alleged loss of BIA e-mails from two servers prejudices their case, any evidentiary-related sanctions are unwarranted.

2. The Court of Appeals Decision in Cobell VIII Bars Civil Contempt Proceedings for the Conduct Alleged [4]

The Court of Appeals for the D.C. Circuit recently clarified the distinction between civil and criminal contempt. The Court explained:

> Civil contempt is ordinarily used to compel compliance with an order of the court, [*Int'l Union, United Mine Workers v.*] *Bagwell*, 512 U.S. [821,] at 828 [(1994)], although in some circumstances a civil contempt sanction may be designed to "compensate[] the complainant

[4] Part C2 of this memorandum is submitted in part in response to the discussion at the March 3, 2005 status conference that this memorandum would provide the government an opportunity to address the impact of *Cobell VIII* on outstanding motions for orders to show cause, including but not limited to the Motion to Supplement.

> for losses sustained." *Id.* at 829. By contrast, criminal contempt is used to punish, that is, to "vindicate the authority of the court" following a transgression rather than to compel future compliance or to aid the plaintiff. *Id.* at 828.

Cobell v. Norton, 334 F.3d 1128, 1145 (D.C. Cir. 2003) (*"Cobell VIII"*). Moreover the Court of Appeals stated in *Cobell VIII* that sanctions to vindicate the authority of the Court following an alleged transgression, rather than to compel future compliance, sound in criminal contempt, not civil contempt. *Id.* As the Court of Appeals explained: "Although one may be held in civil contempt for refusing to comply with a court order, a sanction for one's past failure to comply with an order is criminal in nature." *Id.* at 1146-47.

In other contempt motions, plaintiffs have asserted that the respondents committed fraud on the court. The Court of Appeals determined that fraud on the court was criminal, not civil, in nature, stating "[W]e have been unable to find any authority for, let alone any reason to believe, the proposition that fraud on the court constitutes a civil contempt." *Id.* at 1146.

Plaintiffs have alleged loss of e-mails and the filing of false certifications for which they seek sanctions. The alleged events underlying the Motion to Supplement are completed past conduct. The remedial purpose of a civil contempt order cannot be served where, as here, the allegedly violative act cannot be corrected. *In re Sealed Case*, 250 F.3d 764, 770 (D.C. Cir. 2001) ("Because the Government could not undo the July 18 disclosure [of grand jury material], holding the Government in civil contempt would serve no useful purpose. . . ."). While the Court of Appeals in *Cobell VIII*, quoting *Int'l Union, United Mine Workers v. Bagwell*, 512 U.S. 821 at 829 (1994) recognized that in some circumstances civil contempt sanctions may be designed to compensate the complainant for the losses sustained, the Court made clear that merely an award of attorneys' fees incurred by plaintiffs'

counsel in a contempt trial "cannot be considered relief for the underlying contempt." *Cobell VIII*, 334 F.3d at 1145.

In order to recover compensatory sanctions for civil contempt, the complainant must prove that it has suffered economic loss as a result of the underlying contemptuous acts. Attorneys' fees and expenses incurred in investigating and litigating alleged contemptuous conduct do not constitute damages for the underlying conduct. For example, in *Gemco Latino America, Inc. v Seiko Time Corporation*, 61 F.3d 94 (1st Cir. 1995), a bank was assessed compensatory sanctions for diverting funds subject to an attachment order that the bank should have paid into court. The court stated "Even though Royal Bank's conduct violated the attachment order and diverted or blocked the funds that otherwise would have been paid into court, Royal Bank is liable in a civil contempt proceeding only for actual damages." *Id.* at 100. However, the court found that compensatory sanctions were appropriate because it found that the bank had not contested that the judgment creditor who had obtained the attachment order was economically damaged by the bank's violation of the order . See also *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1063 (2d Cir. 1995) (reversing a monetary award as an abuse of discretion since it was "wholly unrelated to any damages King may have incurred due to New Line's noncompliance with the Decree." The Court also reviewed the award of attorneys' fees as a matter separate from compensatory sanctions.). Plaintiffs have not attempted, in the Motion to Supplement or any other contempt motion, to allege or quantify actual monetary damages to the plaintiff class. Therefore, the motions fail to establish an essential element for an award of compensatory sanctions.

In its September 17, 2002 opinion, this Court acknowledged that "there is no real 'compensatory' relief that the Court can grant as a result of the defendants' conduct." *Cobell v.*

Norton, 226 F. Supp. 2d at 154. Under those circumstances, any monetary sanctions would be punitive. The fact that plaintiffs have incurred attorneys' fees in the process of pursuing their show cause motions cannot convert a non-civil contempt proceeding into a civil proceeding. If it were otherwise, a party seeking purely punitive sanctions could deprive another of due process rights guaranteed by the Constitution simply by inserting a claim for attorneys' fees and expenses incurred in pursuing the claim for contempt. The Court of Appeals decision makes clear that such an attempt to subvert individual Constitutional rights is improper. Consequently, civil contempt is not a remedy for the conduct alleged by plaintiffs in the Motion to Supplement, or, for that matter, for the conduct alleged in any of the other outstanding motions for orders to show cause against the government or against the Named Individuals.

Since the allegedly contumacious conduct occurred outside the presence of the court, to the extent that plaintiffs seek punitive sanctions, individual respondents are entitled to the full measure of due process afforded in criminal proceedings, including a trial by jury and proof beyond a reasonable doubt. *Cobell VIII* at 1147. Moreover, the proceeding – if it continues – must be carried out in accordance with the Federal Rules of Criminal Procedure. Discovery rules governing civil proceedings would not be applicable. Further, if the proceedings continue, the matter must be referred. Plaintiffs may not prosecute a criminal contempt. *Young v. United States ex rel. Vuitton et Fils, S,A.*, 481 U.S. 787, 814 (1987).

As shown, plaintiffs' allegations do not meet the legal requirements for civil contempt sanctions. They certainly do not satisfy the heightened showing required for criminal contempt sanctions. To convict a defendant of criminal contempt for violation of court orders, the Court must find, beyond a reasonable doubt, that the person willfully violated a "clear and reasonably specific" order of the court.

United States v. Roach, 108 F. 3d 1477, 1481 (D.C. Cir. 1997) (citing *United States v. NYNEX Corp.*, 8 F.3d 52, 54 (D.C. Cir. 1993), and *United States v. Turner,* 812 F.2d 1552, 1563 (11th Cir. 1987)). For a violation to be "willful," the accused must have acted with deliberate or reckless disregard of the obligations created by the court order. *Roach*, 108 F.3d at 1481 (citing *In re Holloway*, 995 F.2d 1080, 1082 (D.C. Cir. 1993), and *United States v. Greyhound Corp.*, 508 F.2d 529 (7th Cir. 1974)).

Thus, to support a referral for criminal contempt, plaintiffs must initially identify evidence that, if believed, could establish beyond a reasonable doubt that (1) a clear and reasonably specific court order was in effect, (2) the order required certain conduct by an individual respondent, and (3) the individual respondent willfully violated the court's order. Moreover, plaintiffs must demonstrate respondent by respondent that the elements for a criminal referral exist. *Cobell VIII* at 1147. For the same reasons that their claims fail to establish a basis for civil contempt, plaintiffs' claims cannot meet the even more stringent criminal contempt standard.

II. Sovereign Immunity Precludes the Imposition of Criminal Penalties or Compensatory Sanctions for Civil Contempt Against the Individual Respondents in Their Official Capacities.

Because of sovereign immunity, civil penalties or damage sanctions are not available against the government or against individual respondents in their official capacities.[5] The doctrine of sovereign immunity bars the imposition of fines, penalties or monetary damages against the government, except to

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[5] "As long as the government entity receives notice and an opportunity to respond, a suit against a government employee in his official capacity is to be treated as a suit against the entity." *Coleman v. Espy*, 986 F.2d 1184, 1189 (8th Cir. 1993), *citing Kentucky v. Graham,* 473 U.S. 159, 166 (1985). *See also Wyoming v. United States*, 279 F.3d 1214, 1225 (10th Cir. 2002), and cases cited therein.

the extent that the United States has explicitly consented to such sanctions. The doctrine of sovereign immunity "stands as an obstacle to virtually all direct assaults against the public fisc, save only those incursions from time to time authorized by Congress." *United States v. Horn*, 29 F.3d 754, 761 (1st Cir. 1994). A waiver of sovereign immunity must be definitively and unequivocally expressed and must appear in the text of the statute itself. *Id.* at 762 (citing *United States v. Mitchell*, 445 U.S. 535, 538 (1980), and *United States v. Nordic Village, Inc.*, 503 U.S. 30 (1992)). The determinations in this case that sovereign immunity does not bar either plaintiffs' claim for prospective action or their claim for retrospective relief in the form of an accounting[6] have no bearing on the separate issue of whether the government has waived sovereign immunity for money damages for civil contempt. A waiver of sovereign immunity as to one available remedy does not, by implication, waive sovereign immunity as to other remedies. *See Brown v. Secretary of the Army*, 918 F.2d 214 (D.C. Cir. 1990) (waiver of sovereign immunity as to back pay awards for discriminatory denial of promotion did not waive sovereign immunity for prejudgment interest on such back pay awards).

The United States has not waived sovereign immunity from citation for criminal contempt, nor for court-imposed fines for civil contempt. *Coleman v. Espy*, 986 F.2d 1184, 1191 (8th Cir. 1993); *United States v. Horn*, 29 F.3d at 763; *see also In re Sealed Case*, 192 F.3d 995, 999-1000 (D.C. Cir. 1999) (*per curiam*) ("[i]t is far from clear that Congress has waived federal sovereign immunity in the context of criminal contempt. . . . We know of no statutory provision expressly waiving federal

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[6] *See Cobell v. Babbitt*, 30 F. Supp. 2d. 24, 31-33, 38-42 (D.D.C. 1998) (denying defendants' motion for judgment on the pleadings); *Cobell v. Babbitt*, 52 F. Supp. 2d 11, 21 (D.D.C. 1999) (denying defendants' motion for summary judgment); *see also Cobell v. Norton,* 240 F.3d 1081, 1094-95 (D.C. Cir. 2001) (agreeing that plaintiffs' action was not barred by sovereign immunity).

sovereign immunity from criminal contempt proceedings.").[7] Accordingly, to the extent that plaintiffs are requesting any monetary remedies, sovereign immunity precludes such an award.

Because the availability of a remedy "for the benefit of the complainant" is an essential component of a civil contempt proceeding, *Bagwell*, 512 U.S. at 827 (quoting *Gompers,* 221 U.S. at 441), and plaintiffs' motion fails to identify any remedial measure the Court could properly order, the motion should be denied.

CONCLUSION

In the Motion to Supplement, plaintiffs have offered nothing but speculation that is contradicted by exhibits to the motion. They have failed to meet the requirements established by the Court and the law itself for sanctions they seek against DOI or individual respondents. These claims must firmly be dismissed.

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[7] As the Court acknowledged in the *Cobell* VII Order, whether a court can order the government to compensate a party for losses sustained as a result of the government's contempt has not been decided by the Court of Appeals in this Circuit. 226 F. Supp. 2d at 154 n.163. The District Court in *United States v. Waksberg*, 881 F. Supp. 36, 41 (D.D.C. 1995), *vacated and remanded*, 112 F.3d 1225 (D.C. Cir. 1997), held that sovereign immunity barred recovery of damages as compensation for the government's violation of an injunctive order. The Court of Appeals vacated and remanded with directions to withhold a ruling on the sovereign immunity issue pending a determination on whether Waksberg had incurred damages. 112 F.3d at 1228.

Respectfully submitted,

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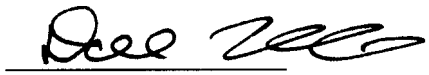

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DATED: March 8, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on March 8, 2005 the foregoing *Government's Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion to Supplement Motion to Amend Plaintiffs' Motion for Order to Show Cause Why Interior Defendants and their Employees and Counsel Should Not Be Held in Contempt for Destroying E-Mail (March 20, 2002)* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-CV-1285 (RCL)
v.	)	
GALE A. NORTON, et al.,	)	
Defendants.	)	

ORDER

Upon consideration of the *Government's Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion to Supplement Motion to Amend Plaintiffs' Motion for Order to Show Cause Why Interior Defendants and their Employees and Counsel Should Not Be Held in Contempt for Destroying E-Mail (March 20, 2002)*, and the entire record in this case, it is this _____ day of _____, 2005,

ORDERED, that the Plaintiffs' Motion to Supplement be and hereby is DENIED.

_____
Honorable Royce C. Lamberth
United States District Judge

cc:

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