



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave., N.W. Room 7531
Washington, D.C. 20530

Tel: (202) 514-5089
Fax: (202) 514-8151

October 5, 2004

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
Room 5423
Third & Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Cobell v. Norton, No. 03-5314

Dear Mr. Langer:

Oral argument was held in this case on September 15, 2004. Government trial counsel were recently contacted by the district court's law clerk to identify motions referred to at that argument. In light of that request, we are submitting this letter for the benefit of this Court.

At argument the government stated, with respect to certain account statements that had been completed by the Department of the Interior, that "of course we're not even allowed to send those out. The District Court has restrained us from doing that." Tr. 27. The government also stated: "You know, and we still can't send it out. We've got a motion that's been pending with the Court for over a year to allow us to do that. But he says, no, you can't send out to, you can't send that because that would be a contact with class beneficiaries." Id. 27-28.

The district court on December 23, 2002, issued an order barring the government from transmitting completed account statements for judgment and per capita accounts to the account holders without court approval, indicating that such conduct would constitute unethical contact with class members. See Gov't Opening Brief at 86-87 (citing district court decisions). On February 6, 2003, the government filed a motion for leave to send out completed account statements.

See id. at 87 (citing motion). On May 28, 2004, the court responded to the latter motion but did not grant the permission requested; the court issued a further order requiring the government to make additional submissions if it wished to obtain authorization to actually send out the completed account statements. Docket No. 2587. On June 22 and August 18, 2004, the government filed submissions in the district court in accordance with the court's May 28 order. Docket Nos. 2600, 2628. Those submissions remain pending at this time.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

GREGORY G. KATSAS
Deputy Assistant Attorney
General

ROBERT E. KOPP *Robert E. Kopp*
MARK B. STERN *Mark B. Stern*
THOMAS M. BONDY *Thomas M. Bondy*
CHARLES W. SCARBOROUGH
ALISA B. KLEIN *Alisa B. Klein*
LEWIS S. YELIN
TARA L. GROVE
Attorneys, Appellate Staff

cc: Hon. Royce C. Lamberth
Keith M. Harper
G. William Austin
Elliott H. Levitas
Dennis Marc Gingold
Earl Old Person