

**U.S. Department of Justice**

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SKR:VM  
145-12-12397

April 20, 2004

**VIA FACSIMILE - 843-216-9450**

Robert T. Haefele  
Motley Rice LLC  
28 Bridgeside Blvd  
Mt. Pleasant, SC 29465

Re: Burnett v. Al Baraka Investment and Development Corp.,  
et al., 03-CV-9849 (RCC) (consolidated in 03 MD 1570  
(RCC) (United States District Court for the Southern  
District of New York) - deposition of Sibel Edmonds

Dear Mr. Haefele:

I am writing to request that you withdraw the April 13, 2004 subpoena for the deposition of Sibel Edmonds, whose deposition is scheduled for April 27, 2004 at 10:00 a.m., in the above-referenced matter in which the United States is not a party. As an initial matter, the subpoena is objectionable because Fed. R. Civ. P. 45 does not apply to the Federal Government, or to government employees or contractors subpoenaed to provide information gained in their official capacities, in situations where the Government is not a party. The Government, as a non-party, is not a "person" within the meaning of the Rule. Cf. In re Al Fayed, 229 F.3d 272, 275-76 (D.C. Cir. 2000) (the Federal Government is not a "person" under 28 U.S.C. § 1781, notwithstanding the reference in that statute to the Federal Rules of Civil Procedure); Linder v. Calero-Portocarrero, 251 F.3d 178, 180-81 (D.C. Cir. 2001) (reserving the question of whether the word "person" in Fed. R. Civ. P. 45 includes the Federal Government).

Moreover, as you may be aware, Ms. Edmonds is currently the plaintiff in two separate lawsuits pending in the United States District Court for the District of Columbia, one against the Federal Bureau of Investigation, S.D. Edmonds v. FBI, No. 02-1294 (ESH) ("FOIA case"), a FOIA case whose outcome plaintiff has

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appealed; and the other against the United States Department of Justice, concerning her work as a contract linguist with the FBI, Sibel Edmonds v. United States Department of Justice, et al., No. 02-CV-1448 (RBW) ("employment case"). In the FOIA case, Judge Huvelle determined, inter alia, that the FBI properly invoked FOIA Exemption 1, which protects properly classified information required to be kept secret in the interest of national defense or foreign policy, 5 U.S.C. § 552(b)(1), over documents containing information that would be contained within the scope of the testimony sought from Ms. Edmonds as set forth in the subpoena. In the employment case, currently pending before Judge Walton, the government has moved to dismiss the entire case on the grounds that it cannot be litigated as a result of the Attorney General's assertion of the state secrets privilege over certain information at issue in that case, also information that would be within the scope of Ms. Edmonds' proposed testimony as set forth in the subpoena.

Given the risk of disclosure of classified information and other information covered by the state secrets privilege, which would cause serious damage to the national security and foreign policy interests of the United States, the United States urges you to withdraw the subpoena for Ms. Edmonds' deposition. Indeed, given the concerns outlined above, and even if Fed. R. Civ. P. 45 did apply, it would not be appropriate for the Department of Justice to authorize Ms. Edmonds to testify in response to the subpoena, under Departmental regulations and other applicable contractual constraints prohibiting unauthorized testimony. See, e.g., 28 C.F.R. § 16.22. Absent such authorization, the subpoena cannot be enforced against Ms. Edmonds and should be withdrawn. See United States ex rel. Touhy v. Ragen, 340 U.S. 462, 467-70 (1951); Houston Business Journal, Inc. v. OCC, 86 F.3d 1208, 1212 n. 4 (D.C. Cir. 1996). If you decline to withdraw the subpoena, given the interests of the United States at stake, we will have no choice but to seek to have the subpoena quashed. I appreciate your earliest

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consideration of this important matter, and look forward to hearing from you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Vesper Mei". The signature is written in a cursive, flowing style.

Vesper Mei  
Trial Attorney

cc: Mark Zaid, Esq.