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Honorable Edgardo Ramos
United States District Court
for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Restis v. Am. Coalition Against Nuclear Iran*, No. 13-cv-5032(ER)(KNF)

Dear Judge Ramos:

On October 7, 2014, numerous civil liberties organizations sought leave to file an *amicus* brief with the Court addressing the Government's invocation of the state secrets privilege. Dkt. 277. The Government does not oppose the request (Dkt. 279), and the Plaintiffs support the participation of the proposed *amici*.

Previously, I advised the Court that the Plaintiffs seek to remedy the defamation they have suffered, but they are not "looking to champion sunshine in government or public access to court proceedings. That is someone else's fight." Dkt. 269 at 1. That is the fight of the civil liberties organizations that have sought to participate as *amici*, and the Court should permit them to be heard. The interests they seek to vindicate are undeniably important and, given their expertise in this area, they are better suited than any party in the case to defend the public interest in the transparency of judicial proceedings and the executive branch.

Courts have held that "it is preferable to err on the side of granting leave" to permit *amicus* participation. *Neonatology Assoc., Inc. v. Comm'r of Internal Rev.*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.). An *amicus* brief should "normally be allowed" when

the *amicus* has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the *amicus* to intervene and become a party in the present case), or when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.

C&A Carbone, Inc. v. County of Rockland, 2014 U.S. Dist. LEXIS 38658 (S.D.N.Y. 2014) (Ramos, J.) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). The proposed *amici*'s participation is particularly warranted here because they meet these criteria.

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In this proceeding, the adversarial process has been compromised by the Government's *ex parte* filings with the Court and its explicit argument to the Court that "[t]here is no need . . . for an adversarial process" to assess its assertion of the state secrets privilege. *See* Dkt. 276-1 at 26:21-23. Consequently, Plaintiffs' counsel have been left boxing in the dark, unsure of what arguments the Government has made or how best to respond. As the Court recently noted, in responding to the Government's *ex parte* filings, the Plaintiffs' "hands will be tied somewhat behind their backs because they will be swinging at moving targets or shadow targets or no targets." *Id.* at 33. That clearly is a concern to this Court. *Id.* at 29 ("My concern is that even with the considerable legal powerhouse that is the federal government and my chambers that we together may not be sufficiently imaginative to conceive of a way forward that would allow plaintiffs to have some measure or some role in . . . advocating on behalf of the clients and that we might benefit from some additional insight.").

The Court has considerable discretion to tailor the proceedings for determining whether a state secret truly is at issue in this case and in fashioning a remedy if state secrets genuinely would prevent this case from being litigated in the usual manner. Given their considerable experience in this kind of litigation, the *amici* may very well be able to present the Court with solutions that may not occur to the parties. Their participation is therefore warranted.

We agree with the Government that there is no need for a hearing on October 21, 2014 to discuss leave to file an amicus brief. No opposition has been expressed to *amici*'s proposed participation, and the proposed *amici* easily fit the criteria for participation. If the Court wishes to hold a pre-motion conference, we agree with the Government that it should be held the week of October 27, 2014.

Respectfully submitted,

/s/ Abbe David Lowell

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