



supplemental briefs. In a Memorandum Order dated November 20, 2008, the Court denied Defendants' motion to dismiss Count III of the Complaint, and explained:

In summary, the Kupfer Certification violates § 7.2(c) of Executive Order 12968 by "diminishing or otherwise affecting" the denial and revocation procedures provided to individuals covered by Executive Order 10865. Under the circumstances of this matter as presented to the Court, 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."

On November 24, 2008, DOE filed the Bodnar Certification, which represents an agency head personal determination by the Secretary of Energy that the applicable procedures set forth in Executive Orders 10865 and 12968 and 10 C.F.R. § 710.26-710.30 "cannot be made available to Dr. El-Ganayni without damaging the interests of national security by revealing classified information." The Bodnar Certification supersedes the Kupfer Certification and addresses the procedural shortcoming which caused the Court to deny Defendants' Motion to Dismiss Count III. Plaintiff acknowledges that the Bodnar Certification bars the relief sought in Count III of the Complaint and agrees that further litigation in this Court is not warranted.<sup>1</sup>

AND NOW, in accordance with the foregoing, the oral MOTION FOR RECONSIDERATION is **GRANTED** and Defendants' MOTION TO DISMISS (Document No. 20) is **GRANTED as to Count III** of Plaintiff's Complaint. All other pending motions are **DENIED AS MOOT**. The clerk shall docket this case closed.

SO ORDERED this 25th day of November, 2008.

BY THE COURT:

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<sup>1</sup>Plaintiff renews and preserves for appeal all of the arguments set forth in his prior filings.

s/ Terrence F. McVerry \_\_\_\_\_  
United States District Court Judge

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