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November 8, 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, Nos. 03-5262, 04-5084
(Argued September 14, 2004, before Chief Judge Ginsburg and Circuit Judges Randolph and Rogers)

Dear Mr. Langer:

The government hereby responds to plaintiffs' October 27 letter submitted under Rule 28(j).

Plaintiffs call the Court's attention to a November 2003 Department of Interior publication entitled "Independent Auditors' Report on the U.S. Department of the Interior's Fiscal Year 2003 Annual Report on Performance and Accountability." They assert that this publication was "withheld" by Interior and "recently discovered by the Plaintiffs-Appellees." Letter at 1.

The cited report has not been "withheld" (ibid.). It is available to the public on Interior's website at Part 4 of http://www.doi.gov/pfm/par2003. See http://www.doi.gov/pfm/new03.html.

Plaintiffs wrongly suggest that the report newly reveals that Interior has not yet completed the "certification and accreditation" (C&A) process for all of its information technology (IT) systems under OMB Circular A-130. See Letter at 1. The government has never intimated otherwise. As noted in our August 25 submission, the record makes clear that, as of March 2004, Interior "ha[d] fully certified and accredited 30 of its systems and issued interim approval to operate for [an additional] 108 systems." JA1820. See also, e.g., Interior's Seventeenth Quarterly Report (May

2004) at p.6 ("Most major applications and general support systems have received an Interim Approval to Operate (IATO). Approximately 20% of Interior's major applications and general support systems have completed the C&A process.").

As in their previous filings, plaintiffs fail to distinguish between IT security in general and security of individual Indian trust data in particular. The report submitted by plaintiffs explicitly states that Interior "has established security processes and documentation for its Indian Trust systems that place the trust systems in a better information-security posture than the majority of other DOI information systems." Attachment 2, p.1.

Respectfully submitted,

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