IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LARRY KLAYMAN, et. al.,

Plaintiffs,

v.

BARACK HUSSEIN OBAMA II, et. al.

Defendants.

Civil Action Number: 13-cv-881

Judge Richard J. Leon

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE SANCTIONED FOR MAKING MATERIAL MISREPRESENTATIONS TO THIS COURT AND REQUEST FOR EVIDENTIARY HEARING

Plaintiffs, Larry Klayman, Charles and Mary Ann Strange, Matthew Garrison and Michael Ferrari hereby move this honorable Court to hold an evidentiary hearing to ascertain why the Government and Individual Defendants have made material misrepresentations and material omissions of fact in the Government Defendants' Motion to Dismiss [Dkt #51] and Government Defendants Opposition to Plaintiff's Motion for Preliminary Injunction that in 2011 they ceased accessing and reading the Internet metadata of American citizens pursuant to Section 215 (50 U.S.C. § 1861). Specifically, the Defendants represented to this Court: "This program of bulk Internet metadata collection was terminated in 2011, for operational and resource reasons." Govt. Defs.' Opp'n to Pls.' Mot. For Prelim. Inj. (Govt.'s Opp'n") [Dkt. #25].

It would appear based on the revelations of the Senator Ron Wyden letter dated March 28, 2014, that the Government Defendants are, in fact, accessing not only the Internet data

content pursuant to Section 702 (50 U.S.C. § 1881a) under the so-called PRISM program, but also the Internet *metadata* through Section 215, even though the Government Defendants represent that the Internet metadata program under 215 has been discontinued since 2011.

Thus, in order to deceive this Court, Plaintiffs and the American people, the Government and Individual Defendants have been playing a shell-game, whereby they falsely represent that they ceased accessing Internet metadata and other data through Section 215 in 2011, when it is now apparent based on Clapper's admissions to Senator Wyden that they simply moved this unconstitutional metadata collection violation of the Fourth, First and First Amendment rights over to their continuing PRISM program under Section 702. One can say colloquially, clever ploy but no cigar. This is why an evidentiary hearing is necessary to ascertain the truth and impose appropriate remedial sanctions if necessary. The Defendants simply cannot be believed.

In sum, recent forced disclosures by James Clapper, the Director of National Intelligence, to Senator Ron Wyden of the Senate Intelligence Committee admit that indeed the collection of Internet metadata and content has been harvested. Exhibit 1 and Exhibit 2. *See also* Motion to Remove Stay on Preliminary Injunction Order [Dkt #74].

These material misrepresentations are part of a now documented course of misconduct and lying by the Defendants, such that if the misrepresentations were taken at face value could have resulted in extreme prejudice to Plaintiffs. However, what is even worse than this prejudice is the now documented fact that the Defendants, by and through the Obama Justice Department, headed by Attorney General Eric Holder, have lied to this Court. 18 U.S.C. § 1001 provides:

> Except as otherwise provided in this section, whoever, in any manner within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully – (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious,

> or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years . . .

18 U.S.C. § 1001.

For this reason in and of itself, and with the full inherent authority of this Court to police and remedy such egregious criminal misconduct[1] which subverts justice and the due administration of the courts, Plaintiffs respectfully request that this Court issue an order to show cause and hold an evidentiary hearing at the earliest practicable date, to determine why it was lied to and the extent to which other lies have infected this important case which bears of the violations of the constitutional rights of all American citizens, not just the Plaintiffs. The Court recognizes that this and the other companion cases are at the "pinnacle" of national importance.

Now that James Clapper has been forced to admit that the NSA reads innocent American's emails and text messages and listens to digital recordings of their telephone conversations without warrants despite the NSA's Clapper, retired head of the NSA Gen. Keith Alexander, and even President Obama[2] steadfastly denying these activities in public and on this

[1] In *Chambers*, the Supreme Court held that federal judges have the judicial power necessary to manage their own proceedings and to control the conduct of those who appear before them, including the inherent power to punish abuses of the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 42-45 (1991).

Importantly, while bad-faith misconduct can be dealt with under the Federal Rules of Civil Procedure, "if in the informed discretion of the court, neither the statute nor the rules are up to the task, the court may safely rely on its inherent power." *Id*. at 50. *See also Link v. Wabash Railroad Co.*, 370 U.S. 626, 633 (1962) (noting that the courts have an inherent role in sanctioning contumacious parties); *Anderson v. Dunn*, 19 U.S. 204, 227 (1821) (courts possess "the power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates" through the contempt power); *Shilltani v. United States*, 384 U.S. 364, 370 (1966) ("There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt."); *Ex parte Robinson*, 86 U.S. 505, 510 (1874) ("The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.").

[2] "Nobody is listening to the content of your phone calls . . . with respect to Internet, this [program] does not apply to U.S. citizens and does not apply to people living in the United

Court's record, U.S. Senators Ron Wyden (D-Ore.) and Mark Udall (D-Colo.) who serve on the U.S. Senate Select Committee on Intelligence, issued the following statement: "It is now clear to the public that the list of ongoing intrusive surveillance practices by the NSA includes not only bulk collection of Americans' phone records, but also warrantless searches of the content of Americans' personal communications. This is unacceptable." The Senators continued:

> Senior officials have sometimes suggested that government agencies do not deliberately read Americans' emails, monitor their online activity or listen to their phone calls without a warrant. However, the facts show that those suggestions were misleading, and that intelligence agencies have indeed conducted warrantless searches for Americans' communications using the 'back-door search' loophole in section 702 of the FISA. Today's admission by the Director of National Intelligence is further proof that meaningful surveillance reform must include closing the back-door searches loophole and requiring the intelligence community to show probable cause before deliberately searching through data collected under section 702 to find the communications of individual Americans.

Press Release, Ron Wyden for Oregon, Wyden, Udall on Revelations that Intelligence Agencies Have Exploited Foreign Intelligence Surveillance Act 'Loophole' (April 1, 2014), http://www.wyden.senate.gov/news/press-releases/wyden-udall-on-revelations-that-intelligence-agencies-have-exploited-foreign-intelligence-surveillance-act-loophole, (on file with author).

Plaintiffs respectfully request that witnesses to be called at the evidentiary hearing include but are not limited to James Clapper and representatives of the NSA who should testify under oath why the NSA and other Defendants have lied to this Court and, in effect, obstructed justice. Plaintiffs, while making the suggestion, leave it to the Court to determine how best to proceed. Should the Court accept the predictable claims of the Defendants that this testimony would be classified national security information, the Court is respectfully requested to fashion a procedure which will protect disclosure of classified national security information. However, it is the duty of this Court to determine by whatever means are appropriate why it, Plaintiffs and the American people have been repeatedly lied to in the context of this case.

States." See http://abcnews.go.com/Politics/video/obama-nsa-controversy-listening-phone-calls-19349423.

At the conclusion of this evidentiary hearing, the Court is respectfully requested to impose any sanctions which it deems appropriate, including but not limited the entry of judgment against the Defendants and an award of Plaintiffs attorneys fees and costs for the time and expense of having to file this and related motions and to hold and participate in this evidentiary hearing.

Defendants oppose this motion.

Dated: April 14, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2014, a true and correct copy of the foregoing Motion For Order To Show Cause Why Defendants Should Not Be Sanctioned For Making Material Misrepresentations To This Court And Request For Evidentiary Hearing (Civil Action No. 13-cv-881) was submitted electronically to the District Court for the District of Columbia and served via CM/ECF upon the following:

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Respectfully submitted,
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