

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Larry Klayman, et. al.

Appellees-Cross-Appellants,

v.

Barack Hussein Obama, et al.,

Appellants-Cross-Appellees.

Nos. 14-5004, 14-5016
14-5005, 14-5017

**NOTICE OF NEW CASE AUTHORITY
AND REQUEST TO ISSUE DECISION**

Appellees/Cross-Appellants Larry Klayman, Charles Strange, Mary Ann Strange, Matt Garrison, and Michael Ferrari hereby file new case authority that is directly relevant to these appeals. *ACLU v. Clapper*, No. 14-42 (2nd Cir. May 7, 2015)(Exhibit 1). In this case, the U.S. Court of Appeals for the Second Circuit (“Second Circuit”) ruled that section 215 of the Patriot Act, 50 U.S.C. § 1861, was being systematically violated by the National Security Agency (“NSA”) and found standing for the appellant, the American Civil Liberties Union (“ACLU”) under section 215 and also to sue for constitutional violations under the Fourth and First Amendments. However, the Second Circuit failed to issue a preliminary injunction,

bowing to political branch of government and hoping that Congress would soon amend the law and take the monkey off its back.

The Second Circuit's dereliction in enforcing the current law is belied by the simple fact that Congress, and most notably the Senate, has reached a deadlock on amending the law and even if it did amend it, this would not stop the rampant lawlessness of the agency. Even its own Inspector General has investigated and documented the uncontroverted fact that agency personnel have been systematically using NSA surveillance software to spy on their paramours. A521. Thousands of other violations have been found. And, fortunately due to the disclosures of Edward Snowden, it is known and now forcibly admitted by the agency that it routinely spies daily on hundreds of millions of Americans who have no connection to terrorists or where there is no probable cause that they are committing a crime, by surreptitiously obtaining all of their telephonic metadata.

After sixteen months on appeal, this Court, the United States Court of Appeal for the District of Columbia Circuit, has a duty to issue its decision now. As ruled succinctly in *United States v. Mills*, 571 F.3d 1304, 1312 (D.C. Cir. 2009), "a constitutional violation and loss of constitutional protections 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Id.* (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Further violations of the U.S. Constitution cannot be countenanced. This Court is not an inferior branch of

government to Congress and should not defer to what might happen. This Court must rule on the law as it exists, not some speculative legislation that is not likely to come to pass in any event. The record of this case is based on the current law, no more and no less. Indeed, if the Court ruled now it would aid Congress in fashioning future legislation. As important, Appellees/Cross-Appellants are not just asking for injunctive equitable relief, but also damages. Thus, Congress amending the current law has nothing to do with this relief and the lower court needs a ruling to determine how to proceed below.

For these and other compelling reasons, the Court should issue its decision now, also because it will be subject to likely Supreme Court review, causing further delay in protecting the rights of all Americans. In this regard, it has been sixteen months and it is time for this Court to do its judicial duty without regard to politics, as regrettably the Second Circuit chose to do in the attached decision of *ACLU v. Clapper*, No. 14-42 (2nd Cir. May 7, 2015) (Exhibit 1).

Dated: May 26, 2015

Respectfully Submitted,

/s/ Larry Klayman
Larry Klayman, Esq.
D.C. Bar No. 334581
2020 Pennsylvania Ave. NW #345
Washington, DC 20006

Tel: (310) 595-0800

Email: leklayman@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

Respectfully Submitted,

/s/ Larry Klayman

Larry Klayman, Esq.

D.C. Bar No. 334581

2020 Pennsylvania Ave. NW #345

Washington, DC 20006

Tel: (310) 595-0800

Email: leklayman@gmail.com