IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LARRY KLAYMAN, *et al.*,

Plaintiffs,

v.

BARACK OBAMA, President of the United States, et al.,

Defendants.

Case No: 1:13-cv-00851-RJL

PLAINTIFFS' REPLY IN SUPPORT OF THEIR RENEWED MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Every element supporting a renewed preliminary injunction has already been decided by this Court and now governs as the law of the case. The Plaintiffs' standing is established in conformity with the ruling in Opinion, *Obama v. Klayman*, U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), Record No. 14-5004, consolidated with 14-5005, 14-5016, 14-5017, August 28, 2015. The D.C. Circuit's decision on standing is also the law of the case, so that the inclusion now, on amendment, of the new Plaintiffs who are customers (subscribers) of Verizon Business Network Services ("VBNS") conclusively establishes standing under the law of the case.

The D.C. Circuit ruled that the Order publicly acknowledged from the Foreign Intelligence Surveillance Court ("FISC"), often referred to as the Foreign Intelligence Surveillance Act Court ("FISA Court"), ordering VBNS to turn over ***all*** telecommunications metadata records of ***all*** VBNS customers during the period of April 25, 2013, through July 19, 2013 (*See* Defendants' Opposition ("Opp."), at 18; *see* Exhibit 2, attached), is sufficient evidence

to establish standing for those VBNS customers to bring suit.

New Plaintiffs, J.J. Little and J.J. Little Associates, P.C., recently joined the lawsuit. Both have been customers of VBNS continuously since October 2011. As a result, the Plaintiffs clearly have standing to contest the unconstitutional surveillance of their telephone calls. Moreover by the Government Defendants' own admissions, revealed recently, they have been ssurveilling illegally and unconstitutionally the telephonic metadata of Verizon Wireless, of which the other Plaintiffs are subscribers during the relevant time frame of the case.

The Government Defendants questioned the time periods of the new Plaintiffs' use of VBNS. Therefore, J.J. Little and J.J. Little Associates, P.C. hereby submit their supplemental declaration, attached hereto as Exhibit 1, attesting under oath that they have been VBNS customers continuously since October 2011 until today. Therefore, they are affected by the FISA Court Order covering the time period of April 25, 2013, through July 19, 2013. Therefore, standing is established according to the rulings already made, which are the law of the case.

An injunction from this Court is required, at a minimum, so that there will be continuing oversight of serious, continuing violations of the Fourth Amendment. Preliminary injunctive relief will be an indispensable safeguard of constitutional rights and civil liberties. The Government Defendants have shown a pattern and practice of violating constitutional rights no matter what laws are in effect. It does not matter which statute governs, it has been demonstrated time in and time again that the Government Defendants do not follow the laws on the books.

The FISA Court has proved to be unwilling or unable to police the National Security Agency ("NSA") and other Government Defendants for compliance with the Constitution. In fact, the *ex parte* FISA Court rolls over for whatever government agencies want. Moreover, the

Government Defendants have lied continuously to congress, the FISA Court, this Court, and the American people about this warrantless surveillance. Their most recent brief underscores their lack of honesty and sincerity, again, unbelievably claiming that since they hold all the cards about their illegal and unconstitutional activities – and arrogantly will not confirm or deny that Plaintiffs have been surveilled -- Plaintiffs cannot meet the standard of proof for a preliminary injunction. For the arrogant and lawless Government Defendants, who have trashed the Constitution and continue to shamelessly do so, it is "heads I win tails you (the People) lose."

As a result, a preliminary injunction is required so that the Government Defendants can be held to obey the law and can be held in contempt, if necessary, if they do not respect the Fourth Amendment rights of Plaintiffs and the hundreds of millions of other affected U.S. citizens. All that Plaintiffs request is a preliminary injunction order which requires the Government Defendants to adhere to the Fourth Amendment of the Constitution, no more and no less. No matter what law is in effect, the prior law or the new one that will take effect in a few months, this is not too much to ask, given the Government Defendants' documented history of violating no matter what law is in effect, and then lying about it to congress, the FISA Court, this Court and the American people.

Moreover, this Court's decisions remain still correct today on every element of a preliminary injunction from its Memorandum Opinion of the Court ("Mem.Op."), on December 16, 2013. The allegations of the Fourth Amended Complaint ("4th Am.Comp.") concerning the Plaintiffs' standing, supported by declarations, are uncontroverted.[1] The facts establish standing. The Government Defendants merely suggest without evidence, which they conveniently will not

[1] The Government Defendants have submitted affidavits concerning the operation of the surveillance program and their claim to need it, but have not come forward with evidence or declarations to contradict the Plaintiffs' factual bases for standing.

admit or confirm despite hard evidence to the contrary, that perhaps these Plaintiffs slipped through the cracks somehow and were not surveilled. This is not a serious argument so as to be dignified with a reply. Importantly, the Government Defendants do not actually deny that they spied, without probable cause, upon these Plaintiffs. Unlike typical standing challenges, here, these Defendants have actual knowledge if they did or did not intrude upon these very Plaintiffs' privacy. The bottom line is thus that they have never denied that they did in fact do so. As a result, the Plaintiff's allegations and evidence of standing is uncontroverted.

II. ARGUMENT

The Court should not disturb the Court's decisions in its Memorandum Opinion, December 16, 2013.

A. ELEMENTS OF PRELIMINARY INJUNCTION ARE LAW OF THE CASE

The Government Defendants in their Opposition are in effect asking the Court to reconsider and reverse the Court's prior rulings. Yet,

> The purpose of the law-of-the-case doctrine is to ensure that "the *same* issue presented a second time in the *same case* in the *same court* should lead to the *same result*." *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996). The courts are appropriately "'loathe' to reconsider issues already decided," except in the case of "extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.'" *Id.* (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) (quoting *Arizona v. California*, 460 U.S. 605, 618 n.8 (1983))). Appellants' argument before us in the preliminary-injunction review was the same as now.

Sherley v. Sebelius, 689 F.3d 776, 785 (D.C. Cir. 2012).

Since the Court has already decided the constituent elements for issuance of a preliminary injunction, a renewed preliminary injunction should likewise issue now as the

inevitable, logical consequence of issues already decided, especially now that the issue of Verizon Business Services and the new Plaintiffs' continuous use of this service has been further established since October, 2011. *See* Exhibit 1, attached. "[T]he *same* issue presented a second time in the *same case* in the *same court* should lead to the *same result*." *LaShawn A. v. Barry,* 87 F.3d 1389, 1393 (D.C. Cir. 1996).

B. NEED FOR PRELIMINARY INJUNCTION IS CLEARLY ESTABLISHED

As this Court has already found, a preliminary injunction is needed, particularly because the constitutional rights of the Plaintiffs and millions of U.S. citizens are being violated:

> THE COURT: Look, this Court has ruled. This Court believes, and anyone who's read its ruling knows this, that there are millions, millions of Americans whose constitutional rights have been and are right now being violated. Millions.

Transcript, of Status Hearing before the Honorable Richard J. Leon, September 2, 2015, ("Transcript, Sept. 2, 2015"), Page 18:9-13.

> Because if this Court finds jurisdiction, I don't have to write another opinion on the Constitution -- on the merits of the constitutional issue. It's been written. It has been written.

Transcript, Sept. 2, 2015, Page 19:3-6.

> Because of the exigency of the circumstances and in my judgment, they are exigent, because as Mr. Klayman said, and he is right, if anyone's constitutional rights are being violated, anyone's, and in this case I believe tens of millions of people's constitutional rights are being violated, tens of millions -- if anyone's constitutional rights are being violated, we are in an exigent circumstance, in my judgment, and we need to move.

Transcript, Sept. 2, 2015, 37:6-13.

C. INJUNCTION REMAINS NECESSARY BEYOND NOVEMBER 2015

The Government Defendants' mass surveillance of the telephone calls, internet communications and other telecommunications of U.S. citizens without a warrant from a court, without probable cause, is supposedly based upon Section 215 of the USA PATRIOT Act,

codified as 50 U.S.C. § 1861. But the statute requires that there be reasonable grounds to believe the data collected is "relevant to an authorized investigation." However, clearly, that language does not provide legal authority for the surveillance of Plaintiffs and millions of innocent U.S. citizens who are *not* being investigated for ties to terrorism.

Even after the enactment of the USA Freedom Act, Pub.L. 114-23, 129 Stat. 268 – which like the Patriot Act will not constrain the illegal and unconstitutional acts of the Government Defendants – this Court's oversight is still needed to ensure that the NSA and other federal agencies comply with the law, as there is a pattern and practice of complete lawlessness in the past and continuing to the present. Based on the pattern and practice, it clearly does not matter to these Government Defendants what the law is. The Government Defendants have a history of not obeying the law and of lying, even under oath, to the courts, congress, and the American people that they have obeyed the law.

The NSA has been forced to admit that it has significantly failed to comply with the minimization procedures that were set forth in certain orders. For instance, in 2009, the NSA reported to the FISC that the NSA had improperly used an "alert list" of identifiers to search the bulk telephony metadata, using identifiers that had not been approved under the "Reasonable Articulable Suspicion" standard. Mem. Op. at 21. Judge Reggie Walton of the FISC, who reviewed the NSA's reports on noncompliance, concluded that the NSA had engaged in "systematic noncompliance" with FISC-ordered minimization procedures from the start, and repeatedly made inaccurate statements and misrepresentations about the surveillance to the FISC judges. Mem. Op at 21. Judge Reggie Walton concluded that he had no confidence that the Government was doing its utmost to comply with the court's orders, and ordered the NSA to

seek FISC approval on a case-by-case basis before conducting any further queries of the bulk telephony metadata collected pursuant to Section 1861 orders. Mem. Op at 21.

Also, in 2011, the Presiding Judge of the FISC, Judge John Bates, found that the Government Defendants had misrepresented the scope of its targeting of internet communications. Judge Bates wrote "the Court is troubled that the government's revelations regarding NSA's acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program." Mem. Op. at 22-23. In fact, since January 2009, the FISC's authorizations of surveillance have "been premised on a flawed depiction of how the NSA uses BR metadata." Mem. Op. at 22, fn. 23. "This misperception by the FISC existed from the inception of its authorized collection in May 2006, buttressed by repeated inaccurate statements made in the government's submissions, and despite a government-devised and Court-mandated oversight regime. The minimization procedures proposed by the government in each successive application and approved and adopted as binding by the orders of the FISC have been so frequently and systemically violated that it can fairly be said that this critical element of the overall BR regime has never functioned effectively." *Id.*

In sum, Plaintiff's renewed motion for preliminary injunctive relief merely requests that Government Defendants be ordered to obey and adhere to the Fourth Amendment to the Constitution, and that the illegally collected metadata be purged when this lawsuit is over as this case must eventually proceed to trial before a jury, as damages have been prayed for.

But the alleged and unbelievable cessation of the previously-ruled illegal and unconstitutional activity does not moot the need for a preliminary injunction. Indeed, there is a very heavy presumption that an injunction remains necessary. Where a defendant suspends the

challenged conduct during litigation and restores the *status quo ante*, the Supreme Court has ruled that such a case is moot only if the defendant meets his "heavy burden" of persuading the court that it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *See Friends of the Earth, Inc., v. Laidlaw Envtrl. Servs., Inc.*, 528 U.S. 167, 189, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000) (quoting *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203, 89 S. Ct. 361, 21 L. Ed. 2d 344 (1968)); *accord Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 94 S.Ct. 1694, 40 L.Ed.2d 1 (1974). In *Walling v. Helmerich & Payne, Inc.*, 323 U.S. 37, 65 S. Ct. 11, 89 L. Ed. 29 (1944), the Supreme Court refused to declare moot a wage and hours case. The Supreme Court observed that that defendant "consistently urged the validity of the [original schedule] and would presumably be free to resume this illegal plan were not some effective restraint made." *Id.* at 43, 65 S. Ct. 11.

One factor to be considered is a defendant's continued insistence that its conduct was legally permissible. The possibility that the Government Defendants here could revert to the surveillance activities is worsened where neither the executive branch nor the congress have recanted from their claim that the mass surveillance of innocent citizens without a warrant is proper. Indeed, in the Government Defendants' latest deceptive missive, they unabashedly seek to justify their illegal activities, incredibly claiming that the new threat of ISIS – which they created through the actions of the Defendant Obama's failed foreign policies – justifies their actions. But sadly for these compromised and dishonest Government Defendants, there is no excuse for not making a showing of probable cause before violating Plaintiff's constitutional rights. This case is not about throwing the proverbial baby out with the bathwater. Plaintiffs' rights are sacrosanct under the Constitution and cannot be dismissed just because they need to

allegedly catch a terrorist within their overreach – a showing to this date they have never made, as this Court observed. Mem.Op. at 62. If this were so, why would the Government Defendants be so keen on the USA Freedom Act, which they concede will now require them to show probable cause and which they claim, in contradiction to their claim that the new law will solve everything, will reduce their so-called speed of mass surveillance.

Changes in the statutes concerning the government's surveillance programs, while the original Section 215 of the USA Patriot Act expires and is replaced by the USA Freedom Act, do not change the analysis here, because the Government Defendants do not admit to any limitation from those particular statutes on in spying on Plaintiffs and other U.S. citizens who have no connection to terrorism. The Government Defendants' arrogance and sense of king-like omnipotence even exceeds what this Court had already found was "almost Orwellian." Mem.Op. at 49. They think and act as if they can do whatever they please; that they make the rules and that we peasants must roll over and obey. Their claim underscores why 'We the People' are no longer in control of our run-a-way lawless government and why we truly, unless this Court steps in and enters an order that the Fourth Amendment of the Constitution must be obeyed for once, or there will be real consequences, are headed for revolution as in 1776.

D. TELEPHONE SUBSCRIBERS HAVE EXPECTATION OF PRIVACY

This Court correctly found in its Memorandum Opinion, December 16, 2013, that Plaintiffs and other U.S. citizens have an expectation of privacy in their telecommunications, thus triggering Fourth Amendment rights:

> For the many reasons discussed below, I am convinced that the surveillance program now before me is so different from a simple pen register that *Smith* is of little value in assessing whether the Bulk Telephony Metadata Program constitutes a Fourth Amendment search. To the contrary, for the following reasons, I

> believe that bulk telephony metadata collection and analysis almost certainly does violate a reasonable expectation of privacy.

Mem. Op. at 47.

E. REASONABLENESS OF SEARCH UNDER FOURTH AMENDMENT

This Court already determined that a search occurred under the Fourth Amendment:

> Having found that a search occurred in this case, I next must "examin[e] the totality of the circumstances to determine whether [the] search is reasonable within the meaning of the Fourth Amendment." *Samson v. California*, 547 U.S. 843, 848 (2006) (internal quotation marks omitted). "`[A]s a general matter, warrantless searches are *per se* unreasonable under the Fourth Amendment.'" *Nat'l Fed'n of Fed. Emps.-IAM v. Vilsack*, 681 F.3d 483, 488-89 (D.C. Cir. 2012) (quoting *Quon*, 130 S. Ct. at 2630); *see also Chandler v. Miller*, 520 U.S. 305, 313 (1997) ("To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing.").

Mem.Op. at 56.

This Court ruled by noting that efficacy is one prong of the Fourth Amendment analysis:

> This is a "`context-specific inquiry'" that involves "`examining closely the competing private and public interests advanced by the parties.'" *Id.* (quoting *Chandler*, 520 U.S. at 314)). The factors I must consider include: (1) "the nature of the privacy interest allegedly compromised" by the search, (2) "the character of the intrusion imposed" by the government, and (3) "the nature and immediacy of **the government's concerns and the efficacy of the [search] in meeting them**." *Bd. of Educ. v. Earls*, 536 U.S. 822, 830-34 (2002).

Mem.Op. at 57 (emphasis added). Furthermore, the Court then already decided that the Government Defendants have not shown that the surveillance program is even effective:

> Yet, turning to the efficacy prong, the Government does *not* cite a single instance in which analysis of the NSA's bulk metadata collection actually stopped an imminent attack, or otherwise aided the Government in achieving any objective that was time-sensitive in nature. In fact, none of the three "recent episodes" cited by the Government that supposedly "illustrate the role that telephony metadata analysis can play in preventing and protecting against terrorist attack" involved any apparent urgency. *See* Holley Decl.

> ¶¶ 24-26.
>
> * * *
>
> Given the limited record before me at this point in the litigation — most notably, the utter lack of evidence that a terrorist attack has ever been prevented because searching the NSA database was faster than other investigative tactics — I have serious doubts about the efficacy of the metadata collection program as a means of conducting time-sensitive investigations in cases involving imminent threats of terrorism. *See Chandler*, 520 U.S. at 318-19 ("Notably lacking in respondents' presentation is any indication of a concrete danger demanding departure from the Fourth Amendment's main rule.").
>
> Thus, plaintiffs have a substantial likelihood of showing that their privacy interests outweigh the Government's interest in collecting and analyzing bulk telephony metadata and therefore the NSA's bulk collection program is indeed an unreasonable search under the Fourth Amendment.

Mem.Op. at 62.

A Fourth Amendment 'search' occurs either when "the Government obtains information by physically intruding on a constitutionally protected area," *United States v. Jones*, 132 S.Ct. 945, 950 n.3 (2012), or when "the government violates a subjective expectation of privacy that society recognizes as reasonable," *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)).

The Government Defendants' surveillance program not only qualifies as a search triggering the constitutional protections of the Fourth Amendment, but also it does not qualify for any recognized exception as a reasonable warrantless search.

The Government Defendants surveillance program miserably fails the reasonableness analysis because of its fundament flaw: It invades the privacy of Plaintiffs and other innocent U.S. citizens – and by the hundreds of millions – rather than investigating lawbreakers with a required showing of probable cause. The Fourth Amendment enshrines as a fundamental

concept that government intrusion must focus on those about whom there is probable cause of criminal conduct. The Government Defendants program flips that core concept of our Constitution on its head and burdens Plaintiffs and millions of innocent citizens instead of acting on probable cause for those who are reasonably suspected of engaging in terrorist activities.

F. CONTINUED OBJECTION TO STANDING IS WITHOUT MERIT

Plaintiffs J.J. Little and J.J. Little Associates have been customers of VBNS continuously since October 2011. *See* Declaration and Supplemental Declaration, attached as Exhibit 1. The Government Defendants admit that they have conducted surveillance of VBNS telecommunications during the period of April 25, 2013, through July 19, 2013. *See* Defendants' Opposition ("Opp."), at 18. As a result, the Plaintiffs clearly have standing to contest the unconstitutional surveillance of their telephone calls.

The Government Defendants argue in clear bad faith – despite binding precedential authority to the contrary – that inferences from the facts established cannot support standing. *See Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

1) The Court's Previous Decision on Standing

This Court has already addressed the issue of standing at this stage, including analyzing the decision of the D.C. Circuit. The Court observed at a recent status conference:

> So there are -- the D.C. Circuit is saying, it's not enough to show what you've shown. You've got to show something more than reasonable likelihood. You need to show a substantial likelihood that your records, your personal records, and your fellow plaintiffs' personal records were actually harvested. **And the quickest way to do that probably, is just simply amend your complaint with someone who had Verizon Business Services.**

Transcript, Sept. 2, 2015, Pages 11:22 - 12:4 (emphasis added). And furthermore, despite the D.C. Circuit's belated and disingenuous hair-splitting over customers of Verizon Wireless versus

VBNS, this Court addressed the correct analysis of standing:

> Look, look. This Court ruled on this issue. To this Court, it is beyond even common sense that Verizon Wireless was involved. The government's admission was that they were intending to create a program to capture the metadata of all cell phone users in the United States. How could you have such a program without capturing the metadata of the second largest provider of cell phone services in the United States? Of course it had to be.

Transcript, Sept. 2, 2015, Page 20:5-15.

As a result, this Court has already made clear that the new Plaintiffs', in particular, as pled in the Fourth Amended Complaint and supported by uncontroverted sworn declarations *See* Exhibit 1, attached, have standing.

2) FISA Court Ordered All, Not Some, Telephone Call Data Produced By Verizon Business Network Services

The Government Defendants again strain to suggest that the Plaintiffs constitutional rights, as well as all Americans, must be violated to attempt to catch terrorists. This, they falsely claims is why no showing of probable cause is necessary to violate the privacy interests of rights of these Plaintiffs and the hundreds of millions of innocent U.S. citizens. Again, the Government Defendants have failed to make any real argument, other than their false claims, that they cannot make such showings. Indeed, their so-called argument is self-defeating, as even under the new USA Freedom Act, they have to make such a showing before records can be obtained from Verizon.

G. INJURY IS PRESUMED FOR CONSTITUTIONAL VIOLATION

The Government Defendants also seek to re-argue that the Plaintiffs have not shown injury. However, injury is presumed from a violation of one's constitutional rights. *Carey v. Piphus*, 435 U.S. 247 (1978); *Kincaid v. Rusk*, 670 F.2d 737, 746 (7th Cir. 1982) (awarding

nominal damages for violation of First Amendment rights). It is presumed by operation of law that the loss of constitutional freedoms, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion).

Federal circuit courts have stated that irreparable injury must be presumed in cases involving an alleged violation of a constitutional right. *Pacific Frontier, Inc. v. Pleasant Grove City*, 414 F.3d 1221, 1235 (10th Cir. 2005) ("We therefore assume that plaintiffs have suffered irreparable injury when a government deprives plaintiffs of their commercial speech rights."); *Tucker v. City of Fairfield*, 398 F.3d 457, 464 (6th Cir. 2005); *Joelner v. Village of Washington Park*, 378 F.3d 613 (7th Cir. 2004); *Newsom v. Albemarle Co. Sch. Bd.*, 354 F.3d 249, 254 (4th Cir. 2003); *Brown v. California Dep't of Trans.*, 321 F.3d 1217, 1225 (9th Cir. 2003); *Tenafly Eruv Assoc., Inc. v. Borough of Tenafly*, 309 F.3d 144, 178 (3d Cir. 2002) (Limitations on the free exercise of religion inflict irreparable injury); *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 574 (2d Cir. 2002); *Siegel v. LePore*, 234 F.3d 1163, 1168 (11th Cir. 2000); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999); *Miss. Women's Med. Clinic v. McMillan*, 866 F.2d 788, 795 (5th Cir. 1989); *see also* 11 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE, § 2948, at 440 (1973) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

H. RESTRAINING CONSTITUTIONAL VIOLATIONS OF THE OTHER BRANCHES IS WITHIN THE CENTRAL ROLE OF THE JUDICIARY

The role of the federal courts was settled long ago in *Marbury v. Madison*, 5 U.S. 137 (1803). This Court should not hesitate to fulfill its constitutional role and should reject the Government Defendants' attempts to discourage the Court from robustly discharging its duties.

The Government Defendants imply that this Court must defer to "the Political Branches" rather than upholding and defending the Constitution. Instead of our nation's constitutional check and balances, the Government Defendants would reduce this Court to a rubber stamp for unconstitutional actions of the executive branch.

Specifically, the Government Defendants argue that this Court must overlook violations of the Constitution because the "Political Branches" passed a law. But *every law passed* is always enacted by congress and signed by the President. So if the judiciary were to exempt itself from reviewing decisions by "the Political Branches," the judiciary would never enforce the Constitution against over-reach. The judiciary would in effect be rendered impotent.

But as the Supreme Court teaches us, the judiciary must supervise and review the constitutionality of laws and government actions: "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 US 425 (1885). "It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution." See *Downes v. Bidwell*, 182 U.S. 244 (1901) (Harlan dissenting).

"Where rights secured by the Federal Constitution are involved, there can be no rule-making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436 (1966). "We find it intolerable that one constitutional right should have to be surrendered in order to assert another." *Simmons v. U.S.*, 390 US 389 (1968). "It is monstrous that courts should aid or abet the lawbreaking police officer. It is abiding truth that '[n]othing can destroy a government more quickly than its own failure to observe its own laws or worse, its disregard of the charter of

its own existence.'" Justice Brennan quoting *Mapp v. Ohio*, 367 U.S. 643, 659 (1961) in *Harris v. New York*, 401 U.S. 222, 232 (1971).

I. THE BALANCE OF HARM AND THE PUBLIC INTEREST SUPPORTS THE IMPLEMENTATION OF A PRELIMINARY INJUNCTION.

"[T]here is an overriding public interest…in the general importance of an agency's faithful adherence to its statutory mandate." *Jacksonville Port Auth. V. Adams*, 556 F.2d 52, 59 (D.C. Cir. 1977). The public has a substantial interest in the Government Defendants following and obeying the law. *See, e.g., In re Medicare Reimbursement Litigation*, 414 F.3d 7, 12 (D.C. Cir. 2005 (Additional administrative burden "[would] not outweigh the public's substantial interest in the Secretary's following the law.") Given the Government Defendants' non-compliance with court orders and constitutional violations, the public interest will be served if this court issues an injunction. See *Tyndale House Publishers, Inc. v. Sebelius*, 904 F. Supp. 2d 106, 130 (D.D.C. 2012), ("there is undoubtedly . . . a public interest in ensuring that the rights secured under the First Amendment. . . are protected"); *O'Donnell Const. Co. v. District of Columbia*, 963 F.2d 420, 429 (D.C. Cir. 1992) ("issuance of a preliminary injunction would serve the public's interest in maintaining a system of laws" free of constitutional violations); *see also Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 54 (D.D.C. 2002), (that the public interest is served by a court order that avoids "serious constitutional risks"); *N. Mariana Islands v. United States*, 686 F. Supp. 2d 7, 21 (D.D.C. 2009) ("the general public interest is served by agencies' compliance with the law"); *Cortez III Serv. Corp. v. Nat'l Aeronautics & Space Admin.*, 950 F. Supp. 357, 363 (D.D.C. 1996) (public interest served by enforcing constitutional requirements).

III. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' renewed motion and enter a preliminary injunction to restrain the Government Defendants from violating the Fourth Amendment and to ensure that they do not continue to violate constitutional rights, and to exercise continuing jurisdiction over such illegal surveillance to insure compliance. This continuing jurisdiction is necessary no matter what law is in effect, as the Government Defendants have engaged in a continuing practice of violating the constitutional rights of Plaintiffs and hundreds of millions of Americans, and then lying about it to congress, the courts and the American people. As held in *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and as this Court has also recognized, one day of a constitutional violation, particularly of this magnitude and severity, is one day too many.

Dated: October 5, 2015

Respectfully submitted,

/s/ Larry Klayman

Larry Klayman, Esq.
General Counsel
Freedom Watch, Inc.
D.C. Bar No. 334581
2020 Pennsylvania Ave. NW, Suite 345
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com
Attorney for Himself, Pro Se, and Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this October 5, 2015, a true and correct copy of the foregoing was filed electronically using CM/ECF to the U.S. District Court for the District of Columbia and served upon the following:

Bryan Scott Dearinger
U.S. DEPARTMENT OF JUSTICE
P.O. Box 883
Washington, DC 20044
(202) 514-3489
Fax: (202) 616-8202
Email: bryan.dearinger@usdoj.gov

James J. Gilligan
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH
20 Massachusetts Avenue, NW
Room 5138
Washington, DC 20001
(202) 514-3358
Fax: (202) 616-8470
Email: james.gilligan@usdoj.gov

James R. Whitman
U.S. DEPARTMENT OF JUSTICE
P.O. Box 7146
Washington, DC 20044
(202) 616-4169
Fax: 202-616-4314
Email: james.whitman@usdoj.gov

Marcia Berman
UNITED STATES DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Room 7132
Washington, DC 20530
(202) 514-2205
Fax: (202) 616-8470
Email: marcia.berman@usdoj.gov

Rodney Patton
U.S. DEPARTMENT OF JUSTICE
Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20044
(202) 305-7919
Fax: (202) 616-8470
Email: rodney.patton@usdoj.gov

Julia A. Berman
U.S. DEPARTMENT OF JUSTICE
Civil Division
20 Massachusetts Avenue, NW
Washington, DC 20001
(202) 616-8480
Fax: (202) 307-0442
Email: julia.berman@usdoj.gov

/s/ *Larry Klayman*
Larry Klayman, Esq.

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LARRY KLAYMAN, *et al.*, Plaintiffs, v. BARACK OBAMA, President of the United States, et al., Defendants.	Case No: 1:13-cv-00851-RJL

SUPPLEMENTAL DECLARATION OF J.J. LITTLE

I, Jeffrey James ("J.J.") Little, hereby declare and swear that the following is true and correct:

1) I am over the age of 18 years old and mentally and legally competent to make this sworn declaration under oath.
2) I and my law firm J.J. Little Associates, P.C. have been customers (subscribers) of Verizon Business Network Services and also Verizon Wireless since October 2011, and have been so continuously during the period from October 2011 until the present.

I hereby swear under oath and penalty of perjury that the foregoing facts are true and correct to the best of my personal knowledge and belief:

// Jeffrey James (“J.J.”) Little

_____

Jeffrey James ("J.J.") Little

Exhibit 2

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE APPLICATION OF THE
FEDERAL BUREAU OF INVESTIGATION
FOR AN ORDER REQUIRING THE
PRODUCTION OF TANGIBLE THINGS
FROM VERIZON BUSINESS NETWORK SERVICES,
INC. ON BEHALF OF MCI COMMUNICATION
SERVICES, INC. D/B/A VERIZON
BUSINESS SERVICES.

Docket Number: BR 13-80

SECONDARY ORDER

This Court having found that the Application of the Federal Bureau of Investigation (FBI) for an Order requiring the production of tangible things from **Verizon Business Network Services, Inc. on behalf of MCI Communication Services Inc., d/b/a Verizon Business Services (individually and collectively "Verizon")** satisfies the requirements of 50 U.S.C. § 1861,

IT IS HEREBY ORDERED that, the Custodian of Records shall produce to the National Security Agency (NSA) upon service of this Order, and continue production

Derived from: Pleadings in the above-captioned docket
Declassify on: 12 April 2038

on an ongoing daily basis thereafter for the duration of this Order, unless otherwise ordered by the Court, an electronic copy of the following tangible things: all call detail records or "telephony metadata" created by Verizon for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls. This Order does not require Verizon to produce telephony metadata for communications wholly originating and terminating in foreign countries. Telephony metadata includes comprehensive communications routing information, including but not limited to session identifying information (*e.g.*, originating and terminating telephone number, International Mobile Subscriber Identity (IMSI) number, International Mobile station Equipment Identity (IMEI) number, etc.), trunk identifier, telephone calling card numbers, and time and duration of call. Telephony metadata does not include the substantive content of any communication, as defined by 18 U.S.C. § 2510(8), or the name, address, or financial information of a subscriber or customer.

IT IS FURTHER ORDERED that no person shall disclose to any other person that the FBI or NSA has sought or obtained tangible things under this Order, other than to: (a) those persons to whom disclosure is necessary to comply with such Order; (b) an attorney to obtain legal advice or assistance with respect to the production of things in response to the Order; or (c) other persons as permitted by the Director of the FBI or the Director's designee. A person to whom disclosure is made pursuant to (a), (b), or (c)

shall be subject to the nondisclosure requirements applicable to a person to whom an Order is directed in the same manner as such person. Anyone who discloses to a person described in (a), (b), or (c) that the FBI or NSA has sought or obtained tangible things pursuant to this Order shall notify such person of the nondisclosure requirements of this Order. At the request of the Director of the FBI or the designee of the Director, any person making or intending to make a disclosure under (a) or (c) above shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

IT IS FURTHER ORDERED that service of this Order shall be by a method agreed upon by the Custodian of Records of Verizon and the FBI, and if no agreement is reached, service shall be personal.

-- Remainder of page intentionally left blank. --

This authorization **requiring the production of certain call detail records or "telephony metadata" created by Verizon** expires on the 19th day of July, 2013, at 5:00 p.m., Eastern Time.

Signed 04-25-2013 P02:26 Eastern Time
Date Time

ROGER VINSON
Judge, United States Foreign
Intelligence Surveillance Court