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 Nos:
13-cv-851
13-cv-881
14-cv-92

Judge Richard J. Leon

PLAINTIFF'S MOTION TO REMOVE STAY ON PRELIMINARY INJUNCTION ORDER OF DECEMBER 16, 2013

Plaintiffs, Larry Klayman, Charles Strange, and Mary Ann Strange, move this honorable Court in *Klayman et. al v. Obama et. al.*, (No. 13-cv-851) ("Klayman I") to remove the stay of its preliminary injunction order of December 16, 2013. Not surprisingly, the Government and Individual Government Defendants, who have not even shown the forthrightness to respond to the Third Amended Complaint, based on proven falsehoods that they were not served (*see* Motion For Entry Of Default And To Strike Government Defendants' Answer To Plaintiffs' Third Amended Complaint), oppose unstaying the December 16, 2013 preliminary injunction order.

Contrary to the Government and Individual Government Defendants, whose strategy and tactics have been to do everything possible to slow down the appellate and lower court proceedings to drag this case out for political and other illegitimate, non-litigation purposes,

Plaintiffs petitioned the U.S. Supreme Court for a writ of certiorari before judgment to accelerate the ultimate adjudication of this Court's finding that in "almost-Orwellian" fashion Fourth Amendment rights have been violated. Notably, the Government and Individual Government Defendants did not file a petition on their own, nor did they join in Plaintiffs' petition. It suits their purposes to not have an early decision by the Supreme Court, so long as this Court's stay order stays in effect, so the Government and Individual Government Defendants can continue to do as they please and violate Plaintiffs and the entire citizenry's Fourth Amendment rights. On Monday April 7, 2014, the Supreme Court declined to hear Plaintiffs' petition.

Coupled with this, the U.S. Court of Appeals for the District of Columbia Circuit has yet to set a briefing schedule (almost four months after this Court's preliminary injunction order of December 16, 2013), as the Government Defendants represented that they needed a substantial amount of additional time to "consider" motions practice before judgment.

It is thus clear that this Court's ruling and preliminary injunction of December 16, 2013, will now wind its way through the court system slowly and that during this time period the Fourth Amendment rights of Plaintiffs and the citizenry will continue to be egregiously violated. Just recently, in yet another lie that was disclosed, the ethically challenged Director of National Intelligence James Clapper, who along with his comrades in the Obama administration have repeatedly lied under oath to Congress and the Foreign Intelligence Surveillance Court ("FISC"), had to do yet another mea culpa to save his derriere from prosecution for this perjury and admit to Senator Ron Wyden of the Senate Intelligence Committee that personnel of the National Security Agency ("NSA") have been accessing, listening to, and reading the telephonic and email communications of ordinary Americans who have no connection to terrorism and no communication with terrorists, domestically and overseas. Of course, Clapper and his corrupt

enablers at the NSA do not need to do much to short-circuit justified criminal prosecution; the Obama Justice Department, true to its continuing inaction if not cover-up of a myriad of what our equally felonious president calls his phony scandals, will not hold anyone in this administration accountable, be it this NSA, IRS, Benghazi, Fast and Furious or whatever "scandal du jour" arises now and in the future. The Clapper letter to Senator Wyden and a concurrent New York Times press report are attached as Exhibit 1 and speak loudly for themselves.

Importantly, the revelation made to Senator Wyden proves that the Government and Individual Government Defendants have repeatedly lied not just to Congress, the FISC and the American people, but to this Court, with the help of their pliant Obama Justice Department lawyers. In short, it is now clear that Internet surveillance did not cease in 2011 as has been represented by them in moving to dismiss certain claims in *Klayman II* (No. 13-cv-881, D.D.C), and the same is true of overseas phone calls under PRISM. The Obama Justice Department has thus argued that relevant portions of the Second Amended Complaint in *Klayman II* should be dismissed as a result. But now that their and their clients' lies have predictably been exposed, this court, sua sponte, should respectfully issue an order to show cause and hold their corrupt feet to the fire and strongly sanction them for their unethical and illegal conduct.

As for the lifting of the stay order of December 16, 2013, this is respectfully the minimum the Court should be prepared to do under these outrageous circumstances. And, by doing so, it would not only serve to protect Plaintiffs, the citizenry and the American people from the criminality, but also serve to light a fire under the Government and Individual Defendants to move this and the other companion cases along and not continue to obstruct and delay at every turn in an effort to "run the clock out."

A number of motions are pending in *Klayman I* (No. 13-cv-851, D.D.C.), *Klayman II* (No. 13-cv-881, D.D.C.), and now *Klayman III* (No. 14-cv-92, D.D.C.), where the Government Defendants, consistent with their obstruction and delay tactics, now want to stay certification of the class and oppose it altogether. There is a clear-cut pattern in all three cases to avoid the Government Defendants' and Individual Defendants' day of legal reckoning.

For all of these compelling reasons, and to protect Plaintiffs and all Americans whose privacy rights and freedoms have been trampled upon by an out of control tyrannical government establishment, run primarily by Defendant Barack Obama and his enablers, this Court must step in and lift the stay of the preliminary injunction order of December 16, 2013.

Plaintiffs contacted Defendants' counsel to seek consent for this motion. Defendants' counsel indicated that they do not consent to this motion.

Dated: April 11, 2014

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 Plaintiffs and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April, 2014, a true and correct copy of the foregoing Motion to Remove Stay On Preliminary Injunction Order Of December 16, 2013 (Civil Action Nos. 13-cv-851, 13-cv-881, and 14-cv-92) was submitted electronically to the District Court for the District of Columbia and served via CM/ECF upon the following:

James J. Gilligan
Special Litigation Counsel
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
(202) 514-3358
Email: James.Gilligan@usdoj.gov

Attorneys for Defendants.

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

Exhibit 1

The New York Times http://nyti.ms/1mlRqm7

POLITICS

Letter Tells of U.S. Searches for Emails and Calls

By CHARLIE SAVAGE APRIL 1, 2014

WASHINGTON — United States intelligence analysts have searched for Americans' emails and phone calls within the repository of communications that the government collects without a warrant, according to a letter from James R. Clapper Jr., the director of national intelligence, to Senator Ron Wyden, Democrat of Oregon.

The March 28 letter was not the first official confirmation that both the National Security Agency and the C.I.A. had carried out such searches. But its release served to elevate attention to the fact that the activity, which Mr. Wyden has criticized as a "backdoor search" loophole to warrant requirements, was not just theoretical.

"It is now clear to the public that the list of ongoing intrusive surveillance practices by the N.S.A. includes not only bulk collection of Americans' phone records, but also warrantless searches of the content of Americans' personal communications," Mr. Wyden said in a joint statement with Senator Mark Udall, Democrat of Colorado. "This is unacceptable. It raises serious constitutional questions, and poses a real threat to the privacy rights of law-abiding Americans."

A 2008 law, the FISA Amendments Act, legalized the warrantless surveillance program that the Bush administration created after the terrorist attacks of Sept. 11, 2001. The law permits the government to intercept phone calls and emails without a warrant and on domestic soil, as long as the surveillance target is a noncitizen who lives abroad.

In fall 2011, the Obama administration obtained the approval of the Foreign Intelligence Surveillance Court for analysts to search for "U.S. person identifiers" in the repository, enabling them to pull out phone calls and emails involving Americans that had been intercepted because the people involved had been in contact with a foreign target.

Hints that the rules permitted that activity first appeared in pointed questions by Mr. Wyden. In 2012, when the FISA Amendments Act was up for renewal, he led an unsuccessful legislative push to begin requiring judicial approval to search the communications gathered under the program.

A document leaked by the former N.S.A. contractor Edward J. Snowden, published by The Guardian in early August, brought the rule change to light. Mr. Clapper's office declassified and released documents about surveillance in response to the leaks. One, released later in August, discussed the rule change and noted that internal overseers had found no rule violations with N.S.A. and C.I.A. searches for Americans' information.

Still, when Mr. Wyden asked Mr. Clapper at a Jan. 29 hearing whether any such searches had been conducted, he declined to answer, saying, "There are very complex legal issues here." He agreed to respond in writing, resulting in the March 28 letter.

The government has not said how often it has used the power to examine Americans' communications.

Last month, the issue also arose at a hearing by the Privacy and Civil Liberties Oversight Board, an independent federal watchdog group that is examining how the government is using the FISA Amendments Act.

Brad Wiegmann, a deputy assistant attorney general for the Justice Department's National Security Division, testified that searching the database for Americans' communications without a warrant did not raise Fourth Amendment concerns because the information had been lawfully collected by the government.

Later in the oversight board's hearing, one of its members, Patricia Wald, a retired appeals court judge, asked why it would not be appropriate to require analysts to get court approval to pull up Americans' communications.

Robert S. Litt, the general counsel for the Office of the Director of National Intelligence, replied that imposing that rule would be an operational burden and would make the surveillance court extremely unhappy because of the frequency with which analysts query the database.

Judge Wald replied, "I suppose the ultimate question for us is whether or not the inconvenience to the agencies, or even the unhappiness of the FISA court, would be the ultimate criteria."

A version of this article appears in print on April 2, 2014, on page A19 of the New York edition with the headline: Letter Tells of Searches for Emails and Calls.

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

MAR 2 8 2014

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senator Wyden:

During the January 29, 2014, Worldwide Threat hearing, you cited declassified court documents from 2011 indicating that NSA sought and obtained the authority to query information collected under Section 702 of the Foreign Intelligence and Surveillance Act (FISA), using U.S. person identifiers, and asked whether any such queries had been conducted for the communications of specific Americans.

As reflected in the August 2013 Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702, which we declassified and released on August 21, 2013, there have been queries, using U.S. person identifiers, of communications lawfully acquired to obtain foreign intelligence by targeting non U.S. persons reasonably believed to be located outside the U.S. pursuant to Section 702 of FISA. These queries were performed pursuant to minimization procedures approved by the FISA Court as consistent with the statute and the Fourth Amendment. As you know, when Congress reauthorized Section 702, the proposal to restrict such queries was specifically raised and ultimately not adopted.

For further assistance, please do not hesitate to contact Deirdre M. Walsh in the Office of Legislative Affairs, at (703) 275-2474.

Sincerely,

James R. Clapper