

**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 Nos: 1:13-cv-851-RJL

Assigned to Judge Richard J. Leon

**PLAINTIFF’S RESPONSE TO GOVERNMENT DEFENDANTS’ NOTICE OF RECENT  
AUTHORITY**

Plaintiffs, Larry Klayman, Charles Strange and Mary Ann Strange, hereby respond to the Defendants’ Notice of Supplemental Authority, filed today, October 29, 2015. The ruling by the U.S. Court of Appeals for the Second Circuit (“Second Circuit”) today is of no significance in this case for the following reasons.

*First*, this case was not filed in the Second Circuit and the Second Circuit’s orders, decisions or dicta have no bearing on and are not controlling to this Court. Indeed, the Second Circuit, which conveniently views itself as a lesser branch of government to Congress, sidestepped even the constitutional issues involved in the “almost-Orwellian” massive surveillance of hundreds of millions of Americans by the National Security Agency (“NSA”) and the other Government Defendants. Its actions have been largely political, not befitting of a co-equal branch of government whose responsibility it is to protect the American people of violations of the Constitution by the other branches of government. This Court, to the contrary, has correctly and courageously carried out its judicial duty to do so. In recent hearings, this Court

expressed and confirmed its judicial responsibility: “I’m prepared to lift the stay I issued . . . [i]t’s time to move, let’s get going . . . [t]his Court believes there are millions of Americans whose constitutional rights have been and are being violated.”

*Second*, the Plaintiffs have requested a preliminary injunction to enjoin the government from violating of the Fourth Amendment, no more and no less. Given the Government Defendants’ history of violating the Constitution and then lying about it to Congress, the courts and the American people, this Court respectfully needs to enter an order to this effect, so that it can oversee even the implementation of the USA Freedom Act, which is not likely to be obeyed given past precedent. Moreover, as discussed at the last hearing on October 8, 2015, having put into effect a sunset provision that allowed Section 215 of the Patriot Act to remain in effect for six months – which time has not expired – the entire act is unconstitutional under the Court’s prior rulings and can – should this Court so rule – even be stricken down in its entirety.

*Third*, even if this Court does not strike down the USA Freedom Act in its entirety, it can and should rule, as the Court has said it would, that the continuing violation of the Constitution under Section 215 is illegal and must be ordered to stop immediately. While, as the Court observed, the Government Defendants have failed to cite even one instance where they have stopped a terrorist attack through their unconstitutional telephonic metadata dragnet surveillance of all Americans, for the remaining weeks of the sunset provision under Section 215, these Government Defendants, as they are required to do under the Constitution, simply can get a warrant to obtain any information they legitimately need, upon a showing of probable cause, from Verizon Business Services and other providers. Thus, the entire claim that Section 215 must remain in effect is a strategic ruse. As set forth by this Circuit, not the Second Circuit, in

*United States v. Mills*, 925 F. 2d 455 (D.C. Cir. 1991) and its progeny, even one day of a violation of our Constitution is one day too many.

For all of these compelling reasons, the reasoning of this Court, as previously expressed at recent hearings and its prior order of December 16, 2013, must stand as the law of the case and this Court should respectfully enter a preliminary injunction now. This Court is the sole protector of not just Plaintiffs but of all Americans and must be commended for its intended swift action to end the Government Defendants' unconstitutional lawlessness at the earliest practicable date. That the Second Circuit shirked its judicial responsibility for political reasons is of no import.

Dated: October 29, 2015

Respectfully submitted,

/s/ Larry Klayman

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this October 29, 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:

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