

Exhibit 2

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

Larry Elliott Klayman, et al.,

Appellees-Cross-Appellants,

v.

Barack Hussein Obama, et al.,

Appellants-Cross-Appellees.

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

**OPPOSITION TO PLAINTIFFS' MOTION
TO STRIKE AND FOR SANCTIONS**

Plaintiffs-appellees (and cross-appellants) Larry Klayman, et al., have moved to strike the government's motion to consolidate related appeals and to set a briefing schedule, and seek sanctions against the government for filing the motion to consolidate, although plaintiffs do not dispute that the captioned appeals should be consolidated and should proceed to briefing. As the attached e-mail from plaintiffs' counsel (Mr. Klayman), dated April 11, 2014, makes clear, plaintiffs consented to the relief sought by the government: consolidation of related cases and establishment of a

briefing schedule (and leave to seek that procedural relief out of time). *See* Mot. 1 (asking the Court to “consolidate the captioned cases and set a briefing schedule”).¹

Plaintiffs object on the ground that, in their view, the government’s unopposed procedural motion sought a controverted disposition on the merits. Mot. to Strike 1. That view is wrong, and the government’s motion expressly stated that it did not seek dispositive relief. *See* Mot. 1 (“a dispositive motion is not necessary in the circumstances of this appeal”); *id.* at 6 (arguing that there is “no need” for dispositive relief at this time); *id.* at 10 (arguing that there is “no immediate need for relief in the form of a dispositive motion at this time”). The motion sought no relief beyond consolidation, for the Court to set a briefing schedule, and for the Court to permit the government to seek those forms of procedural relief out of time—plaintiffs plainly consented to, and their motion to strike offers no disagreement with, those limited steps. Plaintiffs assert, but do not

¹ In representing plaintiffs’ consent to the relief sought by the motion, the government did not suggest that plaintiffs agreed with every statement in the motion.

explain, that the government's procedural motion would "cause . . . an unnecessary delay." Mot. to Strike 9. But the government's motion seeks to move these appeals forward and proceed to briefing, steps that would not cause any delay. By contrast, plaintiffs' motion to strike could lead to procedural uncertainty and delay; the motion should be denied on that ground as well.

As in the motion for an extension of time to file dispositive motions, which this Court partially granted, the government's motion to consolidate explained that reversal of the district court's opinion is warranted irrespective of the recent changes to the Section 215 bulk telephony metadata program that have occurred since the district court entered its preliminary injunction, and this Court is free to consider the significance of those changes in briefing on the merits. Mot. 6-7, 9-10. It was not improper or inappropriate for the government to provide that explanation of why there is no need for a dispositive motion at this time.

The motion to strike and for sanctions should be denied.

Respectfully submitted,

Douglas N. Letter
(202) 514-3602

H. Thomas Byron III
(202) 616-5367

/s/ Henry C. Whitaker

Henry C. Whitaker
(202) 514-3180

Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Room 7256
Washington, D.C. 20530

APRIL 2014

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2014, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Henry C. Whitaker

Henry C. Whitaker

From: [Larry Klayman](#)
To: [Whitaker, Henry \(CIV\)](#)
Subject: Re: Klayman appeals--motion to consolidate
Date: Friday, April 11, 2014 2:11:43 PM

We will consent

Larry Klayman

On Fri, Apr 11, 2014 at 11:08 AM, Whitaker, Henry (CIV) <Henry.Whitaker@usdoj.gov> wrote:

Mr. Klayman:

The government will be filing a motion today informing the D.C. Circuit that the government has decided not to file a dispositive motion. That motion will ask the Court to consolidate the pending appeals and to set a single briefing schedule for both sets of appeals. Because this is a procedural motion, and because the deadline for filing procedural motions has passed, we will also be asking the Court for leave to file this motion out of time.

We'd appreciate knowing your clients' position on the motion so we can represent to the Court whether the motion is opposed.

Thanks very much,

Henry

Henry C. Whitaker

Attorney, Appellate Staff

Civil Division, U.S. Department of Justice

950 Pennsylvania Ave. NW Room 7256

Washington, D.C. 20530

[\(202\) 514-3180](tel:(202)514-3180) (phone)

[\(202\) 514-8151](tel:(202)514-8151) (fax)

