

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

LARRY KLAYMAN, *et. al*

Plaintiffs,

v.

BARACK HUSSEIN OBAMA II, *et. al*

Defendants.

Civil Action No. 13-CV-851

MOTION FOR LEAVE TO FILE SUPPLEMENTAL DECLARATION

On October 28, 2013 the Plaintiffs filed a Motion for Preliminary Injunction in the above styled lawsuit. Within the pleading, the Plaintiffs referenced, cited and relied on the Declaration of Edward W. Felten, Professor at Princeton University. *See* Plaintiffs' Motion for Preliminary Injunction at pp. 11. This Declaration was filed in connection with the ACLU's Motion for Preliminary Injunction in another case concerning PRISM and the Verizon defendants (*ACLU v. Clapper, et al.*, Case No. 13-cv-03994 (S.D.N.Y., June 11, 2013)). Plaintiffs have attached the Declaration as Exhibit 1 to help facilitate the government Defendant's Response in Opposition, currently due on or before November 11, 2013 as the Declaration is a matter of record in this case and the ACLU's. Indeed, the government already has this Declaration in its possession from the ACLU case and its opposition to its preliminary injunction motion.

As the Washington Post recently reported, the NSA continues to spy on millions of Americans and collects mountains of data by infiltrating websites such as Yahoo and Google. See Exhibit 2 --"NSA infiltrates links to Yahoo, Google data centers worldwide, Snowden documents say" By Barton Gellman and Ashkan Soltani. As reported in the article, which is

attached and incorporated by reference in this pleading as Exhibit 2, additional documents revealed by Edward Snowden revealed that "[b]y tapping into those links, the agency has positioned itself to collect at will from hundreds of millions of user accounts, many of them belonging to Americans." The article continues to describe that "[f]rom undisclosed interception points, NSA and the GCHQ [Britain's Government Communications Headquarters] are copying entire data flows across fiber-optic cables that carry information among the data centers of the Silicon Valley giants." According to the Washington Post report, "According to a top-secret accounting dated Jan. 9, 2013, the NSA's acquisitions directorate sends millions of records every day from internal Yahoo and Google networks to data warehouses at the agency's headquarters at Fort Meade, Md. In the preceding 30 days, the report said, field collectors had processed and sent back 181,280,466 new records – including 'metadata,' which would indicate who sent or received e-mails and when, as well as content such as text, audio and video." This new revelation concerning a secret government program known as MUSCULAR is thus subsumed in this lawsuit, as MUSCULAR is a "sister" program to PRISM.

Plaintiff contacted the government Defendants' counsel on November 1, 2013 to seek consent for this motion. Defendants' counsel has not as yet replied, although Plaintiffs do not anticipate any opposition given that Plaintiff's referenced and incorporated the subject Declaration into its preliminary injunction motion and the government Defendants have already had it in their possession for many months.

Dated: November 1, 2013

Respectfully submitted,

/s/ Larry Klayman

Larry Klayman, Esq.

Attorney at Law

D.C. Bar No. 334581

2020 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November 1, 2013 a true and correct copy of the foregoing Motion For Leave To File Supplemental Declaration (Civil Action No. 13-cv- 851) was submitted electronically to the District Court for the District of Columbia and served via CM/ECF upon the following:

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

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

Randolph D. Moss
WILMER CUTLER PICKERING HALE & DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6640
Fax: (202) 663-6363
Email: randolph.moss@wilmerhale.com

Attorneys for Defendants.

Respectfully submitted,
/s/ Larry Klayman
Larry Klayman, Esq.
D.C. Bar No. 334581
Klayman Law Firm
2020 Pennsylvania Ave. NW, Suite 345
Washington, DC 20006
Tel: (310) 595-0800