

Exhibit 1

**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-881

Civil Action No. 13-CV-851

**BENCH BRIEF IN SUPPORT OF THIS COURT’S AUTHORITY TO RULE
INDEPENDENTLY OF FISC ORDER CONCERNING VERIZON**

For the reasons and authorities set forth herein, this Court has the authority to rule independently of the Foreign Intelligence Surveillance Court’s (“FISC”) order commanding Verizon from continuing its mass surveillance programs and their access to immeasurable amounts of Internet metadata belonging to hundreds of millions of ordinary Americans, pursuant to Article III of the U.S. Constitution, 28 U.S.C. § 1331, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 702.

STATEMENT OF FACTS

At the Status Conference held on October 31, 2013, the Honorable Judge Richard J. Leon asked what authority this Court has to make a ruling independent of the FISC and its Verizon order. This bench brief sets forth the reasons why this Court has the authority to so rule and make an independent decision distinct from the FISC’s unlawful order of April 25, 2013.

LAW

Sections 1 and 2, Article III of the U.S. Constitution state in pertinent part, “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts [i.e.

district courts] as the Congress may from time to time ordain and establish . . . The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority . . .” U.S. Const. art. III, §§ 1, 2. [emphasis added] Equally relevant, the U.S. Code states, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. Finally, the Administrative Procedure Act states, “A person suffering legal wrong because of an agency action . . . is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party . . .” 5 U.S.C. § 702 *et seq.*

Article III of the U.S. Constitution, Section 1331 of the U.S. Code and the APA give this Court authority to make a ruling on whether the National Security Agency (“NSA”) is violating the Patriot Act and the U.S. Constitution. This Court is not precluded by the prior ruling of the FISC because constitutional question is at issue. Article III of the U.S. Constitution directly vests this Court with the power to decide constitutional issues while 28 U.S.C. § 1331 presents a federal question within this Court’s jurisdiction.

This Court has the authority to rule on its own and not follow the FISC’s order, which is illegal and unconstitutional in any event. Clearly, the law cannot allow an illegal and unconstitutional order to continue to be enforced, particularly when Plaintiffs have no right to appeal the FISC’s Verizon order. An Article III court such as this one does have primary jurisdiction over constitutional issues, particularly here, where litigation is occurring and an

administrative role is no longer at issue. Simply put, this Court has authority to rule independently of FISC because: (1) the FISC's order is inherently unlawful as on its face it violates Sections 215 and 702 of the Patriot Act and is unconstitutional; (2) the FISC's order is not binding on this Court since Plaintiffs were not a party to that proceeding, had no notice or ability to participate, the proceedings were ex parte, the FISC has no adversarial process upon which Plaintiffs could appeal, and thus no collateral estoppel or res judicata applies; and (3) the district courts have an express or inherent authority to rule on constitutional challenges and issues as a matter of their jurisdiction under Article III of the U.S. Constitution. Thus, the ruling of the FISC concerning Verizon can be given no res judicata or collateral estoppel effect, and this Court thus is empowered to rule on the issues before it, concerning plaintiffs who could not and did not participate in the FISC ruling.

With regard to the second case filed by Plaintiffs concerning PRISM, the FISC Verizon order is not at issue.

Dated: November 18, 2013

Respectfully submitted,

/s/ Larry Klayman

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