

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

LARRY KLAYMAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	1:13-cv-0851(RJL)
BARACK OBAMA, President of the United States, <i>et al.</i> ,)	
)	
Defendants.)	

**PUBLIC CERTIFICATION OF THE DEPUTY ATTORNEY GENERAL
OF THE UNITED STATES**

I, James M. Cole, hereby state and declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Deputy Attorney General of the United States and have held this office since January 3, 2011. I make this certification based on my personal knowledge and information made available to me in the course of my official duties, including Plaintiffs’ Second Amended Complaint (2nd Am. Compl.), filed in *Klayman et al. v. Obama et al.*, civ. no. 1:13-cv-851 RJL, as well as the information in my classified certification, and “supplemental materials,” if any, that may accompany my classified certification, as defined in 50 U.S.C. § 1885a(b)(2).
2. The purpose of this declaration is to make the certification authorized by Section 802 of Title VIII of the Foreign Intelligence Surveillance Act of 1978 (FISA), as amended, codified at 50 U.S.C. § 1885a.
3. This statute establishes immunity protections for persons (including electronic communication service providers) in civil actions alleging that they have furnished

assistance to an element of the intelligence community. Specifically, Section 802 provides that “a civil action may not lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be dismissed promptly, if the Attorney General certifies to the district court of the United States in which such action is pending” that the provider assisted the Government pursuant to an order of the Foreign Intelligence Surveillance Court (FISA Court or FISC), *see* 50 U.S.C. § 1885a(a)(1); or the provider’s assistance was pursuant to other certifications or directives authorized by statute, *see id.* § 1885a(a)(2)-(3); or the assistance given by the provider was in connection with an intelligence activity involving communications authorized by the President after the terrorist attacks on September 11, 2001, and ending on January 17, 2007, and was designed to detect or prevent a further terrorist attack on the United States, and was the subject of written requests to a provider indicating that the activity was authorized by the President and had been determined to be lawful, *see id.* § 1885a(a)(4); or the provider did not provide the alleged assistance. *Id.* § 1885a(a)(5). The Attorney General’s authority under this section may be carried out by the Acting Attorney General or the Deputy Attorney General. *See id.* § 1885a(e)

4. “Assistance” is defined to mean “the provision of, or the provision of access to, information (including communication contents, communication records, or other information relating to a customer or communication), facilities, or another form of assistance.” *Id.* § 1885(1).
5. Plaintiffs Larry Klayman, as well as Charles and Mary Ann Strange, filed suit against Verizon Communications and its Chief Executive Officer, Lowell C. McAdam (Verizon

Defendants), alleging that they complied with FISC orders to produce to the National Security Agency (NSA) on an ongoing, daily basis the telephony metadata of Verizon customers, including the metadata associated with Plaintiffs' calls. *See* 2nd Am. Compl. ¶¶ 2, 25-28, 86. Plaintiffs allege that these private-party defendants are thus liable, under statutory and common law causes of action, for, *inter alia*, compensatory and punitive damages in excess of \$3.0 billion. *See* 2nd Am. Compl. ¶¶ 76, 80, 88, 95, 100. Plaintiffs' Second Amended Complaint also makes claims against President Barack Obama, Attorney General Eric Holder, NSA Director Lieutenant General Keith B. Alexander, the NSA, the U.S. Department of Justice, and Judge Roger Vinson. Plaintiffs' constitutional, statutory, and common law claims against these Government Defendants are not at issue in this certification.

6. I certify that the Verizon Defendants are entitled to statutory immunity protection based on at least one of the provisions contained in Section 802(a)(1) through (5) of the FISA, as amended, which includes the possibility that they did not provide the alleged assistance. *See* 50 U.S.C. § 1885a(a)(1)-(5). I have executed a classified certification which sets forth the specific basis for my certification under Section 802 as it pertains to the Verizon Defendants, including identifying the particular statutory immunity provision under which each of them falls.
7. Section 802(c)(1) of the FISA, as amended, provides that if the Deputy Attorney General attests in a declaration that disclosure of a certification under Section 802 of the Act, or supplemental materials submitted with it, if any, would harm the national security of the United States, the Court shall review that certification and those materials *ex parte* and *in camera*. *See* 50 U.S.C. § 1885a(c)(1). For the reasons set forth in my

classified certification, as well as the reasons set forth in the classified declaration of NSA Acting Deputy Director Frances J. Fleisch, with which I concur, I hereby make the declaration required by Section 802 that disclosure of my classified certification would cause harm to the national security of the United States because it would identify the particular statutory immunity provision under which the Verizon Defendants fall (and thus confirm whether or not the Verizon Defendants did or did not assist the intelligence community). In so doing, I also concur with the conclusion of the Senate Select Committee on Intelligence that disclosure of the identities of persons alleged to have provided assistance to the Government on intelligence matters, and the details of those intelligence activities, are properly protected from public disclosure as part of the intelligence community's sources and methods. *See* S. Rep. No. 110-209, at 9 (2007), Report of the Senate Select Committee on Intelligence to accompany S. 2248, Foreign Intelligence Surveillance Act of 1978 Amendments of 2007.

8. In sum, for the foregoing reasons, and for those set forth in my classified certification, pursuant to Section 802(a) of the FISA, I hereby certify that the Verizon Defendants are entitled to statutory immunity protection based on at least one of the provisions contained in Section 802(a)(1) through (5) of the FISA, as amended, which includes the possibility that they did not provide the alleged assistance. *See* 50 U.S.C. § 1885a(a)(1)-(5). In addition, pursuant to Section 802(c)(1) of the FISA, I have concluded that disclosure of my classified certification would harm the national security of the United States for the reasons set forth in that classified certification, and in the classified declaration of NSA Acting Deputy Director Fleisch. Accordingly, my classified certification must be reviewed *in camera, ex parte* by the Court. *See* 50

U.S.C. § 1885a(c)(1).

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

DATE: December 16, 2013



A handwritten signature in black ink, appearing to read 'James M. Cole', written over a horizontal line.

JAMES M. COLE
Deputy Attorney General of the United States