

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

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LARRY KLAYMAN, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 BARACK OBAMA, President of the )  
 United States, *et al.*, )  
 )  
 Defendants. )

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Civil Action No. 1:13-cv-00851-RJL

**PUBLIC DECLARATION OF  
FRANCES J. FLEISCH, ACTING  
DEPUTY DIRECTOR OF THE  
NATIONAL SECURITY  
AGENCY**

I, Frances J. Fleisch, do hereby state and declare as follows:

1. I am the Acting Deputy Director for the National Security Agency (NSA or the Agency), which is an intelligence agency within the Department of Defense that was established by Presidential Directive in 1952. I have held the position of Acting Deputy Director since December 9, 2013. As Acting Deputy Director, I serve as the senior civilian leader of the NSA and act as the Agency's chief operating officer, responsible for guiding and directing strategies, operations, and policy. Under our internal regulations, and in the absence of the Director of the NSA, I am responsible for overseeing the operations the NSA undertakes to carry out its mission and, by specific charge of the President and the Director of National Intelligence, protecting NSA activities and intelligence sources and methods from public disclosure. Prior to holding the position of Acting Deputy Director, I was the Agency's Executive Director from June 2010 until December 8, 2013. Before moving into the position of Executive Director, I served in a number of different leadership and management positions since joining the Agency in 1980.

2. In the course of my official duties, I have been advised of the above-captioned action entitled *Klayman et al. v. Obama et al.*, civil action no. 13-cv-0851-RJL, in which Larry Klayman, as well as Charles and Mary Ann Strange, challenge the legality of the Government's bulk collection of telephony metadata pursuant to the "business records" provision of the Foreign Intelligence Surveillance Act (FISA), enacted by Section 215 of the USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (2001), and codified at 50 U.S.C. § 1861. I have reviewed Plaintiffs' Second Amended Complaint (2nd Am. Compl.) and understand that Plaintiffs have alleged that Verizon Communications and its Chief Executive Officer, Lowell C. McAdam, are liable to them under various statutory and common law theories because these defendants complied with Foreign Intelligence Surveillance Court (FISA Court or FISC) orders to produce to the 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
3. I understand that the Deputy Attorney General of the United States is certifying, pursuant to Section 802 of Title VIII of the FISA, as amended, as codified at 50 U.S.C. § 1885a, that Verizon Communications and its CEO fall within one of the five provisions set forth in section 1885a(a), which includes the possibilities that the particular defendants either provided the alleged assistance pursuant to a FISC Order or did not provide the alleged assistance, such that they are entitled to the dismissal of the claims against them.
4. I also understand that, in making that certification, the Deputy Attorney General has also declared, in accordance with Section 802(c)(1) of the FISA, as amended, codified at 50 U.S.C. § 1885a(c), that the basis for his certification (regardless of the provision under which Verizon Communications and its CEO fall) is properly classified and that public

disclosure of his classified certification, filed *ex parte* and *in camera*, in support of the Government's motion to dismiss Verizon Communications and its CEO, would harm the national security of the United States. I submit this declaration in connection with the classification of the Deputy Attorney General's certification.


5. I have been designated an original TOP SECRET classification authority under Executive Order ("EO") No. 13526, 75 Fed. Reg. 707 (2009) and Department of Defense Manual No. 5200.1, Vol. 1, Information and Security Program (Feb. 24, 2012).
6. I have determined that the Deputy Attorney General's classified certification is properly classified and therefore must be submitted solely for *in camera*, *ex parte* review 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). The identities of the providers that may have been the recipients of "business records" orders from the FISC for the production of bulk telephony metadata, were at the time the orders were issued, and remain, properly classified as "an intelligence source[]" under Section 1.4 of Executive Order 13526.
7. Congress recognized the need to protect the identities of telecommunications carriers alleged to have assisted the NSA when it enacted provisions of the FISA Amendments Act of 2008, Pub. L. 110-261, 122 Stat. 2467, Title II, § 201 (July 10, 2008), which barred lawsuits against telecommunication carriers alleged to have assisted the NSA after the September 11th attacks. In recommending enactment of this legislation, the Senate Select Committee on Intelligence (SSCI), after extensive oversight of the Terrorist Surveillance Program, found that "electronic surveillance for law enforcement and

intelligence purposes depends in great part on the cooperation of private companies that operate the nation's telecommunications system." S. Rep. 110-209 (2007) at 9 (accompanying S. 2248, Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007). Notably, the SSCI expressly stated that, in connection with alleged post-9/11 assistance, "it would be inappropriate to disclose the names of the electronic communication service providers from which assistance was sought, the activities in which the Government was engaged or in which the providers assisted, or the details regarding any such assistance." *Id.* The Committee added that the "identities of persons or entities who provide assistance to the intelligence community are properly protected as sources and methods of intelligence." *Id.*

8. In sum, for the reasons set forth in my classified declaration, public disclosure of the Deputy Attorney General's classified certification reasonably could be expected to cause exceptionally grave damage to the national security and thus that classified certification must be filed with the Court *in camera* and *ex parte*.

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

DATE: December 15, 2013

  
FRANCES J. FLEISCH  
Acting Deputy Director, National Security Agency