Obama administration moves to freeze lawsuit challenging spying programs

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In a motion filed in the District Court for the District of Columbia on January 8, the Obama administration acted to prevent the release of information that would further expose the extent of its unconstitutional spying programs directed against the entire population of the United States and much of the rest of the world.

The motion to stay the proceedings comes less than a month after District Court Judge Richard Leon ruled against the Obama administration in *Klayman v. Obama*, calling the surveillance programs "almost Orwellian" and declaring that they most likely violated the Fourth Amendment ban on unreasonable searches and seizures.

The suit was filed in the aftermath of the revelations made public last year by whistle-blower Edward Snowden. Although Judge Leon ruled against the government by granting the plaintiffs a preliminary injunction and thereby ordering a halt to the government's collection of their telephone metadata, he simultaneously ordered a stay on his own ruling, pending deliberation by the Court of Appeals for the DC Circuit. Noting "the significant national security issues at stake," Judge Leon's stay of his own order means that the government can legally continue its surveillance and storage of telephone metadata while the preliminary injunction is under appeal.

But the Obama administration is pressing for the district court to further restrict the impact of its ruling. Last Wednesday's motion urges Judge Leon to freeze "all proceedings" in the trial until the Court of Appeals rules on the preliminary injunction. The motion requests that the court prevent the release of any information to the plaintiffs or the public on the grounds that public knowledge of the surveillance programs poses a threat to national security.

It thoroughly exposes President Obama's talk of making the mass spying programs "more transparent." In its language and legal content, the motion bears the badge of a police state.

"Plaintiffs' challenges to the conduct of these programs could well risk or require disclosure of highly sensitive information about the intelligence sources and methods involved—information that the Government determined was not appropriate for declassification when it publicly disclosed certain facts about these programs" the motion reads.

"Further litigation of this issue," it asserts, "could risk or require disclosure of classified national security information, such as whether Plaintiffs were the targets of or subject to NSA intelligence-gathering activities, confirmation or denial of the identities of the telecommunications service providers from which NSA has obtained information about individuals' communications, and other classified information about the scope and operational details of the challenged programs."

Translated into plain English, this statement amounts to a claim by the Obama administration that the public has no right to any information on the extent of the spying programs.

The motion states outright that any disclosure poses an "exceptionally grave damage to national security," noting that "even if the mere collection of information about Plaintiffs' communications constitutes a Fourth Amendment search, *conclusively resolving the reasonableness of that search ultimately could risk or require disclosure of exceptionally sensitive and classified intelligence information regarding the nature and scope of the international terrorist threat to the United States, and the role that the NSA's intelligence-gathering activities have played in meeting that threat* ."[Emphasis added.]

In other words, as far as the Obama administration is concerned: (1) The Fourth Amendment does not apply to the collection of metadata because such collection does

not amount to a search; (2) Even if the collection is considered a search, the courts have no right to review whether it is "reasonable" because "conclusively resolving the reasonableness of that search ultimately could risk or require disclosure of exceptionally sensitive and classified intelligence information."

This legal rationale has been employed before in the service of protecting "state secrets" of war crimes or constitutional violations from reaching the public, but its use here is nonetheless an exposition of the anti-democratic character of the Obama administration's spying programs. Far from being used to protect the population from the vague threat of "terrorism," the programs are repressive mechanisms to monitor and track the lives and political sympathies of hundreds of millions of people in the US and around the world, the details of which must be kept from the targets of the surveillance.

These assertions blow the cover off of the claims by the Obama administration that it favors public "debate" on the surveillance programs. The political establishment asserts that any "debate" on the constitutionality of the programs must take place within the framework of determining the correct "balance" between national security and democratic rights, and in the absence of any of the facts related to the true nature of the programs.

But the Fourth Amendment of the US Constitution contains no "national security" exception. It states clearly that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause…"

The legal content of last Wednesday's motion is a further indication that the American ruling class sees the US Constitution and its Bill of Rights as obstacles to the maintenance of its position of wealth and privilege.