

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

DENNIS MONTGOMERY, et al

Plaintiffs,

v.

JAMES COMEY, et al

Defendants.

Case No: 17-cv-1074

**PLAINTIFFS' RESPONSE TO THE INDIVIDUAL-CAPACITY DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs Dennis Montgomery and Larry Klayman (“Plaintiffs” unless individually named) hereby submit the following in response to Defendants James Comey, Michael Rogers, Mike Pompeo, James Clapper, Dan Coats, and Barack Obama’s (“Defendants”) Notice of Supplemental Authority submitted in their individual capacities.

Attkisson v. Holder, No. 17-364 (E.D. Va. Nov. 1, 2017) has no binding, precedential authority over this Court. Not only is it a district court case, it is in an entirely different district and judicial circuit for the U.S. Court of Appeals. Furthermore, whereas the Court in *Attkisson* believed that the fact that the illegal search and surveillance was done electronically rendered *Bivens* inapplicable, this Court has shown a refined understanding that the law must adapt and evolve as technology grows more and more advanced. For instance, in its December 16, 2013 opinion in *Klayman I*¹, this Court wrote, “[w]hen do present-day circumstances – the evolutions in the Government’s surveillance capabilities, citizens’ phone habits, and the

¹ 13-cv-00851

relationship between the NSA and telecom companies – become so thoroughly unlike those considered by the Supreme Court thirty-four years ago that a precedent like *Smith* does not apply? The answer, unfortunately for the Government, is now.” *Klayman I*, ECF No. 48 at 45.

The same here is true. The U.S. Supreme Court in *Bivens* could not possibly have contemplated the degree of technological advances that would allow an overreaching government to conduct an illegal search and seizure through the use of modern-day technologies without having to actually set foot inside the victim’s home or office. Indeed, what it boils down to is exactly the same as *Bivens* – a clear, warrantless, and illegal search and seizure of Plaintiffs’ property, but only using modern-day technologies.

Dated: November 14, 2017

Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served through the court’s ECF system to all counsel of record or parties on November 14, 2017

/s/ Larry Klayman

Larry Klayman, Esq.