FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CAROLYN JEWEL; ERIK KNUTZEN; JOICE WALTON, on behalf of themselves and all others similarly situated, *Plaintiffs-Appellants*, and TASH HEPTING; GREGORY HICKS, *Plaintiffs*, v. NATIONAL SECURITY AGENCY; KEITH B. ALEXANDER, Director, in his official and personal capacities; MICHAEL V. HAYDEN, in his personal Capacity; UNITED STATES OF AMERICA; GEORGE W. BUSH, President of the United States, in his official and personal capacities; RICHARD B. CHENEY, in his personal capacity; DAVID S. ADDINGTON, in his personal capacity; DEPARTMENT OF JUSTICE; ALBERTO R. GONZALES, in his personal capacity; JOHN D. ASHCROFT, in his personal capacity; JOHN M. MCCONNELL, Director of National Intelligence, in his official	No. 15-16133 D.C. No. 4:08-cv-04373-JSW OPINION

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and personal capacities; JOHN D. NEGROPONTE, in his personal capacity; MICHAEL B. MUKASEY, Attorney General; BARACK OBAMA; ERIC H. HOLDER, JR., Attorney General; DENNIS C. BLAIR,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Argued and Submitted
October 28, 2015—Pasadena, California

Filed December 18, 2015

Before: Michael Daly Hawkins, Susan P. Graber, and M. Margaret McKeown, Circuit Judges.

Opinion by Judge McKeown

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SUMMARY*

Jurisdiction / Rule 54(b) Certification

The panel dismissed the appeal for lack of jurisdiction because the appeal did not meet the requirements of Fed. R. Civ. P. 54(b) certification, and remanded to the district court for further proceedings.

The panel concluded that Rule 54(b) certification was not warranted because the question of whether the copying and searching of plaintiff's Internet communications violated the Fourth Amendment – which was the only issue that the district court certified as final under Rule 54(b) in a case involving statutory and constitutional challenges to government surveillance programs – was intertwined with several other issues that remained pending in district court and this interlocutory appeal would only prolong final resolution of the case.

COUNSEL

Richard R. Wiebe (argued), Law Office of Richard R. Wiebe, San Francisco, California; Cindy A. Cohn, Lee Tien, Kurt Opsahl, James S. Tyre, Mark Rumold, Andrew Crocker, Jamie L. Williams, and David Greene, Electronic Frontier Foundation, San Francisco, California; Rachael E. Meny, Michael S. Kwun, Audrey Walton-Hadlock, Benjamin W. Berkowitz, Justina K. Sessions, and Philip J. Tassin, Keker &

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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Van Nest, LLP, San Francisco, California; Thomas E. Moore III, Royse Law Firm, PC, Palo Alto, California; Aram Antaramian, Law Office of Aram Antaramian, Berkeley, California, for Plaintiffs-Appellants.

Henry C. Whitaker (argued), Douglas N. Letter, and H. Thomas Byron III, Appellate Staff, Civil Division, United States Department of Justice, Washington, D.C, for Defendants-Appellees.

OPINION

McKEOWN Circuit Judge:

This appeal is the second trip to our court for a group of plaintiffs in their long-running statutory and constitutional challenges to government surveillance programs. In the last appeal, we reversed the district court's dismissal of all claims on standing grounds and remanded for further proceedings, including determination of whether the "claims are foreclosed by the state secrets privilege." *Jewel v. Nat'l Sec. Agency*, 673 F.3d 902, 905 (9th Cir. 2011). Several years of further proceedings have yet to produce a final judgment. Most recently, the district court dismissed a Fourth Amendment claim—which was only one among several claims—regarding Internet surveillance, on the grounds that plaintiffs lacked standing and that their claim was barred by the state secrets privilege. *Jewel v. Nat'l Sec. Agency*, No. C08-04373, 2015 WL 545925, at *1 (N.D. Cal. Feb. 10, 2015). The court then certified that single issue as final under Federal Rule of Civil Procedure 54(b).

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The government filed a motion to dismiss the appeal for lack of jurisdiction, arguing that certification was improper under Rule 54(b). We agree. Our task is to address the juridical concerns surrounding the appeal of less than a complete judgment and to "scrutinize the district court's evaluation of such factors as the interrelationship of the claims so as to prevent piecemeal appeals in cases which should be reviewed only as single units." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 10 (1980). Because the Fourth Amendment question is intertwined with several other issues that remain pending in district court and because this interlocutory appeal would only prolong final resolution of the case, we conclude that the Rule 54(b) certification was not warranted and dismiss the appeal for lack of jurisdiction.

BACKGROUND

This appeal arises out of ongoing litigation concerning Internet and cell phone surveillance programs the government began in the aftermath of the terrorist attacks on September 11, 2001.[1] In 2008, Carolyn Jewel, Tash Hepting, Gregory Hicks, Erik Knutzen, and Joice Walton filed a complaint on behalf of themselves and others similarly situated against the United States, the National Security Agency ("NSA"), and a number of high-level government officials in their personal and official capacities. The complaint included seventeen counts, raising both constitutional and statutory claims and seeking injunctive relief and monetary damages. In summary, the complaint alleges that government officials

[1] The *Jewel* case is one of many similar cases, some of which have been consolidated under the Multidistrict Litigation provisions of 28 U.S.C. § 1407. *See Jewel*, 673 F.3d at 906 nn.1 & 2; *see also Jewel v. Nat'l Sec. Agency*, No. C06-179, 2010 WL 235075, at *4 (N.D. Cal. Jan. 21, 2010)

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