

Judge: NSA domestic phone data-mining unconstitutional

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STORY HIGHLIGHTS

- Snowden says he knew the surveillance would not withstand legal review
- The limited ruling opens the door to possible further legal challenges
- The NSA data-mining can continue, pending a likely appeal
- Classified leaks by Edward Snowden revealed the extent of the data-mining

Washington (CNN) -- A federal judge said Monday that he believes the government's once-secret collection of domestic phone records is unconstitutional, setting up likely appeals and further challenges to the data mining revealed by classified leaker Edward Snowden.

U.S. District Judge Richard Leon said the National Security Agency's bulk collection of metadata -- phone records of the time and numbers called without any disclosure of content -- apparently violates privacy rights.

His preliminary ruling favored five plaintiffs challenging the practice, but Leon limited the decision only to their cases.



NSA phone surveillance unconstitutional?

"I cannot imagine a more 'indiscriminate' and 'arbitrary invasion' than this systematic and high-tech collection and retention of personal data on virtually every citizen for purposes of querying and analyzing it without prior judicial approval," said Leon, an appointee of President George W. Bush. "Surely, such a program infringes on 'that degree of privacy' that the Founders enshrined in the Fourth Amendment."

Leon's ruling said the "plaintiffs in this case have also shown a strong likelihood of success on the merits of a Fourth Amendment claim," adding "as such, they too have adequately demonstrated irreparable injury."

He rejected the government's argument that a 1979 Maryland case provided precedent for the constitutionality of collecting phone metadata, noting that public use of telephones had increased dramatically in the past three decades.

Leon also noted that the government "does not cite a single instance in which analysis of the NSA's bulk metadata collection actually stopped an imminent attack, or otherwise aided the government in achieving any objective that was time-sensitive in nature."

However, he put off enforcing his order barring the government from collecting the information, pending an appeal by the government.

A Justice Department spokesman said Monday that "we believe the program is constitutional as previous judges have found," but said the ruling is being studied.

Democratic Sen. Mark Udall of Colorado, a critic of the NSA data mining, said Leon's ruling showed that "the bulk collection of Americans' phone records conflicts with Americans' privacy rights under the U.S. Constitution and has failed to make us safer."

He called on Congress to pass legislation he proposed to "ensure the NSA focuses on terrorists and spies - and not innocent Americans."

Explosive revelations earlier this year by Snowden, a former NSA contractor, triggered new debate about national security and privacy interests in the aftermath of the September 2001 terrorist attacks.

Snowden's revelations led to more public disclosure about the secretive legal process that sets in motion the government surveillance.

In a statement distributed by journalist Glenn Greenwald, who first reported the leaks, Snowden said he acted on the belief that the mass surveillance program would not withstand a constitutional challenge, and that Americans deserved a judicial review.

"Today, a secret program authorized by a secret court was, when exposed to the light of day, found to violate Americans' rights. It is the first of many," according to Snowden, who is living in Russia under a grant of asylum to avoid prosecution over the leaks in the United States.

Greenwald said the judge's ruling vindicates what Snowden did.

"I think it's not only the right, but the duty of an American citizen in Edward Snowden's situation to come forward, at great risk to himself, and inform his fellow citizens about what it is their government is doing in the dark that is illegal," the journalist told CNN's "Anderson Cooper 360" Monday night.

The NSA has admitted it received secret court approval to collect vast amounts of metadata from telecom giant Verizon and leading Internet companies, including Microsoft, Apple, Google, Yahoo and Facebook.

The case before Leon involved approval for surveillance in April by a judge at the Foreign Intelligence Surveillance Court (FISC), a secret body that handles individual requests for electronic surveillance for "foreign intelligence purposes."

Verizon Business Network Services turned over the metadata to the government.

Leon's ruling comes as the Obama administration completes a review of NSA surveillance in the aftermath of the Snowden leaks.

CNN's Jake Tapper reported Monday that tech company executives would meet with President Barack Obama at the White House on Tuesday to discuss the issue.

Obama plans to sit down with Tim Cook of Apple and Eric Schmidt of Google, as well as executives from Twitter, Microsoft, Facebook, Salesforce, Netflix, Etsy, Dropbox, Yahoo!, Zynga, Sherpa Global, Comcast, LinkedIn and AT&T, a White House official said.

Some of those companies issued a joint letter last week calling on the government to change its surveillance policies in the wake of the Snowden revelations.

Last month, the Supreme Court refused to take up the issue when it denied a separate petition, which was filed by the Electronic Information Privacy Center. Prior lawsuits against the broader NSA program also have been unsuccessful.

Days after the Snowden disclosure in June, some Verizon customers filed legal challenges in the D.C. federal court.

The left-leaning American Civil Liberties Union also filed a separate, pending suit in New York federal court.

Under the Foreign Intelligence Surveillance Act of the 1970s, the secret courts were set up to grant certain types of government requests-- wiretapping, data analysis, and other monitoring of possible terrorists and spies operating in the United States.

The Patriot Act that Congress passed after the 9/11 attacks broadened the government's ability to conduct anti-terrorism surveillance in the United States and abroad, eventually including the metadata collection.

In order to collect the information, the government has to demonstrate that it's "relevant" to an international terrorism investigation.

However, the 1978 FISA law lays out exactly what the special court must decide: "A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person."

In defending the program, NSA Director Gen. Keith Alexander told the Senate Judiciary Committee last week that "15 separate judges of the FISA Court have held on 35 occasions that Section 215 (of the Patriot Act) authorizes the collection of telephony metadata in bulk in support of counterterrorism investigations."

Initially, telecommunications companies such as Verizon, were the targets of legal action against Patriot Act provisions. Congress later gave retroactive immunity to those private businesses.

The revelations of the NSA program and the inner workings of the FISC court came after Snowden leaked documents to the Guardian newspaper. Snowden fled to Hong Kong and then Russia to escape U.S. prosecution.

The case is *Klayman v. Obama* (13-cv-881).

CNN's Tom Cohen contributed to this report.