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US Appeals Court Strikes Down Bulk NSA Phone Spying on Americans

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On June 11, 2013, the ACLU challenged "the constitutionality of the National Security Agency's mass collection of Americans' phone records (ACLU v. Clapper)."

It argued that doing so violates Fourth and First Amendment rights, saying:

> "Because the NSA's aggregation of metadata constitutes an invasion of privacy and an unreasonable search, it is unconstitutional under the Fourth Amendment."
>
> "The call-tracking program also violates the First Amendment, because it vacuums up sensitive information about associational and expressive activity."

NSA claims authorization under the Patriot Act's Section 215 – the so-called "business records" provision. It permits warrantless searches without probable cause. It violates fundamental First Amendment rights. It does so by mandating secrecy. It prohibits targeted subjects from telling others what's happening to them. It compromises free expression, assembly and association. It authorizes the FBI to investigate anyone based on what they say, write, or do with regard to groups they belong to or associate with.

It violates Fourth and Fifth Amendment protections by not telling targeted subjects their privacy was compromised. It subverts fundamental freedoms for contrived, exaggerated, or nonexistent security reasons.

At the time of its suit, the ACLU said "(w)hatever Section 215's 'relevance' requirement might allow, it does not permit the government to cast a seven-year dragnet sweeping up every phone call made or received by Americans."

The 1978 Foreign Intelligence Surveillance Act (FISA) authorized surveillance relating to "foreign intelligence information" between "foreign powers" and "agents of foreign powers."

It restricts spying on US citizens and residents to those engaged in espionage in America and territory under US control.

No longer. Today anything goes. America is a total surveillance society. Obama officials claim no authority can challenge them. Governing this way is called tyranny.

The US Second Circuit Court of Appeals agreed. It held Section 215 of the USA Patriot Act doesn't permit bulk collection of Americans' phone records. A three-judge panel ruled

unanimously – overturning a lower court decision.

The Obama administration argued that the ACLU lacked "standing" to challenge NSA surveillance practices, and Congress "precluded" judicial review except by the secret Foreign Intelligence Surveillance Court most often only hearing government arguments.

The appeals court rejected this reasoning, saying:

> "If the government is correct, it could use Section 215 to collect and store in bulk any other existing metadata available anywhere in the private sector, including metadata associated with financial records, medical records, and electronic communications (including e-mail and social media information) relating to all Americans."
>
> "Such expansive development of government repositories of formerly private records would be an unprecedented contraction of the privacy expectations of all Americans."

ACLU staff attorney Alex Abdo called the ruling "a resounding victory for the rule of law."

> "For years, the government secretly spied on millions of innocent Americans based on a shockingly broad interpretation of its authority."
>
> "The court rightly rejected the government's theory that it may stockpile information on all of us in case that information proves useful in the future."
>
> "Mass surveillance does not make us any safer, and it is fundamentally incompatible with the privacy necessary in a free society."

ACLU deputy legal director/lead counsel in the case Jameel Jaffer explained:

> "This ruling focuses on the phone-records program, but it has far broader significance, because the same defective legal theory that underlies this program underlies many of the government's other mass-surveillance programs."
>
> "The ruling warrants a reconsideration of all of those programs, and it underscores once again the need for truly systemic reform."

Electronic Frontier Foundation (EFF) executive director Cindy Cohn called the ruling "a great and welcome decision and ought to make Congress pause to consider whether the small changes contained in the USA Freedom Act are enough."

> "The 2nd Circuit rejected on multiple grounds the government's radical reinterpretation of Section 215 that underpinned its secret shift to mass seizure and search of Americans' telephone records."
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> "While the court did not reach the constitutional issues, it certainly noted the serious problems with blindly embracing the third-party doctrine – the claim that you lose all constitutional privacy protections whenever a third-party, like your phone company, has sensitive information about your actions."

EFF's legislative analyst Mark Jaycox added:

> "Now that a court of appeal has rejected the government's arguments supporting its secret shift to mass surveillance, we look forward to other courts – including the Ninth Circuit in EFF's Smith v. Obama case – rejecting mass surveillance as well."
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> "With the deadline to reauthorize section 215 looming, we also call on Congress to both expressly adopt the interpretation of the law given by the court and to take further steps to rein in the NSA and reform the Foreign Intelligence Surveillance Court."

One court victory doesn't mean overall triumph. The right-wing Supreme Court may have final say – or Congress able to legislatively circumvent High Court or other judicial rulings with no administration opposition by either party.

US governance serves powerful entrenched interests at the expense of popular ones. It's fundamentally anti-democratic, anti-freedom.

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