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Obama Orders Secret Surveillance Court to Ignore Lower Court Decision and Spy on Americans Illegally

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Just hours after President Obama said he would sign new federal legislation ostensibly aimed at ending the National Security Agency's bulk collection of Americans' metadata, he instructed his Department of Justice to seek permission from a secret court to continue the program for at least another six months.

As reported by the UK's Guardian newspaper, the DOJ essentially asked the Foreign Intelligence Surveillance Court, which considers all government surveillance requests behind closed doors, to ignore an earlier federal appeals court ruling that found the bulk collection of data unconstitutional.

The request also suggested that the administration had no intention of complying with a potential court order banning the collection, the paper reported.

The paper said U.S. officials had confirmed earlier that the administration intended to seek permission from the FISA court to restart the domestic bulk collection program.

Secret court requires no special intel community experience or training

The paper further reported:

> Justice Department national security chief John A Carlin cited a six-month transition period provided in the USA Freedom Act – passed by the Senate last week to ban the bulk collection – as a reason to permit an "orderly transition" of the NSA's domestic dragnet. Carlin did not address whether the transition clause of the Freedom Act still applies now that a congressional deadlock meant the program shut down on 31 May.

However, Carlin said he did ask the FISA court to put aside a landmark ruling by the Second U.S. Circuit Court of Appeals in May, which said the federal government had systematically and erroneously interpreted the USA Patriot Act's authorization of data collection as "relevant" to ongoing investigations to permit the bulk collection.

In his filing, Carlin wrote that the controversial Patriot Act provision, Section 215, remained "in effect" during a six-month transition period.

"This court may certainly consider ACLU v Clapper as part of its evaluation of the government's application, but second circuit rulings do not constitute controlling precedent for this court," Carlin wrote in his June application, as reported by *The Guardian*.

Rather, the administration asked the FISA court to rely on its own body of its secretive precedent dating back to 2006, which Carlin called "the better interpretation of the statute."

The FISA court is comprised of 11 federal judges appointed by the chief justice of the U.S. Supreme Court "to review applications for warrants related to national security investigations," according to the Federal Judicial Center (the original number was seven, but it was expanded to 11 by the USA Patriot Act). They serve staggered seven-year terms. Each judge only serves one term, and there is no requirement that they have any special training or education in intelligence matters. The court was established by the Foreign Intelligence Surveillance Act of 1978, itself an intelligence reform measure that grew out of unconstitutional FBI spying during the latter 1960s, as protests over the Vietnam War grew.

Misinterpreted

The Guardian notes that the unique nature of the FISA court makes ambiguous which public court precedents are and are not to be followed or even acknowledged.

> "While the FISA court isn't formally bound by the second circuit's ruling, it will certainly have to grapple with the second circuit's interpretation of the 'relevance' requirement. The [court] will also have to consider whether Congress effectively adopted the second circuit's interpretation of the relevance requirement when it passed the USA Freedom Act,"

Jameel Jaffer, the deputy legal director of the ACLU, which brought the lawsuit decided by the second circuit, told *The Guardian*.

Still, the nature of the Obama Administration's request, coming as quickly as it did on the heels of the president saying he would sign the "reform" legislation, is ironic, to say the least.

On May 7, the Second Circuit Court of Appeals noted "that Section 215, which addresses the FBI's ability to gather business records, could not be interpreted to have permitted the NSA to collect a 'staggering' amount of phone records, contrary to claims by the Bush and Obama administrations," Reuters reported.

Sources:

http://www.theguardian.com

http://www.zerohedge.com

http://www.reuters.com

https://www.eff.org

http://www.fjc.gov

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