



Written by [Joe Wolverton, II, J.D.](#) on December 17, 2013

Federal Judge Rules NSA Phone Data Collection Unconstitutional

A federal judge ruled this week that the National Security Agency's (NSA) dragnet collection of information on all phone calls likely violates the Constitution.

In a [68-page Memorandum Opinion](#) issued on December 16, Judge Richard J. Leon of the United States District Court for the District of Columbia ruled that the NSA's unwarranted surveillance of telephone calls is prohibited by the [Fourth Amendment's protections](#) against unreasonable searches and seizures.



Judge Leon begins his analysis of the plaintiff's Fourth Amendment claim by establishing the actions of the government that are being challenged. He notes that the government:

indiscriminately collects their [the plaintiff's] telephony metadata along with the metadata of hundreds of millions of other citizens without any particularized suspicion of wrongdoing, retains all that metadata for five years, and then queries, analyzes, and investigates that data without prior judicial approval of the investigative targets.

That about sums up the wholesale monitoring activity of the NSA that was revealed in the cache of documents released (so far) by former NSA subcontractor Edward Snowden.

In what will likely be considered a landmark statement of Fourth Amendment jurisprudence, particularly in light of the current climate in regard to the federal government's unbounded bulk collection of private data, Judge Leon says that "unfortunately for the government," the time has come for courts to stop looking to a 34-year-old Supreme Court ruling for guidance in analyzing the contemporary, technologically advanced methods being used by the NSA to keep citizens under the watchful eye of government.

"The almost Orwellian technology that enables the government to store and analyze the phone metadata of every telephone user in the United States is unlike anything that could have been conceived in 1979," Leon writes.

Then, holding that the NSA's collection of telephony metadata "likely violates the expectation of privacy," Judge Leon said his injunction was timely since "there is the very real prospect that the program will go on for as long as America is combatting terrorism, which realistically could be forever!"

Next, distinguishing the corporate-government collusion in the current mass data collection program from the common cooperation of a phone company with police surveillance, Leon writes, "It's one thing to say that people expect phone companies to occasionally provide information to law enforcement; it is quite another to suggest that our citizens expect all phone companies to operate what effectively is a joint intelligence-gathering operation with the government."

Finally, citing the "utter lack of evidence that a terrorist attack has ever been prevented because



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searching the NSA database was faster than other investigative tactics,” Judge Leon holds:

Thus, plaintiffs have a substantial likelihood of showing that their privacy interests outweigh the Government’s interest in collecting and analyzing bulk telephony metadata and therefore the NSA’s bulk collection program is indeed an unreasonable search under the Fourth Amendment.

Although the ruling is a victory for the Constitution and for civil liberties, it is not nearly the end of the government’s spying operations that some outlets are proclaiming it to be.

Leon himself stayed the injunction against the NSA pending a review (a process that could take at least six months according to Leon’s estimation). Furthermore, he admits that the merits of the case are not decided in his opinion, but will be addressed “someday.”

Someday is not soon enough for those who value privacy, freedom, and the protection and perpetuation of fundamental liberties guaranteed by our Constitution.

For his part, the fount of information about all the government programs that are the subject the case decided by Judge Leon believes this is just the beginning and that other similar operations will soon be likewise ruled unconstitutional. “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,” said Edward Snowden, [as quoted by the New York Times](#).

Snowden, presently residing in Russia, released a statement through Glenn Greenwald, declaring that Judge Leon’s ruling vindicated his revelations of the NSA’s unconstitutional surveillance. “I acted on my belief that the NSA’s mass surveillance programs would not withstand a constitutional challenge, and that the American public deserved a chance to see these issues determined by open courts,” Snowden said.

Not everyone sees the ruling as praiseworthy, however. In [his show Tuesday](#), Rush Limbaugh downplayed the scope of the NSA’s telephone surveillance, claiming that the identity of callers is “never known” to the agents collecting the data and that the conversations themselves are not monitored by federal agents.

Limbaugh is in good company with this assertion. President Obama made a similar claim in June, assuring Americans that [“nobody is listening to your telephone calls.”](#)

Unfortunately for Limbaugh, Obama, and their fellow surveillance deniers, Representative Jerrold Nadler (D-N.Y.) disclosed that during a secret briefing, congressmen were informed that [phone calls could be listened to “simply based on an analyst deciding”](#) that he wanted to do so.

Further, Nadler revealed that if an NSA analyst wanted “to listen to the phone,” that analyst’s decision is justification enough, without obtaining any additional legal or judicial authorization.

Finally, although Judge Leon’s decision is promising and certainly an unexpected breath of fresh air out of that former swamp on the Potomac, its impact isn’t nearly deep enough to affect all the myriad ways the government is watching us.

As readers know, there are NSA (and other federal agency) programs that monitor and record every citizen’s movements in the virtual and the real world.

One unwarranted wiretap, one unwarranted seizure of a phone record, one search of records of an individual’s digital communications is too many. If we are a Republic of laws, then the supreme constitutional law of the land must be adhered to. The standard is not whether or not the spies or their



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bosses think the deprivations are “okay” or even whether a federal judge thinks they violate the Fourth Amendment. The standard is the Constitution — for every issue, on every occasion, with no exceptions. Anything less than that is a step toward tyranny.

Taken together, the roster of snooping programs in use by the federal government places every American under the threat of constant surveillance. Until Judge Leon’s ruling in this latest case, the courts, Congress, and the president have prevented a united front bent on obliterating the Constitution and establishing a country where every citizen is a suspect and is perpetually under the never-blinking eye of the government.

The establishment will likely continue construction of the surveillance state until the entire country is being watched around the clock and every monitored activity is recorded and made retrievable by agents who will have a dossier on every American.

The fight can yet be won, though. Americans can attack the sprawling surveillance state on several fronts. First, we must elect men and women to federal office who will honor their oaths of office to preserve, protect, and defend the Constitution. Then, once in office, each of them must be held immediately accountable for each and every violation of that oath.

Next, we must fill our state legislatures with men and women who will refuse to enforce any act of the federal government that exceeds the boundaries of its constitutionally granted powers. These lawmakers must force the federal beast back inside its constitutional cage and never accept even a degree of deviation from the blueprint drawn in Philadelphia in 1787.

Though the hour is late, there is still hope. Beginning today, Americans can refuse to reelect any lawmaker who has voted to fund the NSA or any other federal agency whose existence is not specifically permitted by the Constitution. We can unite, as our forefathers, in the ennobling cause of the end of tyranny and the promotion of those unalienable rights granted to us — and revocable only — by our Creator.

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