

A judicial victory for illegal NSA spying

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In June 2013, National Security Agency (NSA) whistleblower Edward Snowden began leaking a trove of files to the media that have documented systematic, illegal and unconstitutional spying on the population of the United States and the world. The crimes revealed make those that forced Richard Nixon to resign the presidency four decades ago pale in comparison. Yet two years later, the revelations are treated by the American political establishment and media as an insignificant issue, and are not subject to any discussion or debate as part of the US presidential election campaign.

The determination of the ruling class to maintain and indeed expand its police-state apparatus was underscored by a ruling yesterday from the US Court of Appeals for the District of Columbia, the country's second highest judicial body. A three-judge panel vacated an earlier district court's decision against the NSA's bulk telephone metadata collection program.

The lower court ruling was the most significant judicial decision on the constitutional issues involved in one of the intelligence agency's many spying operations. It came in December 2013, six months after Snowden revealed the extent of the bulk telephone data program. Judge Richard Leon, an appointee of George W. Bush, referred to the collection of the telephone records of nearly all Americans as "almost Orwellian." Ruling that the program almost certainly violated the Fourth Amendment, he declared, "I cannot imagine a more 'indiscriminate' and 'arbitrary' invasion than this systematic and high-tech collection and retention of personal data on virtually every single citizen for purposes of querying and analyzing it without judicial approval."

Leon's ruling was broader than a decision in May 2015 from the US Court of Appeals for the Second Circuit, which held only that the text of the USA Patriot Act did not provide a legal foundation for the program.

That ruling did not hold that the program itself is unconstitutional.

While granting the plaintiff's request for a preliminary injunction (an order made prior to a full evaluation of the merits) halting the program, Leon stayed this decision pending appeal by the Obama administration. The result of those appeals came on Friday. Overturning the injunction, the DC court ordered that the case be returned to the lower court for further proceedings.

Two of the three judges in the DC appellate court panel added to the Orwellian character of the program itself by ruling that the plaintiffs involved did not clearly demonstrate standing because they had not proven that their own records had been collected by the NSA. Despite the clearly universal character of the spy program, the NSA has refused to disclose whose records it has collected. According to this legal Catch-22, which has been used in several court cases, the secret spying program cannot be challenged precisely because it is secret, and those being spied on cannot prove they are targeted.

Employing rationalizations that would befit any police state, Senior Circuit Court Judge Stephen Williams wrote, "Plaintiffs complain that the government should not be allowed to avoid liability simply by keeping the material classified. But the government's silence regarding the scope of bulk collection is a feature of the program, not a bug."

Another in the three-judge panel, David Sentelle, agreed with the arguments on standing, but added in a dissent that the case should be dismissed entirely, rather than returned to the lower court. Sentelle, a Reagan appointee, has a long history of right-wing and antidemocratic decisions, including the notorious 2007 ruling upholding the Military Commissions Act, which deprived prisoners held at Guantanamo Bay of the writ of habeas corpus—i.e., the right to challenge their

indefinite detention.

The Obama administration predictably hailed Friday's ruling, with White House Press Secretary Josh Earnest declaring that it conformed to what "this administration has said for some time, which is that we did believe that these capabilities were constitutional."

The appeals court ruling is consistent with other efforts by the state to preserve and extend the NSA's spying powers.

This includes the passage of the "USA Freedom Act" in June of this year. At the time, the law was presented by the media as a transformative event that would end the bulk phone records collection program. In fact, it merely transfers responsibility for retaining the data to the giant telecommunications companies, while actually broadening the types of data that are stored and made accessible to the NSA. As further demonstrated in documents leaked by Snowden this month, the telecommunications companies have long acted as paid contractors for the US intelligence apparatus, making the impact of the law negligible.

Two years after the explosive revelations of Edward Snowden, not only does the bulk metadata program continue, now with the pseudo-legal stamp of approval from the US Congress, but so do the many other unconstitutional programs exposed by the whistleblower. These have not been the subject of any serious investigation or legal action.

Not a single government official has been prosecuted, arrested or otherwise held accountable for blatantly illegal actions. At the same time, Snowden himself is in exile in Russia, unable to return home for fear of arrest. Other whistleblowers, including Chelsea Manning, are now behind bars, while Julian Assange, the head of WikiLeaks, remains trapped in the Ecuadorian embassy in London.

The response of the state to the exposure of its spying program parallels its response to all the revelations of illegal activity. The CIA has systematically tortured prisoners. The president has ordered the extrajudicial assassination of hundreds of people, including US citizens. Prisoners have been held for years in Guantanamo Bay without charges or have been subject to drumhead military tribunals. Yet no one is held accountable, no one prosecuted. The illegal activity continues.

Increasingly the methods employed under the guise

of the "war on terror" are being directed against the population within the United States. The relentless wave of police violence points to the extension of the apparatus of violence and repression to its principal target: social and political opposition at home.

None of these issues are being raised in the course of the presidential campaign by any of the bourgeois candidates, from right-wing Republicans to the nominal "socialist" Bernie Sanders. This only further demonstrates that the American ruling class and its political representatives are determined to maintain the repressive powers that exist to defend its interests abroad and its property and wealth at home.



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