



Written by [C. Mitchell Shaw](#) on September 4, 2015

Judge In NSA Spying Case Anxious to Make a Ruling

In December 2013 U.S. District Court Judge Richard Leon ruled that the NSA's spying program that collects information on the vast majority of phone calls in the United States appears to violate the Fourth Amendment's protection against illegal search and seizure. Then, in May 2014, another federal judge ruled that the program was illegal, "unprecedented and unwarranted." Now that [an appellate court has ruled \(August 28\) that the plaintiffs did not have legal standing](#), the case is going back to Judge Leon.



Politico reported that Leon "told Justice Department lawyers that he was intent on moving the case forward and would not countenance any stalling aimed at preventing him from acting in the case" before the NSA's program is set to end on November 29 to make way for The USA FREEDOM Act. Leon is anxious to make another ruling on the legality of the program before then, because he apparently intends to rule against the legal authority of the program — a ruling that could impact The USA FREEDOM Act.

Judge Leon encouraged one plaintiff in the case, Larry Klayman, to consider adding someone else as a plaintiff. He suggested that if someone who was a customer of Verizon Business subsidiary during the period that the NSA was known to have collected data from those customers was added to the case, it would help resolve the issues of legal standing raised by the appellate court. As [reported by Politico](#):

While insisting that he was not coaching Klayman about how to pursue the case, the judge encouraged Klayman to resolve some issues raised by the appeals court by adding someone to the case who used a Verizon business subsidiary known back in 2013 to be providing data to the NSA under the program. Klayman and the other plaintiffs are customers of Verizon Wireless, which is technically a different company.

Klayman said that it should not matter that Verizon Wireless and Verizon Business are two different companies, because a recent Freedom of Information Act request turned up government documents that show that both companies were involved in the program. In our previous article, we reported:

The thing that makes this particularly ridiculous is that there is ample evidence that the "communications" of the plaintiffs in this case "have been monitored" by the NSA. Cindy Cohn of the Electronic Frontier Foundation points out that after the New York Times filed a Freedom of Information Act request, the federal government responded with a release of documents showing that the NSA "does indeed collect bulk telephone records from Verizon Wireless under Section 215." She went on to say, "Specifically, the formally-released documents reference orders to Verizon Wireless as of September 29, 2010, when they had to report a problem to the Foreign Intelligence Surveillance Court."

This would mean, of course, that when James Gilligan, a lawyer who represented the government in the



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original case, said that there was “no evidence” that Verizon Wireless customers’ data was gathered in the program, he was either deliberately misleading the court, or simply did not have that information himself. In either case, now that it is known that Verizon Wireless was part of the NSA’s spying scheme, Klayman feels that the government has bogged this case down unnecessarily.

Judge Leon seems to feel much the same way, telling Justice Department lawyer Rodney Patton, “I am not going to allow, if I can help it, any misimpression or impression that the government is trying to run out the clock here. I’m not going to tolerate that.”

The USA FREEDOM Act, which has been touted as a reform of the NSA’s broad-sweeping spying activities, really does little to curtail the culture of surveillance that is so prevalent in Uncle Sam’s three-letter-agencies. The new law places the responsibility for gathering data on mobile phone users and their usage on the telephone service companies. It also requires a warrant from a secret counterterror court. While the law requires that the warrant must identify a specific person or group of people suspected of terror ties, the secret nature of the court undoes any gains in this “victory.” Americans concerned about privacy and liberty deserve more. Hopefully, Judge Leon will have the opportunity to make a decision on what the NSA is doing. Maybe, just maybe, it won’t be overturned this time.



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