



Written by [Joe Wolverton, II, J.D.](#) on August 23, 2013

## Ruling Reveals NSA Lies to Courts, Congress About Scope of Surveillance

The National Security Agency was forced to de-classify a document, the contents of which make it easy to see why the snoops wanted it kept secret.

In an [85-page ruling](#) handed down by Foreign Intelligence Surveillance Court (commonly known as the FISA court) judge John D. Bates, the NSA was called out “for repeatedly misleading the court that oversees its surveillance on domestic soil, including a program that is collecting tens of thousands of domestic e-mails and other Internet communications of Americans each year,” the *New York Times* reported on Thursday.



Bates found that the NSA routinely misled the court as to the scope of its domestic surveillance activities.

“The court is troubled that the government’s revelations regarding N.S.A.’s acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program,” former FISA court chief judge Bates wrote in his ruling.

Most of the secret NSA programs recently brought to light by the Edward Snowden leaks are mentioned by Bates as being evidence of the NSA’s blatant disregard for the Constitution and for legal limits on its surveillance authority.

As [reported by the New York Times](#):

“Contrary to the government’s repeated assurances, N.S.A. had been routinely running queries of the metadata using querying terms that did not meet the standard for querying,” Judge Bates recounted. He cited a 2009 ruling that concluded that the requirement had been “so frequently and systematically violated that it can fairly be said that this critical element of the overall ... regime has never functioned effectively.”

[In a statement](#), Senator Ron Wyden (D-Ore.), a familiar foe of government abrogation of the Fourth Amendment, said it was about time Bates’ ruling was released by the government.

While the declassification of the FISA court’s ruling on the constitutionality of Section 702 collection procedures is an important addition to the public discussion being held on government surveillance authorities, its declassification is long overdue. And while the NSA eventually made changes to its minimization procedures in response to this ruling, the very collection it describes was a serious violation of the 4th Amendment and demonstrates even more clearly the need to close the back-door searches loophole that allows for the communications of Americans to be



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searched without a warrant if they are swept up under procedures that were intended to target foreigners.□

Moreover, the ruling states that the NSA has knowingly acquired tens of thousands of wholly domestic communications under section 702 of the Foreign Intelligence Surveillance Act, even though this law was specifically written to prohibit the warrantless acquisition of wholly domestic communications. The FISA Court has noted that this collection violates the spirit of the law, but the government has failed to address this concern in the two years since this ruling was issued. This ruling makes it clear that FISA Section 702, as written, is insufficient to adequately protect the civil liberties and privacy rights of law-abiding Americans and should be reformed.

Questions about the NSA's ability to effectively audit its own abuses of privacy laws and Fourth Amendment protections multiplied after representatives of the intelligence community were caught lying to Congress and the public about the scope of the surveillance.

In the *Atlantic*, [Conor Friedersdorf provides](#) an excellent summary of the duplicity:

NBC News revealed Tuesday that “more than two months after documents leaked by former contractor Edward Snowden first began appearing in the news media, the National Security Agency still doesn't know the full extent of what he took, according to intelligence community sources.” Two separate sources told the network that the NSA doesn't know how many documents were taken or what they are. “One U.S. intelligence official said government officials ‘are overwhelmed’ trying to account for what Snowden took,” the write-up states. “Another said that the NSA has a poor audit capability, which is frustrating efforts to complete a damage assessment.”□□

This flatly contradicts what General Keith Alexander, the NSA's director, has told the public. NBC News gives an example:

Appearing at the Aspen Security Forum on July 18, NSA Director Alexander responded “Yes” when NBC News correspondent Pete Williams asked, “Do you feel you now know what [Snowden] got?” Asked “Was it a lot?”, Alexander again said, “Yes.” On Tuesday, NSA spokesperson Vanee Vines said Alexander's Aspen answer was not intended as “a hard, ‘We know everything, completely,’ answer to Williams' question. He did not say the assessment had been completed in absolute terms,” Vines added in an email. “The Director answered a question about his general sense.”

That attempt to wriggle out of being caught in a lie is incredibly unpersuasive, but there's actually an even more clearcut example of Alexander misrepresenting the NSA's audit capabilities. “The assumption is our people are just out there wheeling and dealing,” he told a hacker conference in July. “Nothing could be further from the truth. We have tremendous oversight over these programs. We can audit the actions of our people 100 percent, and we do that.”

If NBC's latest reporting is accurate — if either of its two intelligence sources are telling the truth — then the head of the NSA has already publicly misrepresented the audit capabilities of the NSA. And if it *can't* audit the actions of its people 100 percent, if a subcontractor like Edward Snowden could abscond with an unknown quantity of the most sensitive secrets kept by the NSA in such a way that, even months later, what exactly he took is unknown, it is that much harder to believe that the NSA's May 2012 audit would even be capable of picking up *all* analyst violations.

<p">From e-mail and social media posts, to web search history and phone records, the NSA is collecting all the data — historical and real-time — necessary to make every citizen a suspect and keep their every movement under the watchful eye of the federal government.



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Then, when caught looking where the Constitution forbids, the spy agency lies and the crime continues.

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