

# Five things to know about the NSA court ruling

May 8 2015, by Ken Dilanian

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A federal appeals court has declared illegal the National Security Agency program that collects data on the landline calling records of nearly every American. The ruling Thursday, the first of its kind by an appeals court, comes as Congress considers whether to continue, end or overhaul the program before June 1, when the legal provisions authorizing it expire.

Five things to know about the [court ruling](#), the [program](#), and the congressional debate about where to go from here:

## NOT-SO-SECRET SURVEILLANCE PROGRAM

At issue is an NSA program that for years has been collecting and storing data on American phone calls—a closely held secret until it was leaked by former NSA systems administrator Edward Snowden in 2013. The NSA collects information on the number called and date and time of the call, and stores it in a database that it queries using phone numbers associated with terrorists overseas. Officials say they don't use the data for any other purpose.

The idea is to hunt for hidden domestic terrorists akin to the hijackers who carried out the 9/11 attacks. But the program has not been particularly valuable as a counter-terrorism tool, and is becoming less so, since, for technical and bureaucratic reasons, the NSA has not been gathering the data on most mobile calls.

## DEMOCRATIC APPOINTEES AGREE

A three-judge panel of the 2nd U.S. Circuit Court of Appeals in Manhattan ruled that the practice was not legally justified under the law its creators cited to implement it, Section 215 of the USA Patriot Act. In a unanimous ruling written by Judge Gerard Lynch, the [court](#) held that Section 215 "does not authorize the telephone metadata program," despite years of secret legal rulings by an intelligence court that it could.

The [appeals court](#) rejected an argument that since the law allows the government to seize records relevant to a terrorism investigation, it was sufficient to declare all the country's [phone records](#) relevant. The ruling, however, allows the program to continue, since the provisions expire June 1 and Congress is debating their future.

All three of the 2nd Circuit judges are Democratic appointees.

## CONSTITUTIONAL ISSUE UNRESOLVED

What the court did not address was whether the program is constitutional. Other legal cases have argued that it is not.

Opponents say the seizure and search of their records from telephone companies violates their expectations of privacy under the Fourth Amendment because the government failed to obtain a search warrant based on probable cause to believe that evidence of criminal conduct will be found in the records. The program's backers rely on what is known as the third-party doctrine, under which the Supreme Court has held that personal records people voluntarily turn over to companies, including phone records and email, are not protected by the Fourth Amendment.

## CONGRESSIONAL DEBATE CONTINUES

The court's ruling sharpens the focus on the ongoing congressional debate about the program. The Patriot Act provisions in question expire

June 1 unless Congress reauthorizes them. Republicans and Democrats in the House have agreed on a bill to do that while also ending the government's bulk collection of the records. Senate leaders are backing a competing measure that would maintain the status quo, but they are open to compromise.

The divisions on the issue don't run neatly along partisan lines. Libertarian-leaning Republicans have joined many Democrats in arguing that a secret intelligence agency should not be storing the records of every American phone call. Some Democrats and Republicans assert that the program is needed now more than ever, given the efforts by the Islamic State group to inspire extremists to attack inside the U.S.

The House Judiciary Committee last month overwhelmingly passed the latest version of a bill known as the USA Freedom Act, which would end the NSA's collection and storage of the phone records. Instead, it would allow the agency to request records held by telephone companies under a court order in terrorism investigations.

## A NOD TO SNOWDEN?

Some were arguing Thursday that the court's ruling was a vindication for Snowden, who is under indictment in the U.S. and living in exile in Moscow. Indeed, one of the three judges, Robert Sack, authored a separate opinion that appeared to paint Snowden as a whistleblower.

Many other people, including senior U.S. officials, sharply disagree. They note that Snowden's disclosures about NSA activities were far broader than this single program, revealing espionage that had no implication for Americans' privacy.

Former CIA Deputy Director Michael Morell served on a task force in the wake of the Snowden leaks that recommended ending NSA's bulk

collection of phone records. In a new book, Morell calls Snowden's leak "the greatest compromise of classified information ever" that did "enormous" damage.

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