

Judge to move forward with suit over NSA's bulk collection (Update)

September 2 2015, by Michael Biesecker

A federal judge said Wednesday he plans to push ahead with a challenge to the National Security Agency's bulk collection of telephone data on hundreds of millions of Americans, even as the program is set to expire at the end of November.

U.S. District Court Judge Richard Leon said he has no intention of allowing the Obama administration to use legal maneuvering to "run out the clock" on a lawsuit challenging the USA Patriot Act. Leon ruled in 2013 that the mass collection of phone records is likely unconstitutional, but the government successfully appealed that decision by challenging whether the plaintiffs in the case could prove their phone records were among those swept up by the secret program.

The lawsuit was filed by conservative lawyer Larry Klayman and Charles Strange, the father of a cryptologist technician killed in 2011 when his helicopter was shot down in Afghanistan. Both are customers of Verizon Wireless, but Klayman could only prove in court that the NSA had collected records from a related company, Verizon Business Network Services.

The U.S. Court of Appeals for the District of Columbia last week reversed Leon's earlier ruling, sending the case back to the lower court to determine whether the government must divulge whether Klayman's cell records had really been collected.

The agency has said it collects the phone numbers of calls made and

received and how long a call lasts, but does not monitor the contents of calls. Congress approved a measure in June that phases out the Patriot Act and replaces it with the USA Freedom Act. In the new program, the phone companies will retain their customers' call records and allow the government to search them with a warrant.

In court Wednesday, Leon accused the government of trying to have it both ways—admitting it collects the phone records of millions of Americans, while claiming it would imperil national security to reveal whether it had access to the calls made by customers of a specific company. The judge said he had little doubt the nation's second-largest wireless provider was participating in the surveillance program.

"This court believes there are millions of Americans whose constitutional rights have been violated, and are being violated, as we speak," Leon said.

The judge outlined potential solutions to procedural hurdles Klayman needs to clear before the case can advance. Rather than ordering the government to simply tell the judge privately whether it had accessed Klayman's wireless data, likely resulting in further time-consuming appeals, the judge said he would look favorably on a motion to add another plaintiff to the lawsuit who is a customer of Verizon Business Network Services.

With the clock ticking, the judge advised the lawyers he is prepared to move quickly, scheduling another hearing for as early as next week.

"Don't go on any vacations between now and November 29," Leon said. "We are going to move expeditiously in this court."

The uproar over the NSA's program began in 2013 when former NSA contractor Edward Snowden leaked details of the surveillance to the news media. Program critics say collecting data on phone calls en masse

is a violation of Americans' privacy rights.

The NSA stores the information in a database that analysts can query for matches against the phone numbers of known terrorists abroad, searching for domestic connections to plots. The government has said it actually looks at only a tiny fraction of the information it collects.

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