

Bush Administration Sued Over Unconstitutional Dragnet Wiretapping Law

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ACLU Sues Over Unconstitutional Dragnet Wiretapping Law (7/10/2008)

Group Also Asks Secret Intelligence Court Not To Exclude Public From Any Proceedings On New Law's Constitutionality

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NEW YORK – The American Civil Liberties Union filed a landmark lawsuit today to stop the government from conducting surveillance under a new wiretapping law that gives the Bush administration virtually unchecked power to intercept Americans' international e-mails and telephone calls. The case was filed on behalf of a broad coalition of attorneys and human rights, labor, legal and media organizations whose ability to perform their work – which relies on confidential communications – will be greatly compromised by the new law.

The FISA Amendments Act of 2008, passed by Congress on Wednesday and signed by President Bush today, not only legalizes the secret warrantless surveillance program the president approved in late 2001, it gives the government new spying powers, including the power to conduct dragnet surveillance of Americans' international communications.

"Spying on Americans without warrants or judicial approval is an abuse of government power – and that's exactly what this law allows. The ACLU will not sit by and let this evisceration of the Fourth Amendment go unchallenged," said ACLU Executive Director Anthony D. Romero. "Electronic surveillance must be conducted in a constitutional manner that affords the greatest possible protection for individual privacy and free speech rights. The new wiretapping law fails to provide fundamental safeguards that the Constitution unambiguously requires."

In today's legal challenge, the ACLU argues that the new spying law violates Americans' rights to free speech and privacy under the First and Fourth Amendments to the Constitution. The new law permits the government to conduct intrusive surveillance without ever telling a court who it intends to spy on, what phone lines and email addresses it intends to monitor, where its surveillance targets are located, why it's conducting the surveillance or whether it suspects any party to the communication of wrongdoing.

Plaintiffs in today's case are:

- The Nation and its contributing journalists Naomi Klein and Chris Hedges

- Amnesty International USA, Global Rights, Global Fund for Women, Human Rights Watch, PEN American Center, Service Employees International Union, Washington Office on Latin America, and the International Criminal Defence Attorneys Association
- Defense attorneys Dan Arshack, David Nevin, Scott McKay and Sylvia Royce

“As a journalist, my job requires communication with people in all parts of the world – from Iraq to Argentina. If the U.S. government is given unchecked surveillance power to monitor reporters’ confidential sources, my ability to do this work will be seriously compromised,” said Naomi Klein, an award-winning columnist and best-selling author who is a plaintiff in today’s lawsuit. “I cannot in good conscience accept that my conversations with people who live outside the U.S. will put them in harm’s way as a result of overzealous government spying. Privacy in my communications is not simply an expectation, it’s a right.”

The ACLU’s legal challenge, which was filed in the U.S. District Court for the Southern District of New York today, seeks a court order declaring that the new law is unconstitutional and ordering its immediate and permanent halt.

In a separate filing, the ACLU asked the Foreign Intelligence Surveillance Court (FISC) to ensure that any proceedings relating to the scope, meaning or constitutionality of the new law be open to the public to the extent possible. The ACLU also asked the secret court to allow it to file a brief and participate in oral arguments, to order the government to file a public version of its briefs addressing the law’s constitutionality, and to publish any judicial decision that is ultimately issued.

“The new law allows the mass acquisition of Americans’ international e-mails and telephone calls,” said Jameel Jaffer, Director of the ACLU National Security Project. “The administration has argued that the law is necessary to address the threat of terrorism, but the truth is that the law sweeps much more broadly and implicates all kinds of communications that have nothing to do with terrorism or criminal activity of any kind.”

In 2006, the ACLU filed a lawsuit against the National Security Agency (NSA) to stop its illegal, warrantless spying program. A federal district court sided with the ACLU, ruling that warrantless wiretapping by the NSA violated Americans’ rights to free speech and privacy under the First and Fourth Amendments of the Constitution, ran counter to the Foreign Intelligence Surveillance Act and violated the principle of separation of powers. The Bush administration appealed the ruling, and an appeals court panel dismissed the case. However, the court did not uphold the legality of the government’s warrantless surveillance activity and the only judge to discuss the merits of the case clearly and unequivocally declared that the warrantless spying was unlawful. The Supreme Court declined to hear the case earlier this year.

“A democratic system depends on the rule of law, and not even the president or Congress can authorize a law that violates core constitutional principles,” said Christopher Dunn, Associate Legal Director of the New York Civil Liberties Union. “The only thing compromised in this so-called ‘compromise’ law is the Constitution.”

Attorneys on the lawsuit *Amnesty v. McConnell* are Jaffer, Melissa Goodman and L. Danielle Tully of the ACLU National Security Project and Dunn and Arthur Eisenberg of the NYCLU.

Attorneys on the motion filed with the FISC are Jaffer, Goodman, Tully, as well as Arthur Spitzer of the ACLU of the National Capital Area.

More information, including today's complaint, a video discussing the ACLU's legal challenge, plaintiff statements in support of the lawsuit and the FISC motion, is available at: www.aclu.org/faa

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