

Supreme Court Asked to Hear NSA Domestic Spying Case

July 10, 2013 - The United States Supreme Court has been asked by the Electronic Privacy Information Center (EPIC) to put a halt domestic telephone surveillance being conducted by the NSA. EPIC has asked the court to take action almost immediately by filing a writ of mandamus with the court. Such a writ is very seldomly granted by the court so EPIC has also requested the court to review the case in the event it turns down writ request. This is the second federal suit filed against the NSA since revelations about the scope of the agency's activities was revealed.

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EPIC's suit makes a very simple claim. That even though the NSA is collecting information on every single phone call made by Americans under the supervision of the FISA (Foreign Intelligence Surveillance Act) court, the broad scope of those collection activities violates FISA.

FISA set up a secret federal court, including an appeals court, which is under the supervision of the Supreme Court. The act allows the court to issue warrants and take other secret actions in foreign intelligence cases. But the way that the law is written, the FISA court appears to have this authority when the government is watching specific individuals or organizations.

EPIC is quick to point out it its filing that there is no plausible way that every single phone call made has anything to do with foreign intelligence operations being conducted by the United States government.

For the Supreme Court to consider a ruling in EPIC's favor, EPIC has to show that it has standing the file the case and that it can't get relief in any other federal court first.

The "standing" issue has been problematic in the past. Within the past year, the court ruled in another case that news organizations didn't have standing to file a case against similar surveillance activity being conducted under FISA because they couldn't actually prove that any of their calls had been intercepted. But things have changed since that ruling. A FISA court order which demanded that Verizon turn over all call records for all of its cell phone customers to the NSA has been leaked. EPIC is a Verizon customer so there is no doubt that their call records were affected.

FISA also excludes other federal courts from supervising FISA rulings. The only exception is the Supreme Court. Hence, EPIC's decision to approach the court without going through lower courts.

As previously mentioned, this is the second suit filed in the federal courts over this issue. The first was filed by the ACLU; also a Verizon customer. That case is taking a different route as it was filed with the US District Court in New York.

by Jim Malmberg

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