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SUPREME COURT LETS STAND NSA SURVEILLANCE ORDER

Privacy Group Challenged Legal Authority of Surveillance Court To Compel Disclosure of All US Telephone Records to the NSA

WASHINGTON, DC – The United States Supreme Court chose today not to consider a petition from the Electronic Privacy Information Center (EPIC), a leading Internet civil liberties organization, which challenged the legality of the NSA telephone record collection program.

The petition “In re EPIC” argued that the Foreign Intelligence Surveillance Court exceeded its legal authority when it required the Verizon telephone company to turn over all of the telephone records on all of its customers to the National Security Agency.

“Obviously, we are disappointed by the Supreme Court’s decision,” said Marc Rotenberg, President of EPIC and lead counsel for *In re EPIC*. “The surveillance order was clearly unlawful. There is simply no way to establish relevance for the collection of all telephone records on all US telephone customers for an intelligence investigation.”

Mr. Rotenberg further explained, “The FISA makes it very difficult to challenge these determinations. That is why we urged the Supreme Court to take the case and reverse the order of the Foreign Intelligence Surveillance Court.”

There were four amicus briefs filed at the Supreme Court in support of the EPIC petition. A brief authored by Professor Fred H. Cate of the Indiana University Mauer School of Law, joined by the Professors of Information Privacy and Surveillance Law, argued that the Verizon order failed to satisfy the necessary legal standard set out in section 215 of the Patriot Act.

A brief by Professors James E. Pfander and Stephen I. Vladeck, experts in the jurisdiction of the US Supreme Court, stated that the Court has authority to provide the relief EPIC sought.

A brief by James W. Harper and Professor Randy Barnett for the Cato Institute argued that the Verizon order was unconstitutional. The Cato brief also argued that EPIC has a legal and constitutional interest in the data about its telephone calls, and that EPIC and Verizon had been deprived of property without due process of law.

Finally, a brief by Professor Laura K. Donohue, on behalf of former members of the Church Committee and law professors, made clear that the purpose of the Foreign Intelligence Surveillance Act was to prevent intelligence agencies from engaging in the broad domestic surveillance that the FISA court had recently approved. Among the members of the Church Committee supporting the EPIC petition were former Vice President Walter Mondale and former Senator Gary Hart.

Alan Butler, director of the EPIC Appellate Advocacy Program, said, "We are grateful for the support of the amicus participants. There was broad agreement among the legal experts and the former members of the Church Committee that the Verizon order was unlawful and should have been overturned."

Mr. Rotenberg will be speaking about *In re EPIC* at a symposium sponsored by the Georgetown University Law Center on Tuesday, November 19. The event "Surveillance and Intelligence Gathering in the United States" will feature keynote remarks by Congressman James Sensenbrenner (R-WI).

Other speakers at the Georgetown conference include Jameel Jaffer, Director, American Civil Liberties Union, Center for Democracy; Robert Litt, General Counsel, Office of the Director of National Intelligence; Matthew Olson, Director, National Counterterrorism Center; and Laura Donohue, Professor, Georgetown Law (moderator)

References:

Supreme Court docket, *In re EPIC*, No. 13-58
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13-58.htm>

Georgetown Law Center conference, "Surveillance and Intelligence Gathering,"
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<http://www.law.georgetown.edu/news/press-releases/surveillance-foreign-intelligence-gathering-current-state.cfm>

EPIC, "In re EPIC - NSA Telephone Records Surveillance: Petitioning the U.S. Supreme Court to Halt NSA Surveillance of Domestic Telephone Calls
<http://epic.org/privacy/nsa/in-re-epic/>

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