

Appeals court lets NSA phone program continue



A federal appeals court has granted a stay that will allow a controversial National Security Agency telephone surveillance program to continue through its planned end on November 29.

The D.C. Circuit Court of Appeals issued [the order](#) Monday afternoon without offering any explanation beyond saying that the government had "satisfied the requirements for a stay pending appeal."

U.S. District Court Judge Richard Leon issued an injunction last week ordering NSA to stop collecting the telephone data of California lawyer J.J. Little and his legal practice. The judge had previously found the anti-terrorism phone-records program appeared to violate the Constitution by collecting metadata on calls of people not suspected of any crime.

Conservative lawyer Larry Klayman, who brought the lawsuit which led to the injunction, said Monday he plans to ask the full bench of the D.C. Circuit to overturn the stay granted Monday by a three-judge panel. If that fails, he said, he plans to ask the Supreme Court to overturn the D.C. Circuit's action and effectively require the NSA data-gathering program to shut down.

"We're going to go to Supreme Court and ask them to lift that stay," Klayman said. "It's important the Supreme Court entertain this because as Judge Leon pointed out, the D.C. Circuit sat on this case [at an earlier stage] for almost two years. It's unconscionable they would now stay it again."

Asked if the terrorist attacks Friday night in Paris may have made some judges reluctant to interfere with government surveillance programs for fear of being blamed for an attack, Klayman said: "That may have played a role but it shouldn't have played a role. ... As Judge Leon pointed out, the telephone metadata

surveillance has not stopped one terrorist attack."

Government officials have claimed the program did thwart plots abroad. Obviously, however, the bulk collection program —which remains up and running — did not forestall the shootings and bombings in Paris that killed more than 120 people and left hundreds more wounded.

A Justice Department spokeswoman declined to comment on the appeals court order, but CIA Director John Brennan warned in a speech Monday morning that legal and policy changes were making it harder to detect terror plots.

"Because of a number of unauthorized disclosures and a lot of handwringing over the government's role in the effort to try to uncover these terrorists, there have been some policy and legal and other actions that are taken that make our ability collectively, internationally to find these terrorists much more challenging," Brennan said, adding that it was time to "take a look" at gaps in surveillance and consider potential fixes.

While the injunction Leon issued last week was relatively narrow in simply barring collection and storage of data on what would likely amount to just a handful of telephone numbers, the Justice Department said in court filings that it likely could not comply with Leon's order without shutting down the entire program because telecommunications providers could not be obliged to exclude particular numbers from the data the companies submit to the NSA. The government said it could block access to certain numbers in its own database, but doing so would require about two weeks to implement.

That wouldn't offer much or any relief to Little since the telephone metadata program is already scheduled to shut down on Nov. 29. Congress passed a law in June, the USA Freedom Act, aimed at ending bulk collection of phone data by the government and moving to a system where telephone companies store the data, sharing only selected portions in response to queries.

The USA Freedom Act extended current legal authorities through the end November, but critics of the NSA program said the legislation did not clearly authorize bulk collection during the transition period. Another federal appeals court, the 2nd Circuit, [rejected that argument](#) in an opinion issued last month.

The stay granted Monday was issued by D.C. Circuit Judges David Tatel, Thomas Griffith and Patricia Millett. Tatel was appointed by President Bill Clinton, Griffith by President George W. Bush and Millett by President Barack Obama. Leon is also an appointee of President George W. Bush.

UPDATE (Monday, 5:58 P.M.): This post has been updated with Klayman saying he plans to ask for en banc review at the D.C. Circuit before going to the Supreme Court.

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