



Who's in Charge: Supreme Court Petitioned To Rule on FISA Court Authorization

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In a ruling which could well be defined as a request for the Supreme Court to rule on its own relevance, the Electronic Privacy Information Center (EPIC) is set to file an emergency petition for the court to rule on whether the Foreign Intelligence Surveillance Court went beyond its authority when, in its April 25, 2013 decision (first revealed by Edward Snowden) it compelled Verizon to turn over phone "meta-data" under section 215 of the Patriot Act.

The EPIC (no pun intended) suit is the first to directly challenge the assumed authority of the FISA court. In its petition, the group is arguing that the FISA court had "exceeded its statutory jurisdiction when it ordered production of millions of domestic telephone records that cannot plausibly be relevant to an authorized investigation," insisting that, "the ongoing collection of the domestic telephone records of millions of Americans by the NSA, untethered to any particular investigation, is beyond the authority granted by Congress." In its filing, EPIC points out that it had to go directly to the Supreme Court, since no lower courts have the ability to vacate a FISC ruling.

A separate article in this morning's Wall Street Journal, while not mentioning the EPIC filing, notes that the FISA's authority pivots on its re-interpretation of the word "relevant," noting that this definition was "widened" following the original September 11, 2001 attacks. This was at the heart of recent dissensions by House Intelligence Committee members Ron Wyden (D-OR) and Mark Udall (D-CO), when they argued that there was a "secret interpretation" of the Patriot Act. The NSA argument is that the notion of "relevance" has changed with the advent of computer communications.

The "Catch 22" is that, it is only *after* the collection of a large data base, can one determine whether any one thing is, indeed, "relevant."

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