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NSA Whistleblowers: "All U.S. Citizens" Targeted by Surveillance Program, Not Just Verizon Customers

A leaked court order has revealed the Obama administration is conducting a massive domestic surveillance program by collecting telephone records of millions of Verizon customers. The Guardian newspaper published a classified order issued by the Foreign Intelligence Surveillance Court directing Verizon's Business Network Services to give the National Security Agency electronic data, including all calling records on an "ongoing, daily basis." The order covers each phone number dialed by all customers, along with location and routing data, and with the duration and frequency of the calls, but not the contents of the communications.

We discuss the news with three guests: Shayana Kadidal, senior managing attorney at the Center for Constitutional Rights, and two former National Security Agency employees turned whistleblowers: Thomas Drake and William Binney. In 2010, the Obama administration charged Drake with violating the Espionage Act after he was accused of leaking classified information to the press about waste and mismanagement at the agency. The charges were later dropped. "Where has the mainstream media been? These are routine orders, nothing new," Drake says. "What's new is we're seeing an actual order. And people are somehow surprised by it. The fact remains that this program has been in place for quite some time. It was actually started shortly after 9/11. The PATRIOT Act was the enabling mechanism that allowed the United States government in secret to acquire subscriber records from any company."

Binney, who worked at nearly 40 years at the NSA and resigned shortly after the 9/11 attacks, says: "NSA has been doing all this stuff all along, and it's been all the companies, not just one. And I basically looked at that and said: If Verizon got one, so did everybody else. Which means that they're just continuing the collection of this kind of information of all U.S. citizens."

TRANSCRIPT

This is a rush transcript. Copy may not be in its final form.

JUAN GONZÁLEZ: A leaked top-secret order has revealed the Obama administration is conducting a massive domestic surveillance program by collecting telephone records of millions of Verizon Business customers. Last night *The Guardian* newspaper published a [classified order](#) issued by the Foreign Intelligence Surveillance Court directing Verizon's Business Network Services to give the National Security Agency electronic data, including all calling records on a, quote, "ongoing,

daily basis." The order covers each phone number dialed by all customers along with location and routing data, and with the duration and frequency of the calls, but not the content of the communications. The order expressly compels Verizon to turn over records for both international and domestic records. It also forbids Verizon from disclosing the existence of the court order. It is unclear if other phone companies were ordered to hand over similar information.

AMY GOODMAN: According to legal analysts, the Obama administration relied on a controversial provision in the USA PATRIOT Act, Section 215, that authorizes the government to seek secret court orders for the production of, quote, "any tangible thing relevant to a foreign intelligence or terrorism investigation." The disclosure comes just weeks after news broke that the Obama administration had been spying on journalists from the Associated Press and James Rosen, a reporter from Fox News.

We're now joined by two former employees of the National Security Agency, Thomas Drake and William Binney. In 2010, the Obama administration charged Drake with violating the Espionage Act after he was accused of leaking classified information to the press about waste and mismanagement at the agency. The charges were later dropped. William Binney worked for almost 40 years at the NSA. He resigned shortly after the September 11th attacks over his concern over the increasing surveillance of Americans. We're also joined in studio here by Shayana Kadidal, senior managing attorney at the Center for Constitutional Rights.

First, for your legal opinion, Shayana, can you talk about the significance of what has just been revealed?

SHAYANA KADIDAL: Sure. So I think, you know, we have had stories, including one in *USA Today* in May 2006, that have said that the government is collecting basically all the phone records from a number of large telephone companies. What's significant about yesterday's disclosure is that it's the first time that we've seen the order, to really appreciate the sort of staggeringly broad scope of what one of the judges on this Foreign Intelligence Surveillance Court approved of, and the first time that we can now confirm that this was under Section 215 of the PATRIOT Act, which, you know, has been dubbed the libraries provision, because people were mostly worried about the idea that the government would use it to get library records. Now we know that they're using it to get phone records. And just to see the immense scope of this warrant order, you know, when most warrants are very narrow, is really shocking as a lawyer.

JUAN GONZÁLEZ: Well, some might argue that the Obama administration at least went to the FISA court to get approval for this, unlike the Bush administration in the past.

SHAYANA KADIDAL: Right. Well, we don't know if the Bush administration was, you know, getting these same orders and if this is just a continuation, a renewal order. It lasted for only—it's supposed to last for only three months, but they may have been

getting one every three months since 2006 or even earlier. You know, when Congress reapproved this authority in 2011, you know, one of the things Congress thought was, well, at least they'll have to present these things to a judge and get some judicial review, and Congress will get some reporting of the total number of orders. But when one order covers every single phone record for a massive phone company like Verizon, the reporting that gets to Congress is going to be very hollow. And then, similarly, you know, when the judges on the FISA court are handpicked by the chief justice, and the government can go to a judge, as they did here, in North Florida, who was appointed by Ronald Reagan, who's 73 years old and is known as a draconian kind of hanging judge in his sentencing, and get some order that's this broad, I think both the judicial review and the congressional oversight checks are very weak.

AMY GOODMAN: And, of course, this is just Verizon, because that's what Glenn Greenwald of *The Guardian* got a hold of. That doesn't mean that there aren't other orders for the other telephone companies, right?

SHAYANA KADIDAL: Absolutely.

AMY GOODMAN: Like BellSouth, like AT&T, etc.

SHAYANA KADIDAL: Right.

AMY GOODMAN: As there have been in the past.

SHAYANA KADIDAL: Yeah, those were—those were companies mentioned in that *USA Today* story in 2006. Nothing about the breadth of this order indicates that it's tied to any particular national security investigation, as the statute says it has to be. So, some commentators yesterday said, "Well, this order came out on—you know, it's dated 10 days after the Boston attacks." But it's forward-looking. It goes forward for three months. Why would anyone need to get every record from Verizon Business in order to investigate the Boston bombings after they happened?

JUAN GONZÁLEZ: And, William Binney, a decades-long veteran of the NSA, your reaction when you heard about this news?

WILLIAM BINNEY: Well, this was just the FBI going after data. That was their request. And they're doing that because they—if they want to try to get it—they have to have it approved by a court in order to get it as evidence into a courtroom. But NSA has been doing all this stuff all along, and it's been all the companies, not just one. And I basically looked at that and said, well, if Verizon got one, so did everybody else, which means that, you know, they're just continuing the collection of this kind of information on all U.S. citizens. That's one of the main reasons they couldn't tell Senator Wyden, with his request of how many U.S. citizens are in the NSA databases. There's just—in my estimate, it was—if you collapse it down to all uniques, it's a little over 280 million U.S. citizens are in there, each in there several hundred to several thousand times.

AMY GOODMAN: In fact, let's go to Senator Wyden. A secret court order to obtain the Verizon phone records was sought by the FBI under a section of the Foreign Intelligence Surveillance Act that was expanded by the PATRIOT Act. In 2011, Democratic Senator Ron Wyden warned about how the government was interpreting its surveillance powers under Section 215 of the PATRIOT Act.

SEN. RON WYDEN: When the American people find out how their government has secretly interpreted the PATRIOT Act, they are going to be stunned, and they are going to be angry. And they're going asked senators, "Did you know what this law actually permits? Why didn't you know before you voted on it?" The fact is, anyone can read the plain text of the PATRIOT Act, and yet many members of Congress have no idea how the law is being secretly interpreted by the executive branch, because that interpretation is classified. It's almost as if there were two PATRIOT Acts, and many members of Congress have not read the one that matters. Our constituents, of course, are totally in the dark. Members of the public have no access to the secret legal interpretations, so they have no idea what their government believes the law actually means.

AMY GOODMAN: That's Senator Ron Wyden. He and Senator Udall have been raising concerns because they sit on the Senate Intelligence Committee but cannot speak out openly exactly about what they know. William Binney, you left the agency after September 2001, deeply concerned—this is after you'd been there for 40 years—about the amount of surveillance of U.S. citizens. In the end, your house was raided. You were in the shower. You're a diabetic amputee. The authorities had a gun at your head. Which agency had the gun at your head, by the way?

WILLIAM BINNEY: That was the FBI.

AMY GOODMAN: You were not charged, though you were terrorized. Can you link that to what we're seeing today?

WILLIAM BINNEY: Well, it's directly linked, because it has to do with all of the surveillance of the U.S. citizens that's been going on since 9/11. I mean, that's—they were getting—from just one company alone, that I knew of, they were getting over 300 million call records a day on U.S. citizens. So, I mean, and when you add the rest of the companies in, my estimate was that there were probably three billion phone records collected every day on U.S. citizens. So, over time, that's a little over 12 trillion in their databases since 9/11. And that's just phones; that doesn't count the emails. And they're avoiding talking about emails there, because that's also collecting content of what people are saying. And that's in the databases that NSA has and that the FBI taps into. It also tells you how closely they're related. When the FBI asks for data and the court approves it, the data is sent to NSA, because they've got all the algorithms to do the diagnostics and community reconstructions and things like that, so that the FBI can—makes it easier for the FBI to interpret what's in there.

JUAN GONZÁLEZ: We're also joined by Thomas Drake, who was prosecuted by the Obama administration after he blew the whistle on mismanagement and waste and constitutional violations at the NSA. Thomas Drake, your reaction to this latest revelation?

THOMAS DRAKE: My reaction? Where has the mainstream media been? This is routine. These are routine orders. This is nothing new. What's new is we're actually seeing an actual order. And people are somehow surprised by it. The fact remains that this program has been in place for quite some time. It was actually started shortly after 9/11. The PATRIOT Act was the enabling mechanism that allowed the United States government in secret to acquire subscriber records of—from any company that exists in the United States.

I think what people are now realizing is that this isn't just a terrorist issue. This is simply the ability of the government in secret, on a vast scale, to collect any and all phone call records, including domestic to domestic, local, as well as location information. We might—there's no need now to call this the Foreign Intelligence Surveillance Court. Let's just call it the surveillance court. It's no longer about foreign intelligence. It's simply about harvesting millions and millions and millions of phone call records and beyond. And this is only just Verizon. As large as Verizon is, with upwards of 100 million subscribers, what about all the other telecoms? What about all the other Internet service providers? It's become institutionalized in this country, in the greatest of secrecy, for the government to classify, conceal not only the facts of the surveillance, but also the secret laws that are supporting surveillance.

AMY GOODMAN: Thomas Drake, what can they do with this information, what's called metadata? I mean, they don't have the content of the conversation, supposedly—or maybe we just don't see that, that's under another request, because, remember, we are just seeing this one, for people who are listening and watching right now, this one request that is specifically to—and I also want to ask you: It's Verizon Business Services; does that have any significance? But what does it mean to have the length of time and not the names of, but where the call originates and where it is going, the phone numbers back and forth?

THOMAS DRAKE: You get incredible amounts of information about subscribers. It's basically the ability to forward-profile, as well as look backwards, all activities associated with those phone numbers, and not only just the phone numbers and who you called and who called you, but also the community of interests beyond that, who they were calling. I mean, we're talking about a phenomenal set of records that is continually being added to, aggregated, year after year and year, on what have now become routine orders. Now, you add the location information, that's a tracking mechanism, monitoring tracking of all phone calls that are being made by individuals. I mean, this is an extraordinary breach. I've said this for years. Our representing attorney, Jesselyn Radack from the Government Accountability Project, we've been saying this for years and no—from the wilderness. We've had—you've been on—you know, you've had us on your show in the past, but it's like, hey, everybody kind of

went to sleep, you know, while the government is harvesting all these records on a routine basis.

You've got to remember, none of this is probable cause. This is simply the ability to collect. And as I was told shortly after 9/11, "You don't understand, Mr. Drake. We just want the data." And so, the secret surveillance regime really has a hoarding complex, and they can't get enough of it. And so, here we're faced with the reality that a government in secret, in abject violation of the Fourth Amendment, under the cover of enabling act legislation for the past 12 years, is routinely analyzing what is supposed to be private information. But, hey, it doesn't matter anymore, right? Because we can get to it. We have secret agreements with the telecoms and Internet service providers and beyond. And we can do with the data anything we want.

So, you know, I sit here—I sit here as an American, as I did shortly after 9/11, and it's all déjà vu for me. And then I was targeted—it's important to note, I—not just for massive fraud, waste and abuse; I was specifically targeted as the source for *The New York Times* article that came out in December of 2005. They actually thought that I was the secret source regarding the secret surveillance program. Ultimately, I was charged under the Espionage Act. So that should tell you something. Sends an extraordinarily chilling message. It is probably the deepest, darkest secret of both administrations, greatly expanded under the Obama administration. It's now routine practice.

JUAN GONZÁLEZ: Shayana, I'd like to ask you, specifically that issue of the FISA court also authorizing domestic surveillance. I mean, is there—even with the little laws that we have left, is there any chance for that to be challenged, that the FISA court is now also authorizing domestic records being surveiled?

AMY GOODMAN: FISA being Foreign Intelligence Surveillance Act.

SHAYANA KADIDAL: Right. I mean, you know, two things about that. First, the statute says that there have to be reasonable grounds to think that this information is relevant to an investigation of either foreign terrorist activity or something to do with a foreign power. So, you know, obviously, this perhaps very compliant judge approved this order, but it doesn't seem like this is what Congress intended these orders would look like. Seems like, on the statute, that Congress intended they would be somewhat narrower than this, right?

But there's a larger question, which is that, for years, the Supreme Court, since 1979, has said, "We don't have the same level of protection over, you know, the calling records—the numbers that we dial and how long those calls are and when they happen—as we do over the contents of a phone call, where the government needs a warrant." So everyone assumes the government needs a warrant to get at your phone records and maybe at your emails, but it's not true. They just basically need a subpoena under existing doctrine. And so, the government uses these kind of subpoenas to get your email records, your web surfing records, you know, cloud—

documents in cloud storage, banking records, credit records. For all these things, they can get these extraordinarily broad subpoenas that don't even need to go through a court.

AMY GOODMAN: Shayana, talk about the significance of President Obama nominating James Comey to be the head of the FBI—

SHAYANA KADIDAL: One of the—

AMY GOODMAN: —and who he was.

SHAYANA KADIDAL: Right. One of the grand ironies is that Obama has nominated a Republican who served in the Bush administration for a long time, a guy with a reputation as being kind of personally incorruptable. I think, in part, he nominated him to be the head of the FBI, the person who would, you know, be responsible for seeking and renewing these kind of orders in the future, for the next 10 years—he named Comey, a Republican, because he wanted to, I think, distract from the phone record scandal, the fact that Holder's Justice Department has gone after the phone records of the Associated Press and of Fox News reporter James Rosen, right?

And you asked, what can you tell from these numbers? Well, if you see the reporter called, you know, five or six of his favorite sources and then wrote a particular report that divulged some embarrassing government secret, that's—you know, that's just as good as hearing what the reporter was saying over the phone line. And so, we had this huge, you know, scandal over the fact that the government went after the phone records of AP, when now we know they're going after everyone's phone records, you know. And I think one of the grand ironies is that, you know, he named Comey because he had this reputation as being kind of a stand-up guy, who stood up to Bush in John Ashcroft's hospital room in 2004 and famously said, "We have to cut back on what the NSA is doing." But what the NSA was doing was probably much broader than what *The New York Times* finally divulged in that story in December '05.

AMY GOODMAN: Very quickly, will Glenn Greenwald now be investigated, of *The Guardian*, who got the copy of this, so that they can find his leak, not to mention possibly prosecute him?

SHAYANA KADIDAL: Oh, I think absolutely there will be some sort of effort to go after him punitively. The government rarely tries to prosecute people who are recognized as journalists. And so, Julian Assange maybe is someone they try to portray as not a journalist. Glenn Greenwald, I think, would be harder to do. But there are ways of going after them punitively that don't involve prosecution, like going after their phone records so their sources dry up.

AMY GOODMAN: I saw an astounding comment by Pete Williams, who used to be the Pentagon spokesperson, who's now with NBC, this morning, talking—he had talked with Attorney General Eric Holder, who had said, when he goes after the

reporters—you know, the AP reporters, the Fox reporter—they're not so much going after them; not to worry, they're going after the whistleblowers. They're trying to get, through them, the people. What about that, that separation of these two?

SHAYANA KADIDAL: Right. I'll give you an example from the AP. They had a reporter named, I believe, John Solomon. In 2000, he reported a story about the botched investigation into Robert Torricelli. The FBI didn't like the fact that they had written this—he had written this story about how they dropped the ball on that, so they went after his phone records. And three years later, he talked to some of his sources who had not talked to him since then, and they said, "We're not going to talk to you, because we know they're getting your phone records."

AMY GOODMAN: We want to thank you all for being with us. Shayana Kadidal of the Center for Constitutional Rights. William Binney and Thomas Drake both worked for the National Security Agency for years, and both ultimately resigned. Thomas Drake was prosecuted. They were trying to get him under the Espionage Act. All of those charges were dropped. William Binney held at gunpoint by the FBI in his shower, never prosecuted. Both had expressed deep concern about the surveillance of American citizens by the U.S. government. You can go to our website at democracynow.org for our hours of interviews with them, as well.

This is *Democracy Now!* When we come back, we're going to be looking at top-secret trade deals the U.S. is involved with, and then we'll be interviewing the new mayor of Jackson, Mississippi. Stay with us.



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