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## Judge Rules Against Wiretaps

NSA Program Called Unconstitutional

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A federal judge in Detroit ruled yesterday that the National Security Agency's warrantless surveillance program is unconstitutional, delivering the first decision that the Bush administration's effort to monitor communications without court oversight runs afoul of the Bill of Rights and federal law.

U.S. District Judge Anna Diggs Taylor ordered a halt to the wiretap program, secretly authorized by President Bush in 2001, but both sides in the lawsuit agreed to delay that action until a Sept. 7 hearing. Legal scholars said Taylor's decision is likely to receive heavy scrutiny from the U.S. Court of Appeals for the 6th Circuit when the Justice Department appeals, and some criticized her ruling as poorly reasoned.

Ruling in a lawsuit brought by the American Civil Liberties Union and other advocacy groups in the Eastern District of Michigan, Taylor said that the NSA wiretapping program, aimed at communications by potential terrorists, violates privacy and free speech rights and the constitutional separation of powers among the three branches of government. She also found that the wiretaps violate the Foreign Intelligence Surveillance Act, the 1978 law instituted to provide judicial oversight of clandestine surveillance within the United States.

"It was never the intent of the framers to give the president such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights," Taylor wrote in her 43-page opinion. ". . . There are no hereditary Kings in America and no powers not created by the Constitution. So all 'inherent powers' must derive from that Constitution."

The ruling is the latest courtroom setback for the Bush administration's controversial anti-terrorism and detention policies, which have frequently relied on broad assertions of presidential power. In a landmark case in June, the Supreme Court rejected Bush's claims of executive power, ruling 5 to 3 that special military trials for terrorism suspects were not authorized under federal law and ran afoul of the Geneva Conventions.

The decision yesterday could complicate efforts by the White House and Sen. Arlen Specter (R-Pa.) to win approval for a bill that would allow, but not require, Bush to submit the NSA program to a secret court for legal review.

The eavesdropping program, revealed in news reports in December 2005, allows the NSA to intercept telephone calls and e-mails between the United States and overseas without court approval in cases in which the government suspects one party of having links to terrorism.

The NSA declined to discuss Taylor's ruling or whether it had suspended any surveillance activities. The office of John D. Negroponte, the director of national intelligence, also declined to comment.

Several dozen lawsuits have been filed around the country challenging the program's legality, but yesterday's ruling marked the first time that a judge had declared it unconstitutional. Experts in national security law argued, however, that Taylor offered meager support for her findings on separation of powers and other key issues.

"Regardless of what your position is on the merits of the issue, there's no question that it's a poorly reasoned decision," said Bobby Chesney, a national security law specialist at Wake Forest University who takes a moderate stance on the legal debate over the NSA program. "The opinion kind of reads like an outline of possible grounds to strike down the program, without analysis to fill it in."

White House press secretary Tony Snow said the Bush administration "couldn't disagree more with this ruling," calling it "carefully administered."

Congressional Republicans quickly condemned Taylor's ruling, and the Republican National Committee issued a news release titled, "Liberal Judge Backs Dem Agenda To Weaken National Security." Taylor, 73, was appointed to the bench in 1979 by President Jimmy Carter.

Some Republicans sought to tie the ruling to last week's arrests in Britain and Pakistan of alleged conspirators in a plot to blow up airliners bound from London to the United States. The administration has not offered evidence that the NSA spying program played a role in the case. Sen. Mike DeWine (R-Ohio) said that halting the program "would hamper our ability to foil terrorist plots."

Senate Minority Leader Harry M. Reid (Nev.) and other leading Democrats hailed the ruling as a welcome check on the Bush administration. The decision shows that "no one is above the law," Sen. John F. Kerry (D-Mass.) said.

ACLU Executive Director Anthony D. Romero called the decision "another nail in the coffin" of the Bush administration's anti-terrorism strategies. "The judge very clearly points out that this, at its core, is about presidential powers," he said.

The Justice Department argued that the NSA program is well within Bush's authority as president, but that proving it would require revealing state secrets. Taylor agreed with the ACLU and other plaintiffs that many details about the program had already been publicly acknowledged by numerous government officials, including Bush.

Taylor rejected one part of the ACLU's lawsuit seeking information about data mining -- the process of searching computer databases for information on individuals -- agreeing with the government that it would be impossible to allow that part of the case to go forward without divulging vital state secrets.

The ruling was hailed by lawyers involved in related, though legally separate, lawsuits elsewhere in the country. "We now have a ruling on the books that upholds what we've been saying all along: that this wiretapping program violates the Constitution," said Kevin Bankston, staff attorney for the Electronic Frontier Foundation in San Francisco, which has filed a class-action case against AT&T. The suit alleges that the telecommunications company collaborated with the NSA in its surveillance program.

*Staff writer Ellen Nakashima and researcher Julie Tate contributed to this report.*

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