

The National Security Agency (NSA) eavesdropping on Americans A programme that is neither legal nor necessary

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Abstract

On 16 December 2005, the *New York Times* reported that the President had authorized the National Security Agency (NSA) to spy on Americans, inside the United States, without first obtaining a warrant from the secret FISA court. Although the President has described the NSA activities to be legal and critical to our national security, the programme has started a national controversy, raising questions over its legality and necessity. Consequently, there have been pending legal challenges, congressional investigations, and public outcry over the use of such expansive presidential authority.

The legal community, including the American Bar Association, considers the programme illegal. The only district court that has addressed the issue has held it to be an unconstitutional programme that violates FISA.

This comment highlights several reasons for why warrantless wiretapping is illegal and unnecessary. The comment also notes public policy reasons against presidential power that is not subject to any checks from Congress or review from the judiciary. Finally, it argues that the President needs to immediately cease the programme; asks Congress to take its oversight responsibility more seriously; and reasons that the judicial review protects against abuse.

Keywords

FISA; warrantless; wiretapping; eavesdropping; National Security Agency (NSA); presidential power

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