Original Phone Record Dragnet Finally Faces Lawsuit

Vast database 'was pretty outrageous,' DEA veteran says.

By Steven Nelson

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A program that collected Americans' international call records for decades, predating and apparently inspiring the National Security Agency's more comprehensive post-9/11 dragnet, now faces a lawsuit.

The Drug Enforcement Administration's pioneering and purportedly discontinued dragnet pulled records from pliable phone companies for two decades without court review using administrative subpoenas.

The records were loaded into a vast database queried for clues about drug trafficking, and DEA agents took pains to keep the tool secret from judges and defense attorneys. The government acknowledged the program in January as part of the prosecution of someone who allegedly violated Iran sanctions.

In a history of the program, USA Today reported this week the collection peaked with records of calls between the U.S. and more than 100 countries. Attorney General Eric Holder ended the collection in 2013 after whistleblower Edward Snowden exposed NSA programs, the paper reported.

The new lawsuit, filed in California on behalf of Human Rights Watch by the Electronic Frontier Foundation, won't let the issue quietly fade. It demands declarations the collection violated First and Fourth amendment rights along with destruction of records and injunctions against future collection.

"It's great news that they say it's been deleted, but we intend to hold them to their burden to show that to us, the public, and the court," says EFF attorney Mark Rumold. "We also intend to make sure they can't build such a database again."

Former DEA senior intelligence specialist Sean Dunagan, who worked at the agency from 1998 until 2011, tells U.S. News the call record database was searchable by employees with security clearances of secret or higher.

While he worked at the DEA office in Miami in late '90s and early 2000s, Dunagan says he searched the database almost every day. Some DEA offices weren't set up with the secure

network needed to access the database, he says, though access gradually expanded to foreign and domestic offices.

Dunagan says DEA employees who used the database meticulously avoided noting it in case files that would be presented to judges or made available to defense attorneys, confirming a 2013 Reuters report that DEA agents reverse engineer criminal cases that begin with secretly acquired call records.

The former intelligence specialist says he personally felt uncomfortable with the level of collection and ease of poring over records on everyday Americans.

“I thought it was pretty outrageous, the scope and indiscriminate nature of the collection,” he says. There probably wasn’t a whistleblower, Dunagan says, “for the same reason there's only been one Edward Snowden," who lives in exile and would face decades in prison if he returns to the U.S.

Dunagan says he's unsure if the database sent anyone to prison who wouldn’t have otherwise landed there, and notes the international call records were only one component of the agency's “incredibly massive database of metadata.” Purely domestic call records were loaded into DEA databases from other investigations, he says.

The NSA shares some metadata-gleaned tips with the DEA, Reuters reported - a relationship later reported by The Intercept to include the storage of all phone conversations in the Bahamas.

Rumold says the lawsuit against the program is in many ways similar to the high-profile cases challenging the NSA’s broader dragnet collection of U.S. phone records.

“The constitutional claims are identical,” he says. “Bulk collection violates the First and Fourth Amendments -- and it doesn't matter which 3-three letter agency is running the bulk collection program.”

But Rumold says the lawsuit may have a stronger likelihood of success. “The DEA's program was a bulk collection program used for domestic law enforcement; the NSA's was national security,” he says. “Whatever wiggle room the Fourth Amendment might allow in the national security context vanishes when the program is designed for enforcement of domestic laws.”

Julian Sanchez, a senior fellow at the Cato Institute and a founding editor of legal blog Just Security, says that's probably why the Obama administration decided to voluntarily end the program after Snowden's leaks.

"You have to pick your arguments," Sanchez says, noting the administration defended the NSA program pointing to review by the secret surveillance court, its purported need to stop terrorism and minimization procedures intended to protect privacy - none of which apply to the DEA database.

Rumold says the court case ideally will force the DEA to prove it ended the record collection, as it claimed in the January disclosure.

“Time and time again, we've seen the government's public representations about the scope or status of a surveillance program to be carefully circumscribed and less than forthcoming,” he says. “Even if they've deleted the database, that doesn't mean they've deleted all the records that were illegally collected.”

Dunagan says he's glad the lawsuit was filed. “For a long time DEA got away with an awful lot of things that people now, fortunately, are taking a second look at," he says. “Before the terrorist boogeyman there was the drug trafficker boogeyman. People have short memories and tend to forget.”