



The quick and dirty on the FISA Amendments Act; what it means in 2013 and beyond

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We've told you a lot about what we like to call the [Big Brother Spying Act](#), officially known as the FISA Amendments Act of 2008. Lawmakers rushed through a "clean" reauthorization of the warrantless spying bill and Obama signed it into law at the end of 2012, meaning it will remain in effect, unaltered by any of the very basic privacy or transparency amendments some Senators proposed, through 2017.

The CATO Institute has produced an excellent, quick and dirty video telling you what you need to know about that rushed "[debate](#)," and what the law enables: mass, warrantless surveillance of US citizens and everyone else in the world. It's embedded above and well worth five minutes of your (and everyone you know's) time.

Congressional authorization to continue warrantless spying operations in the bag, the NSA carries on with construction of its massive data warehouse in Utah, set to open for big spy business in September 2013. Experts say the complex will be big and powerful enough to store all of the phone, internet and other electronic communications in the world for [100 years](#).

What happens after all our silly phone calls, emails, texts, search queries and bank records are collected and stored? James Bamford, who broke the story about the NSA's one million square foot data center, [tells us](#):

*Once the communications are intercepted and stored, **the data-mining begins**. "You can watch everybody all the time with data-mining," [NSA whistleblower Bill] Binney says. Everything a person does becomes charted on a graph, "financial transactions or travel or anything," he says. Thus, as data like bookstore receipts, bank statements, and commuter toll records flow in, the NSA is able to paint a more and more detailed picture of someone's life. [My link]*

Data profiles of every person in the US, just in case they someday become a target of the government's interest? The wholesale monitoring of a society's private communications, in secret

and with no public accountability? Congressional authorization of this Orwellian nightmare? How could we let this happen? More importantly, how can we stop unconstitutional spying?

Time and again, Congress has abdicated its responsibility to address the issue of executive overreach. So what of the courts?

Unfortunately, the judicial landscape is dauntingly bleak.

Just this week we learned that a Bush-era warrantless wiretapping case won't make it to the Supreme Court and is therefore dead in the water. The demise of Al Haramain is particularly distressing for civil libertarians because this case didn't have to contend with the government's reflex "standing" objection -- the assertion that since the plaintiffs can't prove they were spied on, they don't have grounds to sue.

The facts in Al Haramain were plain. And talk about facts: in that case, three people working for the now defunct Al Haramain Foundation found out that federal agencies were eavesdropping on their communications when government officials accidentally sent them printed transcripts of their conversations. They sued alleging that they'd been illegally monitored without warrants, and won. But a federal appeals court overturned their victory, leaving only the Supreme Court to rectify the decision.

We found out this week that the lawyer on the Al Haramain wiretapping case is convinced that his clients would fail at the highest level of our judicial system. He fears such a failure would set terrible precedent and do long term damage to any future legal strategy to overturn the illegal spying, and so that's the end of the Al Haramain challenge.

David Kravetz of Wired [reports](#):

"At some point down the line, a case could end up in a different circuit that would not be bound by the 9th Circuit ruling," Eisenberg said. By that time, he said, perhaps a more willing Supreme Court would be sitting.

Eisenberg sued under domestic spying laws Congress adopted in the wake of President Richard M. Nixon's Watergate scandal. The government appealed their victory, and the appeals court dismissed the suit and reversed the damages.

The appellate court had ruled that when Congress wrote the law regulating eavesdropping on Americans and spies, it never waived sovereign immunity in the section prohibiting the targeting of Americans without warrants. That means Congress did not allow for aggrieved Americans to sue the government, even if their constitutional rights were violated by the United States breaching its own wiretapping laws.

So the Al Haramain challenge is out. But there's hope yet for the legal route: while the Supreme Court [declined](#) to hear an appeal brought by the EFF on another wiretapping lawsuit, the

group's [Jewel v. NSA](#) case is still alive. And the Supreme Court heard oral argument in the ACLU's warrantless spying challenge, [Amnesty v. Clapper](#), in October 2012.

Here's hoping that these courts disregard the government's claims about state secrets and standing, and hear out substantive challenges to one of the most troubling and secretive statutes we've ever been subjected to in the United States.

In 2013, the nation's high courts have an opportunity to let freedom ring in a big, powerful way. But no matter what they decide, we the people can't give up. This battle won't be over until warrantless wiretapping is repealed and the program shuttered. And beyond FISA, we need to rethink and rework our relationship to the government in the post-9/11 era -- top to bottom. To do that meaningfully will take all of us, and it'll be a long fight that no one bad court decision or congressional vote can contain.