

Wiretap By U.S. Is Illegal, Judge Says

BY EVAN PEREZ

A federal judge ruled that the government illegally wiretapped communications between an Islamic charity and its U.S. lawyers, rebuffing the Obama administration's efforts to stop a lawsuit over the case by claiming state secrets.

Wednesday's ruling challenges the legality of the Bush administration's now-defunct Terrorist Surveillance Program and could open the way for plaintiffs to seek damages from the government for violating restrictions outlined in the 1978 Foreign Intelligence Surveillance Act.

The case stems from a 2006 lawsuit filed by the Oregon branch of the Saudi al-Haramain Islamic Foundation, since closed, and two of its lawyers, Wendell Belew and Asim Ghafoor.

The plaintiffs learned they were being wiretapped by the National Security Agency when the government accidentally turned over to them logs of intercepted calls.

U.S. District Judge Vaughn Walker, chief judge of the northern California district, said the plaintiffs had established "aggrieved person" status and shown that "they were subjected to warrantless domestic national security surveillance."

The case puts the Obama administration in a bind, trying to shield a program of which President Barack Obama himself previously had been critical.

At the same time, the administration must defend the government from other possible claims that could arise from the surveillance program.

The Obama administration tried to block the al-Haramain case, claiming that allowing it to continue would potentially expose intelligence methods. The Bush administration had made similar arguments.

The judge rejected the government's attempt to use its state secrets privilege, saying that in this case the FISA law trumped the state secrets claim.

The Justice Department said Wednesday it was reviewing the judge's ruling and noted that the Obama administration had set new policies on the use of state secrets, aiming to use the privilege only sparingly and in important national-security matters. The department is likely to appeal.

Jon Eisenberg, an attorney for the plaintiffs, said his clients would review their options, which he had previously told the court included seeking damages in the "hundreds of thousands of dollars."

Mr. Eisenberg said he believed his clients had proof of at least 202 days of surveillance. The law allows penalties of \$100 a day per violation per person, plus additional punitive damages.

Companies that conducted the wiretapping on the government's behalf are shielded from lawsuits under an update to the FISA law passed by Congress last year.