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# Judge Rejects Bush's View on Wiretaps

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WASHINGTON — A federal judge in California said Wednesday that the wiretapping law established by Congress was the “exclusive” means for the president to eavesdrop on Americans, and he rejected the government’s claim that the president’s constitutional authority as commander in chief trumped that law.

The judge, [Vaughn R. Walker](#), the chief judge for the Northern District of California, made his findings in a ruling on a lawsuit brought by an Oregon charity. The group says it has evidence of an illegal wiretap used against it by the [National Security Agency](#) under the secret surveillance program established by President Bush after the terrorist attacks of Sept. 11, 2001.

The Justice Department has tried for more than two years to kill the lawsuit, saying any surveillance of the charity or other entities was a “state secret” and citing the president’s constitutional power as commander in chief to order wiretaps without a warrant from a court under the agency’s program.

But Judge Walker, who was appointed to the bench by former President George Bush, rejected those central claims in his 56-page ruling. He said the rules for surveillance were clearly established by Congress in 1978 under the [Foreign Intelligence Surveillance Act](#), which requires the government to get a warrant from a secret court.

“Congress appears clearly to have intended to — and did — establish the exclusive means for foreign intelligence activities to be conducted,” the judge wrote. “Whatever power the executive may otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities and it limits the executive branch’s authority to assert the state secrets privilege in response to challenges to the legality of its foreign intelligence surveillance activities.”

Judge Walker's voice carries extra weight because all the lawsuits involving telephone companies that took part in the N.S.A. program have been consolidated and are being heard in his court.

Jon Eisenberg, a lawyer for Al-Haramain Islamic Foundation, the plaintiff in the case, said the legal issues Judge Walker's ruling raised were significant. "He's saying FISA makes the rules and the president is bound by those rules," Mr. Eisenberg said.

A Justice Department official said the department was reviewing the opinion late Wednesday and would consider its options.

Officials at Al-Haramain say they were mistakenly given a government document revealing the N.S.A. operation. The [Federal Bureau of Investigation](#) demanded the document back, and Judge Walker's ruling made it more difficult for Al-Haramain to use what it claims to have seen. But he refused to throw out the lawsuit, giving the charity's lawyers 30 days to restructure their claim. "We still have our foot in the door," Mr. Eisenberg said. "The clock is a minute to midnight, but we've been there before and survived."

The ruling comes as the Senate is overhauling the foreign intelligence law. The measure would reaffirm FISA as the exclusive means for the president to order wiretaps through court warrants, but it would also provide legal immunity to phone companies involved in the eavesdropping program. A vote could come Tuesday.

The immunity issue would not directly affect this lawsuit because Al-Haramain is suing the government, not the phone companies. But the nearly 40 other lawsuits against phone companies that Judge Walker is overseeing would almost certainly have to be dismissed if immunity is signed into law, legal analysts say.

