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## Judge finds Bush warrantless surveillance unconstitutional

By Liz Halloran

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A senior federal judge in Detroit ruled today that the Bush administration's warrantless surveillance program is illegal and unconstitutional and should be halted. The Justice Department immediately moved for a stay of Judge Anna Diggs Taylor's ruling—the first directly addressing the legality of the program—and the judge's ruling will not be enforced until a September 7 hearing on the stay. The administration is expected to appeal the decision to the Sixth Circuit Court of Appeals.

Civil liberties advocates hailed Taylor's decision as a historic rebuke of President Bush's broad assertions of executive authority in the post-9/11 war on terror. Taylor found that the National Security Agency's monitoring of telephone and E-mail communications not only violates U.S. citizens' right to privacy and free speech but also illegally bypasses required review by a special court set up 28 years ago to monitor domestic spying.

Taylor wrote that the president's actions, which the government says target a communication only when one end of it is foreign, "blatantly disregard" the Bill of Rights and contravene the concept of separation of powers.

"It is within the court's duty to ensure that power is never condensed into a single branch of government," Taylor wrote, quoting from the U.S. Supreme Court's 2004 decision in *Hamdi v. Rumsfeld*, which gave detainees at Guantánamo Bay detention camp the right to challenge their incarceration.

Anthony Romero, executive director of the American Civil Liberties Union, a lead plaintiff in the case, called the ruling "another nail in the coffin" of the administration's use of executive power to conduct controversial programs in the name of the war on terrorism. "This is a reaffirmation of the system of checks and balances," he said.

The administration, however, was quick to respond, calling the surveillance program a "critical tool that ensures we have in place an early warning system to detect and prevent a terrorist attack." In a hastily called afternoon press conference, Attorney General Alberto Gonzales said that "we continue to believe that the program is lawful." In a statement, Senate Majority Leader Bill Frist called for a "quick reversal of this unfortunate decision."

And career national security lawyer Bryan Cunningham, who filed an amicus brief for the [Washington Legal Foundation](#) supporting the administration's position, said the judge's order would shut down a government intelligence program without full examination of the evidence.

"This judge is obviously very upset about the program. She clearly wanted to shut it down," said Cunningham, who testified on the surveillance program before the Senate Judiciary Committee 2 1/2 weeks ago. "This legal work is so sloppy I wouldn't accept it from a first-year law student."

But civil libertarians were ecstatic, expressing hope that the decision would influence debate on Capitol Hill this fall over both what to do about the surveillance program and

how to address the Supreme Court's finding that the administration's military tribunals at Guantánamo Bay are unconstitutional.

"This decision very directly states that what has been going on is illegal and in violation of our Constitution," said Caroline Fredrickson, the ACLU's legislative director. "This will be a very important part of our debate in the fall."

*With Chitra Ragavan*

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