**2015-2016 Topicality File**

**Resolved: The United States federal government should substantially curtail its domestic surveillance.**

### Table of Contents

Table of Contents 1

1NC SHELLS 3

1NC: Agent Specification 4

1NC: Effects-Curtail Means Quantitative Reduction 5

1NC: Extra T-Domestic Means US Persons 6

1NC: Curtail is not Abolish 7

1NC: FISA is not Domestic 8

1NC: Data Collection is not Surveillance 9

DEFINITIONS 10

Definitions: Resolved 11

Definitions: United States 12

Definitions: Federal 14

Definitions: Substantially 15

Definitions: Substantial Requires Material Qualification 16

Definition: Curtail means Take Away 17

Definition: Curtail Means Reduce or Shorten 18

Definition: Curtail Means Limit Production 19

Definition: Curtail Must be Quantified 20

Definitions: Its 21

Definition: Surveillance is Analysis 22

Definition: Surveillance 23

Definition: Surveillance is Data Collection 24

Definition: Surveillance is not Data Collection 25

Definition: Domestic means Not Foreign 26

Definition: Domestic means Originating in the United States 27

Definition: Foreign Means Outside the US 28

Definition: Domestic Means US Persons 29

Definition: Foreign Means Not US Persons 30

A-Spec: Congress Must Do the Plan 31

A-Spec: Executive Can Act 33

A-Spec: Court is Normal Means 34

We Meet: FISA Affs are Topical 35

# 1NC SHELLS

### 1NC: Agent Specification

#### A. Interpretation and Violation—The plan doesn’t specify the agency of implementation, which is absolutely necessary to

Elmore 80, Prof. Public Affairs at University of Washington, PolySci Quarterly 79-80, p. 605, 1980

The emergence of implementation as a subject for policy analysis coincides closely with the discovery by policy analysts that decisions are not self-executing. Analysis of policy choices matter very little if the mechanism for implementing those choices is poorly understood in answering the question, "What percentage of the work of achieving a desired governmental action is done when the preferred analytic alternative has been identified?" Allison estimated that in the normal case, it was about 10 percent, leaving the remaining 90 percent in the realm of implementation.

#### B. Standards

1. No Solvency-our Elmore 80 evidence says that 90% of government action and policy analysis is implementation. Means that, at best, the 1AC can access 10% of its solvency—err neg on questions of solvency.
2. Ground—the plan’s silence on question of agency guts process DAs—like politics, spending, and inflation—and allows them to spike out of agent counterplans. This effectively moots the crux of negative policy debating. Reject them for their strategic ambiguity.
3. Moots topical debate—a key question in the domestic surveillance literature is the question of agency and enforcement—who has the ability to conduct and enforce domestic surveillance. The 1AC eschews this question, meaning they destroy central topical education.

#### C. A Spec is a voting issue—for reasons of ground, education, and clash—and because questions of implementation and enforcement are a pre-requisite to good debate about their case.

### 1NC: Effects-Curtail Means Quantitative Reduction

#### A. Interpretation—Curtail must create a prima facie quantitative reduction—courts agree

DC District Court 14 (Judge Beryl Howell, HUMANE SOCIETY OF THE UNITED STATES, et al.,¶ Plaintiffs,¶ v.¶ SALLY JEWELL, Secretary of the Interior, et¶ al.,1¶ Defendants,¶ v. STATE OF WISCONSIN et al.,¶ Civil Action No. 13-186 (BAH), <http://faculty.nelson.wisc.edu/treves/docs/Judge_Howell_19Dec2014.pdf> p 97)

Moreover, by defining “significant portion of a species’ range” in the final rule as referring only to a species’ “current range,” the FWS explicitly contradicts the conclusions by courts finding that “range” must include the “historical range” and the ESA’s legislative history. LEG. HIST. at 742 (H. Rep. 95-1625, from Committee on Merchant Marine and Fisheries, regarding ESAA) (“The term ‘range’ [in the ESA] is used in the general sense, and refers to the historical range of the species.”); Defenders of Wildlife, 258 F.3d at 1145. It also renders meaningless the word “curtailment” in 16 U.S.C. § 1533(a)(1)(A), since it is impossible to determine the “present . . . curtailment of [a species’] habitat or range” without knowing what the species’ historical range was prior to being curtailed.

or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

#### B. Violation: They don’t quantitatively reduce domestic surveillance compared to a pre-9/11 baseline—they only establish a policy that would create an effective deterrent to domestic surveillance

#### C. Standards

1. Effects standard destroys debate: Affirmatives can always win because the negative is unprepared. The topic becomes irrelevant.
2. Prima Facie: The case must be topical on its face. It cannot gain solvency by an effect of the plan.
3. Ground: Voting for effectually topical affs sets a precedence that legitimates the decision to run them. That explodes aff ground and neg research burden. This forces the negative to prepare for any kind of off-the-wall argument with incomprehensible links.
4. Mixing burdens: they force us to look to solvency to determine topicality—means they aren’t on face topical and you should reject them.

#### D. Voting issues—for the reasons above. And T is a gateway issue—only if they prove they are topical can the judge evaluate the merits of their case.

### 1NC: Extra T-Domestic Means US Persons

#### A. Interpretation:

1. Domestic excludes foreign action

Random House Dictionary 15 (Accessed on Dictionary.com Jul 17)

indigenous to or produced or made within one's own country; not foreign; native:

1. Under Section 702 of the FISA Amendment Act, foreign means persons outside of the US—means the plan has to reduce surveillance of people inside the US.

Donohue 15 (Laura, Prof of Law at Georgetown U Law Center, “Security vs. Freedom: Contemporary Controversies: The Thirty-Third Annual Federalist Society National Student Symposium on Law and Public Policy 2014: Article: Section 702 and the Collection of International Telephone and Internet Content,” 38 Harv. J.L. & Pub. Pol'y 117, Winter 2015, L/N)

FISA Section 702 empowers the Attorney General (AG) and the Director of National Intelligence (DNI) jointly to authorize, for up to one year, "the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information." n64 Five limitations apply. Acquisition may not intentionally (a) target a person known to be located in the United States; n65 (b) target an individual reasonably believed to be located outside the United States, if the actual purpose is to target an individual reasonably believed to be located in domestic bounds; n66 (c) target a U.S. person reasonably believed to be outside domestic bounds; n67 or (d) obtain wholly domestic communications. n68 In addition, (e), all acquisition must be conducted consistent with the Fourth Amendment. n69

#### B. Violation—the plan curtails surveillance on persons—including corporations—outside of the United States.

#### C. Standards

1. Extra Topical: the plan takes action outside of the resolution by curtailing surveillance on non U.S. persons—explodes Aff advantages and neg research burdens, moots the core controversy of the topic (e.g., spying on US citizens), and destroys any topical limits—extra topicality is an independent voting issue. And severance doesn’t check—the damage has been done.
2. Limits—they destroy fair limits on the topic, forcing negatives to have case research on both domestic *and* foreign surveillance which doubles our research burden.
3. Debatability—their interpretation kills clash. Foreign surveillance isn’t predictable given the word domestic, which means we have scant research against their xtra topical advantages. Means that we’ll have, at best, a shallow debate.

#### D. Voting issues—for the reasons above. And T is a gateway issue—only if they prove they are topical can the judge evaluate the merits of their case.

### 1NC: Curtail is not Abolish

#### A. Interpretation: Curtail is not abolish—means cut off, shorten, lessen, diminish, or reduce

Black’s Law Dictionary 1990

Curtail. To cut off the end or any part of; hence to ¶ shorten, abridge, diminish, lessen, or reduce; and term ¶ has no such meaning as abolish. State v. Edwards, 207 ¶ La. 506, 21 So.2d 624, 625.

#### B. Violation: The plan abolishes an existing program instead of curtailing domestic surveillance [explain]

#### C. Standards:

1. Bright Line: our interpretation clearly establishes a distinction between abolish and curtail—leaves little room for interpretation
2. Legal Context: our definition is pulled from a legal dictionary that draws definitions for U.S. Legal Code—means it’s the same definition the courts would apply if ruling on the constitutionality of the aff.
3. Fair limits—we create fair and reasonable limits by only excluding those affirmative cases that abolish an existing law.
4. Ground—all are negative arguments assume the aff reduces the size of federal surveillance—not an aff that abolishes existing legislation. That guts our disad links.

#### D. Voting issues—for the reasons above. And T is a gateway issue—only if they prove they are topical can the judge evaluate the merits of their case.

### 1NC: FISA is not Domestic

#### **A. Interpretation**: Domestic excludes foreign action

Random House Dictionary 15 (Accessed on Dictionary.com Jul 17)

indigenous to or produced or made within one's own country; not foreign; native:

B. Violation: FISA is a foreign surveillance program—it excludes domestic surveillance and focuses on persons who are not U.S. citizens.

Donohue 15 (Laura, Prof of Law at Georgetown U Law Center, “Security vs. Freedom: Contemporary Controversies: The Thirty-Third Annual Federalist Society National Student Symposium on Law and Public Policy 2014: Article: Section 702 and the Collection of International Telephone and Internet Content,” 38 Harv. J.L. & Pub. Pol'y 117, Winter 2015, L/N)

FISA Section 702 empowers the Attorney General (AG) and the Director of National Intelligence (DNI) jointly to authorize, for up to one year, "the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information." n64 Five limitations apply. Acquisition may not intentionally (a) target a person known to be located in the United States; n65 (b) target an individual reasonably believed to be located outside the United States, if the actual purpose is to target an individual reasonably believed to be located in domestic bounds; n66 (c) target a U.S. person reasonably believed to be outside domestic bounds; n67 or (d) obtain wholly domestic communications. n68 In addition, (e), all acquisition must be conducted consistent with the Fourth Amendment. n69

#### C. Standards

1. Extra Topical: the plan takes action outside of the resolution by curtailing surveillance on non U.S. persons—explodes Aff advantages and neg research burdens, moots the core controversy of the topic (e.g., spying on US citizens), and destroys any topical limits—extra topicality is an independent voting issue. And severance doesn’t check—the damage has been done.
2. Limits—they destroy fair limits on the topic, forcing negatives to have case research on both domestic *and* foreign surveillance which doubles our research burden.
3. Debatability—their interpretation kills clash. Foreign surveillance isn’t predictable given the word domestic, which means we have scant research against their xtra topical advantages. Means that we’ll have, at best, a shallow debate.

#### D. Voting issues—for the reasons above. And T is a gateway issue—only if they prove they are topical can the judge evaluate the merits of their case.

### 1NC: Data Collection is not Surveillance

#### A. Interpretation: Data collection is not surveillance—data collection is the passive acquisition of data whereas surveillance presupposes calling up files and reading them.

Gellman 2014 (Barton, Pulitzer Prize winning national reporter at the Washington Post, “Obama’s restrictions on NSA surveillance rely on narrow definition of spying,” *The* *Washington Post*, January 17, 2014, https://www.washingtonpost.com/world/national-security/obamas-restrictions-on-nsa-surveillance-rely-on-narrow-definition-of-spying/2014/01/17/2478cc02-7fcb-11e3-93c1-0e888170b723\_story.html)

President Obama said Friday, in his first major speech on electronic surveillance, that “the United States is not spying on ordinary people who don’t threaten our national security.”¶ Obama placed restrictions on access to domestic phone records collected by the National Security Agency, but the changes he announced will allow it to continue — or expand — the collection of personal data from billions of people around the world, Americans and foreign citizens alike.¶ Obama squares that circle with an unusually narrow definition of “spying.” It does not include the ingestion of tens of trillions of records about the telephone calls, e-mails, locations and relationships of people for whom there is no suspicion of relevance to any threat.¶ In his speech, and an accompanying policy directive, Obama described principles for “restricting the use of this information” — but not for gathering less of it.¶ Alongside the invocation of privacy and restraint, Obama gave his plainest endorsement yet of “bulk collection,” a term he used more than once and authorized explicitly in Presidential Policy Directive 28. In a footnote, the directive defined the term to mean high-volume collection “without the use of discriminants.”¶ That is perhaps the central feature of “the golden age of signals intelligence,” which the NSA celebrates in top-secret documents leaked by former contractor Edward Snowden. Obama for the first time put his own imprimatur on a collection philosophy that one of those documents summarized this way: “Order one of everything from the menu.”¶ As digital communications have multiplied, and NSA capabilities with them, the agency has shifted resources from surveillance of individual targets to the acquisition of communications on a planetary scale. That shift has fed the appetite of Big Data tools, which are designed to find unseen patterns and make connections that NSA analysts don’t know to look for.¶ “It’s noteworthy that the president addressed only the bulk collection of call records, but not any of the other bulk collection programs revealed by the media,” said Alexander Abdo, an attorney with the ACLU’s national security project. “That is a glaring omission. The president needs to embrace structural reforms that will protect us from all forms of bulk collection and that will make future overreach less likely.”¶ In principle, these tools have the potential to reveal unknown associates of known foreign targets, although the intelligence community has struggled to offer examples. But they rely, by definition and intent, on the construction of vast databases filled almost entirely with innocent communications. Obama’s view, like the NSA’s, is that there is no intrusion on privacy until someone calls up the files and reads them.

#### B. Violation: the plan curtails domestic data collection—not surveillance [explain]

#### C. Standards

1. Field context—prefer our interpretation of the resolution because it comes from a journalistic expert who is discussing the legal interpretation of surveillance by the NSA and the current administration.
2. Fair limits—we create fair and reasonable limits by only excluding those affirmative cases that curtail data collection without addressing NSA analysis and interpretation.
3. Ground—all our DA, CP, and case arguments assume that the NSA analyzes data. Absent analysis, we can’t win a link to our Terror DA or our Offsets CP, means we have no core neg args.

#### D. Voting issues—for the reasons above. And T is a gateway issue—only if they prove they are topical can the judge evaluate the merits of their case.

# DEFINITIONS

### Definitions: Resolved

#### **Resolved means fixed in purpose**

**Collins English Dictionary 98**

(General Consultant: JM Sinclair, HarperCollins, pg 1568)

Resolved: fixed in purpose or intention; determined

#### Resolved means fixed in purpose

The Chambers Dictionary, 2006

Chambers Harrap Publishers Ltd. Page 1300

Resolved –adj.  fixed in purpose

#### Resolved means to make a decision

**Cambridge Dictionary, 2000**

 Cambridge University Press p.728

Resolve – v. to make a determined decision; n. strong determination

### Definitions: United States

#### United States is a confederacy of states

Oxford English Dictionary Online

1. The proper name or distinctive title of a confederacy, federation, or union of States.¶ In later use freq. construed as a singular.

#### United States is the country geographically occupying the 50 states it encompasses.

**American Heritage Dictionary, 2012.** (http://ahdictionary.com/word/search.html?q=united+states, last modified May 23, 2012)

**A country of central and northwest North America with coastlines on the Atlantic and Pacific Oceans. It includes the noncontiguous states of Alaska and Hawaii and various island territories in the Caribbean Sea and Pacific Ocean. The area now occupied by the contiguous 48 states was originally inhabited by numerous Native American peoples** and was colonized beginning in the 1500s by Spain, France, the Netherlands, and England. Great Britain eventually controlled most of the Atlantic coast and, after the French and Indian Wars (1754-1763), the Northwest Territory and Canada.

#### **United States is the Republic of North America**

Oxford English Dictionary Online

b. The Republic of North America. Abbrev. U.S. or U.S.A. (Cf. state n. 29a, 29b, and United Colonies united adj. Special uses.)

#### **United States is the language spoken in the United States of North America**

Oxford English Dictionary Online

2. The form of English spoken in the United States of North America or regarded as distinctly American. to talk United States , to use strong language, to express oneself forcibly.

#### “United” means to be in harmony

**Dictionary.com, 2012**

By Dictionary.com, online dictionary, 2012, "United” http://dictionary.reference.com/browse/United?s=t

1. made into or caused to act as a single entity: a united front. 2. formed or produced by the uniting of things or persons: a united effort. 3. agreed; in harmony.

#### “State” is the condition of a thing considering its circumstances and attributes

**Dictionary.com, 2012**

By Dictionary.com, online dictionary, 2012, "States” http://dictionary.reference.com/browse/States?s=t

1. the condition of a person or thing, as with respect to circumstances or attributes: a state of health. 2. the condition of matter with respect to structure, form, constitution, phase, or the like: water in a gaseous state. 3. status, rank, or position in life; station: He dresses in a manner befitting his state. 4. the style of living befitting a person of wealth and high rank: to travel in state. 5. a particular condition of mind or feeling: to be in an excited state.

#### **The United States is the fifty states and territories**

Business Dicitonary.com

http://www.businessdictionary.com/definition/United-States.html

Fifty federated states plus District Of Columbia, American Samoa, Guam, Johnston Island, Midway and Wake Islands Northern Mariana Islands, and US Virgin Islands.

#### "United States" means the territory over which the sovereign nation of the "United States" exercises sovereign power

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

the territory over which this sovereign nation called the “United States” exercises sovereign power

#### United States includes territories and possessions

US Code 7 (6 USCS § 1111, lexis)

 (6) United states. The term "United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

#### The United States as a whole is comprised of territories in addition to the states.

**Wilson Environmental Management 8** (“SPCC Glossary of Terms,” Wilson Environmental Management [helps prevent and take care of oil spills], 2008, http://wilsonemi.com/spcc\_glossary\_of\_terms.htm)

United States: the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

### **Definitions: Federal**

#### **Federal is a political covenant**

Oxford English Dictionary Online

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

#### **Federal describes a strong centralized government**

Oxford English Dictionary Online

a. Favouring the establishment of a strong federal, i.e. central government.

### **Definitions: Substantially**

#### **Substantially means in physical substance**

Oxford English Dictionary Online

a. In substance; in one's substantial nature or existence; as a substantial thing or being. Hence: physically, corporeally.

#### Substantially means to a great extent

**WordNet**, wordnet.princeton.edu, 20**06**.

S: (adv) well, considerably, substantially (to a great extent or degree) *"I'm afraid the film was well over budget"; "painting the room white made it seem considerably (or substantially) larger"; "the house has fallen considerably in value"; "the price went up substantially"*

**Substantially means to a great extent or considerably**

**Wordnet, 03 (Princeton University, version 2.0, http://dictionary.reference.com/browse/substantially)**

**substantially**adv 1: **to a great extent or degree**; "I'm afraid the film was well over budget"; "painting the room white made it seem considerably (or substantially) larger"; "the house has fallen considerably in value"; "the price went up substantially" [syn: well, considerably] 2: in a strong substantial way; "the house was substantially built"

#### **Substantially means complete**

Oxford English Dictionary Online

2. In a sound or solid manner; on a solid or firm foundation; effectively, thoroughly, properly, soundly.

#### **Substantially means to a great extent or degree**

Oxford English Dictionary Online

3. Fully, amply; to a great extent or degree; considerably, significantly, much.

#### **Substantially refers to all essential characteristics**

Oxford English Dictionary Online

5. In all essential characters or features; in essentials, to all intents and purposes, in the main.

#### Substantially means without material qualifications

Black’s Law Dictionary 1991 (p. 1024)

Substantially - means essentially; without material qualification.

### Definitions: Substantial Requires Material Qualification

#### Substantial increase is at least 30%

Bryson, 2001, Circuit Judge, US Court of Appeals Federal Circuit

(265 F.3d 1371; 2001 U.S. App. LEXIS 20590; 60 U.S.P.Q.2D (BNA) 1272, 9/19, lexis)

The term "to increase substantially" in claim 1 of the '705 patent refers to the claimed increase achieved by the invention in the relative productivity of the catalyst used in the Fischer-Tropsch process. The specification defines "substantially increased" catalyst activity or productivity as an increase of at least about 30%, more preferably an increase of about 50%, and still more preferably an increase of about 75%. '705 patent, col. 1, ll. 59-63. Based on that language from the specification, the trial court found, and the parties agree, that the term "to increase substantially" requires an increase of at least about 30% in the relative productivity of the catalyst. Notwithstanding that numerical boundary, the trial court found the phrase "to increase substantially" to be indefinite because the court concluded that there were two possible ways to calculate the increase in productivity, the subtraction method and the division method, and the patent did not make clear which of those ways was used in the claim.

#### Substantially is at least 90%

Words and Phrases, 2005 (v. 40B, p. 329)

N.H. 1949. The word “substantially” as used in provision of Unemployment Compensation Act that experience rating of an employer may be transferred to an employing unit which acquires the organization, trade, or business, or “substantially” all of the assets thereof, is an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but cannot be less than 90 per cent in the ordinary situation. R.L. c 218, § 6, subd. F, as added by Laws 1945, c.138, § 16.

#### Substantial increase is 50 to 100 percent

UNEP 2 ( United nations environmental program, www.unep.org/geo/geo3/english/584.htm, October 1 2002, DA6/21/11, OST)

Change in selected pressures on natural ecosystems 2002-32. For the ecosystem quality component, see the explanation of the Natural Capital Index. Values for the cumulative pressures were derived as described under Natural Capital Index. The maps show the relative increase or decrease in pressure between 2002 and 2032. 'No change' means less than 10 per cent change in pressure over the scenario period; small increase or decrease means between 10 and 50 per cent change; substantial increase or decrease means 50 to 100 per cent change; strong increase means more than doubling of pressure. Areas which switch between natural and domesticated land uses are recorded separately.

### Definition: Curtail means Take Away

#### Curtail means taking away some part of what exists

Merriam-Webster Dictionary Online, 2015

transitive verb¶ : to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

### Definition: Curtail Means Reduce or Shorten

#### Curtail means to cut short

OED Online, Accessed 2015

a. To cut short in linear dimension; to shorten by cutting off a part.¶ 1580 J. Lyly Euphues & his Eng. (new ed.) f. 53v, Thou hast rackt me, & curtald me, somtimes I was too long, somtimes too short.¶ 1596 T. Nashe Haue with you to Saffron-Walden Ep. Ded. sig. C3, If it be too long, thou hast a combe and a paire of scissers to curtall it.¶ 1609 S. Rowlands Famous Hist. Guy Earle of Warwick 38 And Estellard I cur-tail'd by the knees.¶ 1674 S. Vincent Young Gallant's Acad. 39 Let the three Huswively Spinsters of Destiny rather curtal the thred of thy life.¶ 1787 ‘G. Gambado’ Acad. Horsemen 11, I..firmly believe, that ten men are hanged for every inch curtailed in a Judge's wig.¶ 1827 H. Steuart Planter's Guide (1828) 71 To lop and deface them..and..to curtail the roots.¶ (Hide quotations)

####  Curtail means limit

28 US Code SS 3003

 (b) Effect on Rights of the United States.— This chapter shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law—¶ (1) to collect taxes or to collect any other amount collectible in the same manner as a tax;¶ (2) to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case;¶ (3) to appoint or seek the appointment of a receiver; or¶ (4) to enforce a security agreement.

#### Curtail means reduce or shorten in extent

OED Online, Accessed 2015

3. To shorten in duration or extent; to cut down; to abbreviate, abridge, diminish, or reduce, in extent or amount.¶ 1589 ‘Pasquill of England’ Returne of Pasquill sig. Dv, With what face dares anie politique..curtoll the maintenance of the Church?¶ 1591 J. Lyly Endimion v. ii, I will by peece-meele curtall my affections towards Dipsas.¶ a1616 Shakespeare Cymbeline (1623) ii. i. 11 When a Gentleman is dispos'd to sweare: it is not for any standers by to curtall his oathes.¶ 1663 S. Butler Hudibras: First Pt. i. iii. 208 Yet I'd be loth my dayes to curtal [rhyme mortal].¶ 1781 G. Morris in J. Sparks Life G. Morris (1832) I. 234 Greatly to cur~tail salaries is a false economy.¶ 1843 J. W. Carlyle Lett. I. 195 His family's slumbers were probably curtailed.¶ 1856 J. A. Froude Hist. Eng. I. iii. 244 The jurisdiction of the spiritual courts was not immediately curtailed.¶ (Hide quotations)

#### Curtail means to shorten in respect

OED Online, Accessed 2015

4. to curtail (a person, etc.) of : to dock him of some part of his property, to deprive or rob him of something that he has enjoyed or has a right to. So to curtail in , to shorten in respect of.¶ 1581 W. Lambarde Eirenarcha (1586) iii. iv. 369 Not altogether beheading them [Statutes] of their preambles, Nor any whit curtailing them of their wordes.¶ 1597 Shakespeare Richard III i. i. 18, I that am curtaild of this faire proportion.¶ 1642 D. Rogers Naaman 396 How doe we curtall him of his ordinary dues.¶ a1719 J. Addison in Wks. (c1888) IV. 367 Fact..had taken a wrong name, having curtailed it of three letters; for that his name was not Fact but Faction.¶ 1830 I. D'Israeli Comm. Life Charles I III. vi. 114 His beard curtailed of ancient dimensions, he wore peaked.¶ 1856 P. E. Dove Logic Christian Faith v. i. §2. 279 God is there..curtailed in no attribute.¶ (Hide quotations)¶ ¶ Thesaurus »

### Definition: Curtail Means Limit Production

#### Curtail means interfere with production

Clarke 1919 (John Hessin, Associate Justice, US Supreme Court, 250 U.S. 616 (1919) ABRAMS ET AL.¶ v.¶ UNITED STATES.¶ No. 316.¶ Supreme Court of United States.¶ Argued October 21, 22, 1919.¶ Decided November 10, 1919., https://scholar.google.com/scholar\_case?case=14321466231676186426&hl=en&as\_sdt=6&as\_vis=1&oi=scholarr)

These excerpts sufficiently show, that while the immediate occasion for this particular outbreak of lawlessness, on the part of the defendant alien anarchists, may have been resentment caused by our Government sending troops into Russia as a strategic operation against the Germans on the eastern battle front, yet the plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing and if possible defeating the military plans of the Government in Europe. A technical distinction may perhaps be taken between disloyal and abusive language applied to the form of our government or language intended to bring the form 624\*624 of our government into contempt and disrepute, and language of like character and intended to produce like results directed against the President and Congress, the agencies through which that form of government must function in time of war. But it is not necessary to a decision of this case to consider whether such distinction is vital or merely formal, for the language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war, as the third count runs, and, the defendants, in terms, plainly urged and advocated a resort to a general strike of workers in ammunition factories for the purpose of curtailing the production of ordnance and munitions necessary and essential to the prosecution of the war as is charged in the fourth count. Thus it is clear not only that some evidence but that much persuasive evidence was before the jury tending to prove that the defendants were guilty as charged in both the third and fourth counts of the indictment and under the long established rule of law hereinbefore stated the judgment of the District Court must be Affirmed.

### Definition: Curtail Must be Quantified

#### It’s impossible to curtail something if the prior historical range is not specified

DC District Court 14 (Judge Beryl Howell, HUMANE SOCIETY OF THE UNITED STATES, et al.,¶ Plaintiffs,¶ v.¶ SALLY JEWELL, Secretary of the Interior, et¶ al.,1¶ Defendants,¶ v. STATE OF WISCONSIN et al.,¶ Civil Action No. 13-186 (BAH), <http://faculty.nelson.wisc.edu/treves/docs/Judge_Howell_19Dec2014.pdf> p 97)

Moreover, by defining “significant portion of a species’ range” in the final rule as referring only to a species’ “current range,” the FWS explicitly contradicts the conclusions by courts finding that “range” must include the “historical range” and the ESA’s legislative history. LEG. HIST. at 742 (H. Rep. 95-1625, from Committee on Merchant Marine and Fisheries, regarding ESAA) (“The term ‘range’ [in the ESA] is used in the general sense, and refers to the historical range of the species.”); Defenders of Wildlife, 258 F.3d at 1145. It also renders meaningless the word “curtailment” in 16 U.S.C. § 1533(a)(1)(A), since it is impossible to determine the “present . . . curtailment of [a species’] habitat or range” without knowing what the species’ historical range was prior to being curtailed.

### **Definitions: Its**

#### **Its is a nominal possessive pronoun**

English Language and Usage 2012 (http://english.stackexchange.com/questions/76337/its-as-a-possessive-pronoun)

Its is a possessive noun. Since its can be both determiner possessive pronoun and nominal possessive pronoun, an example of its as determiner possessive pronoun would be:

#### **Its is a possessive noun**

Oxford English Dictionary Online

a. Modifying a noun indicating something that is possessed by or an attribute of a thing or an animate being referred to as it, or a verbal noun with which its is in subjective or objective relation.

#### **Its is a possessive pronoun that means belonging or relating to it**

Oxford English Dictionary Online

As possessive pronoun: its one, its ones; that or those belonging or relating to it. Cf. his pron.1 rare.

### Definition: Surveillance is Analysis

#### Surveillance presupposes the analysis and interpretation of data

WHO 2015 (World Health Organization, Health Topics, “Public Health Surveillance,” *WHO Health Topics* http://www.who.int/topics/public\_health\_surveillance/en/)

Public health surveillance is the continuous, systematic collection, analysis and interpretation of health-related data needed for the planning, implementation, and evaluation of public health practice. Such surveillance can: serve as an early warning system for impending public health emergencies; document the impact of an intervention, or track progress towards specified goals; and monitor and clarify the epidemiology of health problems, to allow priorities to be set and to inform public health policy and strategies.

#### Surveillance excludes communications that are acquired but are not processed into an intelligible form.

Electronic Frontier Foundation 2015 (https://www.eff.org/nsa-spying/wordgames)

In public discussions of the Program, the government appears to exclude from the term “surveillance” instances where communications are acquired but subsequently “minimized,” despite the broader legal definition of “electronic surveillance” under applicable law. For example, a statement by then White House press secretary Tony Snow displays this irregular usage:¶ MR. SNOW:...the target in these conversations: a foreign individual not on US soil. If that person is talking to a US citizen, it does not mean that you’re sitting around doing surveillance on the US citizen. Furthermore, if it is a—¶ Q: But if you’re surveilling a phone call, you’re not just listening to the foreigner’s side of the call, right?¶ MR. SNOW: Well, yes, but on the other hand, if—you probably understand that if somebody is just calling in and asking how his socks are at the dry cleaners, all of that personal information is combed out and, in fact, the US citizen basically—you’re not conducting surveillance.¶ "Collection" or “Collect”¶ Normally, one would think that a communication that has been intercepted and stored in a government database as “collected.” But the government’s definition of what it means to “collect” intelligence information is quite different than its plain meaning.¶ Under Department of Defense regulations, information is considered to be “collected” only after it has been “received for use by an employee of a DoD intelligence component,” and “data acquired by electronic means is ‘collected’ only when it has been processed into intelligible form.”¶ In other words, the NSA can intercept and store communications in its data base, then have an algorithm search them for key words and analyze the meta data without ever considering the communications “collected.”

### Definition: Surveillance

#### Surveillance makes visible identities or behaviors of people to agencies

Lyon 2002 (David, Department of Sociology, Queen’s University Ontario Canada, “Editorial: Surveillance Studies: Understanding Visibility, Mobility, and the Phenetic Fix,” *Surveillance and Society* 1(1): 1-7)

Surveillance tries to make visible the identities or the behaviours of people of interest to the agency in question. The Personal Identification Number (PIN) needed for use with a credit card verifies that the cardholder is who she appears to be, and the public Closed Circuit Television (CCTV) camera aims to note the suspicious or unusual behaviour of those walking down the street (Norris and Armstrong, 1999; McCahill, 2002). In the former case, the process is automated, whereas in the latter, operators normally are employed to keep an eye on the screens. Such forms of visibility were new in the twentieth century, for although people have for centuries had to identify themselves or have been under observation, this has usually been for highly specific, limited, purposes and at particular times. Surveillance of all became routine during the twentieth century. Visibility became a social and a political issue in a new way.

### Definition: Surveillance is Data Collection

#### Surveillance means the acquisition of electronic, mechanical, or other surveillance device—data collection is surveillance.

Foreign Intelligence Surveillance Act of 1978 (50 US Code § 1801, https://www.law.cornell.edu/uscode/text/50/1801).

(f) “Electronic surveillance” means—¶ (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;¶ (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511 (2)(i) of title 18;¶ (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or¶ (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

### Definition: Surveillance is not Data Collection

#### Surveillance is not data collection—it’s actively listening in on electronic data.

Snow, 2007 (Tony, 26th White House Press Secretary, White House Press Briefing of August 8, 2007, http://georgewbush-whitehouse.archives.gov/news/releases/2007/08/20070808-4.html)

Q But if you're surveilling a phone call, you're not just listening to the foreigner's side of the call, right?¶ MR. SNOW: Well, yes, but on the other hand, if -- you probably understand that if somebody is just calling in and asking how his socks are at the dry cleaners, all of that personal information is combed out and, in fact, the U.S. citizen basically -- you're not conducting surveillance.¶ If, on the other hand, they're talking about blowing up subways in New York, what happens is then our officials would go to the FISA court, seek a warrant and listen in. But the idea that somehow this is an attempt to sit around and listen in on American citizens -- I can think of nothing less efficient than sitting around and saying, I want to listen to Joe here, but I've got to wait until somebody abroad who belongs to al Qaeda gives him a phone call.

#### Data Collection is not surveillance

Jaffer and Kaufman 2013 (Jameel, Depty legal dir at ACLU, and Brett Max, fellow at ACLU National Security Project, “How to Decode the True Meaning of What NSA Officials Say,” *Slate*, July 31, http://www.slate.com/articles/news\_and\_politics/politics/2013/07/nsa\_lexicon\_how\_james\_clapper\_and\_other\_u\_s\_officials\_mislead\_the\_american.html)

Surveillance. Every time we pick up the phone, the NSA makes a note of whom we spoke to, when we spoke to him, and for how long—and it’s been doing this for seven years. After the call-tracking program was exposed, few people thought twice about attaching the label “surveillance” to it. Government officials, though, have rejected the term, pointing out that this particular program doesn’t involve the NSA actually listening to phone calls—just keeping track of them. Their crabbed definition of “surveillance” allows them to claim that the NSA isn’t engaged in surveillance even when it quite plainly is.

### Definition: Domestic means Not Foreign

#### Domestic means not foreign

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domestic ¶ Also found in: Dictionary/thesaurus, Medical, Encyclopedia, Wikipedia.¶ Domestic¶ Pertaining to the house or home. A person employed by a household to perform various servient duties. Any household servant, such as a maid or butler. Relating to a place of birth, origin, or domicile.¶ That which is domestic is related to household uses. A domestic animal is one that is sufficiently tame to live with a family, such as a dog or cat, or one that can be used to contribute to a family's support, such as a cow, chicken, or horse. When something is domesticated, it is converted to domestic use, as in the case of a wild animal that is tamed.¶ Domestic relations are relationships between various family members, such as a Husband and Wife, that are regulated by Family Law.¶ A domestic corporation of a particular state is one that has been organized and chartered in that state as opposed to a foreign corporation, which has been incorporated in another state or territory. In tax law, a domestic corporation is one that has originated in any U.S. state or territory.¶ Domestic products are goods that are manufactured within a particular territory rather than imported from outside that territory.

### Definition: Domestic means Originating in the United States

#### Domestic means created or organized under the law of the United States

26 US Code 7701

(4) Domestic

The term “domestic” when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

### Definition: Foreign Means Outside the US

#### Under Section 702 of the FISA Amendment Act, domestic surveillance means targeting persons within the United States

Donohue 15 (Laura, Prof of Law at Georgetown U Law Center, “Security vs. Freedom: Contemporary Controversies: The Thirty-Third Annual Federalist Society National Student Symposium on Law and Public Policy 2014: Article: Section 702 and the Collection of International Telephone and Internet Content,” 38 Harv. J.L. & Pub. Pol'y 117, Winter 2015, L/N)

FISA Section 702 empowers the Attorney General (AG) and the Director of National Intelligence (DNI) jointly to authorize, for up to one year, "the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information." n64 Five limitations apply. Acquisition may not intentionally (a) target a person known to be located in the United States; n65 (b) target an individual reasonably believed to be located outside the United States, if the actual purpose is to target an individual reasonably believed to be located in domestic bounds; n66 (c) target a U.S. person reasonably believed to be outside domestic bounds; n67 or (d) obtain wholly domestic communications. n68 In addition, (e), all acquisition must be conducted consistent with the Fourth Amendment. n69

### Definition: Domestic Means US Persons

#### Domestic surveillance is any activity that monitors U.S. Citizens

Sinha 13 (G. Alex, Aryeh Neier Fellow, Human Rights Watch and the American Civil Liberties Union, “ARTICLE: NSA SURVEILLANCE SINCE 9/11 AND THE HUMAN RIGHT TO PRIVACY,” 59 Loy. L. Rev. 861, L/N)

Although the foregoing list does not provide an exhaustive account of the domestic intelligence activities that were later disclosed to the public - indeed, there are many more - it provides a clear and representative picture of the sort of activities that arose before FISA passed into law. These programs remained more or less secret until the mid-1970s, but public awareness of domestic surveillance issues begin to grow in 1970, when Christopher Pyle revealed that while serving in the Army, he learned of a military program designed to keep tabs on "politically suspect" Americans (using some 1,500 plainclothes Army intelligence agents to monitor all demonstrations in the United States that involved twenty or more people). n45 Senator Sam Ervin (a Democrat representing North Carolina) began investigating that program, which allegedly started under President Johnson; however, uncooperative Army leadership apparently stymied Ervin's inquiries for more information. n46

### Definition: Foreign Means Not US Persons

#### Foreign means not composed of US Persons

FISA 1978 (50 US Code SS 1801 https://www.law.cornell.edu/uscode/text/50/1801)

As used in this subchapter:¶ (a) “Foreign power” means—¶ (1) a foreign government or any component thereof, whether or not recognized by the United States;¶ (2) a faction of a foreign nation or nations, not substantially composed of United States persons;¶ (3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;¶ (4) a group engaged in international terrorism or activities in preparation therefor;¶ (5) a foreign-based political organization, not substantially composed of United States persons;¶ (6) an entity that is directed and controlled by a foreign government or governments; or¶ (7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.

#### Foreign means anyone who is not a US Person

FISA 1978 (50 US Code SS 1801 https://www.law.cornell.edu/uscode/text/50/1801)

(b) “Agent of a foreign power” means—¶ (1) any person other than a United States person, who—¶ (A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;¶ (B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person’s presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;¶ (C) engages in international terrorism or activities in preparation therefore;¶ (D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or¶ (E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor for or on behalf of a foreign power; or¶ (2) any person who—¶ (A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;¶ (B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;¶ (C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;¶ (D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or¶ (E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

### A-Spec: Congress Must Do the Plan

#### Congress must promulgate domestic surveillance legislation—courts and agencies can only enforce the plan

Sugiyama and Perry 2006 (Tara M., JD U of Mich Law School, and Marissa, Managing Ed. Mich J of L Reform, “The NSA Domestic Surveillance Program: An Analysis of Congressional Oversight During an Era of One-Party Rule,” No 40: p. 149, LN)

Alternatively, members of Congress may follow the "fire-alarm" model of congressional oversight. n15 Under this more cost-effective **[\*152]** model, in which members of Congress avoid spending time investigating actions of the executive branch that do not cause harm, Congress establishes procedures to respond to complaints of interest groups and then waits for fire alarms to sound. n16 Once an interest group brings an issue - such as the legality of the NSA domestic surveillance program - to the fore, Congress decides whether to investigate the fire alarm. n17 Over time, members of Congress theoretically learn to decipher which fire alarms deserve further attention. n18 After investigating the executive branch, Congress may then charge it with violating the will of Congress and seek remedies from agencies, courts, and Congress. n19

#### **FISA courts check executive surveillance—the FISA act proves that Congress must promulgate new surveillance legislation**

Sugiyama and Perry 2006 (Tara M., JD U of Mich Law School, and Marissa, Managing Ed. Mich J of L Reform, “The NSA Domestic Surveillance Program: An Analysis of Congressional Oversight During an Era of One-Party Rule,” No 40: p. 149, LN)

Congress enacted the Foreign Intelligence Surveillance Act of 1978 (FISA) n23 principally in response to covert intelligence gathering activities conducted during the Nixon administration. As the 1970s unfolded, the continuing controversy over the war in Vietnam and Watergate led to renewed oversight by Congress, and ultimately to President Richard Nixon's resignation. For example, disclosures that the U.S. Army had been spying on U.S. citizens, together with later reports of covert and illegal CIA activities, prompted a congressional investigation led by Senator Frank Church. n24 The Church Committee published a series of reports in 1975 and 1976, detailing the operations of U.S. intelligence agencies. One of those reports, published in 1976, revealed that the NSA had been spying on U.S. citizens. n25FISA was designed to limit executive power by proscribing practices by which the administration could conduct surveillance. Specifically, the administration can conduct electronic surveillance within the context of foreign intelligence gathering only if the surveillance meets certain conditions. n26 The Act permits warrantless **[\*154]** surveillance for a period up to one year if it is for the purpose of foreign intelligence gathering and has a minimal likelihood of acquiring information about U.S. citizens. n27 Under FISA, the President authorizes warrantless surveillance through the Attorney General, and the Attorney General certifies the qualifying conditions to the FISA court. n28 In an emergency, the Act permits federal agencies to conduct surveillance for up to seventy-two hours before they must notify the FISA court and seek a search warrant. n29 In times of war, FISA authorizes the President to engage in warrantless wiretaps for up to fifteen days, though the extension of his authority in that instance depends on congressional approval. n30

#### USA PATRIOT Act proves—the Congress must modify the regulatory framework for domestic surveillance

Sugiyama and Perry 2006 (Tara M., JD U of Mich Law School, and Marissa, Managing Ed. Mich J of L Reform, “The NSA Domestic Surveillance Program: An Analysis of Congressional Oversight During an Era of One-Party Rule,” No 40: p. 149, LN)

In response to the terrorist attacks, President Bush signed Public Law 107-56, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) on October 26, 2001. n38 The Act includes several significant amendments to FISA. n39 First, the amendments approve searches where criminal prosecution of individuals is the primary purpose of the search, so long as a significant intelligence purpose remains. n40 These amendments represent a fundamental shift in focus from FISA as a tool for surveillance to FISA as a tool for law enforcement. The government, therefore, need no longer cloak its prosecutorial interests in the guise of foreign intelligence; the bar for initiating surveillance is much lower. Second, the Act increases the number of judges on the FISA court from seven to eleven. n41 Third, the Act expands FISA's coverage with respect to certain data gathering devices and business records. n42 Finally, the Act also amends FISA to include a private right of action for private citizens who are illegally monitored. n43

### A-Spec: Executive Can Act

#### Bush-era executive orders prove that the president can expand domestic surveillance

Sugiyama and Perry 2006 (Tara M., JD U of Mich Law School, and Marissa, Managing Ed. Mich J of L Reform, “The NSA Domestic Surveillance Program: An Analysis of Congressional Oversight During an Era of One-Party Rule,” No 40: p. 149, LN)

Within months of the attacks, the President also issued an executive order authorizing the NSA to conduct warrantless surveillance of American citizens and others within the United States. n44 Although details of the program are sparse, the initial report was staggering - 500 U.S. citizens and between 5,000 and 7,000 non-citizens were being monitored by the NSA at any given time with no judicial approval. n45 The obvious question for many is whether or not President Bush has the authority to authorize **[\*156]** **domestic** **surveillance** without a warrant, and if he does, what limits, if any, exist on that power.

### A-Spec: Court is Normal Means

#### Empirically, the Court has deferred to the legislature on questions of domestic surveillance. Means congress is the normal means actor for the plan.

Sugiyama and Perry 2006 (Tara M., JD U of Mich Law School, and Marissa, Managing Ed. Mich J of L Reform, “The NSA Domestic Surveillance Program: An Analysis of Congressional Oversight During an Era of One-Party Rule,” No 40: p. 149, LN)

Both FISA and the USA PATRIOT Act must be viewed against a backdrop of judicial silence with respect to executive power to "spy" on U.S. citizens. The Supreme Court has never squarely addressed the question of whether, under the Fourth Amendment's prohibition on unreasonable search and seizure, electronic surveillance of people within the United States is constitutional for the purposes espoused by President Bush. n46 Between the 1920s and 1967, conversations were not considered protected under the Fourth Amendment, and thus, wiretapping was not considered a search and seizure. n47 In 1967, however, the Court in Berger v. New York n48 changed course and extended Fourth Amendment protections to conversations when it overruled a New York electronic surveillance statute it deemed a "blanket grant of permission to eavesdrop ... without adequate supervision or protective procedures." n49 The Court in Berger declined to rule on whether the Constitution permits a "national security" exemption, noting that the decision to allow such an exemption should be made by "legislative bodies" because there is no express prohibition in the Fourth Amendment. n50 The Court enhanced protections for U.S. residents in 1972 when it held that electronic surveillance in domestic security matters requires proper warrant procedure. n51 Importantly, no judgment was made on "the scope of the President's surveillance power with respect to the activities of foreign powers, within or without this country." n52 Since then, lower courts have split on **[\*157]** whether the administration can conduct surveillance on communication between citizens and their international contacts. n53

### We Meet: FISA Affs are Topical

#### FISA creates the regulatory framework for domestic surveillance—it’s the heart of the topi

Sugiyama and Perry 2006 (Tara M., JD U of Mich Law School, and Marissa, Managing Ed. Mich J of L Reform, “The NSA Domestic Surveillance Program: An Analysis of Congressional Oversight During an Era of One-Party Rule,” No 40: p. 149, LN)

On December 16, 2005, the New York Times sounded a fire alarm n1 when it revealed that, in response to the September 11, 2001 attacks, President George W. Bush had issued a secret executive order permitting the National Security Agency (NSA) to conduct warrantless surveillance on individuals within the United States to unearth nascent terrorist activity. n2 The executive order n3 purportedly authorized the NSA to monitor the telephone and email messages of tens of millions of unsuspecting individuals in its effort to track down links to Al Qaeda. n4 Almost immediately, **[\*150]** various interest groups began to question the constitutionality of the NSA domestic surveillance program and to challenge whether the scope of the program violates the Foreign Intelligence Surveillance Act of 1978 (FISA). n5