

## Press Release

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### **FISA Appeals Court Ruling Challenged**

On November 21, 2016, Computer Scientist Steven Presser and Attorneys Michael Walsh and John Walsh filed a petition for review with the Supreme Court of the United States. The petition seeks to overturn an April 2016 decision of the Foreign Intelligence Surveillance Court of Review (“FICOR”). The FICOR decision was only declassified on August 18, 2016.

The FICOR decision centers on the use of Pen Registers. Pen Registers are a technology originally developed by telephone companies to track malicious phone calls. The PATRIOT ACT has expanded the definition to include all electronic signals, such as internet traffic, as long as they are non-content.

The distinction between content and non-content information has been at the heart of the Fourth Amendment, tracing back to cases in the mid-1800’s dealing with mails. The FICOR decision under appeal allows the Government to collect content information, specifically telephone digits dialed after a phone call is connected. The Department of Justice told the secret court that it could not tell the difference between content information and non-content information, lacking the technology.

For the appeal Presser developed a computer program called CCAD to sort out content information such as voice and fax signals from dialed digits. Presser tested the program with more than 400 years of audio signals, achieving a very high success rate. The brief filed in the High Court argues that if such inexpensive and efficient programs can be developed, the Government should be constitutionally forced to use them to protect citizen’s privacy.

The Foreign Intelligence Surveillance Court of Review, a secret appeals court setup to review wiretap applications, has issued only three published opinions in its entire 38 year history. The brief filed by Presser and Walsh appears to be the first time that the secret FISA courts have been directly appealed to the Supreme Court. The USA FREEDOM ACT, a surveillance reform measure passed after disclosures made by NSA leaker Edward Snowden, has liberalized some of the process before the FISA Court, including greater access to the Supreme Court and the appointment of Amicus to oppose the Government.

For further information please refer to a Statement released by Presser and Walsh.

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