

FREEDOMWORKS CHALLENGES THE TRANSITIONAL DRAGNET

On Friday, FreedomWorks and Ken Cuccinelli challenged the phone dragnet.

The challenge is a basic legal challenge, not a technical one arising from the lapse of the dragnet. It is smarter than others I've read because it recognizes the dragnet is about backbone usage, not specific provider. It also has more language on contracting than other challenges I've read closely (though I haven't read Rand Paul's, and I expect that language was in his challenge).

But as I said, there's nothing I saw in the challenge that questions how USA F-ReDux can simply extend Section 215 when that provision had already lapsed.

At the very least, because of this challenge, we'll get to see what the government argued about that lapse. That's because Michael Mosman (who signed the December dragnet order, but was also remarkably willing to review a challenge to FISA- and EO 12333-authorized methods in Reaz Qadir Khan's case) not only ordered the government to brief whether ongoing dragnettery was legal under Title V of FISA as modified by USA F-ReDux by next Friday, but he ordered the government to turn over an unclassified version of the memorandum of law it submitted on June 2 to restart the dragnet.

(4) The Government shall immediately serve on the Movants a copy of its unclassified "Memorandum of Law," captioned "In Re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things" and filed with this Court on the night of June 2, 2015, and submit to the Court a certificate of such service. Upon receipt of that certificate of service, the Court intends to make a copy of that Memorandum of Law available to the public on its website.

In addition to whatever else this says, it makes

it clear that (unsurprisingly) the Administration filed to restart the dragnet on Tuesday night, just after the President signed USA F-ReDux.