

**Case Name and Citation:**

Clapper v. Amnesty Int'l USA, 568 U.S. 398 (2013)

**Facts:**

The case revolved around the constitutional challenge of a specific provision in the Foreign Intelligence Surveillance Act (FISA), which granted the U.S. government the authority to conduct surveillance on foreign communications without a warrant, even if they involved American citizens or residents. The plaintiffs consisted of attorneys, journalists, and human rights organizations that contended that this provision infringed upon their right to privacy. The plaintiffs claimed that they had standing to sue because they had a reasonable fear of being monitored, which caused them harm. They asserted that their work required them to communicate with individuals likely to be targeted for surveillance, resulting in costly measures to protect the confidentiality of their communications. They also argued that the provision was overly broad and facially unconstitutional. The defendant was James Clapper, who served as the Director of National Intelligence. He argued that the plaintiffs lacked standing to sue because they could not show that their communications were being monitored, thus lacking a concrete injury. He also argued that the provision was constitutional and essential for national security. The case was initially heard in the U.S. District Court for the Southern District of New York which resulted in the court dismissing the plaintiffs' claims for lack of standing. The plaintiffs then appealed the case to the U.S. Supreme Court.

**Issue:**

The central issue at hand was whether the plaintiffs possessed the legal standing (adequately alleged an injury-in-fact) to challenge the constitutionality of the surveillance provision with FISA and sue, considering their inability to provide evidence that their communications were actively being monitored.

**Ruling:**

The Supreme Court of the United States, in a narrow 5-4 decision, concluded that the plaintiffs did not possess the necessary Article III standing to challenge the FISA Amendments Act of 2008, 50 U.S.C. § 1881a. The Supreme Court reaffirmed the decision of the District Court.

**Reasons:**

In the case of Clapper v. Amnesty Int'l USA, the Supreme Court provided several explanations for its ruling that the plaintiffs did not have standing to challenge the constitutionality of the surveillance provision of FISA. This ruling was based on the plaintiff's inability to provide sufficient evidence that their communications were actively being monitored, which then resulted in a lack of concrete injury

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that met the standard for being “certainly impending” as required for establishing standing. This ruling reinforced the requirement for plaintiffs to demonstrate a concrete and particularized injury that is “certainly impending” to establish standing, creating a stricter interpretation of standing for subsequent cases. In lower court decisions, this ruling has been cited to dismiss lawsuits challenging government surveillance programs based on hypothetical or speculative harm when concrete evidence is not given.

The Court emphasized that standing necessitates a concrete and “certainly impending” injury, not a speculative fear of future harm. The Court held that the plaintiffs’ alleged risk of being monitored was insufficient to establish standing, as they could not prove that their communications were currently being intercepted or would be targeted in the future. The Court also noted that the plaintiffs’ claimed injuries were based on their profession or association with individuals who were likely to be targeted for surveillance, rather than any provable or actual harm suffered. The Court held that standing could not be established based on generalized grievances or interests, but that they must be rooted in concrete and particularized injuries that are directly caused by the challenged provision of FISA. Lastly, The Court emphasized the separation of powers and the limited role of the judiciary in reviewing national security matters. The court stated that the plaintiff’s challenge to the surveillance provision of FISA involved sensitive and complex issues of national security policy, and it was not the role of the judiciary to decide on the merits of such policy choices. The Court deferred to the executive and legislative branches to make decisions regarding national security and underscored that the plaintiffs’ grievances were better addressed through political processes rather than judicial review.

In summary, the Court’s reasons for its ruling, in this case, were based on a strict interpretation of the standing requirement, the lack of concrete injury suffered by the plaintiffs, and the deference to the political branches in matters of national security policy.

### **Opinion:**

To start with my opinion, first I wanted to highlight that since it was a narrow decision of 5-4, there was a dissenting opinion written by Justice Breyer which was later joined by Justices Ginsburg, Sotomayor, and Kagan. Justice Breyer argued that the plaintiffs had standing to sue because they had a reasonable fear of being monitored and that this caused them to take costly measures to ensure the confidentiality of their communications. He also made the argument that the Court’s strict interpretation of the standing requirement would preclude any meaningful judicial review of the constitutionality of the surveillance provision of FISA because individuals that were targeted for surveillance would often not have direct evidence of their communications being intercepted which the Court’s ruling determined is necessary for standing. Ultimately, Justice Breyer’s differing perspective highlighted that the Court should have exercised judicial review to determine the constitutionality of the provision rather than deferring it.

In my opinion, as an individual that values both national security and the protection of privacy rights, I find myself in agreement with the ruling of the Supreme Court in this case. Right now, in the world, the increasing significance of national security cannot be overstated, and this means that sometimes robust measures are necessary to counter any threats. However, I also appreciate the perspective of the dissenting opinion in this case because it does raise valid concerns about protecting the right to privacy. The points raised by Justice Breyer and the other dissenting justices regarding the standing requirement and potential limitations on judicial review deserve careful consideration. It is difficult to strike a balance

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between upholding national security and safeguarding individual rights and I think that the narrow decision of the Supreme Court, in this case, shows that it is not a clear-cut subject and not a subject that is taken lightly. The complexities of modern surveillance and its potential impact on individual privacy necessitate thorough scrutiny and thoughtful deliberation which I think is highlighted in this case. In summary, I do support the Court's ruling on this case by recognizing the importance of national security. Nevertheless, I also acknowledge that there are very valid concerns raised in the dissenting opinion and emphasize the need to safeguard privacy rights. I don't think that there will ever be a clear "this is right and this is wrong" situation in regard to the relationship between privacy and national security because each situation is going to have factors that make it unique. Ultimately the Court has to do its best to balance national security and individual freedoms. As an added point, I think it is good that there are plaintiffs, like in this case, that will attempt to challenge infringements on the right to privacy even if they are not successful because it shows that people are trying to keep their right to privacy protected.