# Clapper v. Amnesty International USA, 568 U.S. XXX (2013) - Plaintiffs have no standing to challenge FISA because they cannot prove they were subject to surveillance.

## The 4th Amendment is about collecting information about crimes that have already been committed. How is the purpose of FISA different?

## Before the 2008 amendments, what were the limits on who could be targeted?

## How does this fit with the purpose of FISA?

## How do the 4 parts of an application for FISA differ from a criminal search warrant?

## What was the first way that the amendments changed FISA?

## How does this fundamentally change FISA as compared to a 4th amendment warrant?

## Why is this of special concern to respondents?

## What was the second change?

## How does this broaden the scope of FISA and make it much more likely that it could reach plaintiffs’ clients?

## Why does the third change, limiting the court’s authority over privacy protections (mainly about the retention of information and sharing it with other agencies) increase the threat to respondent’s clients?

## Who does Plaintiff Scott McKay represent who will likely be targeted under these amendments?

## Sylvia Royce?

## Does it matter that plaintiffs no longer represent some of the clients named in their original petition?

## What does plaintiff Mariner do that might subject her to surveillance?

## Does a foreign national outside the United States have any rights under the US Constitution regarding surveillance, or any other rights under the US Constitution?

## Why do we need FISA at all?

## Who is FISA really about protecting?

## How are the plaintiffs affected if FISA only applies to foreign nationals outside the United States?

## Why do modern communication methods make the physical location of a person less relevant in judging the application of the US Constitution?

## What is the narrow question before the court?

## What is plaintiffs’ claim of injury in fact?

## Why will it be difficult to prove their clients are specifically being targeted?

## Given this problem of proof, what is their alternative argument for injury in fact?

## What do respondents claim they will have to do to work with their clients after the 2008 amendments?

## What two things did the Second Circuit panel find which is on appeal in this case?

## What were the three examples the court gave of standing being denied to challenge national security matters?

## (41) What was the standard the court used from Monsanto for standing?

## What is the purpose of requiring “imminent” injury?

## What does the majority say about allegations of future harm as a basis for standing?

## What cases do they cite that we have discussed?

## What is long chain of causation that the majority says must occur before plaintiffs have an injury?

## The majority criticizes respondents for claiming an injury when they have not actual knowledge of who will be targeted under the amendments. (46) Why must plaintiffs speculate – what prevents them from getting the information necessary to make concrete claims of injury?

## What does the court want plaintiffs to produce to resist the motion for summary judgment?

## Even if they can show that their clients are likely to be targeted, why does this still not prove that §1881a will be used?

## What other methods can it use?

## What do plaintiffs claim is their concrete injury?

## How did the Second Circuit panel find that this injury is “fairly traceable” to amendments?

## What limits did the Second Circuit put on standing based on fears of surveillance?

## What does the majority say plaintiffs could do under the Second Circuit’s holding?

## How did Judge Raggi say plaintiffs might do this?

## Given all the other ways the government says it could get the info, did plaintiffs face this problem before the amendments?

## Why does the majority say this undermines his claim?

## How did the majority argue that Laird bars plaintiffs’ theory that the amendments have a chilling effect on their behavior?

## Why does the majority reject claims based on illegal surveillance?

## How did the majority distinguish Laidlaw?

## How did the court distinguish Keene?

## How does the majority distinguish Monsanto?

## Compare this with dissent (119)

## What about plaintiffs’ claims that should have standing because otherwise there will be no way to challenge the amendments?

## Why does being able to challenge the admission of the evidence not address plaintiffs’ concerns?

## Since plaintiffs will never know if the FISA court has authorized surveillance of their clients, who does the court say could challenge an order of the court?

## Are these parties likely to challenge a FISA order?

## (93) Why does the dissent say that the government has a strong incentive to listen to plaintiffs’ clients?

## Can plaintiffs’ effectively represent their clients or do research if the government is likely to be listening?

## Had the government already done surveillance of one of the plaintiffs’ clients?

## What does the dissent tells about the government’s success rate in the FISA court?

## This was under the previous law – do the amendments make getting authorization easier or harder?

## Why does the dissent say that the majority is wrong when it said that the plaintiffs’ injuries were only speculative?

## Why wasn’t the injury in Lujan imminent?

## What did Babbitt say was the test?

## Monsanto?

## MedImmune?

## Pennell?

## Buckley v. Valeo?

## What had to happen in Pennell before there would be an injury?

## Did patients in Blum have to wait until they were being transferred to challenge a regulation that permitted transfers?

## (114) What is the dam building example?

## What about suits based on threats to violate a contact, if the violation has not happened yet?

## Can you enjoin the building of a pond that will likely flood your land, or do you have to wait for the flood?

## How does the dissent describe necessary chain of events before there would be harm in Monsanto to counter the majority’s description? (119)

## How does the dissent argue that Monsanto is really the same as this case?

## Who really had standing in Whitmore?

## How does the dissent distinguish Lujan?

## How did the dissent distinguish Summers?

## Did the dissent find that plaintiffs should have standing?