

BASAALY MOALIN DENIED NEW TRIAL

As I noted the other day, Basaaly Moalin argued for a new trial Wednesday, arguing that disclosures that his entire prosecution stems from indirect phone contacts with a Somali warlord under the Section 215 phone dragnet program raises questions about the validity of the evidence used to convict him.

One day after that hearing, Judge Jeffrey Miller denied Moalin a new trial.

Miller argues that the all the new disclosures about the phone dragnet present no new issues in the trial. He even suggests the multiple discussions of Moalin's case in testimony before Congress and the documents released by the government may not be admissible (even though he relies on the most recent FISC order, which addresses the program as it exists now, not as it exists in 2007 when FBI was tipped to Moalin).

Setting aside the issue of admissibility of the public revelations of the NSA program of securing telephone metadata, the public disclosure of the NSA program adds no new facts to alter the court's FISA and CIPA rulings. Because the court has already considered and addressed many of the FISA and CIPA arguments from a federal and constitutional law perspective, the present motion is akin to a motion for reconsideration.

Given the Judge's quick turnaround, it's clear he had no intention of granting a new trial, regardless of what Moalin presented yesterday. Miller determined that the phone dragnet was proper in secret a year ago – based on what I am certain was impartial information – and he refuses to consider the possibility that his determination was incorrect.

I will look closer at Miller's thinking later today – while his legal analysis is better than, say, Claire Eagan's, there are still at least two obvious holes in his analysis.

But for the moment, realize that the government has won the ability to base an entire conviction off even indirect phone contacts identified via the phone dragnet.

I suspect we'll see this case again at the 9th Circuit.