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# In first, U.S. judge throws out cell phone 'stingray' evidence

NEW YORK | BY NATE RAYMOND



A businessman sits on a bench looking over his mobile phone in downtown San Francisco, California February 4, 2016. REUTERS/MIKE BLAKE 1 of 2

For the first time, a federal judge has suppressed evidence obtained without a warrant by U.S. law enforcement using a stingray, a surveillance device that can trick suspects' cell phones into revealing their locations.

U.S. District Judge William Pauley in Manhattan on Tuesday ruled that defendant Raymond Lambis' rights were violated when the U.S. Drug Enforcement Administration used such a device without a warrant to find his Washington Heights apartment.

The DEA had used a stingray to identify Lambis' apartment as the most likely location of a cell phone identified during a drug-trafficking probe. Pauley said doing so constituted an unreasonable search.

"Absent a search warrant, the government may not turn a citizen's cell phone into a tracking device," Pauley wrote.

The ruling marked the first time a federal judge had suppressed evidence obtained using a stingray, according to the American Civil Liberties Union, which like other privacy advocacy groups has criticized law enforcement's use of such devices.

"This opinion strongly reinforces the strength of our constitutional privacy rights in the digital age," ACLU attorney Nathan Freed Wessler said in a statement.

It was unclear whether prosecutors would seek to appeal. A spokeswoman for Manhattan U.S. Attorney Preet Bharara, whose office was prosecuting the case, declined to comment.

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Stingrays, also known as "cell site simulators," mimic cell phone towers in order to force cell phones in the area to transmit "pings" back to the devices, enabling law enforcement to track a suspect's phone and pinpoint its location.

Critics of the technology call it invasive and say it has been regularly used in secret to catch suspect in violation of their rights under the U.S. Constitution.

The ACLU has counted 66 agencies in 24 states and the District of Columbia that own stingrays but said that figure underrepresents the actual number of devices in use given what it called secrecy surrounding their purchases.

A Maryland appeals court in March became what the ACLU said was the first state appellate court to order evidence obtained using a stingray suppressed. Pauley's decision was the first at the federal level.

The U.S. Justice Department in September changed its internal policies and required government agents to obtain a warrant before using a cell site simulator.

Bernard Seidler, Lambis' lawyer, noted that occurred a week after his client was charged. He said it was unclear if the drug case against Lambis would now be dismissed.

(This version of the story corrects location of apartment in second paragraph to Washington Heights from the Bronx, rephrases paragraph 10 to make clear ACLU said its figure underrepresents number of devices)

(Reporting by Nate Raymond in New York; Editing by Cynthia Osterman)

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