

What We Know: Background & Talking Points on NSA Spying

Background on NSA leaks:

- In early June, the *Guardian* began publishing government documents that confirmed the existence of broad domestic spying programs used to collect communications data on everyday Americans. We've learned, and in most cases the administration has confirmed, that:
 - Section 215 of the Patriot Act, which allows secret court orders for 'any tangible thing' relevant to an investigation, is being used to collect the phone records of almost every American. For seven years, the Foreign Intelligence Surveillance Court (FISC) has issued secret orders compelling the major phone companies to send all *domestic* phone records to the NSA "on an ongoing daily basis."
 - The FISA Amendments Act of 2008, which legalized (and in many ways expanded) the Bush administration's warrantless wiretapping program, has been used to sift through massive amounts of internet data and emails, even when some or all of the parties are Americans.
 - The secret rules that were supposed to protect Americans' privacy are full of holes and exceptions that make it easy for the government to keep and use Americans' information.
 - The oversight mechanisms are completely broken. The FISC opinions approving the programs confirm that the judges had an incomplete understanding of what they were approving, that court-imposed privacy rules were repeatedly broken, and that government lawyers repeatedly misled the court. The overwhelming majority of Congress was not informed of how broad these programs were. They were forced to rely on vague and misleading public comments from the Administration and did not believe Americans were routinely and intentionally caught up in massive spying programs.

Recent Action in Congress:

- The bipartisan opposition to these programs has been overwhelming. Republicans and Democrats have spoken out about the need for immediate reform. Even influential—and very conservative—Republicans have called for strict limitations being inserted into the law. This includes people like Rep. Jim Sensenbrenner (R-Wis.) who wrote the original Patriot Act and Rep. Darrell Issa (R-Calif.) who has always supported these programs.

- The House voted in late July on an amendment by Rep. Justin Amash (R-Mich.) that would have limited Patriot Act 215 collection to people who are actually under investigation. To be clear – it would not have revoked the Patriot Act in full, or require probable cause or the other high triggers the law required before 9/11. Instead, it would just have stopped the bulk suspicionless collection of Americans’ information.
- The vote was incredibly close and failed by only a 7-vote margin at 205-217. The “yeas” were evenly divided among Democrats and Republicans. It was truly bipartisan opposition. The amendment was supported by a diverse group of advocacy organizations, including the ACLU and Ron Paul’s Liberty Coalition.
- This issue is not going away. There have been 10 or so congressional hearings on NSA surveillance as well as 25 bills introduced at this point. Of the bills introduced so far, the ACLU strongly supports the USA Freedom Act co-sponsored by Sen. Patrick Leahy (D-Vt.) and Rep. Jim Sensenbrenner (R-Wis.).

General Talking Points on NSA Surveillance

Section 215 of the PATRIOT Act

The bulk collection of innocent Americans’ call records under the Patriot Act is unconstitutional and a gross violation of people’s privacy.

- Our call records—particularly when collected in bulk—can be extraordinarily revealing. They can expose intimate details about our lives, including our friends and lovers, our political associations, our faiths, and whether we’re sick or mentally ill.
- For this reason, the government’s bulk collection of Americans’ call records is unconstitutional.
 - It violates the Fourth Amendment because it constitutes a gross invasion of the right to privacy of the millions of innocent Americans who are entirely unconnected to any government investigation.
 - It violates the First Amendment because the bulk collection of Americans’ call records exposes our every affiliation and association to government scrutiny, thereby chilling free speech, expression, and association.
- Bulk collection of call records also violates Section 215 itself: the call records of tens of millions of innocent Americans are not “relevant to” any authorized investigation.

- Even one of the Patriot Act’s authors, Rep. James Sensenbrenner, has said that the government and the FISC have misinterpreted the law’s plain language, calling the bulk collection program an “abuse.”
- The government’s legal justification of the program isn’t limited to phone records—it could be used to collect records related to virtually all of our communications or transactions, such as our use of the internet, our emails, and our financial or credit-card transactions.
- The government’s approach is to “collect it all” now and ask questions later. But the Constitution protects us from bulk *collection*, not just the later searching of information that the government has collected about us.
- The government has powerful tools at its disposal to fight crime and terrorism, but indiscriminate or dragnet surveillance shouldn’t be one of them. The government should only be able to collect an American’s intimate and sensitive records when it has an adequate and specific reason to do so.
 - Moreover, there is no evidence that stopping the bulk call records collection program would harm national security. As many members of Congress have said, the government has not been able to prove that the bulk records collection program is an effective counterterrorism tool.
- The FISC has sharply criticized the NSA for regularly misrepresenting how it conducts its surveillance of Americans’ communications.
 - The NSA has repeatedly violated FISC imposed orders by searching the phone records’ database without any reasonable suspicion that a number is connected to terrorism.

Section 702 of the FISA Amendments Act of 2008

The bulk collection of innocent Americans’ international communications, such as e-mails, is unconstitutional and is a gross violation of people’s privacy.

- Under the FISA Amendments Act, the NSA is indiscriminately collecting, analyzing, and storing Americans’ international calls and emails for “foreign intelligence” purposes. The surveillance is not limited to identifying and stopping terrorist threats. The government is authorized to collect “foreign intelligence,” a broad and vaguely defined term that includes information about the United States’s “foreign affairs.”
- Recent leaks show that these programs are filtering, scanning, and collecting large portions of international communications that enter and leave the United

States, inevitably sucking up innocent Americans' communications, sometimes even wholly domestic ones.

- The long-secret privacy rules that were supposed to protect Americans' privacy under these programs are riddled with holes. We now know that if Americans are caught up in this dragnet, the information can be kept for a very long time and even used against them in criminal prosecutions or intelligence investigations.
- The NSA's surveillance of Americans' international communications is unconstitutional. It gives the government a virtual blank check to listen in on Americans' calls with loved ones or business associates abroad, and to read Americans' emails with those outside the country. This sort of general surveillance chills free speech, expression, and association.
 - It also harms those who communicate internationally for business, particularly journalists, human rights organizations, and attorneys who must communicate confidentially to do their jobs.