



Court Rules NSA Spying Is Illegal, but McConnell Defends Patriot Act's Section 215

The U.S. Court of Appeals for the Second Circuit in New York ruled on May 7 that the National Security Agency's (NSA) bulk collection of U.S. call records is illegal, stating that Section 215 of the PATRIOT Act cannot be legitimately interpreted to allow such bulk collection of domestic calling records.



Speaking on the floor of the Senate just hours after the ruling, Senate Majority Leader Mitch McConnell defended the NSA's mass-surveillance programs. The NSA, with FBI support, has interpreted Section 215 to allow the U.S. government to collect the calling records of millions of innocent people who have never engaged in illegal activities.

The case listed the national and New York branches of the American Civil Liberties Union (ACLU) and their associated foundations as plaintiffs versus Director of National Intelligence James R. Clapper, NSA Director Michael S. Rogers, Defense Secretary Ashton B. Carter, Attorney General Loretta Lynch, and FBI Director James B. Comey as defendants.

The ruling noted:

Americans first learned about the telephone metadata program that appellants now challenge on June 5, 2013, when the British newspaper *The Guardian* published a FISC order leaked by former government contractor Edward Snowden. The order directed Verizon Business Network Services, Inc. ("Verizon"), a telephone company, to produce to the NSA "on an ongoing daily basis ... all call detail records or 'telephony metadata' created by Verizon for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls.

The ruling also referenced recent legislative attempts to eliminate some of the abuses that the government has attempted to use Section 215 to justify, specifically the USA Freedom Act in the 113th Congress in 2014. After noting that the 2014 legislation failed to overcome a Senate filibuster, the ruling made note of the fact that "The current Congress is likewise considering bills aimed at modifying § 215."

After a lengthy summary of the arguments presented by both the plaintiffs (the ACLU) and the defendant (the government), the court concluded "that the district court erred in ruling that § 215 authorizes the telephone metadata collection program, and instead hold that the telephone metadata program exceeds the scope of what Congress has authorized and therefore violates § 215."

By finding that Section 215 does not authorize the NSA's metadata collection program (of telephone



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records) and the program “exceeds the scope of what Congress has authorized and therefore violates § 215,” the court rendered the program illegal.

While many people believe that the entire PATRIOT Act will expire on May 31, an article from the Electronic Frontier Foundation last January explained that parts of the act were reauthorized in 2005 and 2006 and that just three provisions are set to expire. These are: Section 215, the “Lone Wolf provisions” (which amends FISA’s [Foreign Intelligence Surveillance Act] definition of “agent of a foreign power” to include any person, other than a U.S. person, who “engages in international terrorism or activities in preparation therefore.”), and the “roving wiretap” provision (which permits the FBI, with a single search warrant, to raid every house or office that an individual suspect has visited over an entire year).

Of these, Section 215 is by far the most intrusive and controversial. When the USA Freedom Act to curtail certain parts of the PATRIOT Act passed the House last year and were bogged down by a Senate filibuster, Senator Rand Paul (R-Ky.) refused to vote to end the filibuster, his reservations about the bill being based on the fact that it extended the sunset of parts of the PATRIOT Act by two years.

McConnell began his lengthy defense of retaining the expiring provisions of the PATRIOT Act by referring to the “unlawful leaks of NSA programs,” by former NSA contractor-turned-whistleblower Edward Snowden, and asserted that those revelations “have painted a distorted picture of how these programs are conducted and overseen by exploiting the fact that our intelligence community cannot discuss classified activities.”

While the court decision also made reference to Snowden, it did not describe his actions as unlawful, which is perhaps significant.

During his Senate speech, McConnell asked that an editorial from the May 7 *Wall Street Journal*, the “Snowden Blindfold Act,” be printed in the *Congressional Record*. The editorial proposed that the USA Freedom Act be renamed as such because it allegedly attempts to use the revelations made by Snowden to impose what it terms a “blindfold” on U.S. intelligence-gathering operations. The editorial said:

Two years after the leaks from Edward Snowden’s stolen dossier, a liberal-conservative coalition is close to passing a bill that would curtail the programs the National Security Agency has employed in some form for two decades.

The editorial cited the attacks on *Charlie Hebdo* in Paris and in Texas by Islamic State-inspired jihadists as justification for retaining the NSA’s metadata collection powers. It claimed that “the House measure [the USA Freedom Act] is a deliberate effort to know less and blind U.S. spooks to potentially relevant information. This self-imposed fog may be politically satisfying now, but deadly if there is another attack.”

However, the *Journal*’s editorial writer might have engaged in some better fact checking. As former Representative Ron Paul (R-Texas) noted in a recent [article reprinted with permission by *The New American*](#):

Congress will soon vote on the USA FREEDOM Act. This bill extends the expiring surveillance laws. It also contains some “reforms” that supposedly address all the legitimate concerns regarding mass surveillance.

However, a look at the USA FREEDOM Act’s details, as opposed to the press releases of its supporters, shows that the act leaves the government’s mass surveillance powers virtually



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untouched.

As noted previously, Paul's son, Senator Rand Paul, did not vote to end the filibuster of last year's USA Freedom Act because it extended expiring provisions of the PATRIOT Act. This year's version also extends some provisions until 2019. "I don't support anything in the PATRIOT Act," Paul, said in a recent interview. "I want to repeal the whole thing."

A member of Congress who agrees with Paul is Representative Mark Pocan (D-Wis.), who has introduced the Surveillance State Repeal Act (H.R. 1466), "To repeal the USA PATRIOT Act and the FISA Amendments Act of 2008, and for other purposes."

Unlike the USA Freedom, which *pretends* to eliminate the surveillance state, H.R. 146 would actually accomplish that objective.

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