

THE USA FREEDOM ACT

Public revelations about classified government surveillance programs have brought renewed attention to the powerful authorities contained in the Foreign Intelligence Surveillance Act (FISA), and in particular the implications for the privacy rights of law-abiding Americans.

The bipartisan, bicameral USA FREEDOM Act will rein in the dragnet collection of data by the National Security Agency (NSA), increase the transparency of Foreign Intelligence Surveillance Court (FISA Court) decision-making, provide businesses the ability to release information regarding FISA requests, create an independent advocate to argue cases before the FISA Court, and impose new and shorter sunsets on controversial surveillance authorities.

END BULK COLLECTION OF AMERICANS' COMMUNICATIONS RECORDS

- The USA FREEDOM Act ends bulk collection under Section 215 of the Patriot Act, in light of the massive intrusion on Americans' privacy and the lack of evidence of its effectiveness. The bill requires that the tangible things sought are relevant and material to an authorized investigation into international terrorism or clandestine intelligence activities, **and** pertain to: (1) a foreign power or agent of a foreign power; (2) the activities of a suspected agent of a foreign power who is the subject of an investigation; or (3) an individual in contact with, or known to, a suspected agent of a foreign power.
- The bill ensures that other authorities, including the FISA pen register / trap and trace statute and National Security Letters (NSLs), cannot be used to justify bulk collection.

PROTECT AMERICANS' COMMUNICATIONS COLLECTED UNDER THE FISA AMENDMENTS ACT

- The bill closes NSA's "back door" access to Americans' communications by requiring a court order to search for the communications of Americans in data collected without individualized warrants under Section 702 of FISA.
- The bill imposes other safeguards on activities conducted under Section 702, including strengthening the prohibition on "reverse targeting" of Americans — that is, targeting a foreigner with the goal of obtaining communications involving an American.

CREATE NEW AND SHORTER SUNSET PROVISIONS TO ENSURE PROPER OVERSIGHT

- The bill shortens the sunset for the FISA Amendments Act from December 2017 to June 2015. The June 2015 sunset would align with the sunset for three expiring USA PATRIOT Act provisions (including Section 215), and enable Congress to address these FISA provisions all at once, instead of in a piecemeal fashion.
- The bill adds a sunset date to the NSL statutes, requiring that Congress reauthorize the government's NSL authority and thereby ensuring proper congressional review.

REFORM THE FOREIGN INTELLIGENCE SURVEILLANCE COURT

- The USA FREEDOM Act creates an Office of the Special Advocate tasked with promoting privacy interests in the FISA Court's closed proceedings. The Office will be staffed by attorneys who are properly cleared to view the classified information considered by the FISA Court.
- The bill addresses the problem of "secret law" by establishing a process for public release of FISA Court opinions containing significant legal interpretations.

INCREASE TRANSPARENCY AND OVERSIGHT

- Private companies are currently barred from disclosing basic information about their participation in NSA surveillance programs. Under the bill, Internet and telecommunications companies are allowed to report publicly an estimate of: (1) the number of FISA orders and NSLs received; (2) the number of such orders and NSLs complied with; and (3) the number of users or accounts on whom information was demanded under the orders and letters.
- The bill also would require the government to provide new public reporting on FISA implementation. Specifically, the government would be required to make public reports estimating the total number of individuals and U.S. persons who were subject to various types of FISA orders and whose information was reviewed by federal agents.
- The bill enhances oversight by requiring Inspector General audits on the use of Section 215 orders, NSLs, and other surveillance authorities under the USA PATRIOT Act, as well as a comprehensive review of Section 702 surveillance by the Inspector General of the Intelligence Community.

IMPOSE SAFEGUARDS ON NATIONAL SECURITY LETTERS

- The USA FREEDOM Act adopts a single standard for Section 215 and National Security Letters to ensure the government does not move the bulk collection program under a different authority. It also limits the types of records that can be obtained using NSLs, which do not require court approval.
- The bill fixes a constitutional deficiency found by the U.S. Court of Appeals for the Second Circuit in *Doe v. Mukasey*, by allowing meaningful judicial review of any non-disclosure order issued to the recipient of a NSL.