

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
On the USA FREEDOM Act of 2015
May 12, 2015**

For years, Section 215 of the PATRIOT Act has been used by the NSA to justify the bulk collection of innocent Americans' phone records. Americans were outraged when they learned about this massive intrusion into their privacy. And last week, a Federal appeals court confirmed what we have known for some time: the NSA's bulk collection of Americans' phone records is unlawful, it is not essential, and it must end.

Under the government's interpretation of Section 215, the NSA or FBI can obtain *any tangible thing*, so long as it is "relevant" to an authorized investigation. In the name of fighting terrorism, the government convinced a secret court that it needed to collect billions of phone records of innocent Americans – not because those phone records were relevant to any specific counterterrorism investigation, but rather because the NSA wanted to sift through them in the future. This is an extraordinarily broad reading of the statute, and one that Congress certainly did not intend. The Second Circuit rightfully held that such an expansive concept of "relevance" is "unprecedented and unwarranted."

Such an interpretation of "relevance" also has no logical limits. This debate is not just about phone records. If we accept that the government can collect all of our phone records because it may want to sift through them someday to look for some *possible* connection to terrorists – where will it end? We know that for years the NSA collected metadata about billions of emails sent by innocent Americans using the same justification. Should we allow the government to sweep up all of our credit card records? All of our banking or medical records? Our firearms or ammunition purchases? Or how about everything we have ever posted on Facebook, or everything we have ever searched for on Google? Who wants to tell their constituents that they support putting all of this information into government databases? Enough is enough.

During one of the six Judiciary Committee hearings that I convened on these issues last Congress, I asked the then-Deputy Attorney General whether there was any limit to this interpretation of Section 215. I did not get a satisfactory answer. That is, until the Second Circuit ruled last week and correctly laid out the implications of this theory. As the court explained, under the government's interpretation of Section 215, nothing would stop the government from collecting and storing in bulk "any other existing metadata available anywhere in the private sector, including metadata associated with financial records, medical records, and electronic communications (including e-mail and social media information) relating to all Americans." The potential significance of this interpretation is staggering. It is no wonder that groups like the ACLU and the National Rifle Association joined together to file the lawsuit in the Second Circuit to stop this bulk collection program.

Congress now has the opportunity to make real reforms to Section 215 and other parts of FISA that could be used to conduct bulk collection. Tomorrow, the House will consider the bipartisan USA FREEDOM Act of 2015. Senator Lee and I have introduced an identical bill in the Senate. If enacted, our bill will be the most significant reform to government surveillance authorities

since the USA PATRIOT Act was passed nearly 14 years ago. Our bill will end the NSA's bulk collection program under Section 215. It also guarantees unprecedented transparency about government surveillance programs, allows the FISA Court to appoint an amicus to assist it in significant cases, and strengthens judicial review of the gag orders imposed on recipients of national security letters.

The USA FREEDOM Act is a common-sense bill that was crafted with significant input from privacy and civil liberties groups, the intelligence community, and the technology industry. And it has support from members of Congress and groups from across the political spectrum.

Unfortunately, there are some who stubbornly argue that no reforms are needed. Instead, they invoke fearmongering and dubious claims about the utility of the bulk collection programs to defend the status quo – the same arguments that we heard last November when we were not even permitted to *debate* an earlier version of the USA FREEDOM Act. Last week, some Senators came to the floor to argue that the NSA's bulk collection of phone records might have prevented 9/11, and has been vital to national security. We also heard that enacting the USA FREEDOM Act would somehow return the intelligence community to a pre-9/11 posture. None of these claims – when properly scrutinized – can withstand the light of day.

Richard Clarke was working in the Bush administration on September 11, and I asked him whether the NSA program would have prevented those attacks. He testified that the government had the information it needed to prevent the attacks, but failed to properly share that information among federal agencies. Likewise, Senator Bob Graham, who investigated the September 11th attacks as head of the Senate Intelligence Committee, also has debunked the notion that this bulk collection program would somehow have prevented the 9/11 attacks.

The NSA's bulk collection of phone records simply has not been vital to thwarting terrorist attacks. When the news about the NSA's phone metadata program first broke, we were told that it had helped to thwart 54 terrorist attacks. But then I convened public hearings – and under public scrutiny that figure initially shrunk to about a dozen. Then it was two – and now it is *maybe* one. And that sole example is not a "terrorist attack" that was thwarted. It was a material support conviction involving \$8,000 not a terrorist plot.

Numerous independent experts also have concluded that the NSA's bulk collection program is not essential to national security. The President's Review Group, which included former national security officials, stated: "The information contributed to terrorist investigations by the use of section 215 telephony meta-data was not essential to preventing attacks and could readily have been obtained in a timely manner using conventional section 215 orders."

The facts matter. We should not be swayed by fearmongering. Congress cannot simply reauthorize the expiring provisions of the PATRIOT Act without enacting real reforms. When the House passes the USA FREEDOM Act tomorrow and sends it to the Senate, we should take it up immediately and pass that bill. The American people are counting on us to take action. They did not elect us to just kick the can down the road or blindly rubber stamp intelligence activities that have been found to be illegal. Congress should pass the USA FREEDOM Act this week.

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