



Written by [Thomas R. Eddlem](#) on November 21, 2014

NSA: Warrantless Surveillance Would Continue Without Patriot Act Extension

Even if a controversial provision of the USA Patriot Act used to justify the legality of warrantless searches expires on June 1 without congressional action, NSA and White House officials have already determined the warrantless surveillance program will continue on unchanged without Congress, the *New York Times* [reported](#) November 20.



Senators have been laboring under the idea that the program is operating under the permission of actual legislation. "I believe that if we do not pass this bill, the metadata program is at risk because the 215 program sunsets next year," Senator Dianne Feinstein (D-Calif.) [said](#) in Senate debate on an NSA reauthorization measure November 18, the misnamed USA Freedom Act.

But Feinstein's own former staffers on the Senate Intelligence Committee are now stating publicly that the program would go on whether Congress reauthorized it or not. "It was always understood that no investigation should be different the day after the sunset than it was the day before," former Senate Intelligence Committee lawyer Michael Davidson [told](#) the *New York Times*. "There are important reasons for Congress to legislate on what, if any, program is now warranted. But considering the actual language of the sunset provision, no one should believe the present program will disappear solely because of the sunset."

Such a comment is perhaps the strongest admission that Congress has become irrelevant, and that the executive branch of government has become autocratic and without check.

Virtually all of the unconstitutional warrantless surveillance by the NSA is allegedly justified by an obscure executive order issued by President Reagan, the ACLU reported October 30. The executive order did not grant authority to surveil Americans without warrant, but NSA documents reveal that this is how intelligence officials have "interpreted" it. One [training document](#) used by the NSA acknowledges that "Executive Order 12333 was issued by the President of the United States to provide for the effective conduct of US intelligence activities and the protection of the rights of US persons. It is the primary source of NSA's foreign intelligence-gathering authority." But it also notes:

Executive Order 12333 permits collection, retention, and dissemination of the following types of information concerning US persons, such as:

- Information that is publicly available or collected with the consent of the person concerned
- Information constituting foreign intelligence or counterintelligence
- Information needed to protect the safety of any persons or organizations



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- Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure
- Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local, or foreign laws

A [separate training document](#) also acknowledges that in the NSA's foreign intelligence collection program "it is not possible to determine what communications are to or from U.S. persons nearly as readily as is the case with telephony, and often not possible at all."

The USA Freedom Act was [originally drafted by Wisconsin Republican Representative James Sensenbrenner](#), the author of the original 2001 USA Patriot Act, who was horrified that it was being used to justify destruction of the Fourth Amendment. But as the legislation worked its way through Congress, many of the original cosponsors of the bill dropped off the support list because Sensenbrenner's bill had been hijacked by the surveillance state lobby. House Liberty Caucus Chairman Justin Amash (R-Mich.) and his chief ally Thomas Massie (R-Ky.) both [voted against the bill](#) by the time it reached the House floor, despite the fact they had been original cosponsors of the bill.

In the Senate, the same type of change took hold as defenders of the Fourth Amendment to the U.S. Constitution in both the Democratic Party, such as Mark Udall of Colorado, and Republican Party, such as Rand Paul of Kentucky, became opponents of the final bill. And while the bill easily passed the House of Representatives, it stalled in the Senate with opposition from establishment Republicans who opposed even the modest controls the legislation purported to put on the blatantly unconstitutional warrantless surveillance. Senator Rand Paul (R-Ky.) [opposed the bill](#) for the opposite reason of other Senate Republicans but the same reason most members of the House Liberty Caucus opposed it: The bill would fail to end warrantless surveillance as the Fourth Amendment to the U.S. Constitution requires.



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