



Written by [Jack Kenny](#) on September 27, 2013

Senators Pushing Bill to Curb NSA Searches

In what has been [called](#) “an unlikely alliance of liberal Democrats and libertarian Republicans,” a bipartisan group of U.S. senators has introduced legislation to end the National Security Agency’s bulk collection of Americans’ telephone call records and electronic communications. The bill would also create within the secret Foreign Intelligence Surveillance Court a “constitutional advocate” to challenge government requests for search warrants.



The activities of the NSA have been the subject of intense and ongoing debate in Washington and around the country since the publication in June of documents made public by contract worker Edward Snowden, describing the PRISM program the agency employs to collect literally billions of communication records every day. Snowden, charged with espionage and theft of government property, fled the country and is now in temporary asylum in Russia.

“The disclosures over the last 100 days have caused a sea change in the way the public views the surveillance system,” Sen. Ron Wyden [said](#) at a press conference Wednesday announcing the proposed Intelligence Oversight and Surveillance Reform Act. The Oregon Democrat has been warning for at least two years about the extraordinary breadth of searches authorized by the surveillance court and has, along with Sen. Mark Udall (D-Colo.), twice written letters to Attorney General Eric Holder protesting that the court’s interpretation of government surveillance powers under the business records section of the USA PATRIOT Act has gone far beyond the intent of Congress when lawmakers passed the act in September 2001 and reauthorized it a number of times since.

“We believe most Americans would be stunned to learn the details of how these secret court opinions have interpreted Section 215 of the Patriot Act,” the senators wrote in their March 15, 2012 letter to Holder. They sent a similar letter to the attorney general in September 2011.

“There is growing, bipartisan sentiment in Colorado and across the country that the way the NSA and our intelligence agencies are balancing Americans’ privacy rights and our security is fundamentally out of whack,” Udall [said](#) Wednesday. “We need to end the NSA’s collection of millions of innocent Americans’ private phone records and focus on the real problem: terrorists and spies.”

Democrat Richard Blumenthal of Connecticut and Republican Rand Paul of Kentucky are also sponsors of the bill in the Senate, where opposition to it is also likely to be bipartisan. Dianne Feinstein, the California Democrat who chairs the Intelligence Committee, and South Carolina Republican Lindsey Graham are among those who have expressed support for the NSA program, with Graham calling on U.S. law-enforcement officials to follow Snowden “to the end of the earth” in the effort to arrest and prosecute him. In July, the House narrowly [defeated](#) (217-205) an amendment offered by Michigan Republican Justin Amash to curb the NSA’s ability to collect electronic information.

“These reforms are the right thing to do, but they are also essential to the public believing that the system is complying with the law,” Blumenthal [said](#).



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“Reforming the Foreign Intelligence Surveillance Act must restrict the Executive’s expansive powers to seize private records in secret and without probable cause,” said [Paul](#). “I support reforms on the way to a full restoration of our Founders’ idea embodied in the Fourth Amendment.”

The Fourth Amendment of the U.S. Constitution requires that warrants for searches be based on probable cause, “particularly describing the place to be searched, and the persons or things to be seized.”

NSA Director Gen. Keith Alexander and former FBI Director [Robert Mueller](#) have claimed in testimony before congressional committees that the PRISM program enabled law enforcement to uncover some terrorist plots and might have uncovered the 9/11 plot had it been in place at that time. They mentioned specifically a phone call in San Diego by one of the hijackers to an al-Qaeda safe house in Yemen. Others have said the foiled terrorist plots had been uncovered by other means and that the terrorist in San Diego had been under CIA surveillance for several months before making that call.

The National Security Agency was established by executive order of President Harry Truman in 1952 without the approval or even the knowledge of Congress. Its activities were so secret that for many years a standing joke in Washington was that the initials stood for “No Such Agency.” The Foreign Intelligence Surveillance Court was created by an act of Congress in 1978 to rule on warrant applications for searches conducted in investigations of foreign activities within the United States having a bearing on national security. In practice, targets of searches are often U.S. citizens whose actions are considered “relevant” to investigations of foreign operations. In cases where the investigation leads to arrest and prosecution, the warrants remain secret, leaving defendants unable to challenge their validity. Though President Obama and others have said the court exercises “oversight” on NSA surveillance, it rarely — indeed, almost never — turns down an application for a warrant.

According to a National Public Radio [report](#) in June, the court received 1,856 applications for warrants last year and approved all of them.

“From 1979 through 2012,” the *Wall Street Journal* reported, “the court overseeing the Foreign Intelligence Surveillance Act has rejected only 11 of the more than 33,900 applications by the government, according to annual Justice Department reports to Congress.”

Last week the court declassified and released an [opinion](#) defending the NSA’s dragnet collection of phone records. “To date, no holder of records who has received an order to produce bulk telephony metadata has challenged the legality of such an order,” wrote Judge Claire Eagan, one of 11 federal judges who serve on the surveillance court on a rotating basis. That ruling could be considered a Catch-22, however, since recipients of a warrant from the secret court are strictly limited by law in what they may do or even say about it. The bill introduced Wednesday “would let Americans affected by the eavesdropping sue for damages in U.S. courts and allow companies to disclose more information about cooperation with government surveillance,” Reuters [reported](#).

Diplomatic fallout over the discovery that the NSA’s electronic surveillance has included spying on foreign governments was also alluded to by Wyden at Wednesday’s press conference. “The effect can be felt not only by the significant erosion of civil liberties domestically, but in the reduced credibility of the American government abroad and the significant impact on American economic interests,” the Oregon senator [stated](#). “These reforms seek to close that gap and avoid the false choice of protecting security over the preservation of personal liberty.”



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