



Written by [Joe Wolverton, II, J.D.](#) on January 3, 2014

## Sens. Wyden and Udall Call for End to NSA Dragnet Phone Surveillance

Not every federal lawmaker is content to step aside and watch impotently as the executive branch erects a prison state with citizens as suspects and subject to constant surveillance.

In [a recent \*New York Times\* op-ed](#), Senators Ron Wyden (left, D-Ore.) and Mark Udall (right, D-Colo.) call for an immediate end to the National Security Agency's (NSA) dragnet collection of the phone records of Americans. In the opening paragraph, the senators explain the basis of their opposition to this unconstitutional program:



[The] framers of the Constitution declared that government officials had no power to seize the records of individual Americans without evidence of wrongdoing, and they embedded this principle in the Fourth Amendment. The bulk collection of Americans' telephone records — so-called metadata — by the National Security Agency is, in our view, a clear case of a general warrant that violates the spirit of the framers' intentions. This intrusive program was authorized under a secret legal process by the Foreign Intelligence Surveillance Court, so for years American citizens did not have the knowledge needed to challenge the infringement of their privacy rights.

While the spirit of what Wyden and Udall write is correct, they do not go far enough in their denouncement of the NSA's denial of basic fundamental rights to millions of Americans.

[The Fourth Amendment](#) declares that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Based on reports of the number of domestic phone calls being recorded by the National Security Agency, the Obama administration must have probable cause to suspect millions of us of threatening national security.

According to reports, documents obtained by former NSA contractor-turned-whistleblower Edward Snowden reveal that, in a 30-day period in 2013, the NSA recorded data on 124.8 billion phone calls, about three billion of which originated within the United States. A quick Google search reveals the remarkable international scope of the snooping.

The program, [first reported by \*The Guardian\*](#), is appropriately code-named "Boundless Informant," and it involves the monitoring and recording of phone calls and Internet communication. *The Guardian* reports that Boundless Informant "allows users to select a country on a map and view the meta data volume and select details about the collections against that country."

Some defenders of the NSA specifically and the surveillance state in general claim that the actual



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conversations themselves [were not recorded](#). The fact that any information on a phone call was recorded without conforming to the Constitution is alarming. Regardless of the volume of recordings or the amount or type of data stored, a single act of warrantless surveillance violates the Constitution and everyone who ordered or participated in the program should be held accountable.

Of course, Boundless Informant isn't the only such unconstitutional program being carried out by the snoops.

Among the most disturbing disclosures found within the reams of Edward Snowden's revelations was the surrender by major telecommunications companies of the otherwise private phone records of millions of Americans — none of whom was, as required by the Constitution, suspected of committing any sort of crime.

Wyden and Udall make this point, writing, "If government agencies identify a suspected terrorist, they should absolutely go to the relevant phone companies to get that person's phone records. But this can be done without collecting the records of millions of law-abiding Americans."

There is no excuse for this type of unconstitutional sanctioned surveillance. One unwarranted wiretap, one unwarranted seizure of a phone record, one search of records of an individual's digital communications is too many. If we are a Republic of laws, then the supreme constitutional law of the land must be adhered to. The standard is not whether or not the spies or their bosses think the violations are keeping us safe. The standard is the Constitution — for every issue, on every occasion, with no exceptions. Anything less than that is a step toward tyranny.

The establishment will likely continue construction of the surveillance until the entire country is being watched around the clock and every monitored activity is recorded and made retrievable by agents who will have a dossier on every American.

This pair of senators have tried to force the leadership of the intelligence community to reveal how many Americans are under surveillance by the NSA.

Senators Udall and Wyden's consistent commitment to corralling the NSA is unusual among their congressional colleagues.

With very few exceptions, the people's elected representatives have been AWOL in the battle to preserve the Constitution and the fundamental liberties it was designed to protect.

In July of 2011 and again in May 2012, Udall and Wyden wrote a letter to Director of National Intelligence James Clapper, Jr., asking him a series of four questions regarding the activities of the NSA and other intelligence agencies regarding domestic surveillance.

In one of the questions, Udall and Wyden asked Clapper if "any apparently law-abiding Americans had their communications collected by the government pursuant to the FISA Amendments Act" and if so, how many Americans were affected by this surveillance.

In a response to the inquiry dated June 15, 2012, Intelligence Community Inspector General I. Charles McCullough III informed the senators that calculating the number of Americans who've had their electronic communications "collected or reviewed" by the NSA was "beyond the capacity of his office and dedicating sufficient additional resources would likely impede the NSA's mission.

In other words, the NSA is too busy illegally recording our private e-mails, text messages, Facebook posts, and phone calls to figure out how many of us are already caught in their net. And, furthermore, there is nothing Congress can do about it.



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Naturally, Senators Udall and Wyden didn't take kindly to Inspector General McCullough's brush off. In a response to the response, the senators told McCullough that they just wanted a "ballpark estimate" of the number of American citizens who have been monitored under the authority of the FISA. Senator Wyden released an additional statement in which he expressed concern that the figure is likely very high:

I am concerned, of course, that if no one has even estimated how many Americans have had their communications collected under the FISA Amendments Act, then it is possible that this number could be quite large. Since all of the communications collected by the government under section 702 are collected without individual warrants, I believe that there should be clear rules prohibiting the government from searching through these communications in an effort to find the phone calls or emails of a particular American, unless the government has obtained a warrant or emergency authorization permitting surveillance of that American.

Given the intelligence community's disdain for not only the Constitution but for congressional oversight, it is unlikely that the information requested by Senators Udall and Wyden will ever be forthcoming.

Taken together, the roster of snooping programs in use by the federal government places every American under the threat of constant surveillance. The courts, Congress, and the president have formed an unholy alliance bent on obliterating the Constitution and establishing a global surveillance net where every citizen of every country lives perpetually under the never-blinking eye of the U.S. government and its foreign counterparts.

The fight can yet be won, though. Americans can attack the sprawling surveillance state on several fronts. First, we must elect men and women to federal office who will honor their oaths of office to preserve, protect, and defend the Constitution. Then, once in office, each of them must be held immediately accountable for each and every violation of that oath. Furthermore, state lawmakers have an obligation to [refuse to cooperate with the officers of the federal government](#) in carrying out any and all unconstitutional acts, including the nearly boundless spying perpetrated by the NSA.

As Senators Wyden and Udall correctly prescribe, Congress "needs to preserve the right of citizens to be free from unwarranted interference in their lives, which the framers understood was vital to American liberties."

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