



Written by [Jack Kenny](#) on January 28, 2014

Former Bush Officials Knock RNC Call to End NSA Surveillance

Seven former officials in the George W. Bush administration and a Republican member of the House Intelligence Committee issued [a sharp rebuke](#) to the Republican National Committee Saturday over the RNC's passage of a resolution calling for an end of the "blanket surveillance" of phone calls and electronic communications records by the National Security Agency.



Delegates in Friday's session of the committee's winter meeting adopted by voice vote the ["Resolution to Renounce the National Security Agency's Surveillance Program,"](#) calling on Republicans to endorse amendments to the PATRIOT Act and the Foreign Intelligence Surveillance Act "to make it clear that blanket surveillance of the Internet activity, phone records and correspondence — electronic, physical, and otherwise — of any person residing in the U.S. is prohibited by law and that violations can be reviewed in adversarial proceedings before a public court."

Rep. Mike Pompeo, a Republican from Kansas who serves on the House Permanent Select Committee on Intelligence, and seven former national security and Justice Department officials sent a letter to Republican National Committee Chairman Reince Priebus (shown) the next day, blasting the resolution for alleged factual errors and charging that the statement "threatens to do great damage to the security of the nation."

"The resolution falsely implies that NSA collects and has easy access to telephone metadata, when in fact every search of the data requires a reasonable and articulable suspicion and is strictly limited by the courts with oversight by the intelligence committees of both houses of Congress," the letter said. "It is a shame that the resolution reached the Committee without correction of its many errors."

In addition to Pompeo, the letter was signed by former Bush administration officials Michael Hayden (CIA director), Michael Mukasey (U.S. attorney general), Steve G. Bradley (head of the Office of Legal Counsel, Department of Justice), Michael Chertoff (secretary, Department of Homeland Security), Stewart A. Baker (assistant secretary for policy at DHS), Kenneth Wainstein (Homeland Security advisor), and Eric S. Edelman (under secretary for policy, Department of Defense).

The court oversight referenced in the letter is by the Foreign Intelligence Surveillance Court, which has granted [nearly every application](#) for a warrant the government has submitted since the court was



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established in 1978. Its proceedings are classified, so even the members of the House and Senate Intelligence Committee who have reviewed them are not permitted to discuss them. Senate Democrats Ron Wyden of Oregon and Mark Udall of Colorado more than once stated in letters to Attorney General Eric Holder that the American people would be [“stunned”](#) to learn of the broad interpretation the Surveillance Court has given to the power of the government to seize records under Section 215, the business records section of the PATRIOT Act.

The RNC resolution quotes the statement of Representative James Sensenbrenner (R-Wisc.), one of the authors of the PATRIOT Act and chairman of the House Judiciary Committee at the time of its passage, that both the Obama administration and the Surveillance Court have been “relying on an unbounded interpretation of the act that Congress never intended.”

The signatories to Saturday’s letter to RNC Chairman Priebus stoutly defended the legality of the program:

The resolution says that the program violates the Constitution, something that will come as news to the many judges who have found to the contrary — and the Supreme Court which has said that such limited billing data is not protected by a constitutional protection of privacy. The resolution’s claim that the program violates section 215 also runs counter to the rulings of practically every court to address the issue.

Congress passed the 342-page PATRIOT Act during a flurry of security-related legislation, including the reorganization of several government agencies and the creation of the Department of Homeland Security, undertaken in the weeks following the terrorist attacks of September 11, 2001. It’s possible, even likely, that many members of Congress never read all of its provisions, and judges are often reluctant to rule against the government on issues of national security.

District of Columbia Judge Richard Leon, however, recently ruled in the case of [Klayman v. Obama](#) that the phone records program violates the Fourth Amendment. Last week’s report of the independent Privacy and Civil Liberties Oversight Board also declared the program illegal and said it ought to be discontinued. Another panel appointed by the president to review the program agreed with the finding of both Judge Leon and the Civil Liberties Board that no terrorist plot or activity had been uncovered as a direct result of the NSA program.

Apart from constitutional issues, civil liberties lawyer Jennifer Granick of the Stanford Center for the Internet and Society argues that the NSA “metadata” collection is illegal on statutory grounds. In an article co-authored by Christopher Sprigman on [Forbes.com](#), the pair claimed the much-disputed Section 215 does not authorize the NSA to collect from telecommunications companies the records of all the phone calls made and electronic messages sent or received by Americans every day:

Specifically, section 215 allows the F.B.I. to obtain court orders demanding that a person or company produce “tangible things,” upon showing reasonable grounds that the things sought are “relevant” to an authorized foreign intelligence investigation. This statute allows the NSA to collect only information it can plausibly argue is “relevant” to a particular investigation.

The pen register statutes which authorize court orders for the collection of telephone and Internet dialing, signaling, routing and addressing information, and the controversial national security letter (NSL) powers, which allow the FBI to demand certain information without even court review, also hinge on “relevance.”

The dragnet collection of phone records for the NSA runs counter to the Fourth Amendment’s



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requirement that warrants for searches name in particular “the place to be searched and the person or things to be seized.” It also goes beyond both the legal and common sense meaning of the word “relevant.”

“Were we really expected to believe that all these provisions allow the government to collect in bulk the telephone records — as well as Internet records, credit card records and more — of everyone in America?” Granick and Sprigman asked, adding,

Obviously, no. Any individual’s telephone records — your records, our records, your grandmother’s records (unless your grandmother is secretly a member of Al Qaeda) — are virtually certain to be not relevant to any particular foreign intelligence investigation. Only a few people’s phone records will ever be relevant, at least if the word “relevant” has any meaning.

Photo of Republican National Committee Chairman Reince Priebus



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