

## **Amash Amendment #100: Stop NSA's Blanket Surveillance of Americans**

On Wednesday, the House will have its first floor debate over NSA's blanket collection of Americans' telephone records. The Amash-Conyers amendment—and only the Amash-Conyers amendment—ends the indiscriminate collection of those records. The amendment limits the government's collection of records under Section 215 of the Patriot Act to those records that pertain to a person who is subject to an investigation under that provision.

### **How Sec. 215 surveillance works**

The Patriot Act's Sec. 215 (50 U.S.C. § 1861) authorizes the government to collect “tangible things” that are “relevant” to an authorized national security investigation.

We now know that NSA used Sec. 215 to collect metadata on every phone call that every American has made, reportedly over the last seven years. That metadata includes numbers dialed, numbers of incoming calls, times of the calls, and routing information. Many Members who voted for the Patriot Act, including the past chairman of the law's authorizing committee, have stated that NSA's blanket surveillance program is far beyond what was intended in the law.

Pursuant to Sec. 215 and at the request of the government, the FISA court routinely enters 90-day orders to telecommunications providers like Verizon to turn over to the government all call detail records or “telephony metadata” for calls within the U.S., including purely local calls. The FISA court approves the procedures that the administration says it will impose on itself to limit its own access to the data.

The administration has not provided a public explanation as to how the telephone records of all Americans are “relevant” to a national security investigation. Similarly, Sec. 215 is silent as to how the government may use these records once it has obtained them.

### **What the Amash-Conyers amendment does**

The Amash-Conyers amendment ends NSA's blanket collection of Americans' telephone records. It does this by requiring the FISA court under Sec. 215 to order the production of records that pertain only to a person under investigation.

The amendment has three important practical effects. First, it ends the mass surveillance of Americans. The government no longer is authorized under Sec. 215 to hold a pool of metadata on every phone call of every American. Second, the amendment permits the government to continue to acquire business records and other “tangible things” that are *actually* related to an authorized counterterrorism investigation. The government still has access to this tool under the amendment, but it's forced to comply with the intent of Congress when it passed Sec. 215. Third, the amendment imposes more robust judicial oversight of NSA's surveillance. The FISA court will be involved every time NSA searches Americans' records, and the court will have a substantive, statutory standard to apply to make sure the NSA does not violate Americans' civil liberties.

What steps would the government take to collect records if the Amash-Conyers amendment were enacted? The government would have to provide facts to the FISA court to show that there are reasonable grounds to believe that the records sought (1) are relevant to an appropriately authorized national security investigation and (2) pertain to the person (including any group or corporation) under investigation.

We know that the government can use that process effectively in its investigations because it already does. Based on the government's public statements, it appears that the government routinely goes to the FISA court for Sec. 215 orders for tangible things pertaining to persons under investigation. If the government uses non-bulk collection for other Sec. 215 orders, there is no good reason why the government needs bulk collection of Americans' telephone metadata.

### **What the Amash-Conyers amendment does NOT do**

The amendment does not affect foreign surveillance. FISA simply does not apply to the surveillance of purely foreign communications. *See* 50 U.S.C. § 1802. FISA court orders under Sec. 215 cover local telephone calls (wholly within the U.S.) and calls between the U.S. and abroad. NSA's Sec. 215 phone surveillance program covers only calls in which at least one side is in the U.S.

The amendment does not restrict the types of records that the government can collect under Sec. 215. NSA and the FBI can continue to collect telephone records, car rental reservations, hotel receipts, and any other "tangible thing" under Sec. 215. NSA can continue to collect telephone metadata without a warrant and without probable cause that a crime or other statutory violation has been committed. The amendment simply requires that there be a reasonable connection between the documents sought and the person under investigation.

The amendment does not take away a tool that has proved effective in the fight against terrorism. The administration claims that surveillance conducted under FISA Sec. 702, including the PRISM program, has disrupted terrorist plots, including the New York subway plot. The Amash-Conyers amendment does not address FISA Sec. 702 in any way. The amendment concerns Patriot Act Sec. 215 alone, not Sec. 702. The administration's one and only public example of a Sec. 215 "success" is the conviction of a taxi driver for sending money to a Somali group. Reports suggest that the Somali group posed no direct threat to the U.S., the investigation did not uncover an imminent threat, and the data could have been obtained without Sec. 215. For that "success," the government has collected billions of Americans' records.

**As you go home for August recess, you will be asked: Did you oppose the suspicionless collection of every American's phone records? When you had the chance to stand up for Americans' privacy, did you? Please support Amash amendment #100 and oppose the NSA's blanket surveillance of your constituents.**