

PATRIOT ACT

IMPACT: The “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” commonly known as the Patriot Act, was passed less than two months after September 11, 2001. The act greatly expanded the surveillance powers of the U.S. Government, allowing the National Security Agency to access phone metadata, authorize roving wiretaps, and detain individuals at the U.S. border. Congress has authorized the extension of certain portions of the act numerous times, however, as of December 2020, key provisions of the Patriot Act have expired.

- The [USA PATRIOT Act of 2001](#) was **passed on October 26, 2001 in response to the September 11, 2001 attacks**. Introduced only three days before, **the bill passed with little discussion** — the usual process of public hearings, markups, and floor debate was “bypassed almost entirely.” **Many U.S. Representatives and Senators admitted after its passage that they had not even read the bill before voting on it.**
- According to [scholar](#) Geneive Abdo, **the Patriot Act “In theory applies to all citizens, but it was written with Muslims in mind and in practice denies them their civil liberties by empowering law enforcement authorities to raid their homes, offices, and mosques in the name of the war on terrorism.”**
- Before the passage of the Patriot Act the U.S. government was limited in the individuals it could target for surveillance and the kinds of information they could request about them. For example, FBI agents could only [demand records](#) from “entities that count as common carriers, public accommodation facilities, storage facilities, or vehicle rental facilities.” [Additionally](#), they could only request information that directly concerned the target of their investigation, not on people they had come into contact with.
- These previous limitations on surveillance were [initially](#) put into law in [response](#) to [COINTELPRO](#), the FBI’s [counterintelligence program](#) that surveilled, infiltrated, assassinated, and attempted to discredit many domestic Civil Rights and political groups particularly in the 1960s and 1970s, particularly Black, Indigenous, Latinx, communist, and anti-war groups groups. **The Foreign Intelligence Surveillance Act Court (FISC) was established in 1978 in order to provide oversight and prevent abuse of surveillance. FISC approves or denies petitions from intelligence officials who seek to enact surveillance inside the United States. However, in recent years observers have criticized the court for its lack of transparency.** They [say](#) its definition of probable cause is not well understood, and critique the fact that there is no [adversarial process](#) present (i.e. that there is nobody in the court to argue against the approval of surveillance requests). Furthermore, they point out that in the [35 years](#) that FISC has been active, they have approved 35,435 requests for surveillance and rejected only 12.
- The [Patriot Act](#) **mandated that First Amendment protected activities (assembly, speech, practice of religion) are not allowed to be the “sole basis” for being targeted for surveillance.** However, the [agency](#) “may consider activities such as participating in a public rally, attending a particular place of worship, expressing political views on the Internet, or buying a particular book — as long as those activities are not the exclusive basis for the agency’s assessment.”
- The **most controversial part of the Patriot Act is Section 215, also known as the “business records” provision.** Section 215 [vastly expanded](#) the kinds of information that agents can request over the course of their investigation. **Instead of being limited to the businesses and organizations listed above, FBI agents could request an order from FISC that [requires](#) any organization to produce “tangible things** (including books, records, papers, documents, and other items).”
- In 2006, **a secret ruling by FISC drastically changed the NSA’s interpretation of Section 215.** Section 215 requires that records collected be relevant to an authorized foreign intelligence investigation. **This 2006 ruling took the broadest possible [interpretation](#) of “relevant,” claiming that because of the NSA’s [contact chaining](#) (collecting data from numbers within two or three degrees of separation from the individual under investigation), all data collected by phone companies is potentially relevant.** It was this verdict that authorized the NSA to [demand](#) mass phone data on millions of Americans from American

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telecommunication companies. In May of 2015 a federal court ruled that the NSA's bulk collection of phone metadata was in fact illegal, voiding the 2006 FISC verdict.

- Defenders of Section 215 often claim that bulk phone data collection is harmless because it only collects call metadata (also known as call detail records, or CDR) — information about the numbers involved in the call, the length of the call, and when it took place. However, a 2016 study from Stanford showed that when phone metadata is cross referenced with other public datasets researchers can easily discover deeply personal information about callers, including their identity, relationship status, geographic location, health condition, and occupation.
- The **full extent of the government's surveillance activities under Section 215 was not made clear to the public until 2013, when Edward Snowden leaked thousands of classified documents to the press.** Especially shocking to many was a top secret court order that ordered Verizon to turn over telephone data relating to its customers. This was the first time the public was made aware of FISC's secret reinterpretation of Section 215 that allowed mass collection of call detail records.
- Another controversial part of the Patriot Act was **section 206, also known as the roving wiretaps provision.** Before the Patriot Act, national security investigators needed to obtain separate court orders in order to tap every phone or computer that a suspect might use. However, **this provision allowed one wiretap authorization to apply to multiple devices. In other words, it applies to a suspect rather than a singular device. This meant that innocent individuals who come in contact with the target of the tap could have their privacy violated.**
- Although not technically part of the Patriot Act, **the so-called "lone wolf" amendment to the Patriot Act expanded the category of who can be considered an "agent of a foreign power" in a terrorism investigation.** Whereas previous regulations mandated that any individual under investigation had to be proven to be "acting on behalf of a particular entity," due to this amendment investigators can target any individual who "engages in international terrorism or activities in preparation therefore," whether or not they are actually agents of a foreign power. Note that this provision does not apply to citizens and legal permanent residents, and as of November 2019 it has never actually been used. In 2020, the House and Senate failed to renew this provision.
- **Section 213 of the Patriot Act expanded the authority of the government to authorize "sneak and peek" warrants.** These warrants allow law enforcement to enter and search a suspect's property without notifying them that the warrant has been enacted until months later.
- **Sections 411 and 412, both of which act as amendments to the Immigration and Nationality Act, had an especially strong impact on Muslims in the U.S. Section 411 vaguely extended the definitions of many terms, including "terrorist activity," "engage in terrorist activity," and "terrorist organization."** It also gave the Secretary of State authority to single-handedly designate any group as a terrorist organization. This redefinition meant that the number of immigrants who were subject to removal from the country and detention in airports was greatly expanded. **Section 412 also expanded the authority of the Attorney General to place immigrants suspected of terrorism in detention while their immigration case is proceeding.** A 2004 report by the Institute for Social Policy and Understanding (ISPU) detailed many instances of both verbal and physical abuse experienced by individuals who were detained at airports due to these provisions.
- In November 2019 the **Trump administration invoked Section 412 of the Patriot Act for the first time since it was put into law in order to indefinitely detain Adham Ahmed Hassoun, a Lebanese-born Palestinian man.** In 2002 Hassoun was convicted of funneling money to charities that had ties to terrorist groups in Kosovo and Chechnya. He was supposed to be released and deported in 2017, but because no country would accept him he was transferred to the custody of ICE. In March of 2019 he filed a writ of Habeas Corpus, and in response the Trump administration declared him a threat to national security and claimed the authority to detain him indefinitely under Section 412. His lawyers described his situation as "Guantanamo on domestic soil."

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- **The Patriot Act also expanded the maximum sentence for violating 18 U.S.C. § 2339B, also known as the “material support” statute, from ten to fifteen years. The USA Freedom Act (discussed below) then expanded it to twenty years in 2015.** This statute was meant to target individuals who provide funds, materials, or training to terrorists. However, critics have called this law “new McCarthyism” and claim that it relies on guilt by association. They have argued that it leads to the prosecution of individuals participating in humanitarian relief, political advocacy, or human rights training. A 2011 study by U.S. civil rights organization Muslim Advocates points out that regulations like these make it especially difficult for Muslims to give zakat.
- Not even six months after the Patriot Act was first enacted in 2001, advocates began raising alarms about its impact on Muslim Americans. In January 2004 the Institute for Social Policy and Understanding (ISPU) published a report titled “The USA Patriot Act: Impact on the Arab and Muslim American Community.” It noted that, “While the backlash against Muslims can not be solely attributed to the passing of the Patriot Act, it can be said that the new law made violations against Arabs and Muslims more likely while disguising it under a legal veneer. Similarly, while the Department of Justice may have brought federal criminal charges against a number of individuals involved in hate crimes, the Patriot Act granted federal agencies the right to target these communities, ultimately creating a climate of discrimination which enables hate crimes to continue.”
- In October 2011, ten years since the passage of the Patriot Act, **Muslim Advocates published a report with a similar conclusion: Patriot Act surveillance, combined with the fact that anti-Muslim bias pervades many FBI training materials,** has set “a chill on the privacy, equal protection, due process and free speech, religious practice and association rights of American Muslims.”
- In **2014 a document from the Snowden leaks revealed that FISC had authorized the surveillance of five prominent Muslim Americans, including career government officials, university professors, an attorney, and the executive director of the largest Muslim civil rights organization in the U.S., the Council on American-Islamic Relations (CAIR).** The document does not provide any justification for the government’s surveillance on these five individuals, and according to an anonymous official, at the time of surveillance the government did not have a FISC warrant on at least one of the individuals listed. While it is unclear if this surveillance was authorized by the Patriot Act in particular, it does show that the FBI has continuously used its powers of surveillance to target Muslim Communities in the U.S.
- In 2004, Oregon lawyer and white Muslim convert, Brandon Mayfield, was imprisoned for two weeks after a faulty fingerprint match implicated him in the 2004 Madrid train bombings. Over the course of the investigation into Mayfield, the FBI entered his house without a warrant, copied computer drives, photographed documents, took DNA samples, took approximately 335 digital photographs of his home, and wiretapped his conversations. This was all permitted under provisions of the Patriot Act. Following his release, Mayfield reported, “I personally was subject to lockdown, strip searches, sleep deprivation, unsanitary living conditions, shackles and chains, threats, physical pain and humiliation.” Two years later the FBI admitted wrongdoing and paid Mayfield a settlement of \$2 million.
- In 2004, Swiss Muslim academic Tariq Ramadan was denied entry to the United States under Section 411 of the Patriot Act. Ramadan had received an offer for a position at the University of Notre Dame and had already been issued a visa. According to the State Department, the visa was withdrawn due to a small donation Ramadan had made several years prior to an organization that was later added to a State Department blacklist. Before 2004, Ramadan had successfully visited the United States twenty four times.
- A **2014 report by the Privacy and Civil Liberties Oversight Board concluded that not only was the mass collection of phone metadata unlawful and a danger to American privacy, it had also “shown minimal value in safeguarding the nation from terrorism.”** Their analysis of data could not find one case in which the program had impacted the outcome of a counterterrorism investigation or helped to discover a terrorist plot. It officially recommended that the government end the program.
- A 2019 report by the Demand Progress Education Fund (nonpartisan) and the FreedomWorks Foundation (libertarian) argued “Since September 11, 2001, the government has been in nearly continuous violation of the

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statutory and judicial rules governing domestic surveillance.” One example of this is the fact that in 2006, Congress gave FISC 180 days to set specific conditions under which Section 215 data can be accessed, disseminated, and retained. They did not set and adopt these “minimization procedures” for seven years. In addition to this, the report lists seven separate instances in which technical errors resulted in phone companies overreporting data to the NSA, or cases in which the NSA kept files longer than the five year limit for retention.

- On **June 2, 2015 Congress passed the [USA Freedom Act \(Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015\)](#). This act limited some of the provisions of the Patriot Act, especially **Section 215**. Rather than allowing the NSA to continue storing bulk metadata itself, it required phone companies to store the data. The NSA then had to petition a federal court for permission to pull records from the databases. It also limited data gathering to “two hops” (two degrees of separation from the original individual) rather than the previous three. Finally, it also required that FISC increase transparency and declassify some of the rulings it makes on surveillance approval cases. Even with these restrictions, the NSA reported that it had still collected 534,396,285 call detail records during 2017, based on requests for data on only 40 targets.**
- The **USA Freedom Act also extended the provisions of the Patriot Act until December 15, 2019**. Many experts have pointed out that due to the growing popularity of apps that encrypt messages and call data, collecting phone metadata is not nearly as useful as it was when the Patriot Act First passed.
- In June of 2018 the NSA announced that they had received metadata that they were not authorized by law to receive from some companies. Because they did not have the technical capabilities to sift out the illegal information from the legal information, they instead deleted all CDR information acquired since 2015. However, about a year after that announcement a FOIA request revealed that they had been unsuccessful in deleting all of the prohibited data. Even after this, the NSA was apparently unsuccessful in fixing this technical problem, as they announced in October 2018 that technical errors once again lead to an overcollection of CDR records.
- In March 2019, Luke Murry, a national security adviser for House Minority Leader Kevin McCarthy, told the Lawfare podcast that the section 215 program had not been in use since the October 2018 discovery of technical errors.
- In the past few years, **advocacy groups and individuals from a diverse range of backgrounds, including social justice, civil liberties, and internet rights groups, have called on Congress to allow section 215 of the Patriot Act to expire**. In a September 2018 letter to Democratic Members of Congress, thirty such organizations state: “Mass surveillance is wrong and dangerous to our democracy. It is antithetical to our core civil liberties and it disproportionately harms the communities historically targeted by racial and religious animus.”
- In August of 2019, Dan R. Coats, the then-Director of National Intelligence, released a letter in which he requested on behalf of the Trump administration that Congress permanently extend Section 215, Section 206, and the “Lone Wolf” provision of the Patriot Act. While he acknowledged that the program had recently been suspended due to its high costs and few benefits, he still claimed that changes in technology might make the program useful again and therefore that it should be made permanent.
- In early November 2019, The Daily Beast reported that the House judiciary and intelligence committees were working on a bill that would end the CDR program implemented by the USA Freedom Act. This would potentially mean the end of mass collection of phone data by the U.S. intelligence agencies.
- On November 19, 2019 the House passed a continuing resolution to fund the government through December 20, 2019, which the President signed into law two days later. This bill included a three month extension of the Patriot Act, which was set to sunset on December 15th 2019. **This extension expired on March 15 2020, following which the U.S. Senate approved an amended version of the bill**. However, the *New York Times* reported that **the House of Representatives indefinitely postponed a vote on the bill, which would have “temporarily revive[d] three expired F.B.I. surveillance tools for terrorism and espionage investigations.”**

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- On the 20th anniversary (October 26, 2021) of the passage of the Patriot Act, former Wisconsin Senator Russ Feingold penned a piece in the *Nation* outlining why he opposed the bill in 2001. He [wrote](#) that he voted against the Patriot Act, “because of the cost it was asking the American people to pay in the form of their civil rights, particularly their privacy rights and especially for people of color. My fears on this front have come to pass over the past 20 years, and our country has yet to fully reckon with the discriminatory impact of the Patriot Act on communities of color.”

Bridge Initiative Factsheet