

## THE PATRIOT ACT AT A GLANCE

Many provisions in the amended Patriot Act have been abused – or have the potential to be – because of their broad and sweeping nature. The sections detailed on these pages need congressional oversight. Despite numerous hearings during the 2005 reauthorization process, there is a dearth of meaningful information about their use. Congress and the public need real answers, and the forthcoming expiration date is the perfect opportunity to revisit the provisions that have worried civil libertarians since 2001:

- Section 203: Information Sharing. The Patriot Act and subsequent statutes encourage or require information sharing. While it is important for critical details to reach the right people, little is known about the breadth of use and the scope of distribution of our personal information.
- Section 206: Roving “John Doe” Wiretaps. Typical judicial orders authorizing wiretaps, including Foreign Intelligence Surveillance Act (FISA) wiretap orders, identify the person or place to be monitored. This requirement has its roots firmly planted in the original Bill of Rights – the giants of our history having insisted on such a concept, now memorialized in the Fourth Amendment, where it calls for warrants “particularly describing the place to be searched, and the persons or things to be seized.” However, these roving warrants are required to specify neither person nor place, amounting to the “general warrants” that our nation’s founders had abhorred. This section will expire on December 31, 2009.
- Section 209: Access to Stored Communications. The Patriot Act amended criminal statutes so that the government can obtain opened emails and emails older than 180 days with only a subpoena instead of a warrant.
- Section 212: Voluntary Disclosures and Exigent Letters. Current law permits telecommunications companies to release consumer records and content to the government when they have a good faith belief it relates to a threat. However, the Patriot Act and subsequent legislation lowered that trigger from a “reasonable” to “good faith” belief that the information reflects an emergency. The act also took away the requirement that the threat be “imminent.” The Department of Justice Inspector General has confirmed that the government is using this loophole to request information in the absence of true emergencies.
- Section 213: Sneak and Peek Searches. These are delayed notice search warrants. Before the Patriot Act, criminal search warrants required prior notification except in exigent circumstances or for stored communications when notice would “seriously jeopardize an investigation.” The Patriot Act expanded this once narrow loophole – used solely for stored communications – to all searches. Agents might now use this vague catch-all to circumvent longstanding Fourth Amendment protections. These sneak and peek warrants are not limited to terrorism cases – thereby undermining one of the core justifications for the original Patriot Act. In fact, for the 2007 fiscal year, the government reports that out of 690 sneak and peek applications, only seven, or about one percent, were used for terrorism cases.
- Section 214: Pen Register/Trap and Trace Orders Under FISA. Pen register/trap and trace devices pick up communication records in real time and provide the government with a streaming list of phone calls or emails made by a person or account. Before the Patriot Act, this section was limited to tracking the 32 RECLAIMING PATRIOTISM communications of suspected terrorists. Now, it can be used against people who are generally relevant to an investigation, even if they have done nothing wrong.
- Section 215: FISA Orders for Any Tangible Thing. These are FISA Court orders for any tangible thing – library records, a computer hard drive, a car – the government claims is relevant to an investigation to protect against terrorism. Since passage of the Patriot Act, the person whose things are being seized need not be a suspected terrorist or even be in contact with one. This section is scheduled to expire on Dec. 31, 2009.
- Section 216: Criminal Pen Register/ Trap and Trace Orders. The Patriot Act amended the criminal code to clarify that the pen register/trap and trace authority permits the government to collect Internet records in real time. However, the statute does not define ‘Internet record’ clearly. Congress needs to make sure that the government is not abusing this provision to collect lists of everything an innocent person reads on the Internet.
- Section 218: “Significant Purpose” to Begin an Intelligence Wiretap or Conduct Physical Searches. Before the Patriot Act, the extensive and secretive powers under FISA could only be used when the collection of foreign intelligence – as opposed to prosecution – was the primary purpose of the surveillance. Now, collecting foreign intelligence need only be a “significant” purpose, permitting the government to use this lower FISA warrant standard in place of a traditional criminal warrant. Congress

must find out whether the government has conducted surveillance under the relaxed FISA standards for criminal prosecutions.

- Section 219: Single Jurisdiction Search Warrants. The Patriot Act allows judges sitting in districts where terrorism-related activities may have occurred to issue warrants outside of their district, possibly causing hardship on a recipient who may want to challenge the warrant.

- Section 220: Nationwide Search Warrants for Electronic Evidence. This provision permits a judge to issue an order for electronic evidence outside of the district in which he or she sits. This provision may cause a hardship for a remote Internet or phone service provider who wants to challenge the legality of the order.

- Section 411: Ideological Exclusion. The Patriot Act amended the Immigration and Nationality Act to expand the terrorism-related grounds for denying foreign nationals admission into the United States, and for deporting aliens already here. This revived the discredited practice of ideological exclusion: excluding foreign citizens based solely on their political views and associations, rather than their conduct.

- Section 505: National Security Letters. NSLs are demands for customer records from financial institutions, credit bureaus and communications service providers. They have existed for decades, but prior to passage of the Patriot Act and its subsequent amendments, they were limited to collecting information on suspected terrorists or foreign actors. Recipients are gagged from telling anyone besides their lawyers and those necessary to respond to the request that they either received or complied with a NSL. The gag has been struck down as unconstitutional but remains on the books. In 2007 and 2008, the Justice Department's inspector general reported that upwards of 50,000 NSLs are now issued each year, many of which obtain information on people two and three times removed from a suspected terrorist.

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- Section 802: Definition of Domestic Terrorism. The Patriot Act broadened the definition of domestic terrorist acts to include any state or federal crime as a predicate offense, including peaceful civil disobedience.

- Section 805: Material Support. This provision bars individuals from providing material support to terrorists, defined as providing any tangible or intangible good, service or advice to a terrorist or designated group. As amended by the Patriot Act and other laws since September 11, this section criminalizes a wide array of activities, regardless of whether they actually or intentionally further terrorist goals or organizations. Federal courts have struck portions of the statute as unconstitutional and a number of cases have been dismissed or ended in mistrial.

- Section 6001 of intelligence reform bill: "Lone Wolf" Surveillance and Search Orders. Since its inception, FISA has regulated searches and surveillance on US soil for intelligence purposes. Under FISA, a person would have to belong to a group suspected of terrorism before he or she could be surveilled. The Intelligence Reform and Terrorism Prevention Act of 2004 added a new category, allowing someone wholly unaffiliated with a terrorist organization to be targeted for surveillance. This section is scheduled to expire on December 31, 2009.

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