**So What Does the USA Freedom Act Do Anyway?**

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Now that the Senate has passed—and the President has signed—the [USA FREEDOM Act](https://www.congress.gov/bill/114th-congress/house-bill/2048/text?q=%7B%22search%22%3A%5B%22USA+Freedom+Act%22%5D%7D), we thought it might be a good idea to recap what exactly the new law does and does not do.

Thanks to efforts by Senators Patrick Leahy and Mike Lee, among others, to defeat proposed amendments to the bill, the version passed by the Senate is the same as that which passed the House a couple weeks back. See our [summary of the bill](http://www.lawfareblog.com/so-whats-new-usa-freedom-act-anyway) from a couple weeks ago for a detailed account and a comparison to the previous Senate bill proposed by Senator Leahy nearly a year ago. But here’s a quick overview of the key provisions of the bill that yesterday became law.

Under Title I, the bill bans the current system of bulk collection under Section 215. Instead, it requires that the government base any applications for call detail records on a “specific selection term”—a term that “specifically identifies a person, account, address, or personal device” in a way that “limit[s], to the greatest extent reasonably practicable, the scope of tangible things sought consistent with the purpose for seeking the tangible things.”

The government can apply for records within the first hop of the specific selection term if it (1) states “reasonable grounds to believe that the call detail records sought to be produced based on [a] specific selection term . . . are relevant to [an authorized] investigation,” and (2) has “a reasonable, articulable suspicion” that the selection term is “associated with a foreign power engaged in international terrorism or activities in preparation therefor, or an agent of a foreign power engaged in international terrorism or activities in preparation therefor.” To apply for records within the second hop, the government must state “session-identifying information or a telephone calling card number identified by the specific selection term” used to produce call detail records within the first hop.

As a safeguard against overbroad collection, the Act requires the government to “adopt minimization procedures” calling for “the prompt destruction of all call detail records” determined not to be “foreign intelligence information.” FISA court judges may, moreover, “impose additional, particularized minimization procedures” with respect to any “nonpublicly available information concerning unconsenting United States person.”

Title II of the act concerning pen registers and trap and trace devices is brief. In similar manner as Title I bans bulk business records collection except by way of application based on a specific selection term, Title II bans pen registers and trap and trace devices except by way of application based on a specific selection term. It adopts the same definition of “specific selection term” as in Title I. Similarly, Title V reforms the National Security Letter program by extending the ban on bulk collection, except by way of application based on a “specific selection term,” to various provisions in the U.S. Code that would otherwise permit the FBI to issue the bulk collection of national security letters.

Titles III and VII of the Act deal with collection under Section 702. Title III prohibits the use, in court proceedings, of information obtained under Section 702 through procedures deemed by a FISA Court to be “deficient concerning any United States person.” Nor may the government “use[] or disclose[] in any other manner” such information.

Title VII, conversely, attempts to correct for several concerns regarding the targeting of non-United States persons. First, it creates an emergency exception allowing the government to continue targeting “roamers”—people lawfully targeted as non-United States persons located outside the United States, but who suddenly show up in the United States—for a brief period of time after they show up in the United States, so long as “a lapse in the targeting of such non-United States person poses a threat of death or serious bodily harm to any person.” Second, it expands the definition of “agent of a foreign power,” as applied to non-United States persons, in order to include non-United States persons who are lawful targets under traditional FISA warrants but might otherwise become improper targets when they leave the country. Third, it also expands the definition of “agent of a foreign power” to include a non-United States person who “engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power, or knowingly aids or abets” or “knowingly conspires with” any person in activities related to the “international proliferation of weapons of mass destruction” In these areas, the USA Freedom Act actually does modestly expand surveillance authorities.

Title IV is concerned with reform of the FISA Court. Broadly speaking, the new law provides for the appointment of amici curiae to assist the FISA Court, but it creates a fairly limited role for those amici. For instance, amici may provide assistance with respect to “legal arguments or information regarding any . . . area relevant to the issue presented to the court,” but only if the FISA Court deems such information relevant and only in certain matters that, for instance, “present[] a novel or significant interpretation of the law” in the eyes of the FISA Court. Title IV also provides for limited appellate review of FISA Court decisions, as well as limited Supreme Court review of FISA Court of Review decisions. Finally, Title IV also requires the DNI to perform declassification review of FISA Court opinions that “include[] a significant construction or interpretation” of any provision of law and, following such declassification review, make certain parts of FISA Court opinion publicly available.

Title VI prescribes extensive disclosure requirements with respect to data about FISA collection. Under Sections 601 and 602, the government must disclose to Congress, as well as to the public, various items regarding the number of orders and certifications sought and received; estimates of the number of people targeted and affected by surveillance; and the number of appointments of amici curiae, among other items of information. Section 603 then allows companies subject to government production orders to report publicly certain limited pieces of information about the number and the types of production orders they have received.

The final title of the Act—entitled “Safety of Maritime Navigation and Nuclear Terrorism Conventions Implementation”—deals not with surveillance at all, but rather concerns U.S. international obligations on matters regarding maritime safety and nuclear terrorism. As Ben and I noted in our previous post, it is unclear how these provisions made their way into the USA FREEDOM Act.

As per Section 705 of the Act, the law now extends until December 15, 2019. Importantly, this extension also covers the no-longer-controversial roving wiretap and lone-wolf terrorist provisions that sunset along with the 215 program. The baby that was thrown out with the bath water, in other words, has been rescued from the trash.

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