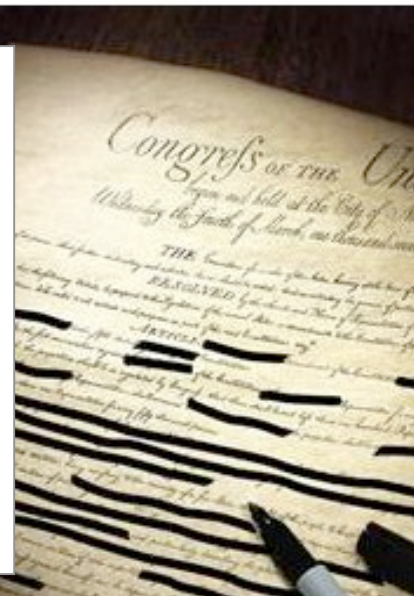


The PATRIOT Act in 2009

A guide to current legislation & debates

Since the passage of the original PATRIOT Act in 2001 and its revision in 2006, much national debate has centered on the legislation's threat to privacy, intellectual freedom, and sanction of pervasive racial profiling. As two important sections of the PATRIOT Act are scheduled to sunset in December 2009, there is renewed opportunity to challenge government spying on our communities. This guide offers resources to help civic and community leaders find both *background* and *up-to-date* information on the reauthorization debate.



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HISTORY & BACKGROUND

The PATRIOT Act Itself

*The following sections will sunset 12/31/2009.
U.S.C. stands for United States Code.*

50 U.S.C. § 1804, 1805

ELECTRONIC SURVEILLANCE

Known as **Section 206**, this code deals with government permission to apply roving wiretaps on all phones and computers a person uses.

50 U.S.C § 1981, 1861

ACCESS TO BUSINESS RECORDS

Known as **Section 215**, this code deals with FISA warrants used to demand “any tangible thing,” such as financial records or membership lists from a business or nonprofit.

See also:

18 U.S.C. § 2709 pertaining to NATIONAL SECURITY LETTERS, and the INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004, **Pub. Law No. 108-458 § 6001**, known as the "lone wolf" provision, which is also scheduled to sunset 12/31/09.

To read these sections in full:

- Go to GPOACCESS.GOV
- <http://www.gpoaccess.gov/uscode/index.htm>
- Then enter the U.S.C. cite (e.g., 50 USC 1861)

Treatises on the Law

PRIVACY LAW AND THE USA PATRIOT ACT

(2006) BY STEVE C. POSNER NEWARK

A major tome on the PATRIOT Act and subsequent legislation, this treatise discusses privacy rights and national security.

INTERNET LAW TREATISE

A free, online derivative of the *Electronic Media and Privacy Law Handbook* (2003), this treatise is maintained by the legal advocacy group Electronic Frontier Foundation. <http://ilt.eff.org/>

SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT (2004) BY W.R.LAFAVE

This 6-volume set comprehensively covers legal precedent on issues including probable cause, surveillance, and privacy of personal, business and financial records. See especially §2.1-§2.7.

Helpful Articles

THE CHAINS OF THE CONSTITUTION AND LEGAL PROCESS IN THE LIBRARY: A POST-USA PATRIOT REAUTHORIZATION ACT ASSESSMENT BY SUSAN NEVELOW MART

This recent, comprehensive article provides *excellent* background on court challenges to the Act, including easy-to-read charts outlining contested sections. Find through your local library by citation: 33 OKLA. CITY U. L. REV. 435 (2008).

History & Background cont...

THE USA PATRIOT ACT FROM THE PBS ONLINE NEWSHOUR (MARCH 2006)

This online article provides an easy-to-read overview of the Act's main sections and revisions during the 2006 reauthorization.

http://www.pbs.org/newshour/indepth_coverage/terrorism/homeland/patriotact.html

Oversight & Watchdog Reports

A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF SECTION 215 ORDERS FOR BUSINESS RECORDS (MARCH 2007) BY OFFICE OF THE INSPECTOR GENERAL, U.S. DEPT. OF JUSTICE

<http://www.usdoj.gov/oig/special/s0703a/final.pdf>

A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF NATIONAL SECURITY LETTERS (MARCH 2007) BY OFFICE OF THE INSPECTOR GENERAL, U.S. DEPT. OF JUSTICE

<http://www.usdoj.gov/oig/special/s0703b/final.pdf>

RECLAIMING PATRIOTISM (MARCH 2009) BY AMERICAN CIVIL LIBERTIES UNION

This report documents glaring abuses under the PATRIOT Act during its first 8 years.

www.aclu.org/pdfs/safefree/patriot_report_20090310.pdf

Prior Cases with Bearing on Act

Tattered Cover, Inc. v. City of Thornton, 44 P.2d 1044 (Colo. 2002).

American Civil Liberties Union v. U.S. Dep't. of Justice, 265 F. Supp.2d 20 (D.D.C. 2003)

American Civil Liberties Union v. U.S. Dep't. of Justice, 321 F.Supp.2d 24 (D.D.C. 2004)

Electronic Privacy Information Center v. Dep't. of Defense, 355 F.Supp.2d 98 (D.D.C. 2004)

Muslim Community Ass'n. of Ann Arbor v. Ashcroft, 459 F.Supp.2d 592 (E.D. Mich. 2006)

STAYING CURRENT

Pending Bills

NSL REFORM ACT OF 2009

(H.R. 1800, 111TH CONGRESS).

Revises Section 215 and seeks to limit FBI use of National Security Letters (NSLs) to obtain record records.

SAFE AND SECURE AMERICAN ACT

(H.R. 1467, 111TH CONGRESS)

Would extend Section 206 of the PATRIOT Act another 10 years.

JUDICIOUS USE OF SURVEILLANCE TOOLS IN COUNTER-TERRORISM EFFORTS ACT

(S.1686, 111TH CONGRESS)

Proposes reforms to USA PATRIOT including safeguards on the use of surveillance, gag orders, and data gathered about U.S. citizens.

Other bills to watch:

STATE SECRETS PROTECTION ACT

(S. 417, H.R. 984)

END RACIAL PROFILING ACT

(S. 2481, H.R. 4611)

To check the official status of these bills:

- Go to THOMAS.GOV <http://thomas.loc.gov>
- Enter the bill number (e.g., HR 1800)
- To review a bill from a previous Congress, use the Advanced Search

Automatically track these bills by email:

GOVTRACK.US <http://www.govtrack.us/>

- Sign up to track the individual bills mentioned here or track by topic area.

Outstanding Cases Relating to §§ 1805, 1805 and 1861

DOE V. MUKASEY, 549 F.3D 861 (2ND CIR. 2008)
Addresses Section 215 and revises a 2007 case (*DOE V. GONZALEZ*, S.D.N.Y) declaring National Security Letters unconstitutional. See the “Discussion” section of this case and watch for further ruling. In the district case, Judge Victor Marrero ruled that Section 215 of the PATRIOT Act violated the separation of powers doctrine and First Amendment protection of free speech.

HEPTING ET AL V. AT&T CORP. ET AL, 539 F.3D 1157 (9TH CIR. 2008)
Plaintiffs suing AT&T for its role in wiretapping average Americans. Decision pending based on updates to Foreign Intelligence Surveillance Act.

JEWEL ET AL V. NATIONAL SECURITY AGENCY ET AL, No. C 08-04373
(N.D. CAL. FILED SEPT. 18, 2008)
Class action suit against the government for its role in unwarranted wiretapping. Scheduled for hearing this summer in 9th Circuit Court of Appeals.

Find these cases and view documents:

- Go to JUSTIA.COM <http://law.justia.com/>
- Choose which court you want to browse. For district cases, search party name, court, date, etc.

Useful Websites for Staying Current

AMERICAN CIVIL LIBERTIES UNION
Maintains regular legislative updates, news, background and judicial updates on the Act. <http://www.aclu.org/safefree/index.html>

BILLS OF RIGHTS DEFENSE COMMITTEE
Find out about other bills with bearing on the U.S. civil liberties. <http://www.bordc.org/threats/legislation>

ELECTRONIC PRIVACY AND INFORMATION CENTER
<http://epic.org>

CENTER FOR CONSTITUTIONAL RIGHTS
<http://www.ccrjustice.org>

Suggested Search Terms

- ◆ National security + privacy *or* free speech
- ◆ Foreign Intelligence Surveillance Court
- ◆ Foreign Intelligence Surveillance Act *or* FISA + amendment act
- ◆ PATRIOT Act + reauthorization + 2009
- ◆ Warrantless Wiretap(ping)
- ◆ Roving wiretap *or* John Doe wiretap
- ◆ Any of the above terms plus Gag Order *or* Nondisclosure