

Floor Statement of Senator Chuck Grassley
For the Record
Reauthorization of Expiring USA PATRIOT Act Authorities
Friday, May 22, 2015

Mr. President, I rise today to explain why I support a short term reauthorization of the national security authorities that expire on June 1, and why I will not vote for cloture on the latest version of the USA FREEDOM Act at this time. These authorities need to be reauthorized and reformed in a way that appropriately balances national security with the privacy and civil liberties of all Americans. I'm hopeful that during the next few weeks we can do a better job of doing just that.

I start with the premise that these are important national security tools that shouldn't be permitted to expire. If that were to happen, there is little doubt that the country would be placed at greater risk of terrorist attack, at a time when we can least afford it. This isn't exaggeration or hyperbole.

We've recently witnessed the emergence of ISIS, a terrorist organization that controls large swaths of Iraq and Syria, including, as of just days ago, the capital of the largest province in Iraq. ISIS is beheading Americans and burning its captives alive for propaganda value. And fueled in part by black market oil sales, ISIS reportedly has at least \$2 billion.

The organization isn't just sitting on that money. Members of ISIS and related groups are actively recruiting would-be terrorists from around the world to come to Syria. They are inspiring attacks, often using social media, in the West, from Paris, to Sydney, to Ottawa, and even here in the United States, in places like New York City, Ohio, and Garland, Texas. Director Comey has reported that the FBI has investigations of perhaps thousands of people in various stages of radicalization in all 50 states.

So this isn't the time to let these various authorities expire. This isn't the time to terminate the government's ability to conduct electronic surveillance of so-called "lone wolf" terrorists – people that are inspired by groups like ISIS but don't have direct contact with them. And this isn't the time to end the government's ability to seek roving wiretaps against terrorists. After all, this is a tool that prosecutors have used in criminal investigations since the mid-1980s.

Most of all, this isn't the time to sunset the government's ability to acquire records from businesses like hotels, car rental agencies, and supply companies, under Section 215, in a targeted fashion. These kinds of records are routinely obtained by prosecutors in criminal investigations, through the use of grand jury subpoenas. It makes no sense for the government to be able to collect these records to investigate bank fraud, insider trading and public corruption, but not to help keep the country safe from terrorists.

While we must reauthorize these authorities, however, it's equally important that we reform them. But we don't yet have a reform bill that I'm satisfied with.

The American people have made clear that they want the government to stop indiscriminately collecting their telephone metadata in bulk under Section 215. They also want

more transparency from the government and from the private sector about how Section 215 and other national security authorities are being used. They want real reform.

I want to be clear that I emphatically agree with these goals. They can be achieved responsibly, and doing so will restore an important measure of trust in our intelligence community.

I agree with these reforms because the civil liberties implications of the collection of this type of bulk telephone metadata are concerning. This is especially so, given the scope and nature of the metadata collected through this program.

Now, there haven't been any cases of this metadata being intentionally abused for political or other ends. That's good. I recognize that the overwhelming majority of those who work in the intelligence community are law-abiding American heroes to whom we owe a great debt for helping to keep us safe.

But other national security authorities *have* been abused. Unfortunately, to paraphrase James Madison, all men aren't angels. I've been critical, for example, of the Department of Justice's handling of the so-called LOVEINT cases uncovered by the NSA's Inspector General.

Given human nature, then, the mere *potential* for abuse makes the status quo concerning the bulk collection of telephone metadata under Section 215 unsustainable, especially when measured against the real yet modest intelligence value the program has provided.

The USA FREEDOM Act would in some ways reauthorize and reform Section 215 along these lines. It would end the bulk collection of telephone metadata in six months, and transition the program to a system where the phone companies hold the data for targeted searching by the government.

But the bill's serious flaws cause me to believe that we can do better. Let me discuss just a few.

First, while the system to which the bill would transition the program sounds promising, it does not exist at present, and may well not exist in six months. Intelligence community leaders don't know for sure how long it will take to build. They don't know for sure how fast it will be able to return search results to the government. They don't know for sure whether the phone companies will voluntarily keep the metadata for later searching by the government.

On this score, then, this bill feels like a leap into the dark when we can least afford it. While we need certainty that the bulk collection of telephone metadata under Section 215 will end, we also need more certainty that the new system proposed will work and be effective.

Second, the bill contains reforms to the FISA Court that are unneeded and risky. I'm strongly in favor of reforming the court to make clear that it can appoint a traditional amicus, or a friend of the court, to help it get the law right. This is a well understood legal concept.

But this bill goes further – potentially dangerously so. Under certain circumstances, the bill directs the FISA Court to name a panel of outside experts who would, in the words of the *New York Times*, “challenge the government’s pleadings” before the court.

Especially when the bill already ends the kind of dragnet intelligence collection under Section 215 that affects so many innocent Americans, this is wholly unnecessary. And for this reason, the Administrative Office of the U.S. Courts sent a letter alerting Congress to its concerns that this outside advocate could “impede the court’s work” by delaying the process and chilling the government’s candor.

In addition, this proposed advocate is contrary to our legal traditions, in which judges routinely make similar decisions on an *ex parte* basis, hearing only from the government. Mobsters don’t get a public defender when the government seeks to wiretap their phones. Crooked bankers don’t get a public defender when the government seeks a search warrant for their offices. There is no need to give ISIS a public defender when the government seeks to spy on its terrorists to keep the country safe.

Third, the bill also contains language that amends the federal criminal code to implement a series of important and widely-supported treaties aimed at preventing nuclear terrorism and proliferation. However, the bill doesn’t authorize the death penalty for nuclear terrorists. Nor does it permit the government to request authorization from a judge to wiretap the telephones of these terrorists or allow those who provide them material support to be prosecuted.

These common-sense provisions were requested by both the Bush and Obama Administrations, but for unknown reasons they were omitted from the bill.

In fact, Senator Whitehouse and I have introduced separate legislation, the Nuclear Terrorism Conventions Implementation and Safety of Maritime Navigation Act of 2015, which would implement these treaties with these provisions included.

Recently, I’ve been heartened that there is a bipartisan group of members of the Judiciary and Intelligence Committees who share these and other concerns. We’ve been discussing an alternative reform bill that would also end the bulk collection of telephone metadata under Section 215. But it would also do a better job of ensuring that our national security is still protected.

So I support a short, temporary reauthorization with the hope that an alternative reform bill can be crafted that addresses the core reform goals of the American people and that appropriately balances national security with the privacy and civil liberties of all Americans. There’s work ahead, but it’s important that we get this reform right.

I yield the floor.