

Dispelling the Myths: PATRIOT Act Authorities and Civil Liberties Protections

Section 215 Business Records

- Section 215 has more strict requirements than grand jury subpoenas used in criminal investigations.
- Business Records can ONLY be obtained under Section 215 by an order issued by a federal judge of the FISA Court.
- A request for business records under Section 215 is NOT a search under the 4th Amendment.
- Business records obtained under Section 215 are records generated and stored by 3rd party businesses and are NOT personal documents of the target. Therefore, the target of the investigation has no reasonable expectation of privacy in these things.
- Section 215 does NOT authorize the warrantless search of a target's home or other place and a 215 application to seek this authority would be summarily rejected by the FISA Court.
- The FISA Court is comprised of federal trial judges who are experienced in criminal procedure and constitutional protections and who, in addition to their district court duties, also serve on the FISC.
- Section 215 CANNOT be used to acquire records of U.S. persons based solely upon 1st Amendment protected activity.
- In 2005, Congress prohibited Section 215 applications to the FISC for "library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, tax return records, educational records, or medical records containing information that would identify a person" UNLESS the application to the Court is first approved by the FBI Director, Deputy Director, or head of the FBI's National Security Division.
- The 2005 reauthorization also provided procedures for recipients of 215 orders to seek judicial review of orders compelling the production of business records.

Section 206 Roving Wiretaps

- Roving wiretaps are nothing new. Domestic law enforcement agencies have had roving authority for criminal investigations since 1986.
- These wiretaps simply allow investigators to surveil a target, regardless of what phone he/she uses. With today's disposable cell phones, making agents run back to a FISA judge every time a suspect changes phones risks losing track of the target.
- A FISA Court judge is the only one who can authorize a roving wiretap.
- FISA Judges supervise roving wiretaps as they progress to make sure the authority is being used correctly.
- The government must notify the FISA judge when they begin tracking a new phone or computer.

- **As with any wiretap, the government must “minimize” roving wiretaps. This requires the government to turn the wiretap off when conversations not related to the investigation are taking place or a person who is not a target of the investigation is using the phone or computer.**

Lone Wolf Definition

- Al Qaeda has changed its tactics, looking to inspire terrorists who are not “members” of Al Qaeda.
- Terrorists not affiliated with a known terrorist organization are “lone wolves.” They share the jihadist goals of al Qaeda but are not following an operational plan handed down by a terrorist group.
- Prior to 9/11, there was no law allowing for the government to gather intelligence on these lone wolves.
- The law should not create a gaping loop hole for these terrorists simply because they do not belong to an identified group.
- An increasing number of attempted terrorist attacks on the U.S. are being carried out by self-radicalized jihadists who adopt an agenda as equally hateful and destructive as a terrorist group.
- The lone wolf definition simply brings our national security laws into the 21st century to allow our intelligence officials to answer the modern day terrorist threat.
- Lone wolf authority CANNOT be used against a U.S. Citizen or legal permanent resident.