

20 years later, it's time to move on from mass surveillance



In the weeks after 9/11, Congress rushed to pass the [Patriot Act](#) with little debate. It quickly became a global symbol of excessive executive power. The law gave the government authority to spy on Americans' communications, track their associations, and monitor their financial transactions. It made it far easier for the government to issue "[National Security Letters](#)," requiring companies to turn over phone records and account information without court approval. It expanded the FBI's ability to use surveillance tools designed for tracking foreign spies, and allowed the FBI to conduct "[sneak-and-peek](#)" searches of homes, offices and other property.

Today, 20 years after President George W. Bush [signed the Patriot Act](#) into law, many of its provisions remain on the books and the surveillance state continues to expand. It's past time for that to change.

Congress has the opportunity to enact essential reforms to protect us in the face of powerful and invasive technologies going forward. America's leaders must put an end to mass spying — by ensuring that surveillance is targeted, that there is robust judicial oversight, and that people whose lives the government invades can have their day in court.

There has been [bipartisan recognition](#) that the Patriot Act undermined privacy rights, but this law was only the tip of the iceberg — the most visible sign of the government's post-9/11 appetite for intrusive surveillance. Even as Congress passed the Patriot Act, the Bush administration moved quickly and in secret to deploy spying programs far beyond those Congress had authorized. This warrantless surveillance violated legal limits imposed by Congress and bedrock constitutional rights. When the Obama administration took office years later, it allowed many of these spying programs to continue and grow.

Congress and the courts had opportunities to impose meaningful restraints, but they [frequently](#) gave in to executive branch demands for greater spying powers. In 2008, for example, Congress enacted [Section 702](#) of the Foreign Intelligence Surveillance Act, authorizing the warrantless surveillance of Americans' international communications — phone calls, emails, chats and web browsing.

In 2013, [Edward Snowden](#)'s revelations about the breadth of U.S. government surveillance shocked the world. The public learned about the National Security Agency's "[PRISM](#)" and "[Upstream](#)" programs, which involve the NSA working closely with Google, Facebook, AT&T and Verizon to conduct warrantless surveillance of Americans' international communications.

The public also learned that the NSA for years had been secretly [collecting](#)

[records](#) about virtually every American's phone calls — who's calling whom, when those calls were made, and how long they lasted. This kind of information can reveal sensitive details about people's lives, such as whether they called a pastor, an abortion provider, an addiction counselor, or a suicide hotline.

In addition, whistleblowers and media reports revealed that the NSA was conducting bulk surveillance abroad, without judicial oversight, under [Executive Order 12333](#). In an increasingly interconnected world, Americans' communications and data are frequently sent or routed abroad, where they're vulnerable to this surveillance. The government has used this authority to vacuum up 5 billion records per day on the [location of cell phones](#) around the world.

Routine surveillance is corrosive, chilling the kind of speech and association on which democracy depends. And the human toll of government surveillance is undeniable, with far-reaching consequences for people's lives. It feeds into a national security apparatus that puts [people on watchlists](#), subjects them to unwarranted scrutiny by law enforcement, and [allows the government to upend their lives](#) on the basis of vague, secret claims. The people who feel the impact the most are often Muslims, Brown and Black people, and people of Asian descent — those who often are subject to discriminatory profiling and wrongful surveillance in the name of national security.

And there's [little evidence](#) mass surveillance is effective or necessary.

In the face of public scrutiny and court review, the government's justifications often crumbled. The bipartisan Privacy and Civil Liberties Oversight Board found that the NSA's bulk collection of Americans' call records produced "[little unique value](#)" and largely duplicated more targeted

techniques. The NSA ended at least two other mass surveillance tools after concluding their intelligence value was outweighed by the cost and complexity of operating these programs.

In the years since the Snowden revelations, Congress and the courts placed some [limited restraints](#) on the government's ability to spy on Americans and others. But these restraints are being outpaced by technological advances.

Congress must rein in the post-9/11 mass spying programs and update privacy laws to account for new technologies, including government [purchases](#) of [sensitive location data](#) and the use of [facial recognition](#).

- [Former Citgo executive detained in Venezuela suffers from heart attack](#)
- [Overnight Health Care — Presented by Altria — FDA advisers endorse...](#)

What we're asking for isn't radical; it's common sense. These reforms should bar intelligence agencies from conducting surveillance in bulk and without suspicion, by requiring that spying be targeted and based on specific intelligence needs. They should require far greater judicial supervision of spying that's currently conducted without a warrant and often without any court oversight. And they should make clear that individuals harmed by surveillance can seek redress in court.

By reining in mass surveillance and beginning to right the privacy harms of the past 20 years, Congress can help ensure that Americans are able to speak and associate freely, without fear of unwarranted government scrutiny.

Ashley Gorski and Patrick C. Toomey are senior staff attorneys with the American Civil Liberties Union's [National Security Project](#). Follow them on

Twitter [@ashgorski](#) and [@PatrickCToomey](#).