

## Oppose Senator Feinstein's "FISA Reform Act of 2015"

After the US Senate narrowly voted down the USA FREEDOM Act of 2015 (H.R. 2048), Senator Feinstein introduced legislation that would also modify surveillance laws.<sup>1</sup> Senator Feinstein's bill, titled the FISA Reform Act of 2015 (S.1469), would not end NSA bulk collection, would impose a data retention mandate on private companies, and does not address the problem of secret law. The Center for Democracy & Technology urges opposition to this bill. Among other things, the FISA Reform Act of 2015:

- **Does not end bulk collection.** A key way that the USA FREEDOM Act sought to prohibit NSA bulk collection was by requiring the government to use a "specific selection term" to narrow the scope of records sought to the greatest extent reasonably practicable "consistent with the purpose for seeking the tangible things."<sup>2</sup> Sec. 107 of Senator Feinstein's bill broadens the crucial definition of "specific selection term" to allow terms that narrow the scope of records sought to the greatest extent reasonably practicable "consistent with the purpose and need to obtain foreign intelligence information" (FII). The broad definition of FII raises serious concerns that Senator Feinstein's bill would not actually curtail the government's power to obtain large quantities of records about individuals with no nexus to a crime or terrorism.<sup>3</sup>
- **Does not address secret law.** The bill does not shed light on secret FISA Court opinions with significant implications for Americans' civil liberties. Sec. 402 of the bill requires the FISA Court to send a copy of opinions with a significant or novel interpretation of law to the House and Senate Judiciary and Intelligence Committees. However, this disclosure does not provide the public with additional information on how the FISA Court is construing the law, and Members of Congress can already access FISA Court opinions. Secret law is incompatible with an open and democratic society, but the bill does not adequately address this problem. By contrast, Sec. 402 of the USA FREEDOM Act of 2015 requires the Attorney General to declassify (to the greatest extent practicable) or release unclassified summaries of FISA Court opinions with a significant or novel interpretation of law.
- **Empowers the government to mandate data retention.** Sec. 101 of the bill enables the FBI Director to obtain a secret court order demanding that service providers subject to surveillance orders retain all call detail records for two years. Yet, a data retention mandate is unnecessary for security – in a letter of support for the USA FREEDOM Act, the Attorney General and the Director of National Intelligence stated that carriers' existing metadata retention practices are sufficient for preserving essential security capabilities.<sup>4</sup>

Senator Feinstein's bill would not solve any of the severe problems exposed in the past two years. Senator Feinstein's bill would undo nearly all of the work the House of Representatives did to end bulk collection and strengthen transparency by passing the USA FREEDOM Act of 2015, and does not adequately respond to Americans, who overwhelmingly favor restrictions on the government's surveillance power.<sup>5</sup> The Center for Democracy & Technology opposes Senator Feinstein's FISA Reform Act of 2015. We urge the Senate to reject it and pass the USA FREEDOM Act – or sunset Sec. 215 of the PATRIOT Act.

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<sup>1</sup> See *FISA Reform Act of 2015*, Senator Dianne Feinstein, 114th Cong., <https://cdt.org/files/2015/05/Feinstein-FISA-Reform-Act-Draft.pdf> (last accessed May 26, 2015).

<sup>2</sup> Sec. 107 of the USA FREEDOM Act of 2015 (H.R. 2048), 114th Cong.

<sup>3</sup> 50 USC 1801(e).

<sup>4</sup> Letter from Attorney General Lynch and Director of National Intelligence Clapper to Senators Lee and Leahy, May 11, 2015, <http://www.scribd.com/doc/265113744/Letter-to-Senators-Leahy-and-Lee-Supporting-USA-Freedom-Act>.

<sup>5</sup> See Lauren Walker, *Poll: Majority of Americans Want the Patriot Act Reformed*, Newsweek, May 18, 2015, <http://www.newsweek.com/poll-majority-americans-want-patriot-act-reformed-332991>.