

Common Questions Regarding the USA PATRIOT Act

Q: Why is the President calling for the renewal of the PATRIOT Act?

A. Because America needs every lawful tool available to prevent terrorist attacks from taking the lives of innocents. As the President said in his State of the Union Address: “Key provisions of the PATRIOT Act are set to expire next year,” but “the terrorist threat will not expire on that schedule.” (January 20, 2004)

Q: Why is the FBI using the PATRIOT Act to search private library records?

A. Section 215 of the PATRIOT Act gives the government the ability to get business records and other tangible things with an order from a Federal court, the Foreign Intelligence Surveillance Act Court, and does not even mention library records. On September 17, 2003, the Justice Department declassified information regarding the use of this provision – and made public the fact that PATRIOT Act Section 215 had never been used. But if evidence of a threat convinced a judge to authorize such a search, the FBI could review relevant records. Library computers and internet access, for example, should not be allowed to become a safe haven for terrorists to transmit attack plans. For years, ordinary grand juries have, without specific judicial approval, issued subpoenas to all manners of businesses, including libraries and bookstores, for records relevant to criminal inquires. A Section 215 order can only be approved by a Federal judge.

Q: If the government hasn't used the Section 215 provision to access libraries, why is it even necessary?

A. Terrorists have, in fact, used public library computers to do research and communicate with their co-conspirators. A situation could arise when Section 215 would be instrumental in preventing a terrorist attack. Section 215 gives the government the ability to get business records and other tangible things with an order from a Federal court if the government can show that the information is necessary to: (1) “obtain foreign intelligence information not concerning a United States person;” or (2) “protect against international terrorism or clandestine intelligence activity.” This is a narrow and targeted authority. And unlike grand jury subpoenas, a Section 215 order can only be approved by the specific action of a Federal judge. Section 215 also expressly provides additional protections, such as prohibiting the FBI from conducting investigations of a United States person solely on the basis of activities protected by the First Amendment.

While the government had never used the provision in the 24 months since the PATRIOT Act was passed, it is possible that there will be a situation in which that provision could be the difference between the life and death of innocent Americans.

Q: Don't the "sneak and peek" searches in the PATRIOT Act let the government conduct searches without warrants and violate the 4th Amendment?

A. No. Delayed notice search warrants (inaccurately characterized as "sneak and peek") were not created by the PATRIOT Act. These judicially-authorized delayed notification searches have been used with the explicit approval of Federal courts for decades. Such search warrants always require a judge's approval, and are needed to allow investigators to conduct certain searches without tipping off the suspect that they are under investigation. The Act established national standards for a practice that had varied among different Federal jurisdictions, requires a warrant from a Federal judge, and notification of the target of the search in all circumstances after a reasonable amount of time.

By law, this section of the Act can be used only in extremely narrow circumstances. And in each and every case, law enforcement is specifically obliged to give notice at some point that a search or seizure has taken place. This provision simply allows investigators, after providing sufficient evidence to persuade a court to issue a search warrant, to temporarily delay when the required notification is given. No court may issue a search warrant without meeting the Fourth Amendment standard of "probable cause." The Supreme Court has squarely held that the Fourth Amendment does not require law enforcement to give immediate notice that a search warrant has been executed. *Dalia v. United States*, 441 U.S. 238 (1979). These same types of "delayed-notice" authorities have been on the books for at least 35 years. They are effective, court-approved tools that have helped prosecutors build the case necessary to lock up Colombian drug lords and the leadership of organized crime. In fact, because Congress did not view this provision of the PATRIOT Act as controversial or new, Congress did not include it among those provisions that are scheduled to sunset in December 2005.

Q. Doesn't the PATRIOT Act violate the 1st Amendment by allowing the government to wiretap, harass, and prosecute peaceful, political groups here as domestic terrorists?

A. No. The PATRIOT Act limits "domestic terrorism" to conduct that breaks criminal laws, and endangers human life. Peaceful political discourse and dissent is one of America's most cherished freedoms, and is not subject to investigation as domestic terrorism. Under the PATRIOT Act, the definition of "domestic terrorism" is limited to conduct that: (1) violates Federal or state criminal law; and (2) is dangerous to human life. Therefore, peaceful political organizations engaging in political advocacy would not come under this definition.

Q: A number of cities have voted against the PATRIOT Act. Is much of the country opposed to it?

A. No. In several polls (CNN/Gallup; AP; FOX News/Opinion Dynamics), about 75% of the American people support the PATRIOT Act while less than 20% oppose it. In addition, the overwhelming majority of Members of Congress, of both parties, voted for the Act.

Q: Doesn't the PATRIOT Act allow the indefinite detention of U.S. citizens without access to lawyers?

A. No. The President, in his constitutional role as Commander in Chief, has always had the authority in times of war to order the detention of enemy combatants to prevent them from carrying out acts of war and to gather intelligence. This authority, however, is not part of, and has nothing to do with, the PATRIOT Act. The Act has no provisions whatsoever relating to the detention of enemy combatants.

Q. Didn't a Federal court recently strike down a provision of the PATRIOT Act as unconstitutional, thereby confirming the arguments set forth by the Act's critics?

A. Section 805(a)(2)(B) of the PATRIOT Act prohibits individuals from providing "expert advice or assistance" to foreign terrorist organizations. This was a modest change to pre-existing law, designed to address the very real threat caused by those who offer support to terrorist groups. Recently, the United States District Court for the Central District of California ruled that this provision was unconstitutionally vague. This decision only relates to one small portion of the PATRIOT Act and does nothing to call into question the constitutionality of any other provision of the Act. The Justice Department currently is reviewing the court's decision. The Administration continues to believe that the PATRIOT Act appropriately imposes tough new penalties on those who provide expert advice or assistance to terrorist organizations because Americans are threatened as much by the person who teaches a terrorist to build a bomb as by the one who detonates it.

Q: Isn't the proposed SAFE Act, now pending in Congress, the right way to protect Americans?

A. Just the opposite. If enacted, the SAFE (Security And Freedom Ensured) Act would roll back many of the most important and useful anti-terrorism tools in the PATRIOT Act. In fact, the SAFE Act would make it even more difficult to fight against terrorism than it was before the PATRIOT Act was passed. For example, Section 3 of the SAFE Act would prohibit a court from approving additional delayed notice of a search warrant even when immediate notice would result in intimidation of witnesses or otherwise seriously jeopardize an investigation. That would be even more burdensome than the law prior to the PATRIOT Act, when court-created standards imposed no such artificial restrictions on the circumstances that justified extending the period of delay for a delayed-notice warrant. If the SAFE Act passes both houses of Congress in its current form, the President's Senior Advisors will recommend that it be vetoed.