

NSA Spying, Privacy and the Fourth Amendment: The Views of U.S. Presidential Candidates

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What are the positions of U.S. presidential candidates on NSA domestic spying, personal privacy and the Fourth Amendment?

Putting the debate in perspective, we begin with the Snowden affair.

In May 2013, explosive details about the National Security Agency's (NSA) surveillance programs were revealed in documents provided by Edward Snowden to journalists Glenn Greenwald and Barton Gellman, and documentary filmmaker Laura Poitras.

Investigators claim Snowden began downloading government documents in 2012 while working with Dell, an NSA contractor. In March, 2013 – three days after what he later called his “breaking point” of “seeing the Director of National Intelligence, James Clapper, directly lie under oath to Congress” – Snowden quit his job at Dell and began work for Booz Allen Hamilton where his downloading resumed.

Initial Snowden documents published in June 2013 by the Washington Post and The Guardian revealed the extent and expansive reach of the agency's dragnet spy programs worldwide.

In the same month, the U.S. Department of Justice charged Snowden of two counts of violating the Espionage Act of 1917 and theft of US Government or foreign government property.

Documents estimated to range from 250 thousand to 1.7 million disclosed NSA's collection of domestic email, telephone metadata and revealed a top secret data mining and information sharing program named PRISM.

Shock value was high leading calls for Congressional hearings and changes to the U.S. surveillance law. European reaction reached a zenith upon learning that the cell phone of Angela Merkel, Chancellor of Germany, had been bugged. “Spying among friends” is unacceptable, she said.

Leaked documents published by Der Spiegel in 2014 appeared to show that the NSA had targeted 122 “high ranking” leaders.

Responding to public outcry, in June 2015 the U.S.A. Freedom Act was passed by Congress. It restored in modified form several provisions of the Patriot Act while imposing some limits on the bulk collection of telecommunication data on U.S. citizens by American intelligence agencies.

Given this history, what are the positions of presidential candidates on NSA domestic spying and privacy rights guaranteed by the Fourth Amendment?

Donald Trump would be “fine” with restoring provisions of the Patriot Act to allow the NSA to once again collect American phone metadata in bulk.

Ted Cruz has denounced hoarding tens of billions of records of ordinary Americans. “When the focus of law enforcement and national security is on ordinary citizens rather than targeting the bad guy, we miss the bad guys while violating the constitutional rights of American citizens,” he said.

However, while Cruz publicly defended Snowden in 2013, he now says: “Snowden is a traitor, and he should be tried for treason.”

Marco Rubio, who considers the U.S.A. Freedom Act an anti-intelligence law, laments the loss of the metadata program and has accused other candidates of weakening national security.

“If ISIS had lobbyists in Washington, they would have spent millions to support the anti-intelligence law (the USA Freedom Act) that was passed with the help of some Republicans now running for president,” he charged.

Ohio governor John Kasich promotes balancing civil liberties and national security in a mixture that is “not too hot and not too cold.” He feels encryption is a “major problem” that Congress has to deal with “and so does the president to keep us safe.”

Ben Carson told ABC “This Week”: “In the larger capacity, we should monitor anything – mosques, church, school, you know, shopping centers – where there is a lot of radicalization going on.”

Hillary Clinton’s position has been characterized as “fuzzy”. Other than advocating for a balance between civil liberties and national security which she failed to formulate, her position has been vague on ending NSA surveillance. Mrs. Clinton voted for the Patriot Act in 2001 and its renewal in 2006 and insists the bill was necessary to insure security.

In the first presidential debate, Bernie Sanders said he would absolutely end the NSA’s sweeping surveillance powers. “Yes, we have to defend ourselves against terrorism, but there are ways to do that without impinging on our constitutional rights and our privacy rights,” he maintained.

Sanders, who voted against the Patriot Act and the U.S.A. Freedom Act, stated in a Time article last year: “Do we really want to live in a country where the NSA gathers data on virtually every single phone call in the United States – including as many as 5 billion cellphone records per day? I don’t.”

Arguing against the U.S.A. Freedom Act in 2015, Sanders wrote: “Do we really want our government to collect our emails, see our text messages, know everyone’s Internet browsing history, monitor bank and credit card transactions, keep tabs on people’s social networks? I don’t.”

“The Intercept” (theintercept.com) funded by billionaire Pierre Omidyar teamed with Glenn

Greenwald, Laura Poitras, and former *Nation* writer Jeremy Scahill, has become the custodian of Snowden's immense archive of classified documents, which it continues to mine for stories.

Edward Snowden is living in asylum in Russia and currently in negotiations with the U.S. Justice Department. In February, he told a libertarian forum he will return home if he is guaranteed a "fair trial" and "can make a public interest defense of why this was done and allow a jury to decide."

In 2013, former CIA Director David Petraeus said:

"Every byte left behind reveals information about location, habits, and, by extrapolation, intent and probable behavior. The number of data points that can be collected is virtually limitless."

On February 9, Director of National Intelligence James Clapper reaffirmed how intelligence services might use a new generation of smart household devices to increase their (intel's) surveillance capabilities, "for identification, surveillance, monitoring, location tracking, and targeting for recruitment, or to gain access to networks or user credentials."

Over the last three years through a combination of growing indifference and arguable amnesia, the subject of NSA, the security state and onerous losses to personal privacy have drifted from general public focus.

In light of the fact that by 2020 there will be 21 billion connected devices in a global Internet of Things, Americans need to reexamine and debate the legality of government and corporate surveillance versus Fourth Amendment guarantees against unreasonable search and seizure.

In November, they will vote for a pro-security state president or one who puts personal privacy first.

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