

TODAY OBAMA WILL GET HIS FIFTH NEW DRAGNET ORDER SINCE “REFORM” STARTED

On December 12, 2013, almost one year ago, President Obama’s handpicked NSA Review Group made the following two recommendations.

Recommendation 1: We recommend that section 215 should be amended to authorize the Foreign Intelligence Surveillance Court to issue a section 215 order compelling a third party to disclose otherwise private information about particular individuals only if: (1) it finds that the government has reasonable grounds to believe that the particular information sought is relevant to an authorized investigation intended to protect “against international terrorism or clandestine intelligence activities” and (2) like a subpoena, the order is reasonable in focus, scope, and breadth.

Recommendation 5: We recommend that legislation should be enacted that terminates the storage of bulk telephony meta-data by the government under section 215, and transitions as soon as reasonably possible to a system in which such meta-data is held instead either by private providers or by a private third party. Access to such data should be permitted only with a section 215 order from the Foreign Intelligence Surveillance Court that meets the requirements set forth in Recommendation 1.

Since that time, Obama has applied for and will, today, receive authorization for 5 extensions of

the phone dragnet:

BR 14-01, signed by Thomas Hogan on January 3, 2014

BR 14-67, signed by Rosemary Collyer on March 28, 2014

BR 14-96, signed by James Zagel on June 19, 2014

BR 14-125, signed by Raymond Dearie on September 11, 2014

Along the way, Obama has instituted prior FISC review, added an emergency provision, given up on an automated query NSA had never been able to implement technically, even while standardizing "connection chaining." The FISC also had to remind the government it must still abide by the legal requirement for prior First Amendment review, even when obtaining emergency orders.

By my count, the government has made 5 changes (or institutionalized prior changes) since the time Obama's hand-picked review group recommended he give up the dragnet. As I noted yesterday, over the last year, 5 different Democrats have called on Obama to end the dragnet without waiting for legislation.

And yet, sometime today, the dragnet will be extended for another 3 months.