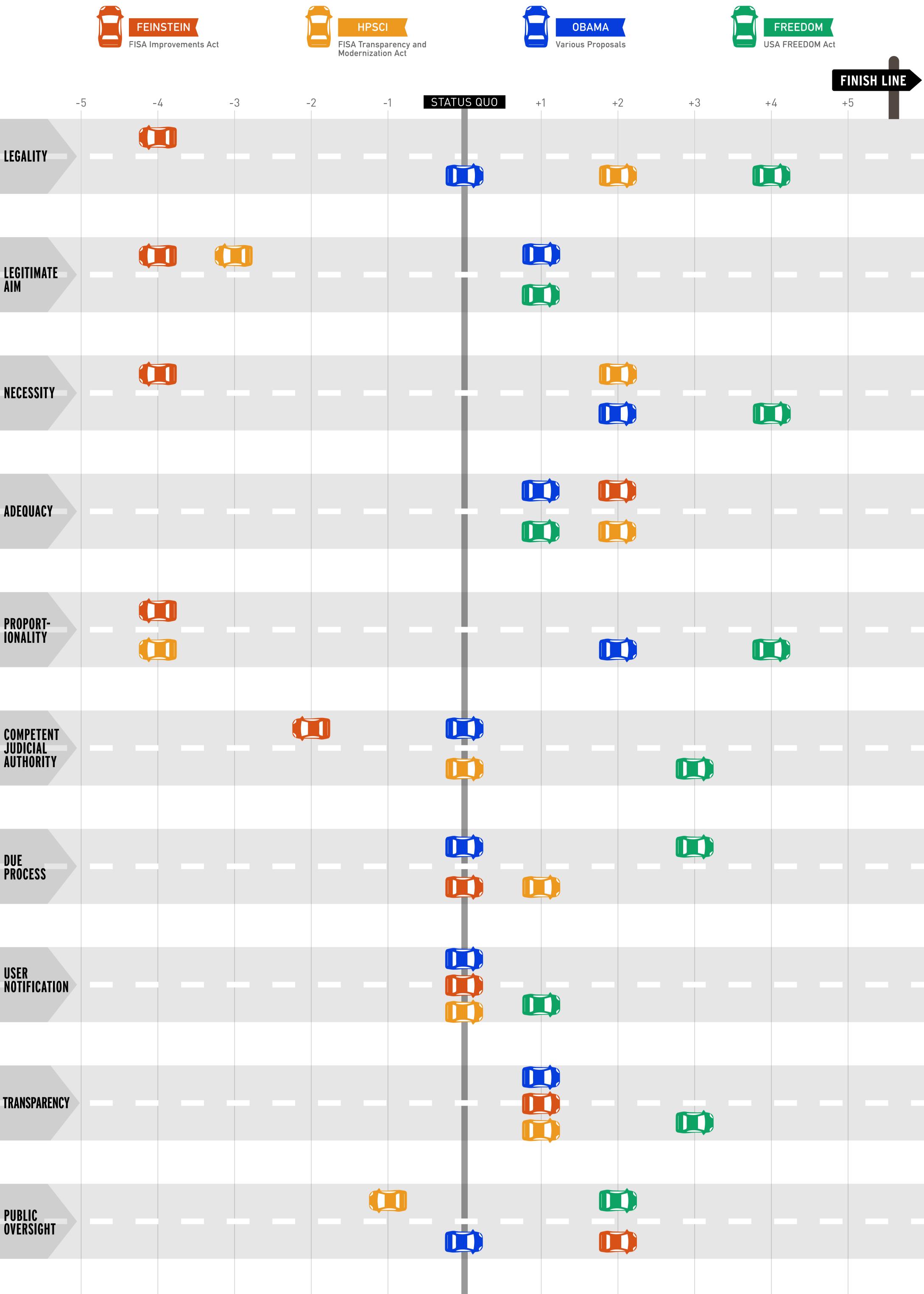
TO INTERNATIONAL PRINCIPLES ON THE APPLICATION OF HUMAN RIGHTS TO COMMUNICATIONS SURVEILLANCE

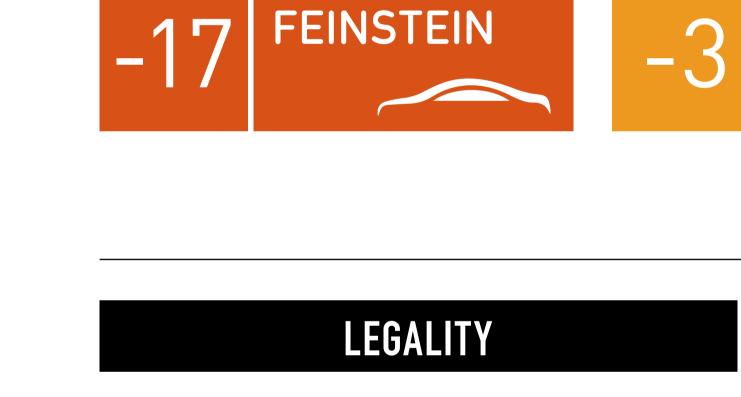
Out of more than a dozen bills, four primary proposals have received the most support from members of Congress. Access has measured how these four proposals stack up against the International Principles on the Application of Human Rights to Communications Surveillance ("the Principles"). The Principles, which have been endorsed by over 400 civil society organizations, provide a framework for assessing how human rights obligations apply when conducting communications surveillance. The 13 roads below represent the 13 Principles. Each car represents one of the leading NSA reform proposals, on the road toward

In the wake of revelations about NSA surveillance, several members of the U.S. Congress have sprung to action to introduce legislation.

full compliance with each respective Principle. While no proposal perfectly embodies any Principle, Access judged each proposal on a scale relative to the starting line – where we are today. From there, some cars speed ahead toward the realization of the Principle, while others lag behind, or even drive

away from the goal. While some proposals get as far as four mile markers in the right direction, there's still a stretch of road to go before we cross the finish line.





FINAL SCORE

Endeavors to eventually clarify NSA authority

and limit the current scope of collection, but

the lack of legislative language fails to move

Clarifies current legislation to reconcile

the public and private interpretations

of Section 215 of the USA PATRIOT Act.

Codifies current unlawful NSA practices,

bringing the bulk collection of information

within the scope of Section 215 of the USA

PATRIOT Act and negatively impacting privacy

the proposal in the right direction.

OBAMA

FREEDON

OBAMA

FREEDOM

FREEDOM

FEINSTEIN

HPSCI

OBAMA

FREEDOM

FEINSTEIN

HPSCI

None.

INTEGRITY OF

AND SYSTEMS

SAFEGUARDS

INTERNATIONAL

COOPERATION

SAFEGUARDS

ILLEGITIMATE

AGAINST

ACCESS

COMMUNICATIONS

SCORE ANALYSIS BASED ON 13 PRINCIPLES LEGITIMATE AIM **NECESSITY**

OBAMA

The USA FREEDOM Act is clearly the leader in this race, but House leadership has blocked the USA

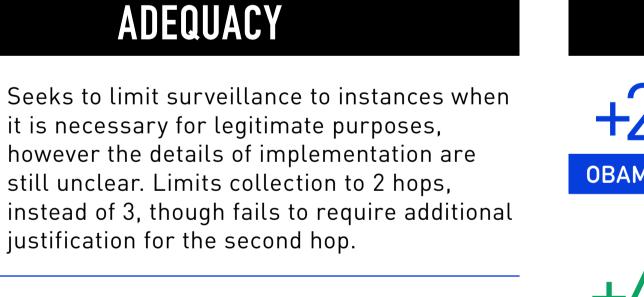
FREEDOM Act from coming to a vote since October 29, 2013. Access is joining other civil society

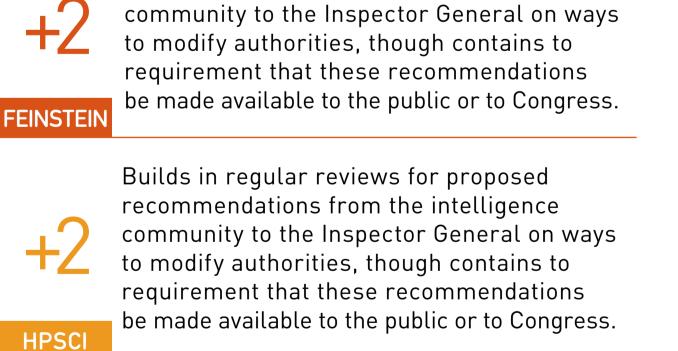
groups and the public to come together to demand that a vote to send the bill to the House floor

+5

FREEDOM

and human rights. Further reduces safeguards against surveillance. **FEINSTEIN** Provides additional protections for privacy and human rights by preventing the bulk collection of information in some cases. However, nuances in language may allow for more expansive authority than in the current law. HPSC





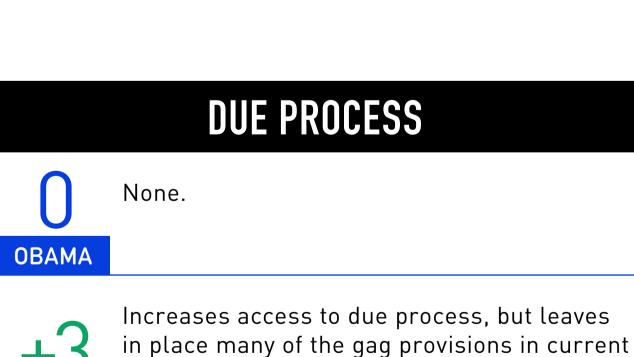
Requires an annual review of certain

category related to US Persons.

collection activities, but only in a limited

Builds in regular reviews for proposed

recommendations from the intelligence



law. Fails to give an individual a right to challenge

Increases access to due process, but leaves

in place many of the gag provisions in current

law. Fails to give an individual a right to challenge

surveillance in court prior to its commission.

PUBLIC OVERSIGHT

a generally-endorsed role of a FISA Court

Increases Inspector General oversight

the findings of the Inspector General

of programs, though fails to require that

investigations be made publicly available.

Increases oversight by Congress, but largely

public. Fails to increase oversight capabilities

Requires the intelligence community to review

privacy procedures only every 5 years, and not

the Office of the Director of National Intelligence

on the number of violations of the law, but not

for public review. Requires a report from

fails to provide additional information to the

of independent groups, such as the Privacy

and Civil Liberties Oversight Board.

Provides no specific details on

independent advocate.

surveillance in court prior to its commission.

In violation of international law, codifies the

action toward achieving that goal.

Seeks to increase protections for non-US

Provides additional safeguards to prevent

the targeting of US Persons. However, fails

to provide additional rights for non-US Persons.

persons, though there has been no affirmative

STATUS QUO

is held immediately.

HPSCI

OBAMA

FREEDOM

HPSCI

FREEDOM

FEINSTEIN

FREEDOM

FEINSTEIN

HPSCI

OBAMA

FREEDOM

FEINSTEIN

None.

None.

None.

None.

-4	information.
EINSTEIN	
	Fails to elucidate on where it would be
_3	appropriate to collect communications information, allowing collection based on

to a foreign power.

an individual's foreignness and relation

+2	Moves toward minimizing collections of excessive information by building in a 2-hop limitation on collection.
ВАМА	
,	Requires a demonstrated nexus to
-4	an investigation before information can be collected under FISA authorities, effectively

ending bulk collection programs.

PROPORTIONALITY

-4	communications information, including by faili to require a nexus to an investigation before information can be collected.
HPSCI	

Potentially expands the authorities to collect

Permits the use of information gathered for

intelligence purposes by law enforcement,

O BAMA	Increases transparency around the issuance of National Security Letters, but fails to clarify how far the new transparency provision would go.
1	Limits the instances in which non-disclosure

provisions may be issued, but fails to require

notification to the target of the surveillance.

USER NOTIFICATION





for NSA to collect bulk communications information under other authorities. **HPSCI**

Limits bulk collection, but only for

of non-targets may be accessed.

PATRIOT Act.

OBAMA

FREEDOM

FEINSTEIN

telecommunications metadata, and only

as collected under Section 215 of the USA

Prevents bulk collection by requiring a showing

that any specific surveillance is closely connected

to a legitimate aim, and limits incidental collection

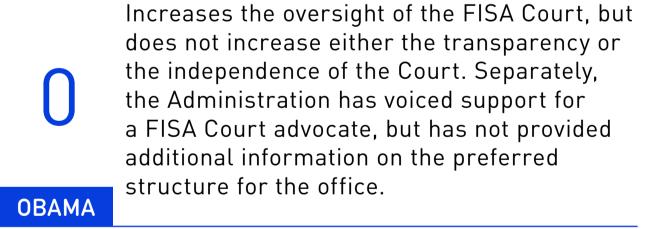
Codifies the bulk metadata collection program

under Section 215 of the USA PATRIOT Act.

Prohibits bulk collection for certain records

under certain authorities, but retains the ability

by clarifying the instances in which communications



oversight of the FISA Court.

only on request of the Court.

Increases FISA Court oversight considerably,

and provides for a special advocate to provide

a dissenting point of view to the government,

though it does not meaningfully increase public

for an amicus curiae for the FISA Court, though

COMPETENT JUDICIAL AUTHORITY

0	Permits the FISA Court to approve the collection of communications information for up to a year without renewal. Provides for an amicus curiae for the FISA Court, though only on request of the Court.
PSCI	

FEINSTEIN

TRANSPARENCY No specific proposal to allow the on-going

release of information, though the Administration

has taken steps to declassify pre-existing

Increases the amount of information to be

FISA Court opinions.

+3	made publicly available on intelligence activities, though allows for reporting in arbitrary "ranges," instead of specific numbers.
FREEDOM	
_ 1	Creates no incentive for any increase in

HPSCI

OBAMA

creates no incentive for any increase in publicly-available information. **FEINSTEIN**

Increases public information on the instances

but fails to create more general reporting

requirements. Increases declassification

of FISA Court opinions.

where US Persons data is incidentally collected,



funding for increased training on evidentiary standards. Formal systems help keep legal assistance requests away from informal channels with lower oversight. However, the Administration has made no effort, including in response to requests under the FOIA, to make

current Mutual Legal Assistance Treaties available

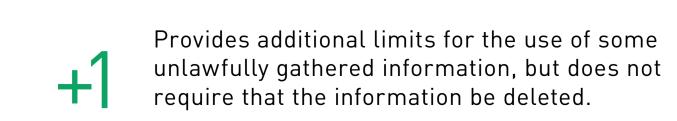
COOPERATION

to the public. **OBAMA** None. **FREEDOM**

None. None.



for the report to be made public.



FREEDOM Fails to create new procedures for whistleblowers, and creates a system that would make it easier to prosecute future whistleblowers.

Attempts to prevent the unauthorized release of information about surveillance activities. but does not provide for means by which employees or contractors may report information, nor does it contain provisions to ensure the integrity of systems.

Requires that businesses create records for government access that may not otherwise be available. **HPSCI**

INTEGRITY OF COMMUNICATIONS

AND SYSTEMS

Requires that all information remain stored

in a single format, which would compel

businesses to change current practices.

FEINSTEIN HPSCI

Access' review of the different legislative proposals demonstrated, unequivocally, that

the USA FREEDOM Act offers the most comprehensive reforms to move U.S. practice in line with international law. In addition to halting bulk surveillance, the bill would also increase transparency, accountability, and help prevent against future abuse by providing for a special advocate for the Foreign Intelligence Surveillance Court, to operate independently from other interested government agencies. In contrast, the White House proposal is an overall improvement over the status quo, but is largely focused on reforming only a single type of collection under a single authority.

Senator Dianne Feinstein's "FISA Improvements Act" – would constitute a net loss for human rights in the United States. The House bill would prevent bulk collection by the government, but would build the same capabilities in by requiring telcos to hold onto the records in a specific format, and the records would still be available to the NSA.. However, nuances in language make the new authority potentially even broader than the NSA's current practices. The Feinstein bill would largely codify current practices largely considered to be unlawful under today's law, though it would also build in certain transparency measures. For more information and to view our sources.

please see: https://accessnow.org/NSAReformsInfographic

Two proposals – the House Intelligence "FISA Transparency and Modernization Act" and



FEINSTEIN

HPSCI