

October 17, 2019

The Honorable Jerrold Nadler
Chairman
U.S. House Committee on the
Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Doug Collins
Ranking Member
U.S. House Committee on the
Judiciary
2142 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Adam Schiff
Chairman
U.S. House Permanent Select Committee on
Intelligence
Capitol Visitor Center, HVC-304
Washington, D.C. 20515

The Honorable Devin Nunes
Ranking Member
U.S. House Permanent Select Committee on
Intelligence
Capitol Visitor Center, HVC-304
Washington, D.C. 20515

Dear Chairman Nadler and Ranking Member Collins and Chairman Schiff and Ranking Member Nunes,

The undersigned groups write to urge you to ensure that any legislation to reauthorize expiring FISA authorities scheduled to sunset on December 15, 2019 include key reforms to Section 702.

On October 8, 2019, the Office of the Director of National Intelligence released alarming new information related to surveillance conducted under Section 702 of the Foreign Intelligence Surveillance Act (FISA), which poses a serious threat to the privacy of both U.S. and non-U.S. persons. The documents reveal significant privacy violations, including the wrongful use of this powerful tool for personal purposes, queries that violated both the statute and the Fourth Amendment, and efforts by the Federal Bureau of Investigation (FBI) to evade laws designed to access how often this tool is turned against people in the United States. In addition, the opinions raise additional concerns regarding the extent of the government's so-called "abouts" collection.

These abuses demand action by Congress and underscore the need to reform Section 702. In particular, we urge you to ensure that any legislation reauthorizing provisions of FISA include the following reforms:

Congress must prohibit warrantless “backdoor” searches. Though Section 702 prohibits the targeting of Americans, the government routinely conducts warrantless searches of Section 702-acquired information looking specifically for information of Americans. For years, civil liberties

advocates have decried the government’s practice of conducting these warrantless “backdoor” searches as a dangerous end-run around the Fourth Amendment. These documents prove the point, revealing tens of thousands of searches conducted in violation of the law, which requires them to be conducted only when reasonably likely to return foreign-intelligence information or evidence of a crime. In some instances, FBI personnel reportedly even queried FISA information to spy on relatives in violation of the law.

These large-scale privacy violations underscore the significant threat that the backdoor search loophole poses to the rights of people in the United States. They also demonstrate the urgent need to ensure court approval of any searches of Section 702 information looking for information about U.S. persons to prevent abuse. Thus, we urge Congress to prohibit backdoor searches looking for information about U.S. persons absent a probable cause warrant.

Congress must prohibit “abouts” collection. The documents also raise questions regarding the scope of the government’s “abouts” collection, which involves collection of communications that are not to or from a surveillance target. In response to persistent compliance violations, the government ended certain types of “abouts” collection in 2017. However, these documents raise questions regarding whether the government is engaged in new “abouts” collection that Congress did not authorize. Based on the documents, it appears that the Foreign Intelligence Surveillance Court (FISC) rejected arguments made by the appointed amicus regarding whether certain surveillance practices could constitute “abouts” collection, which would trigger Congressional notification requirements prior to initiation. Given this divergence, it is crucial that Congress clearly define and prohibit any type of “abouts” collection.

The abuses in the documents also underscore the need to further strengthen the role of court-appointed amicus, enhance transparency, and ensure prompt declassification of novel and significant FISC opinions. It should not have taken a full year to declassify the October 2018 opinion, which covers numerous significant issues.

The reforms referenced above are necessary additions to, not substitutes for, those that our organizations and others have already highlighted regarding Section 215 and other FISA authorities scheduled to sunset on December 15. However, the FBI’s inability to comply with the law compels further Congressional action.

Sincerely,

Access Now
Advocacy for Principled Action in Government
American Civil Liberties Union
American-Arab Anti-Discrimination Committee

Americans for Prosperity
Antiwar.com
Arab American Institute
Brennan Center for Justice at NYU School of Law
Campaign for Liberty
Center for Democracy & Technology
Color of Change
Constitutional Alliance
Defending Rights & Dissent
Demand Progress
Due Process Institute
The Electronic Privacy Information Center (EPIC)
Fight for the Future
Free Press Action
Freedom of the Press Foundation
FreedomWorks
Get FISA Right
Government Accountability Project
Government Information Watch
Human Rights Watch
Indivisible
Media Alliance
Million Hoodies Movement for Justice
NAACP
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
New America's Open Technology Institute
Oakland Privacy
OCA - Asian Pacific American Advocates
Open the Government
People For the American Way
The Project On Government Oversight
Restore The Fourth
RootsAction.org
South Asian Americans Leading Together (SAALT)
TechFreedom
Wikimedia Foundation, Inc.
X-Lab