

March 15, 2023

The Honorable Mark Warner
Chairman
Senate Select Committee on Intelligence

The Honorable Mike Turner
Chairman
House Permanent Select Committee on Intelligence

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee

The Honorable Jim Jordan
Chairman
House Judiciary Committee

Dear Chairman Warner, Turner, Durbin and Jordan:

We write to urge you to hold hearings on the government's surveillance of Americans given the latest revelations of unconstitutional surveillance by the intelligence community made at last week's hearings held by the Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence. Given numerous additional examples in recent years of similar abuses, this year's Section 702 reauthorization debate already necessitated rigorous Congressional hearings and oversight. However, the few short hours of testimony from last week should reinforce to Members that any serious effort to rein in the abuses by the intelligence community must include significant changes to Section 702 and other surveillance activities that impact Americans.

Specifically, during Thursday's House Intelligence Committee hearing, Representative Darin LaHood identified himself as the Member of Congress whose name was unlawfully used to search Section 702-acquired communications without a warrant, as initially reported in *Wired*. That same reporting also indicated that the FBI had conducted warrantless searches of Section 702 data connected to a local political party and improper queries based on a tip that suggested racial profiling. Americans are rightly concerned that if even Members of Congress are not shielded from such abuses from intelligence agencies, that they themselves are at serious risk of having their most sensitive communications unlawfully spied upon.

The testimony at the Senate Intelligence Committee's hearing earlier in the week was equally disturbing. In it, Director Wray attempted to argue that the FBI has made adequate reforms in its surveillance operations by citing a decline in warrantless searches of Americans' data. His comments suggest that the FBI conducted more than 200,000 searches of Americans' communications in 2022. However, in previous statements, the FBI indicated that previously reported US person query numbers were overinflated due to duplication. If this is the case, then Congress should be equally skeptical of Director Wray's revised query statistics and associated claims of decreased U.S. person searches without a better understanding of whether or how a change in counting methodology occurred. More broadly, this change of reporting is provided within the context of a pattern of the intelligence community misleading or concealing from the FISA Court, Congress, and the wider public the extent of warrantless searches of Americans' data. Most importantly, for a program that is ostensibly about targeting non-US persons, hundreds of thousands, or even millions, of searches of Americans' data in a single year indicates that the intelligence community is not using Section 702 solely for its stated purpose of surveilling non-U.S. persons abroad.

Finally, during the Senate Intelligence Committee hearing, Director Wray stated that the FBI had previously purchased commercial mobile phone geolocation data. This admission underscores a well-documented pattern of other federal agencies circumventing existing statute requiring a court order for obtaining such data from phone companies and internet services providers by instead acquiring such data through third-party data brokers. Not only should Congress consider reforms to close this loophole that violate the Fourth Amendment rights of all Americans, but Members should also use this existing practice by agencies to inform the entirety of its review of Section 702 and similar authorities. Without clear and stringent protections, like clearly designating the exclusive means by which the government may surveil Americans, intelligence agencies will develop novel interpretations of the law that enable them to see into more and more of Americans' personal lives.

During the House Intelligence Committee hearing, Representative LaHood noted that the intelligence community's request for a clean reauthorization of the 702 program is a "non-starter". However, the severity of these and other abuses over the years necessitate that Congress not merely make minor tweaks to the status quo either. Congress must approach its review of the 702 program and related intelligence operations with the same purpose as the original Foreign Intelligence Surveillance Act of 1978: to rein in rogue intelligence agencies and ensure proper Congressional oversight.

This year's Section 702 reauthorization debate presents a unique opportunity for Congress to work together to accomplish much needed reforms. Meaningful proposals have long been pursued by members across the political spectrum who have rightly expressed concern with warrantless surveillance of people in the United States. To inform the debate, it is necessary for the committees of jurisdiction to begin holding hearings with a focus on protecting the civil liberties of all Americans. We stand ready to support the committees in their oversight duties and ensure that Congress acts boldly to reform Section 702 and related surveillance authorities.

Sincerely,



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Jason Pye
Director, Rule of Law Initiatives
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Cc:

The Honorable Marco Rubio, Vice Chairman Senate Select Committee on Intelligence
The Honorable Jim Himes, Ranking Member House Permanent Select Committee on Intelligence
The Honorable Lindsey Graham, Ranking Member Senate Judiciary Committee
The Honorable Jerrold Nadler, Ranking Member House Judiciary Committee
Senate Select Committee on Intelligence Majority Members
House Permanent Select Committee on Intelligence Majority Members
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