

The Honorable Bob Goodlatte
Chairman, House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member, House Judiciary Committee
B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Chuck Grassley
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

April 21, 2015

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Grassley, and Ranking Member Leahy:

We urge you to end mass surveillance of Americans. Among us are civil liberties organizations from across the political spectrum that speak for millions of people, businesses, whistleblowers, and experts. The impending expiration of three USA PATRIOT Act provisions on June 1 is a golden opportunity to end mass surveillance and enact additional reforms.

Current surveillance practices are virtually limitless. They are unnecessary, counterproductive, and costly. They undermine our economy and the public's trust in government. And they undercut the proper functioning of government.

Meaningful surveillance reform entails congressional repeal of laws and protocols the Executive secretly interprets to permit current mass surveillance practices. Additionally, it requires Congress to appreciably increase transparency, oversight, and accountability of intelligence agencies, especially those that have acted unconstitutionally.

A majority of the House of Representatives already has voted against mass surveillance. The Massie-Lofgren amendment to the National Defense Authorization Actⁱ garnered 293 votes in support of defunding "backdoor searches." Unfortunately, that amendment was not included in the "CROmnibus"ⁱⁱ despite overwhelming support. We urge you to act once again to vindicate our fundamental liberties.

End the NSA's bulk collection of telephone information under the USA PATRIOT Act.

Mass surveillance conducted under Section 215 of the USA PATRIOT Act is antithetical to Americans' exercise of their civil liberties. Section 215 has been interpreted by the Executive branch as providing for the collection of virtually unlimited personal information, from gun recordsⁱⁱⁱ and financial records^{iv} to our physical locations^v and with whom we talk. All the worse, this intrusive collection is not only unconstitutional; it is unnecessary. The President's Privacy and Civil Liberties Oversight Board concluded^{vi} that not a single instance exists "involving a threat to the United States in which the telephone records program made a concrete difference in the outcome of a counterterrorism investigation." Others have reached similar conclusions.^{vii} Even the NSA considered ending the program because the "the costs outweighed the meager counterterrorism benefits."^{viii} Additional provisions that may be interpreted to allow bulk collection—whether under Section 214, via National Security Letters, or elsewhere—must also be addressed.

End the FISA Amendments Act and Executive Order 12333 mass surveillance programs.

Congress must end mass surveillance programs purportedly authorized under the FISA Amendments Act and Executive Order 12333. These programs are incredibly broad. For example, they include the acquisition of vast amounts of information sent privately over the Internet (e.g., "upstream collection" under Section 702 of the FISA Amendments Act of 2008).^{ix} They also include any information or communication, by foreigners and Americans, that is ever transmitted outside the physical boundaries of the United States (e.g., as authorized by Executive Order 12333).^x Section 702 results in the unnecessary collection of innocent Americans' domestic communications,^{xi} and EO 12333 raises troubling concerns about the scope of "authorized" collections.

Restore accountability for bad actors in the Intelligence Community.

Accountability starts with truth. Members of Congress, both on the left and the right, must have access to documents necessary to know the full story.^{xii} They must be able to trust those they oversee. When they are misled, as occurred in statements by Director of National Intelligence James Clapper and CIA Director John Brennan, there must be consequences.^{xiii} In addition, the Intelligence committees and members of Congress must have the staff, resources, clearance and cooperation necessary to provide vigorous oversight.^{xiv} A special committee should investigate and publicly report on Intelligence Community transgressions since 9/11.

Mass surveillance is counterproductive.

The evidence shows mass surveillance costs outweigh any tangible benefits. Furthermore, the misdirection of resources undermines support for the analysts who must connect the dots.^{xv}

Mass surveillance harms our economy.

Mass surveillance will cost the digital economy up to \$180 billion in lost revenue by 2016.^{xvi} Law enforcement efforts to subvert the integrity of technology—in particular by attacking privacy and security mechanisms built into technology^{xvii}—threaten the profitability of American manufacturers, entrepreneurs, and software companies. Already, 30% of all American adults report changing their online behavior in response to surveillance fears.^{xviii}

Americans want mass surveillance to stop.

Americans oppose domestic mass surveillance. 57% of American adults deem it unacceptable for government to monitor communications of U.S. citizens, according to a 2015 Pew survey.^{xix} 61% of Americans are losing confidence that surveillance efforts serve the public interest.

Mass surveillance is a red herring for effective anti-terrorism policies.

America can lead the world in civil liberties. But to do that, we must:

- Ensure a probable cause-based warrant requirement for acquiring and searching the communications of U.S. persons;
- End bulk and “bulky” (*i.e.*, broadly defined, *e.g.* by location) information collection;
- Inform the public about the scope of surveillance by requiring each intelligence collection agency—and allowing companies—to release granular information about collections;
- Prohibit the government from weakening security and privacy technology;
- Provide pathways for and protect whistleblowers who report problems;
- Slim down the role of the FISC, which has expanded from its original mandate;
- Publish “secret law,” including documents that interpret the law on matters of national security, except to the extent it contains facts that risk the viability of investigations;
- Require independent audits of intelligence agencies' compliance with the law;
- Strengthen and empower Congressional oversight;
- Legislatively address and limit the state secrets privilege; and
- Conduct a full accounting of post-9/11 intelligence community activities with substantial public reporting.

For more information, please contact Josh Withrow, legislative affairs manager at FreedomWorks at 202.783.3870 or jwithrow@freedomworks.org; Daniel Schuman, policy director at Demand Progress at 202.577.6100 or daniel@demandprogress.org; or Sascha Meinrath, director of X-Lab, at sascha@thexlab.org.

Sincerely yours,

American-Arab Anti-Discrimination Committee (ADC)
Amicus
Appar
Arab American Institute
Augur
Automattic
Badger Maps, Inc.
Bill Binney
Bill of Rights Defense Committee
Boing Boing
Constitutional Alliance
Contextly
CREDO
Dan Ellsberg
Data Foundry
Defending Dissent Foundation
Demand Progress
Diane Roark
Distinc.tt
DuckDuckGo
Earbits, Inc.
Ed Loomis
Fight for the Future
Foundry Group
Freedom of the Press Foundation
FreedomWorks
Friends Committee on National Legislation
GitHub, Inc.
Golden Frog
Government Accountability Project
Grid

InXile
J. Kirk Weibe
John Tate, President, Campaign for Liberty
Law Office of Elaine Mittleman
LawGives
Liberty Coalition
Linknovate
Media Alliance
National Security Counselors
OpenTheGovernment.org
PadMapper
Participatory Politics Foundation
Project On Government Oversight (POGO)
R Street Institute
Recrout
Restore The Fourth
Reylabs, Inc.
Rhode Island Coalition to Defend Human and Civil Rights
RootsAction.org
Sonic
Statwing
Student Net Alliance
Sunlight Foundation
TechFreedom
TheNextWeb.com
Thomas Drake
ThoughtWorks
TouchCast
X-Lab

ⁱ See “This Meaningful Surveillance Reform Had Bipartisan Support. It Failed Anyway,” *Slate* (Dec 10, 2014), available at <http://goo.gl/aKNE5K>.

ⁱⁱ See “NSA Reform That Passed House Reportedly Cut From ‘Cromnibus’: A landslide vote to end ‘backdoor’ surveillance appears to have been scuttled by backroom deal,” *US News and World Report* (Dec. 4, 2014), available at <http://goo.gl/3TVHbd>.

ⁱⁱⁱ See “NRA joins ACLU lawsuit, claims NSA starting ‘gun registry,’” *The Hill* (Sep. 14, 2013), available at <http://goo.gl/kEm7GX>.

^{iv} See “C.I.A. Collects Global Data on Transfers of Money,” *New York Times* (Nov. 14, 2013), available at <http://goo.gl/c639zp>.

^v See “In Test Project, N.S.A. Tracked Cellphone Locations,” *New York Times* (Oct. 2, 2013), available at <http://goo.gl/VF09cJ>.

^{vi} “Independent review board says NSA phone data program is illegal and should end,” *Washington Post* (Jan. 23, 2014), available at <http://goo.gl/3vU14C>.

^{vii} See, e.g., “Liberty and Security in a Changing World,” *Report and Recommendations of the President’s Review Group on Intelligence and Communications Technologies* (Dec. 12, 2013), available at <http://goo.gl/57RCgm>.

^{viii} “NSA weighed ending phone program before leak,” *Washington Post* (Mar. 30, 2015), available at <http://goo.gl/TdBx1Q>.

^{ix} “In NSA-intercepted data, those not targeted far outnumber the foreigners who are,” *Washington Post* (July 5, 2014), available at <http://goo.gl/WGj8hF>.

^x See “Meet Executive Order 12333: The Reagan rule that lets the NSA spy on Americans,” *Washington Post* (July 18, 2014), available at <http://goo.gl/kpq6Cu>.

^{xi} See Memorandum Opinion, *Foreign Intelligence Surveillance Court*, available at <http://goo.gl/uF0Lmj>.

^{xii} See “Florida congressman denied access to censored pages from 9/11 report,” *Miami Herald* (Dec. 29, 2014), available at <http://goo.gl/dohTCW>;

“Members of Congress denied access to basic information about NSA,” *The Guardian* (Aug. 4, 2013), available at <http://goo.gl/kCxb4o>.

^{xiii} See “Making Alberto Gonzales look good,” *New York Times* (June 11, 2013), available at <http://goo.gl/IOgoWo>; “It’s about the lying,” *The Intercept* (July 31, 2014), available at <http://goo.gl/N7JqJC>.

^{xiv} See “Congressional Oversight of National Security Reform Agenda” (Dec. 17, 2014), available at <http://goo.gl/d2hzYQ>.

^{xv} See, e.g., “The Whole Haystack,” *The New Yorker* (Jan 26, 2015), available at <http://goo.gl/GQ6BC1>.

^{xvi} “NSA’s PRISM could cost IT service market \$180 billion,” *Wall Street Journal* (Aug. 16, 2013), available at <http://goo.gl/wRmRX7>.

^{xvii} “FBI Director Comey calls on Congress to stop unlockable encryption,” *Washington Post* (Oct. 17, 2014), available at <http://goo.gl/ayQa9e>.

^{xviii} “Americans’ privacy strategies post-Snowden,” *Pew Research Center* (Mar. 16, 2015), available at <http://goo.gl/JDj6Rs>.

^{xix} See *supra* “Americans’ privacy strategies post-Snowden.”