

October 3, 2017

Dear Senate Minority Leader Schumer, House Minority Leader Pelosi, and Democratic Members of the U.S. Senate and House of Representatives:

The presidency of Donald Trump is an existential threat to the well-being of all Americans. He has repeatedly attacked communities of color and immigrants, created false equivalencies between neo-nazis and social justice advocates in an attempt to delegitimize the latter, and engaged in authoritarian behavior that is a grave threat to our democratic norms. We must deny him access to tools that likely will be used to further discriminatory ends or be employed to undermine democracy if we are to have any hope of successfully resisting his assaults on our communities and our values.

We, the undersigned progressive and grassroots organizations, urge you to oppose reauthorization of one of the most expansive and unaccountable mass surveillance laws in American history: Section 702 of the FISA Amendments Act of 2008. We cannot leave such a powerful weapon in Donald Trump's hands. Section 702 is scheduled to expire at the end of 2017, and absent whole cloth reform, it must.

History and contemporary abuse of surveillance powers

The history of America's surveillance abuses is a contemptible succession of measures intended to thwart collective organizing efforts toward greater liberty and equality. Celebrated today, these movements were actively targeted and subverted by the United States government. For example, the FBI deemed Rev. Martin Luther King Jr. a threat to national security and did all it could to discredit him. Its head of domestic intelligence operations, William Sullivan, declared: "We must mark him now, if we have not done so before, as the most dangerous Negro of the future in this Nation from the standpoint of communism, the Negro and national security."¹ The FBI would later try to convince King to kill himself.²

The government's abuse of surveillance powers for political purposes has been unrelenting. It extends from early wiretaps to undermine an ascendant labor movement to J. Edgar Hoover's surveillance of social justice advocates, from infiltrating Muslim student associations en masse to spying on Black Lives Matter activists,³ from harassing environmental activists to spying on college campuses, and more. Surveillance always has been justified on the back of national security concerns, even though on many occasions it has been employed to counter progressive reform movements, and it invariably disproportionately targets communities of color and people

¹ "MLK's speech attracted FBI's intense attention," *Washington Post* (August 27, 2013) https://www.washingtonpost.com/politics/mlks-speech-attracted-fbis-intense-attention/2013/08/27/31c8ebd4-0f60-11e3-8cdd-bcdc09410972_story.html

² "What an uncensored letter to MLK Reveals," *Washington Post* (Nov. 11, 2014) <https://www.nytimes.com/2014/11/16/magazine/what-an-uncensored-letter-to-mlk-reveals.html>

working for social change.

The Trump administration has made no secret of its desire to criminalize people of color and activists. No Democrat should support a law that grants Trump the ability to spy — without a court-issued warrant — on the more than 325 million people that live in this country.

Background on Section 702

Section 702 permits the government to programmatically surveil electronic communications based on so-called “selectors,” such as email addresses and phone numbers, that intelligence agencies associate with foreign individuals located outside of the United States. These selectors are not reviewed or approved by any court. All information related to these selectors is turned over by internet companies at the request of intelligence agencies. The government even forces companies that manage the backbone of the Internet to scan communications as they travel in real time.

This searching means millions of innocent Americans’ communications are being scanned in pursuit of these selectors. This process also means that, of the billions of communications that have been turned over to the government, volumes of information to, from, and about innocent people in the United States have also been handed over.

While these tremendous powers were intended to be limited to foreign intelligence purposes, in practice they are used much more expansively. Intelligence agencies are not permitted to knowingly target citizens or people in the United States at the beginning of this process, but they have fought in court to defend their practice of knowingly and routinely searching through the collected troves of data for information belonging to citizens and people in the United States. And they have also used this information for non-intelligence purposes, including prosecution of unrelated crimes, in an end run around the U.S. Constitution. The government conducts these searches at least tens of thousands of times per year, without a warrant, without evidence of a crime, and without proper independent oversight. Not only are these powers dangerous in and of themselves, but history teaches us that they will be abused.

Section 702 is unlike any other surveillance tool. It is akin to a general warrant, specifically prohibited by the Fourth Amendment, which would allow the government broad discretion to search and seize without identifying what and who it is looking for. This extraordinary power is not acceptable under any president. But it is particularly intolerable under the Trump administration.

Section 702 is scheduled to expire at the end of 2017. While the undersigned groups would support a full sunset, we call on Democrats to, at a minimum, require any extension of this provision come with the following limitations:

- Section 702 should only be used to acquire information for the purposes of countering espionage by foreign governments, terrorism, and weapons proliferation;
- An Article III judge must be required to approve a warrant based on probable cause before the government may search information to or from people in the United States for any reason;
- Agencies may no longer acquire and search information because of a selector's presence within the content of emails without a warrant, which intelligence agencies call "about searching";
- After it has been acquired, intelligence agencies must be prohibited from sharing information they collect with domestic law enforcement entities unless it is protected by the higher standard required for criminal prosecutions, and it should never be shared for low-level or non-violent crimes;
- Any time Section 702 information is used in an investigation that leads to a prosecution, defendants must receive notice that Section 702 specifically was used in the case so they can assert their constitutional rights in a court of law;
- Intelligence agencies must report to Congress and the public estimates of how much information about people in the United States has been acquired and how much of it has been reviewed pursuant to Section 702, so as to ensure intelligence agencies have not turned their lenses inward;
- The Office of Legal Counsel of the Department of Justice must submit any final legal opinion that interprets this provision to Congress and declassify and make public the same as soon as practicable so that we do not have secret law in this country and we can have assurances the law is faithfully being executed; and
- Reform must include another sunset date within one year of passage so that Congress and the public have an opportunity to reexamine how (and if) the Trump-run surveillance agencies operate under the framework it enshrines.

Conclusion

Congress passed Section 702 with the intention of giving intelligence agencies a tool to counter espionage, terrorism, and weapons proliferation. Unfortunately, it has grown into a tool so powerful that it is changing the way innocent people associate and speak. These invasions of privacy now happen an unknown number of times, for any number of reasons, or worse, for no reason at all, all while massive databases that include information about innocent people — including United States citizens and others protected by the Fourth Amendment — continue to grow. We cannot stand by and allow this to continue.

Congress must rein in the acquisition and use of this information before it is too late. The mass surveillance of people within our shores, euphemistically deemed “incidental collection,” is a menace to our democracy and a threat to those who wish to strive towards a more perfect union.

These reforms we have outlined are not a panacea — eternal vigilance is the price of liberty — but if Section 702 is renewed they would significantly improve upon current practices. These reforms at a minimum *must* be included in any bill that garners your support. While we work to survive the Trump administration and look to repair its wreckage, we must curtail any power granted to this administration with which it ought not be entrusted. Otherwise we place at risk those the Trump administration and its illiberal predecessors have repeatedly targeted: communities of color, immigrants, religious minorities, activists, and anyone seeking to attain the full promise of the American dream.

If you have any questions about this letter or Section 702, please contact Daniel Schuman, policy director at Demand Progress, at daniel@demandprogress.org.

Sincerely,

18 Million Rising
350.org

American-Arab Anti-Discrimination
Committee

Asian American Legal Defense and
Education Fund

Center for Media Justice

Center for Popular Democracy

Climate Hawks Vote

ClimateTruth.org

Color of Change

Common Cause

Courage Campaign

CREDO

Daily Kos

Demand Progress Action

Democracy For America

Free Press Action Fund

Friends of the Earth

Greenpeace

Indivisible

Million Hoodies

National Guestworker Alliance

Oil Change International

The Other 98%

Our Revolution

Progressive Change Campaign Committee

People's Action

Presente.org

Public Citizen

Revolving Door Project
RootsAction
SumOfUs.org
The Nation
Ultraviolet
Working Families Party