

November 21, 2023

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Mike Johnson
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Mike Rogers
Chairman
Committee on Armed Services
United States House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
United States House of Representatives
Washington, DC 20515

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Johnson, Minority Leader Jeffries, Senator Durbin, Senator Graham, Representative Jordan, Representative Nadler, Senator Reed, Senator Wicker, Representative Rogers, and Representative Smith:

We are writing in response to reports that the administration may be seeking to have a reauthorization of Section 702 of the Foreign Intelligence Surveillance Act (FISA) included in the National Defense Reauthorization Act (NDAA). **The undersigned groups strongly oppose**

including a Section 702 reauthorization in the NDAA and urge you to categorically reject any such efforts.

Section 702 has been routinely abused in ways that violate Americans' fundamental civil liberties and civil rights. FBI agents have used this surveillance authority, which is supposed to be limited to non-U.S. citizens located outside the United States, to gain warrantless access to the communications of *tens of thousands* of [protesters](#), [racial justice activists](#), [19,000 donors to a congressional campaign](#), [journalists](#), and [members of the U.S. Congress](#). Even after the FBI's recent changes to its internal procedures, the abuses have continued, with agents conducting warrantless searches for the communications of a [U.S. senator](#), a [state senator](#), and a [state court judge](#) who contacted the FBI to report civil rights violations by a local police chief. NSA agents, for their part, have abused the authority to search for the communications of [online dating prospects](#) and [potential tenants](#).

In its current form, this authority is dangerous to our liberties and our democracy, and it should not be renewed for any length of time without robust debate, an opportunity for amendment, and — ultimately — far-reaching reforms. That process should begin with the judiciary committees, which have primary jurisdiction over legislation affecting Americans' constitutional rights and civil liberties, including FISA. **Bypassing this process by slipping an extension of the law into the defense authorization bill during conference would demonstrate a blatant disregard for the civil liberties and civil rights of the American people.**

Even a short-term reauthorization of Section 702 would be inappropriate, as it is completely unnecessary. Although Section 702 itself is scheduled to expire on December 31, the government is currently conducting Section 702 surveillance pursuant to a one-year FISA Court authorization that expires in April 2024. The FISA Amendments Act of 2008 [provides](#) that a FISA Court authorization “shall continue in effect” until its expiration, notwithstanding any other provision of law. Accordingly, the government will continue to conduct surveillance under Section 702 until April 2024, even if Section 702 itself expires. This gives Congress ample time to consider whether and how to reauthorize this deeply flawed authority.

Indeed, we are concerned that the government would take advantage of any short-term reauthorization of the law to go back to the FISA Court and obtain *another* one-year authorization for the surveillance. Given this likelihood, even a two-month extension of the law could result in a de facto extension of Section 702 surveillance *into 2025*. Congress cannot in good conscience greenlight such a measure after the egregious abuses that have taken place.

In short, there is simply no excuse for ramming through a reauthorization of Section 702 on a must-pass defense authorization bill. **We urge you not to betray the trust of the American people by following such a course of action.**

Sincerely,

Access Now
Advocacy for Principled Action in Government
American Civil Liberties Union

Americans for Prosperity
Asian Americans Advancing Justice | AAJC
Asian American Scholar Forum
Brennan Center for Justice at NYU School of Law
Center on Race, Inequality, & the Law at NYU School of Law
Center for Democracy & Technology
Chinese for Affirmative Action (CAA)
Color Of Change
Common Cause
Defending Rights & Dissent
Demand Progress
Due Process Institute
Electronic Privacy Information Center (EPIC)
Electronic Frontier Foundation
Fight for the Future
Free Press Action
Freedom of the Press Foundation
FreedomWorks
Government Information Watch
Muslim Advocates
New America's Open Technology Institute
National Association of Criminal Defense Lawyers
Organization for Identity and Cultural Development (OICD.net)
PEN America
Project for Privacy and Surveillance Accountability
Restore The Fourth
S.T.O.P. - The Surveillance Technology Oversight Project
Stop AAPI Hate
X-Lab
United We Dream