

October 6, 2014

Dear Members of Congress:

We, a coalition of civil liberties, civil rights, peace & justice, transparency, and community organizations, urge you to pass the USA FREEDOM ACT (S. 2685) as introduced by Senator Leahy in July, and then immediately turn your attention to more meaningful and comprehensive reform of the National Security Agency's (NSA) overreaching and unconstitutional surveillance practices.

Some members of Congress have recently suggested that NSA reform could undermine national security and hamper our nation's efforts targeting violent extremist networks.¹ These concerns are entirely misplaced.

Both the Attorney General and Director of National Intelligence support the USA FREEDOM Act, explaining in a September 4 letter that it "preserve[s] essential Intelligence Community capabilities" and "will accommodate operational needs." The bill allows ample space for legitimate national security needs to be addressed, and imposes no limits on surveillance when the government has a reason to suspect a particular individual of a crime or involvement in terrorism.

The passage of the USA FREEDOM Act would be an important first step in curtailing the NSA's abuses of fundamental constitutional rights, but it would not be enough. To bring true change to the surveillance system, Congress must also:

- Reform Section 702 of the Foreign Intelligence Surveillance Act to also restore legal limits on Internet surveillance;
- Close the "back door" search loophole used to spy on Americans;
- Begin public and accountable oversight into spying conducted under Executive Order 12333;
- Delete the automatic collection of "two-hops" (i.e., "two-degrees") from a suspected target;
- Further strengthen the adversarial process in the FISA (Foreign Intelligence Surveillance Act) Court by strengthening the powers of the Special Advocate created by the bill;

¹ See, e.g., Mike Masnick, *Senator Saxby Chambliss Insists That NSA Reform Would Help ISIS...Despite Having Nothing To Do With ISIS Surveillance*, Techdirt (Sep. 23, 2014) ("This is the logic of fear, because it has no basis in reality.").

- Further narrow the definition of specific selection terms to close any potential circumvention of limits on Section 215 surveillance authorities;
- Reform the current system of classified information, which has been an obstacle to meaningful legislative and public discussion of U.S. surveillance activities;
- Ensure the legal standing of individuals and entities monitored by military agencies to challenge such surveillance in civilian courts, and legislatively reject the judicial “state secrets” privilege that has prevented judicial review of executive violations²;
- Require the government to disclose to Congress all interpretations of surveillance authorities, including Office of Legal Counsel Opinions and Agency General Counsel Opinions; and
- Restore opportunities for meaningful legislative oversight by creating robust protections for intelligence whistleblowers who disclose information to members of Congress, who often confront official retaliation when acting in the public interest.³

While we hope the USA FREEDOM Act would impose restraints on mass violations by the NSA and FBI, we recognize that, as currently drafted, S. 2685 fails to address these vital concerns.

Unfortunately, Congress has exacerbated these problems by failing to hold accountable any of the executive officials who have actively misled Congress during attempts to oversee surveillance practices, and failing to conduct a necessary independent investigation of the sort that uncovered wanton violations the last time Congress closely examined the agencies.⁴

² See, e.g., *Clapper v. Amnesty, Int'l*, 568 U.S. ____ (2013) (dismissing a challenge to mass NSA surveillance without individualized suspicion in violation of the Fourth Amendment on the basis of a de facto immunity doctrine extended from judicial deference to executive secrets); *Mohamed et al. v. Jeppesen Dataplan, Inc.*, No. 08-15693 (9th Cir. 2009) (“According to the government’s theory, the Judiciary should effectively cordon off all secret government actions from judicial scrutiny, immunizing the CIA and its partners from the demands and limits of the law.”), *reversed en banc* (9th Cir. 2010).

³ The Espionage Act was originally created for use against foreign spies, rather than public servants who resign their careers to serve the public interest. Yet more whistleblowers from U.S. national security agencies have confronted prosecution under the current administration for violating the Act than during the combined preceding 225-year history of our Republic. See Jane Mayer, *The Secret Sharer*, *The Atlantic* (May 23, 2011); Aaron Blake, *Greenwald: Obama engaged in ‘unprecedented war on whistleblowers,’* *Washington Post* (July 2, 2013).

⁴ Prompted by evidence of illegal secret domestic spying by federal intelligence agencies, Congress in the 1970s established the precursors to the contemporary Select Committees on Intelligence to oversee the agencies. According to the official U.S. Senate website: “The committee interviewed 800 individuals, and conducted 250 executive and 21 public hearings...demonstrat[ing] the need for perpetual surveillance of the intelligence community...” U.S. Senate, *Senate History: 1964-Present*, available at https://www.senate.gov/artandhistory/history/minute/Church_Committee_Created.htm.

At a minimum, Congress must recommit itself to meaningful oversight. The USA FREEDOM Act was co-sponsored by the original co-sponsors of the PATRIOT Act, after they were alarmed by media reports featuring whistleblowers revealing how their signature legislative achievement had been abused by the agencies. To craft a complete piece of NSA reform legislation, Congress -- and the American people -- must first hear the full story.

While the USA FREEDOM Act would ensure minimal transparency and safeguards for only three out of many surveillance authorities used by the intelligence community, it would secure a number of important objectives shared by diverse Americans from across the political spectrum concerned about transparency, checks & balances, and basic constitutional rights. For instance, the FREEDOM Act would:

- Prohibit bulk data collection under several (though still not all relevant) authorities, including Section 215 of the USA PATRIOT ACT;
- Establish an office of Special Advocates for the FISA court and empower that office to view government surveillance orders, contest them, seek the declassification of FISA court opinions, and request an appeal to higher courts;
- Enhance transparency by allowing disclosure about surveillance orders from both the public and private sectors; and
- Mandate disclosure by the Attorney General and Director of National Intelligence of “significant decisions” issued by the FISA court.

Passing the USA FREEDOM Act in its current form is an opportunity to begin a long overdue overhaul of the United States’ surveillance programs. We urge you to swiftly pass it and then legislate further measures in the next congressional session and restore constitutional rights repeatedly abused en masse by our nation’s intelligence agencies.

Respectfully submitted,

Action LA Network

Alliance for Global Justice

American-Arab Anti-Discrimination Committee*

Arab American Association of New York

Arab Resource & Organizing Center (CA)

Bill of Rights Defense Committee*

Campaign for Digital Fourth Amendment Rights (MA)

Charity & Security Network

Chicago Committee to Defend the Bill of Rights (IL)

Code Pink: Women for Peace*
Constitutional Alliance
Council on American-Islamic Relations*
Dallas Peace Center (TX)
Defending Dissent Foundation*
DRUM-South Asian Organizing Center
Electronic Frontier Foundation*
Friends of the Constitution (WA)
Green Shadow Cabinet*
Hip Hop Congress*
Immigrant Support Network*
Interfaith Communities United for Justice and Peace (CA)
Latin American Solidarity Coalition (CA)
Libertarian Party*
Libertas Institute (UT)
Liberty Coalition*
Media Alliance (CA)
Montgomery County Civil Rights Coalition (MD)
Mothers Against Police Brutality*
National Coalition to Protect Civil Freedoms*
National Immigrant Solidarity Network*
National Lawyers Guild*
National Network for Arab American Communities*
Neighborhood Unitarian Universalist Church
New England Muslim Bar Association
New South Network of War Resisters (NC)
OMNI Center for Peace, Justice & Ecology (AR)
OneAmerica (WA)
OpenTheGovernment.org
Poor Peoples Economic Human Rights Campaign (CO, OH, PA)
Popular Resistance*
Project On Government Oversight (POGO)*
Project SALAM (NY)
SOA Watch: Close the School of the Americas*
U.S. Labor Against the War (USLAW)*

* National organizations