

June 11, 2012

Chairman James Sensenbrenner  
House Subcommittee on Crime, Terrorism, and Homeland Security  
Rayburn House Office Building B-370B  
Washington, DC 20515

Ranking Member Bobby Scott  
House Subcommittee on Crime, Terrorism, and Homeland Security  
Rayburn House Office Building B351  
Washington, DC 20515

Dear Chairman Sensenbrenner, Ranking Member Scott, and Members of the Committee,

We, the undersigned organizations, which support both security and liberty, write to express our concerns about the FISA Amendments Act of 2008 (FAA). Unless reauthorized, the FAA will sunset on December 31, 2012. We urge you to impose measures to prevent abuse of the FAA, and to require that government officials implementing the law be more transparent about its use.

The FAA authorizes the government to conduct surveillance in the U.S. of individuals reasonably believed to be non-U.S. persons located outside the U.S. Even if the target communicates with people in the U.S., the surveillance is conducted without meaningful judicial authorization and without probable cause. Instead, the FISA Court evaluates only whether the procedures under which surveillance is conducted are reasonably designed to target people reasonably believed to be abroad.

Though the FAA surveillance authority is broad and the criteria for conducting it lax, the National Security Agency has reportedly overstepped the bounds of the law. In April 2009, the *New York Times* reported that the NSA “intercepted private e-mail messages and phone calls of Americans in recent months on a scale that went beyond the broad legal limits established by Congress,” and it reported that intelligence officials characterized the illegal surveillance as “significant and systemic.”<sup>1</sup> Further, despite evidence of impropriety, the government has not publicly detailed the extent of the problem or publicly explained what, if anything, it has done to prevent it from recurring. Before the Congress considers legislation to reauthorize the FAA, it should require the government to specify the nature and extent of this illegal surveillance and in any reauthorization legislation, Congress should impose statutory mechanisms to ensure that illegal surveillance does not recur under the FAA umbrella.

In addition, the Judiciary Committee should, prior to considering reauthorization, or in the reauthorization legislation itself:

- Require the government to disclose more about the extent and the nature of the surveillance that has been conducted under the FAA, most notably, the number of U.S. citizens and individuals in the United States that have been affected;
- Impose reporting requirements that require such disclosures for future FAA surveillance;

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<sup>1</sup> Eric Lichtblau and James Risen, *The New York Times*, *Officials Say U.S. Wiretaps Exceeded Law*, (April 15, 2009), available at <http://www.nytimes.com/2009/04/16/us/16nsa.html?pagewanted=all>.

- Amend the FAA to prevent bulk surveillance of entire categories of persons; and
- Strengthen the FAA minimization procedures to ensure that the information collected under the FAA is not repurposed for government uses unrelated to national security.

Thank you for considering our views. Please direct your response to Gregory Nojeim of the Center for Democracy & Technology ([gnojeim@cdt.org](mailto:gnojeim@cdt.org); 202/637-9800) and to Michelle Richardson of the American Civil Liberties Union ([mrichardson@dcaclu.org](mailto:mrichardson@dcaclu.org); 202/544-1681).

Sincerely,

American-Arab Anti-Discrimination Committee  
American Association of Law Libraries  
American Civil Liberties Union  
American Library Association  
Association of Research Libraries  
Brennan Center for Justice  
Center for Democracy & Technology  
Council on American-Islamic Relations  
Cyber Privacy Project  
Defending Dissent Foundation  
Demand Progress  
Electronic Frontier Foundation  
Government Accountability Project  
Liberty Coalition  
National Association of Criminal Defense Lawyers  
[OpenTheGovernment.org](http://OpenTheGovernment.org)

cc: Members of the House Judiciary Committee