Center for American Progress Action Fund

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January 8, 2018

Re: S. 139, FISA Amendments Reauthorization Act of 2017

Dear Representative,

On behalf of the Center for American Progress Action Fund, I urge you to oppose S. 139, which would renew section 702 of the Foreign Intelligence Surveillance Act unless it is amended by vote on the House floor to add necessary safeguards to require the FBI to obtain a warrant before targeting and reading Americans' communications obtained under the warrantless surveillance program established by section 702.

Congress should renew Section 702 of the Foreign Intelligence Surveillance Act only if it incorporates key reforms needed to protect Americans' constitutional rights and to prevent the government from using information against its political opponents or members of religious, ethnic, or other groups. There is a straightforward fix that would do so without interfering with the national security objectives of 702 surveillance – requiring the FBI to obtain a warrant before reading communications by Americans, when it finds those communications by targeting that American and searching its 702 databases.

The bill calendared for consideration by the Rules Committee on Tuesday, January 9, 2018, S. 139, the FISA Amendments Reauthorization Act of 2017, does not contain the necessary safeguards. Rather, it would likely provide the government a powerful tool for political spying on Americans. Recent events make clear that there is a real danger that government surveillance authorities will be used to target political opponents and groups based on their religion, ethnicity or race. And there is reason to be concerned that section 702 provides an easy means of political spying with little possibility of discovery.

In particular, section 702 allows "backdoor searches" where government agencies, including individual FBI agents, may search the communications collected under section 702 for communications by an individual American, read those communications and disseminate them within the government. They may do so without any external oversight, much less a judicial warrant, simply by claiming a "foreign intelligence" purpose.

The FBI is doing tens of thousands, if not hundreds of thousands, of searches for Americans' information in the 702 database. The FBI reportedly now does such searches *every time* an agent looks at any American for any reason. Searches of the 702 database may be conducted by individual Special Agents in all FBI offices throughout the country

without any approval by any higher level official. Most significantly, FBI agents may conduct such searches targeting Americans *without any information even suggestive of suspected wrong-doing, much less probable cause.*

Our history gives us no reason to be sanguine that individual FBI agents would not conduct searches against Americans considered to be political opponents of the government. When the FBI has the power to uncover Americans' private conversations with individuals overseas without the safeguard of a judicial warrant, there is very little to protect against such information being used against that American, to coerce her, to threaten her or her family, or to discredit her in front of her community.

There is a simple and effective reform, which would prevent such spying. When the FBI searches for 702 communications by an American, it should obtain a warrant to read those communications. This reform will not harm counterterrorism investigations; it will protect the principles of the Fourth Amendment and democratic government.

S. 139 does not contain this essential safeguard. While its proponents argue that it contains provisions protecting privacy, those provisions are either a sham or ineffective. On its face, it appears to require the FBI to obtain a warrant, but only when the FBI has already opened predicated criminal investigations unrelated to national security (sec. 101). But as the FBI acknowledged to Rep. Nadler's office, it will most likely never have to obtain a warrant under this provision because it would already have repeatedly searched for an American's communications in the 702 database without a warrant before opening a "predicated criminal investigation." It appears that this provision was inserted simply as a sham to give the appearance of reform without making any practical change whatsoever.

Other provisions addressing the use of section 702 information in criminal cases also are insufficient to protect civil liberties. The greatest potential for political spying arises when the FBI makes queries about Americans, which it labels "foreign intelligence". Regulating the use of 702 information in criminal cases, which, in any case, only happens rarely, does nothing to address this problem.

We urge you to support an amendment like the one offered by Representatives Lofgren and Poe in the past that would provide the necessary safeguards by requiring a warrant before the government searches its 702 databases for communications by Americans. It would prevent the warrantless collections against foreigners overseas, which are authorized by section 702, from being used by the government to search for and read Americans' private communications when it does not have a warrant to do so.

This reform would not prevent the FBI from "connecting the dots. Adopting this reform would leave in place the government's existing authority to target foreigners by seizing millions of communications from U.S. companies without a warrant, including any communications by those targeted foreigners with Americans. Adopting this reform would leave in place, in particular, the government's existing authority to target a terrorist or terrorist group overseas and read and review *all* the communications by that foreign terrorist, including the contents of any communications with an American or person located in the United States, again without a warrant. It is hard to imagine a circumstance where the government would target an overseas terrorist and not immediately read any communications that terrorist happens to have with an American. The proposed warrant requirement would not apply in that case. In short, the government will still be free to identify and investigate any American communicating with foreign terrorists, who is discovered as a result of targeting terrorists overseas. It would simply require a warrant when the government seeks to discover communications by an American through targeting that American.

The Framers recognized the necessity of a judicial warrant in such circumstances to protect against government abuse. Their insight still applies today.

Thank you for your consideration.

Sincerely,

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