

**Congress of the United States**  
**Washington, DC 20515**

March 14, 2024

The Honorable Merrick B. Garland  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Mike Johnson  
Speaker  
U.S. House of Representatives  
H-232 The Capitol  
Washington, D.C

The Honorable Hakeem Jeffries  
Democratic Leader  
U.S. House of Representatives, The Capitol  
Washington, D.C.

Dear Attorney General Garland, Speaker Johnson, and Leader Jeffries,

Following reports<sup>1</sup> that the Department of Justice (DOJ) is unilaterally moving to extend FISA Section 702 without congressional approval, **we write to convey our strong disapproval of any attempt to extend the warrantless surveillance program beyond the congressionally-enacted deadline of April 19, 2024.** We call on the DOJ to respect congressional authority and the legislative process by not pursuing a full one-year extension from the Foreign Intelligence Surveillance Court (FISC) absent Congress' reauthorization of Section 702. Simultaneously, we call on House leadership to bring the Protect Liberty and End Warrantless Surveillance Act (PLEWSA) to the House Floor for a vote.

As you know, Section 702 of FISA is a highly-controversial and routinely-abused surveillance program, and Congress was unable to agree on reauthorization and reform legislation ahead of the law's December 31, 2023 sunset date. That's why the Biden Administration requested a short-term reauthorization to provide time for Congress to act and, thereafter, Congress enacted an extension of Section 702 until April 19, 2024, as part of the FY 2024 National Defense Authorization Act (NDAA).

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<sup>1</sup> Savage, Charlie. 2024. "U.S. To Ask Court to Reauthorize Disputed Surveillance Program for a Year." The New York Times, February 28, 2024, sec. U.S. <https://www.nytimes.com/2024/02/28/us/politics/nsa-fbi-surveillance-program.html>

At the time, many Members of Congress voiced concern that the Administration could effectively convert the NDAA’s four-month extension into a 16-month extension by obtaining FISC approval for one-year certifications in the days or weeks leading up to the new deadline. Under the Administration’s view of the law, certifications remain in effect until their scheduled expiration date, regardless of whether Section 702 remains in effect. That means a one-year certification approved in early April 2024 would remain in effect until early April 2025, even if Congress does not reauthorize Section 702. When we expressed concern about this possible path to usurp congressional authority surrounding the NDAA vote, Members were privately reassured by Administration officials that the government would not seek any certification to conduct Section 702 surveillance beyond April 19, 2024 without a legislative reauthorization in place.

Yet the recent reports indicate that the Administration has reneged and will soon seek FISC approval for a one-year certification to conduct Section 702 surveillance. The Administration claims this move is necessary to avoid a gap in collection between April 11, when the current certification expires, and April 19, the deadline for reauthorization. However, if the Administration merely sought to prevent a gap, it could seek a certification to cover just that period – the law allows surveillance to be authorized for periods of “up to one year.”<sup>2</sup> Instead, the Administration is reportedly seeking approval to conduct surveillance for a full year — exactly what Members had feared and were told would not happen.

We write to remind you of the understanding that existed between Members and Administration, and to emphasize that Congress’ intent in temporarily extending Section 702 through the NDAA was to provide an additional time for Congress to reach a determination on whether Section 702 should be renewed and in what form. The NDAA extension was *not* intended to allow the Administration to continue warrantless surveillance under Section 702 into 2025.

Given this current landscape, upcoming surveillance deadlines, and overwhelmingly bipartisan desire for long-needed privacy reforms, it is vital that House leaders promptly bring the Judiciary Committee-passed PLEWSA to the House Floor for a vote. With strong bipartisan support, the Committee passed this legislation to significantly reduce surveillance overreach and safeguard Americans’ civil liberties without compromising national security.

For too long, federal intelligence and law enforcement agencies have had nearly unchecked access to Americans’ personal data. A broad coalition from across the political spectrum agrees that Congress should not greenlight another major surveillance reauthorization without carefully enacting surveillance reform measures. In 2022 alone, the FBI used Section 702 more than 278,000 times to unlawfully access Americans’ data without a warrant.<sup>3</sup> These searches unjustly targeted innocent individuals, including a Member of Congress, individuals protesting after the police killing of George Floyd, visitors to FBI offices, and individuals based solely on their race.<sup>4</sup>

We stress that it is despicable that, despite broad support for substantial reform, the DOJ is reportedly attempting to bypass the legislative process to secure another surveillance

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<sup>2</sup> 50 U.S.C. § 1881a (a). Emphasis added.

<sup>3</sup> Memorandum Opinion & Order at 23, [Redacted], No. [Redacted], FISA Ct. (Apr. 21, 2022).

<sup>4</sup> *Id.*

reauthorization. Such action would completely undermine congressional authority. If true, we urge an immediate change of course. Additionally, and regardless of the Administration's intentions, we urge House leaders to promptly act and assert congressional leadership.

Sincerely,



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Zoe Lofgren  
Member of Congress  
Co-Chair, Fourth Amendment  
Caucus



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Tom McClintock  
Member of Congress



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Pramila Jayapal  
Member of Congress



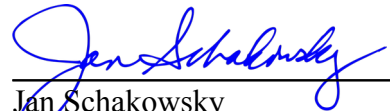
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Warren Davidson  
Member of Congress



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Ted W. Lieu  
Member of Congress



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Jan Schakowsky  
Member of Congress



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Barbara Lee  
Member of Congress



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Lloyd Doggett  
Member of Congress



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Rashida Tlaib  
Member of Congress



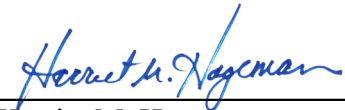
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Nancy Mace  
Member of Congress



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Greg Casar  
Member of Congress



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Harriet M. Hageman  
Member of Congress



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Earl Blumenauer  
Member of Congress



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Andy Biggs  
Member of Congress



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J. Luis Correa  
Member of Congress



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Jesús G. "Chuy" García  
Member of Congress



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Ilhan Omar  
Member of Congress



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Robert C. "Bobby" Scott  
Member of Congress



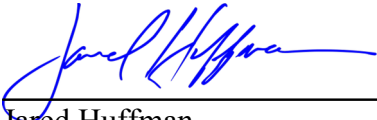
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James P. McGovern  
Member of Congress



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Delia C. Ramirez  
Member of Congress



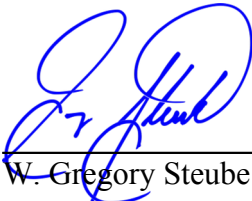
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Jared Huffman  
Member of Congress



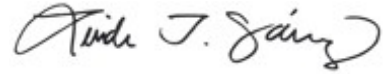
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Ben Cline  
Member of Congress



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W. Gregory Steube  
Member of Congress



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Linda T. Sánchez  
Member of Congress