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February 28, 2023



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

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

The Honorable Kevin McCarthy
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Hakeem S. Jeffries
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Leader Schumer, Leader McConnell, Speaker McCarthy, and Leader Jeffries:

As the 118th Congress begins, we urge you to promptly reauthorize a key foreign intelligence authority—Title VII of the Foreign Intelligence Surveillance Act (FISA)—before it expires on December 31, 2023.

Title VII of FISA, and in particular Section 702, has been a critical authority for the Intelligence Community (IC) and Department of Justice (DOJ) since its passage in 2008. The authority allows the U.S. Government to acquire foreign intelligence information from individual terrorists, weapons proliferators, hackers, and other foreign intelligence targets located overseas who operate using U.S. electronic communications service providers. It also requires the IC and DOJ to comply with robust privacy and civil liberties safeguards, which are overseen by all three branches of government. As the examples below demonstrate, the information acquired using Section 702 plays a key role in keeping the United States, its citizens, and its allies safe and secure.

Given this, the reauthorization of Title VII is a top legislative priority for this Administration. Both the IC and DOJ thus stand ready to provide you and your offices with information about how Section 702 is used to produce unique and timely intelligence, and the steps we have taken to strengthen compliance with FISA's privacy and civil liberties safeguards. As in past reauthorization cycles, the IC and DOJ are committed to engaging with Congress on potential improvements to the authority that fully preserve its efficacy.

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Over the last 15 years, Section 702 has proven invaluable again and again in protecting American lives and U.S. national security:

Section 702 has been used to identify and protect against national security threats to the United States and its allies, to include both conventional and cyber threats posed by the People's Republic of China, Russia, Iran, and the Democratic People's Republic of Korea.

- Section 702-acquired information has been used to identify multiple foreign ransomware attacks on U.S. critical infrastructure. This intelligence positioned the U.S. Government to respond to and mitigate these events, and in some instances prevent significant attacks on U.S. networks.
- Section 702-acquired information related to sanctioned foreign adversaries was used in U.S. Government efforts to stop components for weapons of mass destruction from reaching foreign actors.
- Section 702 has identified threats to U.S. troops and disrupted planned terrorist attacks both at home and abroad, and contributed to the United States' successful operation against Ayman al-Zawahiri in 2022.
- Section 702 has resulted in the identification and disruption of hostile foreign actors' attempts to recruit spies in the United States or send their operatives to the United States.
- Section 702 information has identified key economic security risks, including strategic malign investment by foreign actors in certain U.S. companies.

It has also become clear that there is no way to replicate Section 702's speed, reliability, specificity, and insight.

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The comprehensive system Congress designed to ensure this irreplaceable intelligence tool protects the privacy and civil liberties of U.S. persons has worked. When incidents of non-compliance have been identified, remedial steps have been taken to ensure the authority is being implemented consistent with its limited scope.

Because Section 702 can only be used to target individual *non-U.S. persons located outside the United States*, it may not be directed against Americans at home or abroad, or any person, regardless of nationality, known to be located in the United States. It also cannot be used to collect against a foreign person overseas if the intended purpose is to target someone located in the United States. Each target must meet specific foreign intelligence criteria and any information can only be collected, analyzed, and disseminated according to detailed court-approved procedures. It cannot

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be used to gather data in bulk. Every court to consider the Section 702 program has found it to be constitutional.

Compliance with these strictures is subject to a comprehensive oversight regime involving all three branches of our Government. First, the Foreign Intelligence Surveillance Court (FISC)—an Article III court—conducts a comprehensive review of the program annually, evaluating certifications submitted by the Attorney General and the Director of National Intelligence that identify appropriate categories of foreign intelligence information as well as accompanying targeting, acquisition, and minimization procedures. Additionally, the FISC has sought the views of outside experts (*Amicus Curiae*) on multiple occasions as it exercises its rigorous and ongoing oversight of the U.S. Government's implementation of and compliance with these procedures. Second, DOJ and the Office of the Director of National Intelligence scrutinize all Section 702 collection decisions, review U.S. person queries, and evaluate and take remedial action to address identified incidents of non-compliance. Finally, the congressional intelligence and judiciary committees receive semi-annual compliance reporting and regular briefings to facilitate their stringent oversight.

In addition to the privacy protections contained in Section 702, separate provisions in Title VII of FISA provide heightened standards for other foreign intelligence activities conducted overseas. For example, Title VII requires an individual court order before the U.S. Government can conduct surveillance against an American located overseas when the Government has established it has probable cause to believe the target is "a foreign power, an agent of a foreign power, or an officer or employee of a foreign power." Other provisions of Title VII support congressional oversight by requiring the release of detailed information about how the U.S. Government uses the authority.

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As noted at the outset, we stand ready to help you and your offices get the information you need as you consider the reauthorization of Title VII before December 31, 2023. To that end, our staff will be offering briefings on Section 702, including at the classified level, on the specific operational successes enabled by Section 702, and the actions we have taken to implement Section 702's privacy and civil liberties' protections. We also encourage you to contact Matt Rhoades, Assistant Director of National Intelligence for Legislative Affairs, or Carlos Uriarte, Assistant Attorney General for Legislative Affairs, if you would like any further information or have any questions.

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We look forward to working with you over the coming year to reauthorize this fundamentally critical national security tool.



Merrick B. Garland
Attorney General



Avril D. Haines
Director of National Intelligence

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Cc:

The Honorable Kamala Harris, President, U.S. Senate
The Honorable Patty Murray, President Pro Tempore, U.S. Senate
The Honorable Richard J. Durbin, Chair, Committee on the Judiciary, U.S. Senate
The Honorable Lindsey O. Graham, Ranking Member, Committee on the Judiciary, U.S. Senate
The Honorable Jim Jordan, Chairman, Committee on the Judiciary, U.S. House of Representatives
The Honorable Jerrold L. Nadler, Ranking Member, Committee on the Judiciary, U.S. House of Representatives
The Honorable Mark R. Warner, Chairman, Select Committee on Intelligence, U.S. Senate
The Honorable Marco Rubio, Vice Chairman, Select Committee on Intelligence, U.S. Senate
The Honorable Michael Turner, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives
The Honorable Jim Himes, Ranking Member, Permanent Select Committee on Intelligence, U.S. House of Representatives