

August 14th, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins:

We urge you to ensure that any legislation that would reauthorize Section 215 of the USA PATRIOT Act contains critical reforms including, as one of several essential reforms, repealing the government's statutory authority to operate the Call Detail Records ("CDR") program. We urge you to oppose, and our organizations will oppose, any bill to reauthorize Section 215 that does not include meaningful surveillance reforms. Given the CDR program's extraordinary breadth, its lack of demonstrated efficacy, and the government's failure to lawfully implement it, repealing the CDR program is a necessary first step, although not sufficient without other major reforms.

The USA FREEDOM Act included reforms to prohibit bulk collection under Section 215, including requiring the use of a "specific selection term" as the basis for any Section 215 order. However, the current Section 215 CDR program that the USA FREEDOM Act created to replace the former bulk phone records program still poses enormous privacy threats and has not demonstrated meaningful national security value. The CDR program provides the government with the ability to collect the telephone records on a daily basis of all people two degrees away from a target, which ensures that the majority of individuals surveilled under the program are neither suspected of any wrongdoing, nor in contact with anyone who is. It also ensures that this program produces huge volumes of sensitive information: in 2018, collection on 11 targets produced over 434 million records that relate to over 19 million phone identifiers.¹

¹ https://www.dni.gov/files/CLPT/documents/2019_ASTR_for_CY2018.pdf

The government's implementation of the CDR program further demonstrates both the privacy threats posed by the program and its lack of efficacy. In June 2018, the National Security Agency ("NSA") announced that from 2015 to 2018 it had unlawfully collected an unknown volume of call detail records as a consequence of "technical irregularities" present since the inception of the program.² To cure this, the NSA deleted all records it had collected to date under the program.

It is highly concerning that it took almost three years to detect the fact that the NSA was collecting records even beyond the broad authorization provided under the CDR program. Moreover, the agency has offered little information about the actual nature of the technical problem, whether and how it can protect against further irregularities, or the communications service provider(s) involved. The government has volunteered even less information about another reported overcollection incident that occurred later in 2018. In addition, there has been no indication that purging the full database of CDRs collected from the end of 2015 through the first half of 2018 has in any way damaged U.S. counterterrorism efforts.

Given these serious technical failures, their serious privacy impact, and the lack of demonstrated efficacy of the CDR collection, the NSA should not be permitted to resume this program.

The CDR program's expansive reach and impact on innocent people chills free speech; permits the mapping of relationships among members of historically marginalized communities and distant associates of targeted individuals, even when none of the individuals in those communities are suspected of wrongdoing; and has a disproportionate impact on historically marginalized communities.

In April 2019, The Wall Street Journal reported that the NSA recommended abandoning the CDR program because the challenges of implementing it outweighed its intelligence benefits.³ We agree that the CDR program should be abandoned — permanently. Eliminating the authorization for the CDR program is necessary but not sufficient to reform the government's surveillance authorities. We would welcome the opportunity to discuss the issues that any legislation must address to earn our support. Regardless, the CDR program must end.

Sincerely,

Access Now
American-Arab Anti-Discrimination Committee (ADC)
Arab American Institute

² <https://www.nsa.gov/news-features/press-room/Article/1618691/nsa-reports-data-deletion/>

³ <https://www.wsj.com/articles/nsa-recommends-dropping-phone-surveillance-program-11556138247>

Campaign for Liberty
Center for Democracy & Technology
Color of Change
Constitutional Alliance
Consumer Action
CREDO Action
Daily Kos
Defending Rights & Dissent
Demand Progress
Due Process Institute
Environmentalists Against War
Fight for the Future
Free Press Action
Freedom of the Press Foundation
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National Coalition Against Censorship
New America's Open Technology Institute
PEN America
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