

July 26, 2021

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives

The Honorable Steny Hoyer  
Majority Leader  
United States House of Representatives

The Honorable Steve Scalise  
Minority Whip  
United States House of Representatives

The Honorable Jim McGovern  
Chairman of the Committee on Rules  
United States House of Representatives

The Honorable Tom Cole  
Ranking Member of the Committee on Rules  
United States House of Representatives

**RE: Civil Liberties Groups Urge Members to Support the Lofgren-Massie Amendment to H.R. 4505, the Commerce, Justice, Science, and Related Agencies Appropriations Act**

Dear Speaker Pelosi, Majority Leader Hoyer, Chairman McGovern, Republican Leader McCarthy, Republican Whip Scalise, Ranking Member Cole, and all members of the House of Representatives:

We write to urge your support for an amendment that Representatives Lofgren, Jayapal, Massie, and Davidson have offered to H.R. 4505, the Commerce, Justice, Science, and Related Agencies Appropriations Act for FY 2022. This amendment would prohibit the use of funds for the warrantless search of United States persons' communications acquired under Section 702 of the Foreign Intelligence Surveillance Act of 1978 (FISA), the controversial foreign intelligence authority that acquires an untold number of Americans' Fourth Amendment-protected information.

Ending this unconstitutional practice is imperative to ensure that foreign intelligence surveillance does not swallow Americans' privacy rights. In previous years, this amendment garnered the broad, bipartisan support of a majority of members of the House of Representatives.<sup>1</sup> Recently released opinions by the Foreign Intelligence Surveillance Court (FISC) underscore the need for a warrant requirement to protect the privacy of those whose communications are "incidentally" collected.<sup>2</sup> According to one opinion, the FBI, over the course of one year, conducted *three million queries* of a single database containing Section 702 communications, most of which presumably were U.S. person queries in light of the FBI's primarily domestic mission. Although Congress has required the FBI to obtain a FISC order for a small subset of these queries, the FISC found that the FBI has literally never complied with this statutory requirement and has violated it on at least dozens of occasions.

Moreover, the FBI's own court-approved procedures place some limits on queries, yet several recent FISC decisions found that FBI agents simply ignore those rules in a shocking number of cases, conducting queries

---

<sup>1</sup> See e.g. H. Amdt. 1204 to H.R. 5293 (2016) (126 Democratic members and 72 Republican members voted in support); H. Amdt. 503 to H.R. 2685 (2015) (146 Democratic members and 109 Republican members voted in support); H. Amdt. 935 to H.R. 4870 (2014) (158 Democratic members and 135 Republican members voted in support).

<sup>2</sup> Elizabeth Goitein, *How the FBI Violated the Privacy Rights of Tens of Thousands of Americans*, Brennan Center for Justice (2019), <https://www.brennancenter.org/our-work/analysis-opinion/how-fbi-violated-privacy-rights-tens-thousands-americans>.

when they have no reason to believe it would return foreign intelligence or evidence of a crime.<sup>3</sup> Agents queried Section 702 data to find the communications of people who came to the FBI to perform repairs; victims who reported crimes; and business, religious, and community leaders applying to participate in the FBI's "Citizens Academy." In a move that has disturbing echoes of the NSA's bulk collection of Americans' phone records, agents have also conducted so-called "batch queries," such as one that swept in the 70,000 people who have authorized access to FBI facilities.

Criticizing the FBI's failures to respect the rules set by Congress and the FISC, Judge James Boasberg wrote that "It should be unnecessary to state that government officials are not free to decide for themselves whether or to what extent they should comply with court orders."<sup>4</sup> We agree, and it is time for Congress to act by passing the Lofgren-Massie amendment.

Today, this amendment enjoys overwhelming, bipartisan support, both from the public and from the undersigned groups. In addition to supporting these necessary steps forward by voting in favor of this amendment to H.R. 4505, we also respectfully ask that you work to ensure it is included in any legislation sent to the President.

We welcome the opportunity to discuss this with you further. Please don't hesitate to reach out to Bob Goodlatte, Senior Policy Adviser for The Project for Privacy and Surveillance Accountability and former Chairman of the House Committee on the Judiciary, at [rwg@bobgoodlatte.com](mailto:rwg@bobgoodlatte.com), or Sean Vitka, Senior Policy Counsel for Demand Progress, at [sean@demandprogress.org](mailto:sean@demandprogress.org).

Sincerely,

American Civil Liberties Union  
Americans for Prosperity  
Brennan Center for Justice at NYU School of Law  
Campaign for Liberty  
Center for Democracy & Technology  
Center for Security, Race and Rights  
Constitutional Alliance  
Due Process Institute  
Defending Rights & Dissent  
Demand Progress  
Electronic Frontier Foundation  
Fight for the Future  
Free Press Action  
Freedom of the Press Foundation  
FreedomWorks

Government Information Watch  
National Association of Criminal Defense Lawyers  
National Coalition Against Censorship  
New America's Open Technology Institute  
OCA - Asian Pacific American Advocates, Greater  
Chicago Chapter  
The Project for Privacy and Surveillance  
Accountability  
Presente.org  
Project On Government Oversight  
Restore The Fourth  
RootsAction.org  
Secure Justice  
S.T.O.P. - The Surveillance Technology Oversight  
Project

CC: Members of the House of Representatives

---

<sup>3</sup> Ellen Nakashima, FBI and NSA violated surveillance law or privacy rules, a federal judges found, Washington Post (2020), [https://www.washingtonpost.com/national-security/fbi-and-nsa-violated-surveillance-law-or-privacy-rules-a-federal-judge-found/2020/09/04/b215cf88-ee33-11ea-b4bc-3a2098fc73d4\\_story.html](https://www.washingtonpost.com/national-security/fbi-and-nsa-violated-surveillance-law-or-privacy-rules-a-federal-judge-found/2020/09/04/b215cf88-ee33-11ea-b4bc-3a2098fc73d4_story.html).

<sup>4</sup> *In re Government's Ex Parte Submission of Reauthorization Certifications and Related Procedures, Ex Parte Submission of Amended Certifications, and Request for an Order Approving Such Certifications and Amended Certifications*, FISA Ct. (2019), available at [https://www.intelligence.gov/assets/documents/702%20Documents/declassified/2019\\_702\\_Cert\\_FISC\\_Opinion\\_06Dec19\\_OCR.pdf](https://www.intelligence.gov/assets/documents/702%20Documents/declassified/2019_702_Cert_FISC_Opinion_06Dec19_OCR.pdf).