



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

January 8, 2018

The Honorable Paul Ryan
Speaker, House of Representatives
H232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
H204, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
H107, The Capitol
Washington, DC 20515

The Honorable Steny Hoyer
Democratic Whip
H148, The Capitol
Washington, DC 20515

Dear Speaker Ryan, Leader Pelosi, Leader McCarthy, and Congressman Hoyer,

As a civil liberties non-profit with expertise in constitutional law, the Electronic Frontier Foundation has fought for meaningful NSA surveillance reform for many years. Recently, we have been working with Members on both sides of the aisle to ensure that any proposed extension of Section 702 of the FISA Amendments Act included robust constitutional protections for the American people. We are deeply disappointed to learn that the proposal scheduled for consideration by the House next week, S. 139, fails to achieve any meaningful reform or protect the constitutional right to privacy. Therefore, we must oppose the bill in its current form.

As you know, under current law, communications written and sent by Americans are also swept up in the NSA's 702 database, and searches of this information by the FBI or other agencies are called "backdoor" searches because they avoid the constitutional warrant requirement provided to Americans by the Fourth Amendment. Like the earlier bills written by the House Permanent Select Committee on Intelligence, the new proposal does not protect the communications of Americans from these warrantless searches. While we are pleased that the proposal being considered does not contain an "optional warrant requirement," the new warrant requirement still fails to address the vast majority of 702 searches. The new provision only requires a warrant for a full-blown, predicated criminal investigation, and by the FBI's own admission, will rarely be used.

Additionally, we are troubled by language providing guidance on how to restart "abouts" collection, an invasive form of NSA surveillance that the agency temporarily ended last year. This is a clear violation of the Fourth Amendment, and we cannot support any bill that provides a path to reauthorizing "abouts" collection. Moreover, the prohibition on "abouts" collection only applies to "intentional" acquisition, which the NSA may claim does not include "incidental" collection of Americans' communications.

The American people deserve real reform, not fake reform. We look forward to working with you on how best to protect the Fourth Amendment rights of all Americans as you continue to consider meaningful reforms to the 702 surveillance program. If you have any questions, please contact India McKinney at india@eff.org or 415-436-9333.

Sincerely,

The Electronic Frontier Foundation