



April 5, 2024

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

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

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

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

As you are aware, Section 702 of the Foreign Intelligence Surveillance Act—an essential authority that the Intelligence Community (IC) relies upon in almost every aspect of its work—will expire on April 19, 2024. It is vital that Congress reauthorize Section 702 urgently.

In early 2023, the Attorney General and the Director of National Intelligence wrote to Congress urging prompt reauthorization of Section 702 prior to its expiration and pledging to engage with Congress on meaningful reforms that fully preserve the operational efficacy of the authority. The Administration continues to work with Congress on meaningful, constructive reforms, and the Department of Justice (Department) and the IC commit to expeditiously incorporating any statutory reforms into new certifications and procedures for Foreign Intelligence Surveillance Court (FISC) review.

FISC-approved certifications provide the legal basis for compelling the assistance of U.S. service providers under Section 702. As discussed in our letter on March 6, 2024, the then-current certifications were effective until April 12, 2024. Consistent with the timeline specified by statute, the executive branch submitted new certifications and legal procedures to the FISC on March 5, 2024, which reflect reforms implemented by the Federal Bureau of Investigation since 2021. On April 4, 2024, the FISC issued an opinion approving the certifications and legal procedures.

The newly approved certifications and procedures would ordinarily remain in effect for one year, expiring in April 2025. However, once Congress reauthorizes Section 702, we commit to incorporating any additional statutory reforms Congress enacts on an expedited timeline. That commitment includes returning to the FISC as soon as practicable, but no later than 90 days after

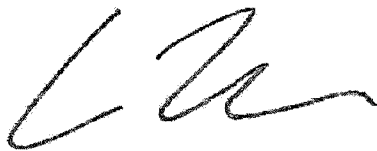
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enactment, to seek approval of new draft certifications and procedures that reflect any new statutory requirements.

We must emphasize, however, that the presence of valid certifications does not obviate the need for Congressional action. A lapse in the statutory authority underlying these certifications could endanger the IC's ability to use Section 702 to acquire valuable and timely foreign intelligence. In the event of a lapse, some providers are likely to stop or reduce cooperation with the legal process they receive. That is exactly what happened during a short-term lapse of the predecessor statute to Title VII, called the Protect America Act.¹

We continue to support responsible reforms. Section 702 provides critical foreign intelligence at a speed and reliability that the IC cannot replicate with any other authority, and, as a result, we continue to oppose any limitations, such as a warrant requirement to review lawfully collected information, that would fundamentally undermine its effectiveness.

We look forward to continuing to work with Congress on a long-term reauthorization.



Carlos Felipe Uriarte
Assistant Attorney General



Matthew Rhoades
Assistant Director of National Intelligence

¹ As then-Attorney General Mukasey and Director of National Intelligence McConnell wrote to Congress at the time, providers "delayed or refused compliance with our requests to initiate new surveillances of terrorist and other foreign intelligence targets under existing directives issued pursuant to the Protect America Act." The degraded cooperation and uncertainty resulting from the expiration of the statute, they said, "led directly to a degraded intelligence capability." Letter from Attorney General Michael B. Mukasey and Director of National Intelligence J.M. McConnell, to Representative Silvestre Reyes, Chairman, House Permanent Select Committee on Intelligence 1-2 (February 22, 2008), <https://www.justice.gov/archive/ll/docs/ag-dni-letter-to-chairman-reyes.pdf>. Although the Department could file a motion to compel companies to continue providing collection in the absence of a statute, litigating the validity of the legal process served to providers will result in delays and vital intelligence will be lost in the interim.

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cc: The Honorable Kamala Harris, President, United States Senate

The Honorable Patty Murray, President Pro Tempore, United States Senate

The Honorable Richard J. Durbin, Chair, Committee on the Judiciary,
United State Senate

The Honorable Lindsey O. Graham, Ranking Member, Committee on the
Judiciary, United States 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,
United States Senate

The Honorable Marco Rubio, Vice Chairman, Select Committee on Intelligence,
United States 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