

November 30, 2012

United States Senate
Washington, D.C. 20510

Dear Senator:

We, the undersigned organizations, which support both security and liberty, write to urge you to vote “no” on S. 3276, the FAA Sunsets Extension Act of 2012, which would extend the FISA Amendments Act (FAA) until June 1, 2017. Unless reauthorized, the FAA will sunset on December 31, 2012. We urge you to impose measures to prevent abuse of the FAA, and to require that government officials implementing the law be more transparent about its use.

The FAA authorizes the government to conduct surveillance in the U.S. of individuals reasonably believed to be non-U.S. persons located outside the U.S. Even if the target communicates with people in the U.S., the surveillance is conducted without meaningful judicial authorization and without probable cause. Instead, the FISA Court evaluates only whether the procedures under which surveillance is conducted are reasonably designed to target people reasonably believed to be abroad.

Though the FAA surveillance authority is broad and the criteria for conducting it lax, the National Security Agency has reportedly overstepped the bounds of the law. In April 2009, the *New York Times* reported that the NSA “intercepted private e-mail messages and phone calls of Americans in recent months on a scale that went beyond the broad legal limits established by Congress,” and it reported that intelligence officials characterized the illegal surveillance as “significant and systemic.”¹ Further, despite evidence of impropriety, the government has not publicly detailed the extent of the problem or publicly explained what, if anything, it has done to prevent it from recurring. Before the Congress considers legislation to reauthorize the FAA, it should require the government to specify the nature and extent of this illegal surveillance and in any reauthorization legislation, Congress should impose statutory mechanisms to ensure that illegal surveillance does not recur under the FAA umbrella.

In addition, Congress should, prior to considering reauthorization, or in the reauthorization legislation itself:

- Require the government to disclose more about the extent and the nature of the surveillance that has been conducted under the FAA, most notably, the number of U.S. citizens and individuals in the United States that have been affected;
- Impose reporting requirements that require such disclosures for future FAA surveillance;
- Amend the FAA to prevent bulk surveillance of entire categories of persons; and
- Strengthen the FAA minimization procedures to ensure that the information collected under the FAA is not repurposed for government uses unrelated to national security.

¹ Eric Lichtblau & James Risen, *Officials Say U.S. Wiretaps Exceeded Law*, N.Y. TIMES, Apr. 15, 2009, at A1, available at <http://www.nytimes.com/2009/04/16/us/16nsa.html?pagewanted=all>.

Thank you for considering our views. Please direct any questions to Gregory Nojeim of the Center for Democracy & Technology and to Michelle Richardson of the American Civil Liberties Union.

Sincerely,

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