

Congress of the United States
Washington, DC 20515

October 30, 2019

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

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

Dear Chairman Nadler and Ranking Member Collins:

We are writing to express our concern regarding anticipated legislation from the Committee that may reauthorize expiring provisions of the USA PATRIOT Act. Six years ago, the public learned that the federal government was surveilling millions of innocent people in the United States pursuant to a contorted interpretation of Section 215 of the USA PATRIOT Act (50 USC § 1861). Despite Congress's efforts to reform this unprecedented mass surveillance through the USA FREEDOM Act, the government has since used Section 215 to collect sensitive information on innocent people. On December 15, 2019, three FISA authorities will sunset, including Section 215. Therefore, we are writing to urge the Committee not to reauthorize these provisions without bold reforms to protect the privacy and civil rights of everyone in America, particularly the most vulnerable communities currently under attack by the Trump administration.

One program authorized by Section 215 is the Call Detail Records ("CDR") program, which since 2015 has surveilled millions of innocent people and has been plagued with compliance issues. Despite having only 11 targets in 2018, this program collected over 434 million records relating to over 19 million phone identifiers.¹ The government's own reports reveal that it acquired a significant amount of that sensitive information unlawfully. Earlier this year, the American Civil Liberties Union received documents in response to Freedom of Information Act litigation that describes unlawful overcollection of CDRs. The documents suggest that this compliance failure is similar to a previous overcollection incident, which was disclosed in the summer of 2018.² This mass surveillance of phone records has never been shown to be effective, but it is ripe for abuse. The National Security Agency shuttered the program due in part to its negligible intelligence value in late 2018.³ Any meaningful reform must repeal the CDR program, which is an unnecessary violation of the rights of people in the United States and a threat to our democracy. We will oppose a bill that does not do so.

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

² <https://www.aclu.org/letter/aclu-letter-house-judiciary-committee-regarding-section-215-call-detail-record-program>

³ <https://www.nytimes.com/2019/08/15/us/politics/trump-nsa-call-records-program.html>

In addition to the repeal of the CDR program, a reform bill must provide meaningful safeguards against abuse. Specifically:

- A reform bill should include language to strengthen the prohibition on using Section 215 to investigate First Amendment-protected activity, which would interfere with the invaluable expression of political speech.
- The government should not be permitted to use Section 215 to warrantlessly track sensitive location information.
- The disproportionate application of Section 215 surveillance must be audited so that Congress and the public have a better understanding of how it impacts the communities targeted by the current and previous administrations.
- The bill must put an end to secret legal interpretations by the Foreign Intelligence Surveillance Court and the executive branch, in particular those originating from the Department of Justice's Office of Legal Counsel.
- The bill must increase transparency by requiring reporting on how much information is vacuumed up under Section 215, including outside of the CDR program, for instance by mandating an accounting of how many and what kinds of non-communications records are collected using Section 215.
- As the nation engages in a conversation around the importance of robust criminal justice reform, intelligence surveillance must also be held accountable. Defendants must be provided notice when the government intends to use Section 215 or Section 215-derived information against them.

While we do not believe that any administration should have the broad and unchecked surveillance powers permitted by Section 215, certainly the Trump administration should not be entrusted with these powers. Surveillance in the United States has always had a disproportionate impact on people of color, and this administration poses a unique threat to our most vulnerable communities. Given the current administration's increasingly hostile approach to immigrant communities, false law enforcement reports targeting Black activists as "Black Identity Extremists," and unjust scrutiny of Muslim communities, President Trump and his senior officials cannot be trusted to wield these surveillance powers without a dangerous bias. The extension of any part of the USA PATRIOT Act is inherently concerning, but it is particularly problematic at a time when the Federal Bureau of Investigation continues to wrongfully target historically marginalized communities and obstructs Congressional oversight into that activity.

As the committee holds hearings and drafts legislation regarding Section 215, we urge you to include the reforms above and to consider additional ways to rein in government surveillance. We all swore to support and defend the Constitution, and we must defend our constituents against mass surveillance, which has the power to destroy our democracy. Accordingly, we will not support any legislation that extends Section 215's sunset date if it fails to contain robust reforms that protect

innocent people from unjust surveillance.

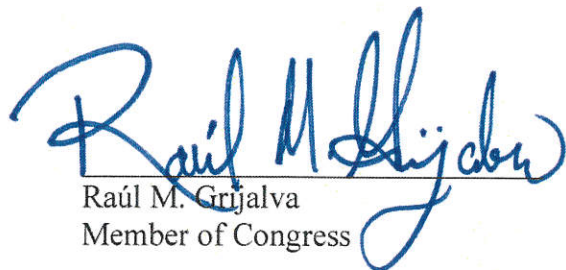
Sincerely,



Earl Blumenauer
Member of Congress



Rashida Tlaib
Member of Congress



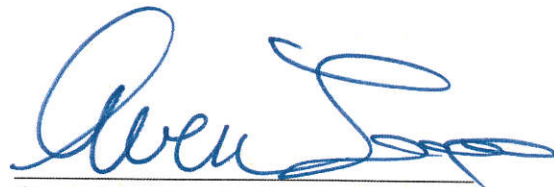
Raúl M. Grijalva
Member of Congress



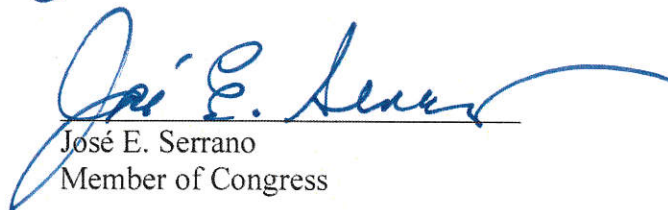
Alan Lowenthal
Member of Congress



Jan Schakowsky
Member of Congress



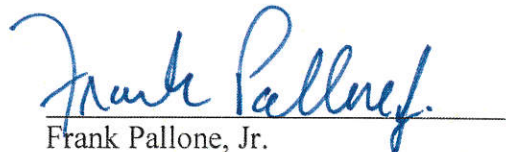
Gwen Moore
Member of Congress



José E. Serrano
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Eleanor Holmes Norton
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Frank Pallone, Jr.
Member of Congress



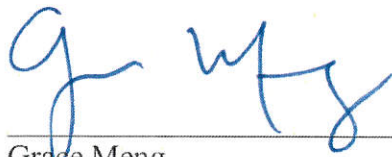
Mark Takano
Member of Congress



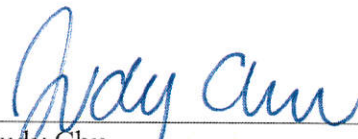
Bobby L. Rush
Member of Congress



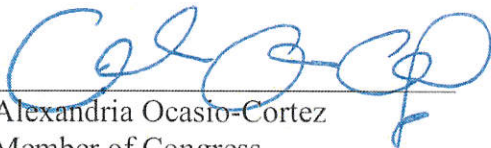
Debra Haaland
Member of Congress



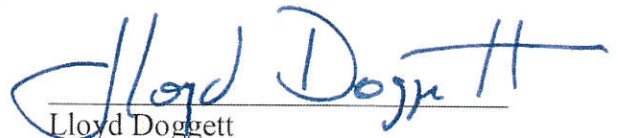
Grace Meng
Member of Congress



Judy Chu
Member of Congress



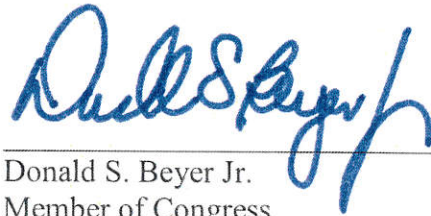
Alexandria Ocasio-Cortez
Member of Congress



Lloyd Doggett
Member of Congress



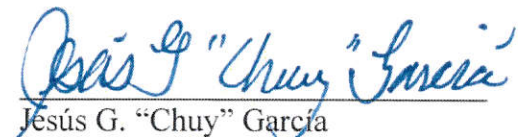
Ilhan Omar
Member of Congress



Donald S. Beyer Jr.
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Nydia M. Velázquez
Member of Congress



Jesús G. "Chuy" García
Member of Congress