

July 23, 2013

**OPEN LETTER IN SUPPORT OF
THE RECENTLY DISCLOSED NSA PROGRAMS**

To the President and the Leaders of Congress:

We are writing to express our strong support for the two recently disclosed foreign intelligence programs operated by the National Security Agency—the telephone metadata program and the targeted surveillance of foreign Internet communications.

We are convinced that both programs are vitally important to our national security. The Director of the NSA, Gen. Keith Alexander, has publicly attested that these programs have been instrumental in helping to prevent attacks on the United States and its allies, including the plot to bomb the New York City subway.

The unauthorized disclosure of NSA activities has seriously harmed the Nation by degrading the effectiveness of our intelligence efforts. Revelations about the existence of these programs, the limitations and conditions governing the use of the acquired data and communications, and the identities of private companies that have provided access under court orders have all done irreparable damage to the national security interests of the United States. It was because of the compelling need to avoid precisely this harm to national security that the government was previously unable to explain to the public the scope of these NSA activities and the underlying legal support, though we understand that these matters have been the subject of extensive congressional oversight.

Now that the existence of these programs is officially acknowledged, however, the American people can benefit from a healthy discussion about the scope of foreign intelligence collection and the governing constitutional standards. To the extent consistent with national security, this discussion should be informed by an accurate understanding of the facts.

Both programs are based on statutes thoroughly debated, enacted by overwhelming majorities, and reauthorized repeatedly by Congress since the attacks of 9/11, and each is supported by court orders periodically approved by the federal judges who sit on the Foreign Intelligence Surveillance Act court.

The telephone metadata program is supported by a business records order under section 215 of the PATRIOT Act. The database includes only the X's and O's of phone calls, not the substance of anyone's communications. These are purely transactional business records that phone companies use for billing purposes, and telephone subscribers do not have a reasonable expectation that this transactional metadata will remain private.

The court order circumscribes how and when the database is used. It does not permit random searching through the data to find suspicious patterns. The data can only be accessed when the government has a particular phone number that it reasonably suspects is used by a foreign terrorist organization. Testing the suspicious number against this database is one of the best tools we have to discover new phone numbers that are being used by terrorist agents.

The principal question raised about this program is, “How can such a large collection of data be ‘relevant’ to an authorized counterterrorism investigation, as required by section 215?” In reality, this use of the “relevance” standard is not extraordinary or unprecedented. The same standard supports similar acquisitions of large data collections by other government agencies in regulatory investigations conducted using administrative subpoena authorities—which, unlike section 215, do not typically require court approval.

Denying the NSA such access to data will leave the Nation at risk. If the relevance standard of section 215 does not permit the government to acquire large data collections where necessary to preserve the data and to be able to conduct focused queries based on reasonable suspicion, our counterterrorism capabilities will be severely constrained.

The second NSA program involves the targeted surveillance of foreign Internet communications. This program is supported by a “programmable” order issued by the FISA court under section 702, the provision that Congress added to FISA in 2008 with the support of a strong bipartisan consensus. Section 702 authorizes targeted surveillance of the communications of non-U.S. persons reasonably believed to be located outside the United States, provided the FISA court approves the required targeting and minimization procedures. All indications are that this foreign-targeted surveillance program is exactly what Congress intended when it enacted section 702.

These two programs are fully authorized by law and are conducted in a manner that appropriately respects the privacy and civil liberties interests of Americans. Indeed, in light of the judicial approval requirements, the extensive congressional and executive oversight that occurs, and the strict limitations on the use of these authorities, we believe it is fair to say that no other nation in the world conducts foreign intelligence operations with more regard for privacy and civil liberties. These programs are prudent, focused, and necessary to protect our Nation, and the fine men and women of the NSA and the U.S. Intelligence Community who carry them out deserve our support and praise, not our condemnation.

We urge leaders of both parties in Washington to come together to defend these programs and to ensure their effective continuation. We firmly believe that there is no need to make dramatic changes in existing law or to require fundamental alterations in these programs or in the FISA process. We all know that new international dangers arise continuously, and the evolving threat environment confronting the United States requires the firm maintenance of these capabilities into the future.

Respectfully,

Michael B. Mukasey

Attorney General of the United States
2007-2009

Alberto R. Gonzales

Attorney General of the United States
2005-2007

Amb. John D. Negroponte

Deputy Secretary of State, 2007-2009
Director of National Intelligence, 2005-2007

Stephen J. Hadley

National Security Adviser
2005-2009

Michael V. Hayden

Director of the CIA, 2006-2009
Principal Deputy DNI, 2005-2006
Director of the NSA, 1999-2005

Michael Chertoff

Secretary of Homeland Security
2005-2009

Porter J. Goss

Director of the CIA
Director of Central Intelligence
2004-2006

Diana Villiers Negroponte

Trustee, Freedom House