

July 29, 2026

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives

The Honorable John Thune
Majority Leader
U.S. Senate

The Honorable Steve Scalise
Majority Leader
U.S. House of Representatives

The Honorable Charles E. Schumer
Democratic Leader
U.S. Senate

The Honorable Hakeem Jeffries
Democratic Leader
U.S. House of Representatives

The Honorable Tom Cotton
Chairman
Senate Select Committee on Intelligence

The Honorable Rick Crawford
Chairman
House Permanent Select Committee on Intelligence

The Honorable Mark Warner
Vice Chairman
Senate Select Committee on Intelligence

The Honorable Jim Himes
Vice Chairman
House Permanent Select Committee on Intelligence

Re: Congress Must Enact Meaningful Section 702 Safeguards Regardless of Who Serves as Director of National Intelligence

Dear Congressional Leadership and Members of the Intelligence Committees:

The undersigned organizations write to urge Congress to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA) only with meaningful reforms, including a warrant requirement for U.S. person queries and limits on government purchases of Americans' sensitive data from data brokers. Concerns surrounding Jay Clayton's confirmation underscore the dangers of allowing the intelligence community warrantless access to Americans' private communications. But regardless of Members' views on Clayton's confirmation, Americans cannot be asked to rely on executive branch promises alone when fundamental constitutional protections are at stake.

Mr. Clayton's recent conduct raises serious concerns about continuing to concentrate powerful governmental authorities that lack basic safeguards in the hands of officials willing to wield executive power in service of political objectives. Most recently, Clayton [issued grand jury subpoenas](#) to New York Times journalists seeking information about their reporting on security

concerns related to President Trump's Qatari-donated Air Force One. Clayton has also demonstrated a troubling susceptibility to political pressure, including by refusing to acknowledge that Joe Biden won the 2020 presidential election.

But even if Clayton's record were spotless, it would not obviate the need for Section 702 reforms. The President has repeatedly expressed his desire to aggressively [pursue leakers](#) and individuals he characterizes as members of the "deep state"; he has targeted perceived political opponents for [investigation](#) and [prosecution](#); and he has [enlisted the intelligence community](#) in his efforts to undermine confidence in elections with unsupported claims of foreign interference. He has also [made clear](#) that any executive branch official that fails to support this agenda can be easily replaced. There is no reason to expect that Clayton will be the exception. Structural protections for Americans' sensitive information are the only way for Congress to guard against executive branch abuse, in this or any future administration.

The eighteen year track record of Section 702 abuse amply demonstrates that no government official should be entrusted with warrantless access to Americans' private communications and sensitive data. Throughout [the program's history](#)—and under presidential administrations from both parties—intelligence analysts have conducted improper searches. In recent years, these abuses have included searches for the communications of [19,000 congressional campaign donors](#), [members](#) of [Congress](#) and their [staff](#), [journalists](#), [government officials](#), and [protesters](#) across the political spectrum.

Congress's repeated attempts to address these abuses by enacting internal executive branch safeguards and agency oversight mechanisms have consistently proven insufficient. Most recently, after Congress enacted additional restrictions on U.S. person queries in 2024, the FBI quietly used an "advanced filter function" to perform queries that it treated as exempt from the new statutory requirements, once again demonstrating that Americans' rights cannot depend upon executive branch agencies policing themselves.

Executive branch self-policing is a particularly unreliable safeguard in an administration that has gutted internal oversight mechanisms—including the Privacy and Civil Liberties Oversight Board and the FBI Office of Internal Auditing—and repeatedly demonstrated disregard for Americans' privacy. Congress cannot legislate on the assumption that Americans will always be governed by trustworthy officials exercising extraordinary powers with restraint. Indeed, the Constitution was deliberately designed around a different premise: that government power requires meaningful checks regardless of who wields it.

Preserving the foreign intelligence value of Section 702 does not require Congress to abandon Americans' constitutional rights. A warrant requirement for U.S. person queries, subject to reasonable exceptions for legitimate security needs, would preserve the government's ability to collect foreign intelligence information while ensuring that Americans' privacy and civil liberties

are protected. Promises from executive branch officials simply cannot substitute for individualized judicial review.

Congress should therefore enact these meaningful Section 702 reforms in any reauthorization:

- Require the government to obtain a warrant or FISA Title I order before accessing U.S. person communications obtained under Section 702 and retrieved through a U.S. person query, subject to reasonable exceptions, and
- Close the data broker loophole that currently enables the government to purchase Americans' sensitive information that would otherwise require legal process to obtain.

Congress must ensure that Americans' private communications and sensitive data are protected in this administration—and thereafter—by reauthorizing Section 702 only with meaningful reforms to protect Americans' privacy.

Sincerely,

Arab American Institute
Access Now
Advocacy for Principled Action in Government
All For Tech
American Civil Liberties Union
Brennan Center for Justice at NYU School of Law
Center for Democracy & Technology
Church Women United in New York State
Common Cause
Defending Rights & Dissent
Demand Progress
Earth Action, Inc
Electronic Frontier Foundation (EFF)
Electronic Privacy Information Center
Fight for the Future
Free Press Action
Freedom of the Press Foundation
Government Information Watch
Indivisible
Lucy Parsons Labs
Muslims for Just Futures
Organize for Peace

Project On Government Oversight

Project South

Restore The Fourth Action

ReThinking Foreign Policy

South Lake Tahoe Indivisible

Whistleblower & Source Protection Program (WHISPeR) at ExposeFacts

Win Without War

cc: Members of the U.S. House of Representatives and the U.S. Senate