

We, the undersigned, write to urge President Obama and members of Congress to reject the PATRIOT Act in its current form, rather than extend its expiring provisions without imposing meaningful protections to ensure transparency and enable oversight going forward.

When the Act was originally passed, civil liberties advocates decried it, both for the inadequate congressional process exploring its many revisions to longstanding law—including some that federal courts have since held unconstitutional—and also for giving the government the authority to invade the privacy of law-abiding individuals without meaningful checks and balances.¹ The PATRIOT Act has been in place for nearly a decade, and its implementation has repeatedly demonstrated that those fears were—and unfortunately remain—well-founded.

Powers granted by the PATRIOT Act have been systematically abused by government agents. For example, the PATRIOT Act expanded the federal government’s power to use national security letters to obtain “customer and consumer transaction information...from communications providers, financial institutions, and credit agencies” without a warrant.² A 2007 report from the Justice Department’s own Inspector General found “a variety of instances in which the FBI used [NSLs] contrary to statutory limitations, Attorney General Guidelines, or internal FBI administrative guidance or policies.”³

Multiple other reports have documented further abuses of PATRIOT Act powers, as well as other domestic spying authorities. For instance, one Inspector General report detailed the government’s warrantless wiretapping scheme (also known as the “Terrorist Surveillance Program”)⁴; the continuing secrecy surrounding this program has resulted in complaints from several members of Congress.⁵ Despite its contours remaining undisclosed and the executive branch invoking the state secrets privilege to frustrate judicial review, Congress in 2008 authorized the previously illegal TSP.

¹ See Gregory T. Nojeim, Threats to Civil Liberties Post-September 11: Secrecy, Erosion of Privacy, Danger of Unchecked Government, American Civil Liberties Union, December 14, 2001.

² Although the FBI had the authority to issue NSLs before the Act, the legislation “allowed NSL authority to be employed more quickly (without the delays associated with prior approval from FBI headquarters) and more widely (without requiring that the information pertain to a foreign power or its agents).” Congressional Research Service, *National Security Letters in Foreign Intelligence Investigations: A Glimpse of the Legal Background and Recent Amendments 2*, September 8, 2009. The Patriot Act also expanded NSL authority beyond the FBI to “any government agency investigating or analyzing international terrorism.” *Id.* at 2.

³ See Office of the Inspector General, Department of Justice, A Review of the Federal Bureau of Investigation’s Use of National Security Letters 120, March 2007. The two bills reauthorizing the Act added some judicial oversight and protections for targets of the NSLs. P.L. 109-177(H.R. 3199) and P.L. 109-178 (S. 2271). A subsequent OIG report concluded that the executive branch “made significant progress in implementing the recommendations from [the first OIG] report and in adopting other corrective actions to address serious problems we identified in the use of [NSLs].” Office of the Inspector General, Department of Justice, A Review of the FBI’s Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006, March 2008, *available at* <http://www.justice.gov/oig/special/s0803b/fin-al.pdf>.

⁴ Offices of the Inspectors General, Unclassified Report on the President’s Surveillance Program, July 10, 2009, *available at* <http://www.justice.gov/oig/special/s0907.pdf>.

⁵ See Rep. Jane Harman, *What the CIA Hid from Congress*, L.A. Times, July 25, 2009 (stating that, during briefings on the Bush administration’s surveillance programs, “we learned only what the briefers wanted to tell us -- even though they were required by law to keep us ‘fully and currently informed’ ”), *available at* <http://www.latimes.com/news/opinion/commentary/la-oe-harman25-2009jul25,0,6-575602.story>.

Finally, officials have confirmed that [the Inspector General is currently preparing](#) yet another analysis documenting widespread and systemic abuses by the FBI of its powers to spy on Americans. Not only have authorities collected information invading the privacy of millions of law-abiding Americans, but they have done so through numerous programs repeatedly violating laws designed to protect civil liberties.

As Congress considered its first reauthorization of the PATRIOT Act, the bipartisan 9/11 Commission issued its report on the government's counterterrorism measures. The Commission warned that, "while protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties."⁶ It then recommended that, as Congress considered reauthorization, "the burden of proof for retaining a particular governmental power should be on the executive to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the executive's use of the powers to ensure protection of civil liberties."⁷

Congress failed then to heed the Commission's recommendation. And since the issuance of the Commission's report, the government's use of PATRIOT Act powers has remained subject to inadequate checks, and continues to lack the transparency necessary to enable effective congressional oversight.

Given the recurring abuse of domestic spying authorities, and the executive branch's failure to satisfy congressional requests for information and transparency, any re-authorization of surveillance powers—including those included within the PATRIOT Act—should include overdue reforms to ensure transparency, oversight and accountability across the government's various domestic spying programs.

The reauthorization bill recently approved by the Senate Judiciary Committee, however, failed to include many proposed reforms, including those that would simply have required investigators to demonstrate some relevance to national security before invoking intrusive powers.⁸ Given the recurring abuses of NSLs and wiretaps, such reforms would be a small—and still inadequate—step toward ensuring that the government operates within its statutory authority. Yet Congress has overlooked even such basic measures.

To ensure that the government does not continue abusing its powers and violating the rights of law-abiding Americans, much stronger reforms—some of which may be found in the JUSTICE Act developed by Senator Feingold and others—are needed.

The Framers of our Constitution established a system in which the Commander-in-Chief remains subject to checks and balances, including those in the Bill of Rights. The PATRIOT Act up-ended this delicate equilibrium and Congress should act now to correct it. Congress and the administration should protect the rights of the American people rather than bow to the demands of agencies claiming to protect us while repeatedly violating our rights.

⁶ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* 394 (2004), available at <http://www.gpoaccess.gov/911/pdf/fullreport.pdf>.

⁷ *Id.* at 394-95.

⁸ See Charlie Savage, *Judiciary Panel Approves Patriot Act Sections*, *The Caucus*, *New York Times*, October 8, 2009.