

April 11, 2007

The Honorable Nancy Pelosi
U.S. House of Representatives
H-232, US Capitol
Washington, DC 20515

The Honorable Harry Reid
U.S. Senate
S-221, US Capitol
Washington DC 20510

Dear Majority Leader Pelosi and Majority Leader Reid:

Five years ago, in the aftermath of the terrorist attacks of September 11, 2001, Congress passed the USA Patriot Act, giving the FBI extraordinarily broad powers to secretly pry into the lives of Americans and others without any indication they had done anything wrong. The Patriot Act expanded the FBI's authority to issue National Security Letters (NSLs) by reducing the standard and allowing the FBI to obtain telephone and e-mail records, financial information and consumer credit reports with only a certification that the records sought are "relevant" to an authorized investigation. Under the Patriot Act, information sought with NSLs no longer has to pertain to an agent of a foreign power and is no longer limited to the subjects of FBI investigations.

How the FBI used these powers was a zealously guarded secret until March 9, 2007, when a Department of Justice Inspector General audit report was released, revealing widespread misuse and abuse of these NSL authorities.

Despite statements to the contrary, the Inspector General found much more than just sloppy management and poor record keeping. The IG's report documents systematic failures to follow statutory requirements, an inexplicable lack of internal controls, and intentional circumvention of the law. These results were entirely predictable because the violations the IG uncovered were the natural consequences of a statute that allows government agents to access sensitive information without suspicion of wrongdoing, in the absence of court oversight, and with complete secrecy compelled by a gag order enforceable with criminal consequences. The FBI and Department of Justice proved they are incapable of policing themselves. Congress must act now to fix the Patriot Act so these abuses will not continue.

First, Congress must repeal the expansion of the NSL power that allows the FBI to demand information about totally innocent people who are not the subject of any investigation. The FBI should never be allowed to use NSLs to investigate people two or three steps removed from any suspected criminal or foreign terrorists.

Second, the NSL power itself should be subject to prior judicial approval. The FBI cannot be left to police itself. Allowing the FBI to keep self-certifying that it has met the statutory requirements invites further abuse and overuse of NSLs. Contemporaneous and independent judicial oversight of the issuance of NSLs is needed to ensure that they are not used to collect information about innocent U.S. persons. Court review will provide the checks and balances that were intended by the Constitution.

Third, Congress should amend the NSL statute so that gag orders are imposed only upon the authority of a court, and only where necessary to protect national security. Judicially imposed gag orders should be limited in scope and duration. First Amendment freedom of speech must be protected and there must be a meaningful right to challenge restrictions before a neutral arbiter, unlike the mechanisms under current law.

Fourth, any information that has been collected illegally, or collected about innocent people, should be removed from government databases and destroyed.

Fifth, Congress should revisit the “exigent circumstances” provision of 18 USC 2702, which the FBI is now citing as the source of broad power. Despite the record of illegality reflected in its misuse of “exigent letters,” the FBI is now claiming that Section 2702’s safe harbor provisions for telecomm companies gives the FBI authority to collect records in what it declares to be emergency situations by making oral requests. If the FBI did not properly document its written exigent requests for information in the hundreds of instances noted by the Inspector General, should it really be allowed to make such requests orally and go around the requirements of the NSL statutes?

Finally, Congress should also examine other domestic surveillance and data mining programs run by other government agencies such as the National Security Agency, the Department of Homeland Security, the Department of Defense, and other entities to determine the scope and nature of all spying programs and ensure they are not being used against innocent Americans. This inquiry should also examine the role of the telecommunications companies in contracting with the government to sell their customers’ data without the proper process.

Together, we call on Congress to reform the NSL powers and investigate thoroughly the surveillance powers being claimed and used by the administration to the detriment of our civil liberties and privacy interests. Thank you for considering our views.

Sincerely,

American African Foundation Against
Torture

American Civil Liberties Union

Bill of Rights Defense Committee

Center for American Progress Action
Fund

Center for Democracy and Technology

Center for National Security Studies

Council on American-Islamic Relations
(CAIR)

DownsizeDC.org

Electronic Frontier Foundation

Group Against Torture in Sudan

League of Women Voters of the United States

Liberty Coalition

Muslim Advocates

National Association of Criminal Defense Lawyers

National Lawyers Guild--National Office

People For the American Way

PrivacyActivism

The American-Arab Anti-Discrimination Committee (ADC)

Unitarian Universalist Association of Congregations

Unitarian Universalist Service Committee

US Bill of Rights Foundation

We The People Foundation for Constitutional Education

World Privacy Forum

State and Regional Organizations:

California

Continental Features/Continental News Service, San Diego, CA

Fresno Stonewall Democrats

Glendale Education & Social Justice Advocates (GESJA)

Women For: Orange County

Colorado

Bill of Rights Supporters of Fort Collins

Rocky Mountain Peace and Justice Center —Boulder

Southwest Colorado Peace & Justice Coalition —Durango

Florida

Marions for Peace, Ocala, Florida

Massachusetts

Amnesty International, Group-128

Brookline PAX

Martha's Vineyard Peace Council

Pioneer Valley Coalition Against Secrecy and Torture —Northampton

Minnesota

Minnesota Bill of Rights Defense Committee —Minneapolis/St. Paul, MN

Missouri

Kansas City Sanctuary for Freedom / Civil Liberties Campaign

St. Louis Bill of Rights Defense Committee

Nebraska

Lincoln Bill of Rights Defense Coalition

Nevada

Nevada Campaign to Defeat the PATRIOT Act

New Hampshire

New Hampshire Faithful Democracy

Peterborough Unitarian Universalist
Social Justice Committee

Worldview, Ltd.

New Jersey

Central Jersey Coalition Against Endless
War

New York

Connie Hogarth Center for Social Action
— Manhattanville College, Purchase

Greater Rochester Libertarian Party

Muslim Solidarity Committee —Albany

Rochester Civil Liberties Coalition

Rockland Coalition for Democracy and
Freedom

WESPAC Foundation – Westchester
County

Westchester Progressive Forum

Women Against War – Albany

North Carolina

Durham Bill Of Rights Defense
Committee

Oregon

Bandon Bill of Rights Defense
Committee

Community Alliance of Lane County
(CALC)

Citizens' Democracy Watch Forum —
Florence

Civil Liberties Defense Center —Eugene

Lane County Bill of Rights Defense
Committee

Northwest Constitutional Rights Center,
Portland

Portland Bill of Rights Defense
Committee

Rural Organizing Project

Veterans for Peace, Oregon Coast
Chapter

Pennsylvania

Centre Region Bill of Rights Defense
Committee

Lehigh-Pocono Committee of Concern
(LEPOCO) —Bethlehem

Pittsburgh Bill of Rights Defense
Campaign

Texas

Bill of Rights Defense Committee of
Greater Dallas

San Marcos Bill of Rights Defense
Committee

Washington

Sound Nonviolent Opponents of War
(SNOW) – Seattle

Western Washington Fellowship of
Reconciliation (WWFOR) – Seattle