

Dear Representative:

The number of people who are on the list of a  
a hundred and a half million people in the United States  
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searches (commonly referred to as “backdoor” searches) mean that Section 702 is a surveillance tool used against Americans. Outside of the FISA Court, the legality of these searches has not been fully examined by courts. Instead of reforming this practice—as the House has voted to do on two separate occasions—the bill contains no requirement that the government obtain a warrant of any kind before accessing Americans’ content or metadata. It merely gives the government the *option* to apply for a warrant—an option the government is free to decline. We anticipate that the government will argue that language in the bill codifies the government’s current illegal practice of performing backdoor searches.

**Section 702(a)(2)(B)** The bill explicitly allows the government to use Americans’ information accessed without a court order in criminal prosecutions involving specified domestic crimes and in cases where the Attorney General makes an unreviewable determination that a criminal proceeding is merely “related to” national security, a category so broad it could be interpreted to encompass a wide array of domestic crimes. Given the breadth of this definition, we anticipate that these provisions will place no meaningful limit on the ability of the government to use Section 702 information obtained and accessed without a warrant in a broad swath of criminal cases.

We note that the Administration has already suggested that there is no urgency to extend this authority at the end of the year. The Administration has taken the position that intelligence agencies can continue current surveillance under Section 702 until April 2018, even if the law were to expire.

Given the important interests at stake, we urge you to oppose H.R. 4478, including as amended by Representative Nunes’ manager’s amendment.

If you have questions, please contact Neema Singh Guliani, Legislative Counsel with the ACLU at 202-675-2322 or [nguliani@aclu.org](mailto:nguliani@aclu.org).

Sincerely,

American Civil Liberties Union  
Access Now  
Restore The Fourth  
The Electronic Frontier Foundation  
Constitutional Alliance  
FreedomWorks  
American-Arab Anti-Discrimination Committee  
OpenTheGovernment  
Wikimedia Foundation, Inc.  
TechFreedom  
The Constitution Project at POGO  
Government Information Watch  
Center for Democracy and Technology

R Street Institute  
Brennan Center for Justice at NYU School of Law  
American Library Association  
New America's Open Technology Institute  
Demand Progress Action  
Japanese American Citizens League  
NACDL  
PEN America  
Friends Committee on National Legislation  
National Coalition Against Censorship  
NAACP  
Free Press Action Fund  
Defending Rights & Dissent  
Freedom of the Press Foundation  
Sunlight Foundation  
National Association of Social Workers  
Center for Security, Race, and Rights, Rutgers Law School  
South Asian Americans Leading Together (SAALT)