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June 6, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

As the author of the Patriot Act, I am extremely disturbed by what appears to be an overbroad interpretation of the Act. The Federal Bureau of Investigations (FBI) applied for a top secret court order to collect the phone records of virtually every call that has been made by millions of Verizon customers. These reports are deeply concerning and raise questions about whether our constitutional rights are secure.

The Patriot Act was a careful balancing of national security interests and constitutional rights. While I believe we found an appropriate balance, I have always worried about potential abuses of the Act.

The FBI's broad application for phone records was made under section 215—the so-called business records provision—of the Act. To obtain a business records order from the court, the Patriot Act requires the government to show that: (1) it is seeking the information in certain authorized national security investigations conducted pursuant to guidelines approved by the Attorney General;¹ (2) if the investigative target is a U.S. person, the investigation is not based solely on activities protected by the First Amendment;² and (3) the information sought is relevant to the authorized investigation.³ In addition, the Patriot Act requires the government to adhere to minimization procedures that limit the retention and dissemination of the information that is obtained concerning U.S. persons.⁴

I insisted upon sunseting this provision in order to ensure Congress had an opportunity to reassess the impact the provision had on civil liberties. I also closely monitored and relied on

¹ 50 U.S.C. § 1861(a)(2)(A).

² *Id.* at § (a)(1), (a)(2)(B).

³ *Id.* at § (b)(2)(A).

⁴ *Id.* at § 1861(b)(2)(B) and (g).

testimony from the Administration about how the Act was being interpreted to ensure that abuses had not occurred. On March 9, 2011, Acting Assistant Attorney General Todd Hinnen told the Judiciary Committee:

Section 215 has been used to obtain driver's license records, hotel records, car rental records, apartment leasing records, credit card records, and the like. It has never been used against a library to obtain circulation records. . . On average, we seek and obtain section 215 orders less than 40 times per year.⁵

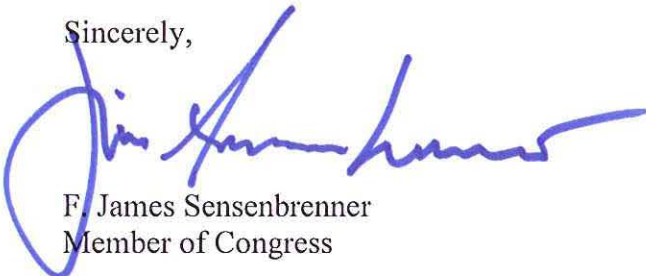
The Department's testimony left the Committee with the impression that the Administration was using the business records provision sparingly and for specific materials. The recently released FISA order, however, could not have been drafted more broadly.

I do not believe the released FISA order is consistent with the requirements of the Patriot Act. How could the phone records of so many innocent Americans be relevant to an authorized investigation as required by the Act? Please respond to the following questions by June 12, 2013:

1. Do you believe that the recently released FISA order is consistent with the requirements of the Patriot Act?
2. Why was the order so broad?
3. Is the released FISA order consistent with the FBI's interpretation of section 215 of the Patriot Act?
4. Does the FBI believe there are limits on what information it can obtain under section 215? If so, what are those limits?

Section 215 is an urgent tool and crucial to intelligence agencies, but if such abuses are not reined in, it will be very difficult to reauthorize these provisions when they sunset in 2015. Thank you for your prompt and personal response to this serious matter.

Sincerely,



F. James Sensenbrenner
Member of Congress

⁵ Statement of Todd Hinnen, Acting Assistant Attorney General for National Security, House Judiciary Subcommittee on Crime, Terrorism and Homeland Security (March 9, 2011).