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March 8, 2017

The Honorable Daniel R. Coats
Nominee to be Director of National Intelligence

Dear Senator Coats:

I write to respectfully repeat my request that the Senate Select Committee on Intelligence and the American public be provided an estimate of the number of Americans whose communications have been collected pursuant to Section 702 of the Foreign Intelligence Surveillance Act. At your February 28, 2017, confirmation hearing, you stated that, "I'm going to do everything I can to work with Admiral Rogers in NSA to get you that number." I believe the administration should provide this estimate prior to a full Senate vote on your confirmation.

I and other members of Congress have been seeking an answer to this question since 2011. We posed the question again in the context of the reauthorization of Section 702 in 2012. It is now central to the debate this year over the reauthorization of the program, which you have described as your "top legislative priority."

In 2014, the Privacy and Civil Liberties Oversight Board (PCLOB) concluded that the lack of information about the collection of Americans' communications under Section 702 "hampers attempts to gauge whether the program appropriately balances national security interests with the privacy of U.S. persons." As the PCLOB further noted, the program is "close to the line of constitutional reasonableness" and, "at the very least, too much expansion in the collection of U.S. persons' communications or the uses to which those communications are put may push the program over the line." The PCLOB therefore recommended that the government provide to Congress, and to the extent consistent with national security, the public, data related to this collection.

The lack of information on the extent to which Americans' communications have been collected under Section 702 is relevant not just to the question of whether Section 702 should be reauthorized, but to what reforms may be needed. For example, the government is currently authorized to conduct warrantless queries

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for Americans' communications from communications collected under Section 702. Without data on the number of Americans' communications available to the government, it is impossible to know the full extent to which these queries intrude on the privacy and constitutional rights of Americans.

If you are confirmed as Director of National Intelligence, you will serve as Congress's primary interlocutor with regard to the reauthorization of Section 702. In order for there to be a robust and meaningful debate, however, it is critical that the government provide Congress and the public the information needed to assess the impact of the program and determine whether it should be reauthorized and whether it should be reformed.

I thank you for your attention to this important matter.

Sincerely,



Ron Wyden

cc.: Mr. Michael Dempsey
Acting Director of National Intelligence

Admiral Michael Rogers
Director, National Security Agency