



Office of the Attorney General  
Washington, D.C. 20530

November 9, 2009

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Chairman  
Select Committee on Intelligence  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Chairman Feinstein:

I am writing to express the strong support of the Department of Justice for S. 1692, the USA PATRIOT Act Sunset Extension Act, as reported by the Judiciary Committee.

This legislation reauthorizes several important authorities in the Foreign Intelligence Surveillance Act ("FISA"), including the authority for roving surveillance of targets who take steps to thwart FISA surveillance, the authority to compel production of business records and other tangible things with approval of the FISA court, and the authority to target with FISA surveillance non-United States persons who engage in international terrorist activities but are not necessarily associated with an identified terrorist group. For reasons expressed in the Department's September 14 letter to Chairman Leahy, we believe these authorities are critical to national security investigations, and we are pleased that the pending legislation comports with our recommendation that they be renewed.

We are also pleased that S. 1692 includes a number of provisions designed to enhance statutory protections for civil liberties and privacy in the exercise of these and related authorities. These include the following: authorization for court-imposed minimization requirements for information obtained via pen register or trap and trace orders in exceptional cases; judicial oversight of the Government's compliance with business record and pen register or trap and trace minimization procedures; heightened standards for use of the business records authority to obtain library circulation records and patron lists; the elimination of a waiting period before nondisclosure requirements for business records orders can be challenged in court, and the elimination of the conclusive effect of the Government's certification of the need for non-disclosure; as well as inspector general audits of use of these authorities. We believe these measures will promote appropriate standards, oversight, and accountability, especially with respect to how information about United States persons is retained and disseminated, without sacrificing the operational effectiveness and flexibility of the underlying tools needed to protect

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our citizens from terrorism and to facilitate the collection of vital foreign intelligence and counterintelligence information.

We also support additional civil liberties protections included in the bill with regard to national security letters ("NSLs"), which remain a critical tool of national security investigations. These protections include provisions that make clear that the recipient of an NSL nondisclosure order may challenge the order at any time, put the burden on the Government to initiate judicial review, eliminate the conclusive effect of the Government's certification on the need for nondisclosure, and require the Government to notify any recipient of an order who has objected to nondisclosure if and when the requirement for nondisclosure no longer exists. These changes are designed to satisfy the requirements of the Second Circuit Court of Appeal's decision in *Doe v. Mukasey*, 549 F.3d 861 (2d. Cir. 2008). The bill also will require the FBI, consistent with current practice, to prepare and retain a statement of the facts indicating that the information sought via NSL is relevant to an authorized national security investigation and will call for additional inspector general audits of the use of NSLs. We believe these requirements reflect appropriate checks and balances on the Government's use of this important authority.

While we are very pleased to be able to support the bill, we do have some concerns that we are working with the Committee to address before the measure reaches the floor. In particular, we are working with the Committee on provisions regarding procedures for the collection, use, and storage of information obtained through NSLs; certain public reporting and audit requirements; and provisions to ensure a smooth transition to the new law.

Thank you for the opportunity to present our views. The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric H. Holder, Jr.", with a stylized flourish at the end.

Eric H. Holder, Jr.  
Attorney General

cc: The Honorable Jeff Sessions  
Committee on the Judiciary  
United States Senate

The Honorable Christopher S. Bond  
Vice Chairman  
Select Committee on Intelligence  
United States Senate