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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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October 10, 2008

The Honorable J. Michael McConnell
Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Lt. Gen. Keith B. Alexander
Director
National Security Agency
Fort George G. Meade, MD 20755

Dear Director McConnell and General Alexander:

As the Chairman and Ranking Member of the Senate Committee on the Judiciary we are very concerned about claims from an Army reservist, Adrienne Kinne, and a Navy linguist, David Murfee Faulk, who allege they were ordered to intercept and transcribe international communications between U.S. persons in the Middle East, including U.S. Servicemembers, and their spouses and significant others here in the United States. Such interceptions, and orders to continue transcribing them when minimization should have resulted, appear to violate Executive Order 12333 and NSA guidelines in effect prior to adoption of the FISA Amendments Act of 2008, Pub. L. No. 110-261.

During the 109th Congress, Senator Specter chaired a hearing at which General Alexander testified that “at all times, NSA applies procedures approved by the U.S. Attorney General to all aspects of its activities, seeking through these procedures to minimize the acquisition, retention and dissemination of information concerning U.S. persons.” At the same hearing, in response to questions from Senators Leahy and Cornyn, government witnesses denied that the personal communications of U.S. soldiers in Iraq were being targeted for collection. Similarly, during the 110th Congress, Senator Leahy chaired a hearing at which Director McConnell reassured Judiciary Committee members that “the minimization procedures that Intelligence Community agencies follow are Attorney General approved guidelines issued pursuant to Executive Order 12333. These minimization procedures apply to the acquisition, retention and dissemination of U.S. person information.”

The FISA Amendments Act of 2008 included new protections for U.S. persons abroad—including a requirement for FISA court approval of surveillance, based on a showing of probable cause—but such provisions are for naught if they are not followed.

The Honorable J. Michael McConnell and Lt. Gen. Keith B. Alexander
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Over a year ago, Senator Leahy referred Ms. Kinne's allegations to the Department of Defense Inspector General, who then referred the matter to the National Security Agency's Inspector General. In light of Mr. Faulk's reinforcement of Ms. Kinne's charges, we specifically request the following from each of you: (1) a vigorous investigation of Ms. Kinne's and Mr. Faulk's allegations; (2) a delineation of what steps, if any, you have taken to detect, deter and punish any violations of law or regulation that are found to have occurred; (3) written assurances that any ill-gotten collection is being destroyed and purged from government databases; and (4) an agreement to provide the Senate Judiciary Committee with any audits or reports resulting from these revelations, with appropriate safeguards for classified content.

As the Senate Committee principally charged with protecting Americans' constitutional liberties and ensuring the privacy of U.S. persons' communications, we believe the foregoing requests are sound and reasonable, and we look forward to your timely reply.

Sincerely,



PATRICK LEAHY
Chairman



ARLEN SPECTER
Ranking Member

cc: The Honorable Michael Mukasey, Attorney General
The Honorable Michael V. Hayden, Director, CIA