

Federal Bureau of Investigation
Agents Association

February 4, 2020

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins:

On behalf of the FBI Agents Association (FBIAA), which is comprised of over 14,000 FBI Special Agents nationwide, I write to urge Congress to reauthorize four provisions of the Foreign Intelligence Surveillance Act (FISA)—roving wiretaps, business records, lone wolves, and Call Detail Records (CDR)—which are currently set to expire on March 15, 2020.

FBI Special Agents in every field office responsibly use tools provided by FISA in sensitive counterintelligence, counterterrorism, and counterproliferation investigations to help protect our country. One Special Agent who helps conduct counterterrorism investigations has explained to the FBIAA that:

Sophisticated techniques like roving wiretaps and the ability to access business records are instrumental to how I do my work. We use them to help thwart attacks by foreign terrorist organizations and home-grown violent extremists. I think that our work, supported by these tools, has helped save lives. Our partners in state and local law enforcement depend on the FBI and our techniques as well. I am concerned that losing them would make it harder for us to do our jobs and would make our country less safe.

As you consider reauthorization of these expiring provisions, the FBIAA asks you to recall that national security and law enforcement experts have reiterated to Congress since 2001 that these FISA tools play an essential role in protecting our country from constantly evolving threats. As FBI Director Christopher Wray noted, “The FBI relies on FISA every day in national security investigations to prevent terrorists and foreign intelligence services from harming the United States.” And, as Director Wray further explained in a 2017 speech about FISA:

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The fact that we have not suffered another 9/11-scale attack is not just luck. It is the product of an enormous amount of very, very hard work and diligence by thousands of professionals....We still have enemies who are plotting the kind of elaborate mass casualty attacks that we suffered on 9/11—attacks that might take months or even years to plan. But that's not all. New technologies now allow ISIS and others to recruit, radicalize, and direct people worldwide much more easily and more remotely than ever before, including right here in the U.S. Homegrown violent extremists or lone actors who self-radicalize at home with little warning continue to be a major concern.

Allowing FISA tools to expire would ignore the lessons we learned after the 9/11 attacks. As Ranking Member Collins has explained:

Our unity and strength following the [9/11] attacks were palpable and encouraging — nothing the terrorists inflicted could defeat our nation as a worldwide beacon of liberty. As part of our resolve, it is critical that tools to defeat terrorism remain available to our national security and intelligence community who work tirelessly to protect our country and secure the freedoms we cherish....It is our duty to reauthorize these authorities. Otherwise, the authorities revert back to our national security posture before 9/11, and I don't think anyone wants that.

Given the nature of the threats facing our country, it would be dangerous and irresponsible for Congress to allow the four FISA provisions in question to expire. The authorities are reasonable, effective, and an integral part of contemporary investigations.

- Three of the authorities—the roving wiretap, business records, and lone wolf provisions—have been critical law enforcement tools for nearly two decades. Congress, recognizing the importance of these provisions, has reauthorized them numerous times without controversy and on a bipartisan basis. The Director of National Intelligence (DNI) noted in an August 2019 letter to the Senate Intelligence and Judiciary Committees, “[t]hese common sense authorities are analogous to what is available in criminal investigations, have no history of abuse after no more than 18 years, and should be reauthorized without sunset.”
- The more recent fourth authority—the CDR provision—permits targeted collection of telephone metadata. The National Security Agency (NSA) recently discontinued the CDR program, but it remains an important authority to retain given evolving national

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security threats. The DNI noted in his letter that “as technology changes, our adversaries’ tradecraft and communications habits will continue to evolve and adapt. In light of this dynamic environment the [Trump] Administration supports reauthorization” of the CDR provision. The FBIAA agrees about the need to reauthorize the CDR provision. The narrowly-scoped nature of collection provides appropriate privacy safeguards while recognizing the need to have a holistic intelligence picture to prevent threats to the United States.

Taken together, the case for permanently reauthorizing the four expiring provisions is very strong, and no reasonable argument can be made for allowing these authorities to lapse.

While you conduct oversight and discuss recent controversies surrounding FISA and concerns about the application and renewal process for FISA warrants it is important that you avoid inaction that would undermine our safety and reject extreme positions that force false choices. As Speaker Pelosi has explained in the context of past FISA reauthorizations:

This isn't... ‘you don't care about privacy if you support this bill.’ It isn't about that. It's about where you strike the balance, when you weigh the equities. And we have to come down in favor of honoring the constitution and our civil liberties, but we cannot do that completely at the expense of security.

As these issues are debated, the FBIAA looks forward to reviewing reform proposals and supports the range of FISA reforms recently announced by Director Wray in December 2019 that will improve the FISA process.

To both protect civil liberties and maintain safety as you move forward with debate over reforms to the FISA process, it remains essential that the expiring FISA provisions are reauthorized. Criminals and terrorists will not wait for the reform debate to finish before acting on their plans to harm our country and people. As President Trump stated when he signed the most recent FISA reauthorization into law, “[w]e cannot let our guard down in the face of foreign threats to our safety, our freedom, and our way of life.”

The FBIAA appreciates your leadership on these issues and consideration of these comments. FBI Agents work diligently to detect, investigate, and apprehend individuals and groups engaged in a constant and evolving effort to execute plots against the United States and its citizens. Agents need these proven FISA tools to most effectively conduct their work

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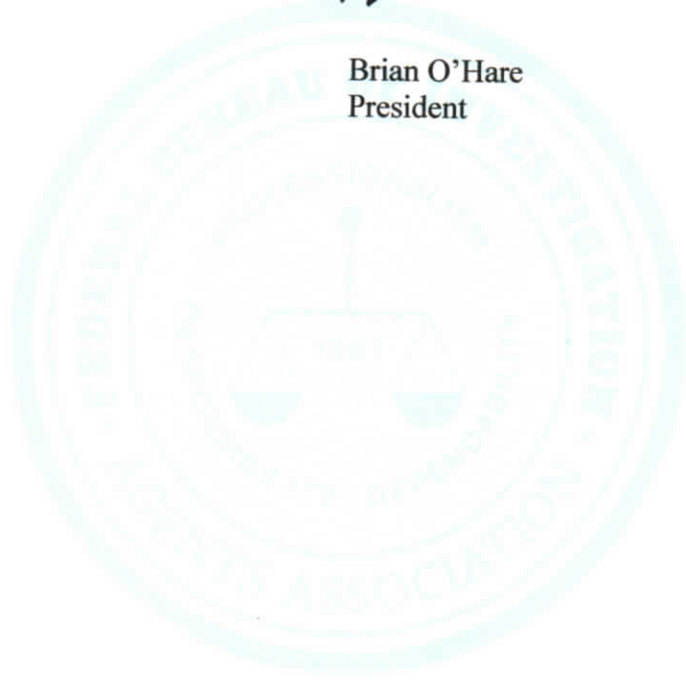
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in defense of the homeland. Accordingly, the FBIAA believes that Congress must reauthorize the FISA authorities before they expire on March 15, 2020.

Very truly yours,



Brian O'Hare
President



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