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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

May 4, 2016

The Honorable Rachel L. Brand
Board Member
Privacy and Civil Liberties Oversight Board
2100 K Street NW, Suite 500
Washington, DC 20427

Dear Ms. Brand:

I invite you to testify on Tuesday, May 10, 2016, at the Senate Committee on the Judiciary hearing entitled “Oversight and Reauthorization of the FISA Amendments Act: The Balance between National Security, Privacy and Civil Liberties.” The hearing is scheduled to begin at 10:00 a.m. in Room 226 of the Dirksen Senate Office Building.

Committee rules require that you provide your testimony and a short biography for distribution to members of the Committee and the press at least 24 hours before the hearing is scheduled to begin. Please send an electronic copy of your testimony and biography to (b) (6) (b) (6)

Please contact (b) (6) at (202) 224 (b) (6) with any questions. We look forward to your testimony.

Sincerely,



Charles E. Grassley
Chairman

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

May 17, 2016

The Honorable Rachel L. Brand
Board Member
Privacy and Civil Liberties Oversight Board
2100 K Street NW, Suite 500
Washington, DC 20427

Dear Ms. Brand:

Thank you for your testimony at the Senate Committee on the Judiciary hearing entitled: "Oversight and Reauthorization of the FISA Amendments Act: The Balance between National Security, Privacy and Civil Liberties" on May 10, 2016. Attached are written questions from Committee members. We look forward to including your answers to these questions, along with your hearing testimony, in the formal Committee record.

Please help us complete a timely and accurate hearing record by sending an electronic version of your responses to (b) (6) Hearing Clerk, Senate Judiciary Committee, at (b) (6), no later than May 31, 2016.

Where circumstances make it impossible to comply with the two-week period provided for submission of answers, witnesses may explain in writing and request an extension of time to reply.

Again, thank you for your participation. If you have any questions, please contact (b) (6) at (202) 224 (b) (6).

Sincerely,



Charles E. Grassley
Chairman

Senate Committee on the Judiciary

“Oversight and Reauthorization of the FISA Amendments Act: The Balance Between National Security, Privacy and Civil Liberties”

May 10, 2016

Questions for the Record from Ranking Member Charles E. Grassley

Kenneth Wainstein, Matthew Olsen, and Rachel Brand

1. Section 702 Sunset Provision

As you know, the FISA Amendments Act Reauthorization Act of 2012 reauthorized Title VII, or Section 702, of the FISA Amendments Act until December 31, 2017. As you also know, the Privacy and Civil Liberties Oversight Board (“PCLOB”) conducted an extensive review of Section 702 surveillance and its oversight and compliance processes. The PCLOB concluded that the program was authorized by the FISA statute, was constitutional under the Fourth Amendment, and that the information collected under this authority “has been valuable and effective in protecting the nation’s security and producing useful foreign intelligence.” Following its extensive review, the PCLOB further explained that “the Board has found no evidence of intentional abuse” of the program. And the Section 702 program is subject to a substantial compliance and oversight regime from all three branches of the government, including the U.S. Intelligence Community and Department of Justice, as well as Foreign Intelligence Surveillance Court and the congressional intelligence and judiciary committees.

- a. Given all of the above, do you believe Title VII of the FISA Amendments Act should be made permanent?

Ken Wainstein, Matthew Olsen, and Rachel Brand

2. U.S. Person Queries and U.S. Persons' Personal Life

In his Prepared Statement, Chairman Medine asserted that U.S. persons' communications incidentally acquired pursuant to Section 702 "can include family photographs, love letters, personal financial matters, discussions of physical and mental health, and political and religious exchanges. U.S. person queries [of that information] are, therefore, capable of revealing a significant slice of an American's personal life."

- a. U.S. persons cannot be targeted, or "reverse targeted," for Section 702 collection, correct?
- b. Is it accurate to state that the way the government may incidentally acquire U.S. person communications through Section 702 collection is when U.S. persons communicate with a non-U.S. person abroad who has been targeted pursuant to targeting requirements? And those targeting requirements ensure that the non-U.S. person abroad was targeted for a court-authorized foreign intelligence purpose, correct?
- c. Further, U.S. person communications that are acquired through Section 702 only include those obtained *while* communicating with a valid foreign intelligence target, correct? In other words, just because a U.S. person has communicated with a valid foreign intelligence target on one occasion doesn't mean the U.S. government thereafter has access to any and all of that U.S. person's communications, correct?
- d. **To Rachel Brand:** During the PCLOB's review of the Section 702 program, did you ever encounter an instance in which U.S. person queries of collected 702 data revealed a "significant slice" of a specific American's personal life?

Ken Wainstein, Matthew Olsen, and Rachel Brand

3. Deletion of U.S. Persons' Irrelevant Communications

Also in his Prepared Statement, Chairman Medine explained that “NSA’s minimization procedures further require the destruction of irrelevant U.S. person communications . . . only where the communication can be identified as ‘clearly’ not relevant to the purpose under which it was acquired or containing evidence of a crime,” yet he asserted that “[i]n practice, this destruction rarely happens.” He also separately asserted in his Prepared Statement that “[i]n theory . . . innocent communications will be deleted by the intelligence agencies. But in practice, as the Board’s Section 702 report notes, they rarely are deleted.” Finally, in response to a question during the hearing, he stated that some U.S. person information “is never deleted. It sits in the databases for five years or sometimes longer.”

- a. As the PCLOB’s Section 702 report explains, isn’t the reason why NSA doesn’t immediately delete many U.S. person communications because most U.S. person communications are never analyzed or reviewed by NSA analysts?
- b. And isn’t it correct that all U.S. person communications not reviewed or analyzed by the NSA will be aged-off and deleted within defined periods?
- c. **To Rachel Brand:** During the PCLOB’s review of the Section 702 program, did you ever encounter a situation in which the NSA did *not* delete an identified U.S. person communication it had (1) reviewed and (2) determined was “innocent” – i.e., “‘clearly’ not relevant to the purpose under which it was acquired or containing evidence of a crime”?

ROBERT PITTINGER
MEMBER OF CONGRESS
9TH DISTRICT, NORTH CAROLINA

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June 24, 2016

Dear Forum Panelists:

Thank you for your great service to our country in speaking at the Parliamentary Forum in Vienna. Your thoughtful remarks were very instructive and meaningful to the delegates as we move forward with collaboration on information sharing and intercepting terrorism financing.

Your advice and counsel is always welcome by me on these important issues. Please be in touch with me or (b) (6) regarding any concerns or initiatives you would like to advance.

Thanks for your kind friendship and support.

Sincerely,



Robert Pittenger
Member of Congress
Chairman, Taskforce on Terrorism and Unconventional Warfare

ROBERT PITTINGER
MEMBER OF CONGRESS
9TH DISTRICT, NORTH CAROLINA

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August 3, 2016

The Honorable Rachel Brand
Board Member
U.S. Privacy and Civil Liberties Oversight Board
Washington, D.C.

Dear Ms. Brand:

Thank you for your continued interest and participation in our Parliamentary Intelligence-Security Forums.

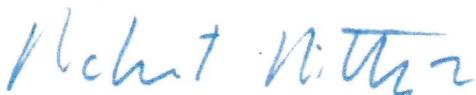
As you know, we recently completed our 4th forum in June in Vienna where we had participation from approximately 30 different countries. Enclosed you will find a copy of our report from this event. We had tremendous positive feedback as result of our Vienna event and are currently in the planning stages for our next forum, which will be on December 7 in Washington, D.C.

At our December event, we will continue discussions on cybersecurity, intelligence sharing, privacy and surveillance issues, and terrorist financing. Several experts have already expressed interest in participating, and we anticipate expanded interest and attendance at our next event.

We would welcome your participation in this proposed forum. In the past, we have had a series of panel discussions with opening remarks followed with audience questions. Independent arrangements are required for travel and accommodations.

Kindly inform us of your interest as we move forward to formalize plans. Please contact (b) (6)
(b) (6) (b) (6); 202-225-(b) (6) to let us know.

Sincerely,



Robert Pittenger
Member of Congress
Chairman, Taskforce on Terrorism and Unconventional Warfare