

that has spread across our land, with an effort to understand, compassion, and love.

For those of you who are black and are tempted to fill with hatred and mistrust of the injustice of such an act, against all white people, I would only say that I can also feel in my own heart the same kind of feeling. I had a member of my family killed, but he was killed by a white man.

But we have to make an effort in the United States. We have to make an effort to understand, to get beyond, or go beyond these rather difficult times.

My favorite poet was Aeschylus. And he once wrote:

Even in our sleep, pain which cannot forget falls drop by drop upon the heart, until, in our own despair, against our will, comes wisdom through the awful grace of God.

What we need in the United States is not division; what we need in the United States is not hatred; what we need in the United States is not violence and lawlessness, but is love, and wisdom, and compassion toward one another, and a feeling of justice toward those who still suffer within our country, whether they be white or whether they be black.

So I ask you tonight to return home, to say a prayer for the family of Martin Luther King yeah, it's true but more importantly to say a prayer for our own country, which all of us love a prayer for understanding and that compassion of which I spoke.

We can do well in this country. We will have difficult times. We've had difficult times in the past, but we and we will have difficult times in the future. It is not the end of violence; it is not the end of lawlessness; and it's not the end of disorder.

But the vast majority of white people and the vast majority of black people in this country want to live together, want to improve the quality of our life, and want justice for all human beings that abide in our land.

And let's dedicate ourselves to what the Greeks wrote so many years ago: to tame the savageness of man and make gentle the life of this world. Let us dedicate ourselves to that, and say a prayer for our country and for our people.

Thank you very much."

#### PERSONAL EXPLANATION

**HON. LEE M. ZELDIN**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, January 19, 2018*

Mr. ZELDIN. Mr. Speaker, on January 10, 2018, I was improperly recorded as a Yes vote on Roll Call No. 11. This was in error and that I wish to be recorded as a No on RC No. 11.

#### SENATE BILL 139

**HON. DEVIN NUNES**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, January 19, 2018*

Mr. NUNES. Mr. Speaker, Section 702 of the Foreign Intelligence Surveillance Act (FISA) provides a framework for the Government to target non-U.S. persons located overseas to obtain foreign intelligence information, with the compelled assistance of electronic

communication service providers. S. 139 reauthorizes and improves upon this authority—the intelligence value of which cannot be overstated. For example, Section 702 was critical in the tracking of Hajji Iman, a senior Islamic State terrorist who was removed from the battlefield.

Members have had numerous opportunities over the past several years to attend Section 702 education sessions, either on Capitol Hill or at Fort Meade, Maryland. These sessions have demonstrated the extensive level of oversight related to this authority, and underscored that no acts of intentional abuse have occurred since its creation. Despite these facts, and the fact that various courts have affirmed the constitutionality of Section 702, some Members sought to add further protections to enhance U.S. person privacy. As a result, S. 139, which reauthorizes title VII of FISA for six years, includes additional privacy, oversight and transparency provisions.

Throughout the debate, a good deal of inaccurate information about Section 702—including about the program's oversight, as well as the current or potential use of incidentally collected U.S. persons information by the Government—was put forward publicly.

Section 702 is not a bulk-collection authority. It is instead narrowly applied to a relatively small number of targets worldwide. In the Director of National Intelligence's 2016 annual transparency report, the Intelligence Community publicly reported that there are roughly 106,000 Section 702 targets—a vanishingly small fraction of the worldwide population of just over 7 billion. The targets' communications are, moreover, sought only for legally authorized foreign intelligence purposes. Section 702 is used for counterterrorism purposes, as well as to target spies, weapons proliferators, and other foreign threats to the United States and allies.

Section 702 is subject to a rigorous oversight regime by all three branches of government. The independent Privacy and Civil Liberties Oversight Board (PCLOB) produced a report on Section 702 in 2014, which states that Section 702 is constitutionally sound and implemented in a way that protects U.S. person privacy, while at the same time offering several recommendations to better enhance the program's privacy protections. As of 2016, the PCLOB reported that the Executive Branch has implemented all of its recommendations, either in whole or in part. In addition, the Foreign Intelligence Surveillance Court (FISC), as well as several U.S. district courts and the 9th Circuit Court of Appeals, have confirmed that Section 702 is constitutional, and that the implementation of the program is consistent with the Fourth Amendment.

#### 1. NSA'S "ABOUT" COMMUNICATION COLLECTION

One issue during the reauthorization debate was how, if at all, Congress might address the National Security Agency (NSA's) voluntarily discontinued practice of collecting so-called "about" communications, in connection with NSA's Section 702 upstream collection. NSA and other Intelligence Community agencies obtain so-called "downstream" collection, which involves only the collection of messages "to" or "from" Section 702 selectors. NSA, on the other hand, is the only Intelligence Community element that conducts Section 702 upstream collection, which permits NSA to target non-U.S. people located outside of the United

States for foreign intelligence purposes with the assistance of the providers that operate the "Internet backbone."

Because of the way communications traverse the Internet, it is possible for NSA to acquire communications "about" a Section 702 target's specific selector, rather than "to" or "from" the selector. This type of communication is known as an "about" communication, and takes place only in NSA's upstream collection. NSA is statutorily prohibited from intentionally acquiring domestic communications, meaning those that originate and end in the United States. Therefore, NSA set up several filters in upstream collection to avoid intentionally ingesting domestic communications.

In 2016, NSA self-reported a technical problem related to "about" communication collection. The agency then informed the Department of Justice, the FISC, and the appropriate congressional committees. The FISC raised concerns with the compliance incident, and ordered NSA to find a solution. After much consideration, NSA, on its own initiative, decided to cease "about" communication collection to fix the issues discussed with the FISC. This type of self-reporting of compliance incidents is expected of the Intelligence Community elements—and is reason to credit, rather than doubt, Section 702 oversight mechanisms. This incident and resulting chain of events demonstrates that the law is working as intended and does not indicate that abuse has occurred or that Congress needs to further limit the Section 702 authority.

Some in Congress called for a permanent end to "about" communication collection. Such a prohibition would limit NSA's ability to reconstitute the collection in the future, even with FISC approval, and use it to identify threat networks. For that reason, rather than permanently prohibiting NSA's "about" communication collection, S. 139 includes a compromise that allows for the possibility of a future technical solution. If NSA wants to restart "about" communication collection, NSA would need to first convince the FISC that the technical changes to "about" communication collection satisfy the FISC's concerns from 2016. After receiving FISC approval to restart "about" communication collection, NSA would brief the relevant congressional committees of jurisdiction, and then wait 30 days to provide Congress time to act. If Congress takes no action in 30 days, NSA may move forward with "about" communication collection. This legislation strikes the right balance between national security and privacy.

#### 2. FBI ACCESS TO SECTION 702 INFORMATION FOR CRIMINAL PURPOSES

Similar to all other surveillance authorities, it is possible that a Section 702 target may communicate with a U.S. person or person located inside the United States. Collection on a U.S. person communicating with a foreign target is known as "incidental collection." Such "incidental collection" is carefully managed. The Intelligence Community's procedures for handling the incidental collection of U.S. person information are regularly reviewed by the FISC, and have been found to be sufficient by the PCLOB. Furthermore, U.S. district courts have reviewed the issue of incidental collection of U.S. person information under Section 702, and determined that such collection is consistent with the Fourth Amendment.

Despite the number of Section 702 education sessions sponsored by the House Permanent Select Committee on Intelligence (the

Committee), some have claimed that the Intelligence Community is abusing the Section 702 authority by targeting Americans, an action that is specifically prohibited by statute. There is, however, no evidence of a single intentional abuse that has resulted in the improper targeting of Americans. There have been others who have asserted that the Intelligence Community has inaccurately reported certain statistics each year related to the use of Section 702. These claims are demonstrably false, and unsupported by any evidence. Unfortunately, the dissemination of such inaccurate information is a disservice to the American public and the men and women of the Intelligence Community who serve in silence to keep us all safe from threats, both foreign and domestic.

During the course of reauthorization discussions over the past several months, the Committee has brokered key compromises necessary to reauthorize this critical national security authority. Therefore, after significant de-

liberation, the House and Senate leadership agreed to institute a probable cause-based order requirement for the FBI to access the content of a Section 702 communication that is responsive to a U.S. person query conducted by the FBI during a criminal investigation not related to the national security of the United States. This order requirement does not mandate that the FBI obtain an order before reviewing metadata, accessing the results of any query reasonably designed to return foreign intelligence information, or querying to return evidence of a crime that is related to the national security of the United States. The order requirement is narrowly tailored to address instances where FBI is conducting a predicated investigation into criminal activity not related to national security and seeks to access the content of a Section 702 communication.

Consistent with well-established case law, the order requirement should not be construed to mean—and it is not the Committee's in-

tent—that law enforcement access to lawfully-acquired information constitutes a separate “search” under the Fourth Amendment. The Fourth Amendment, as interpreted by various federal courts, does not require the FBI to obtain an order from the FISC to review lawfully-acquired Section 702 information, even if such access was pursuant to a query using a U.S. person identifier. Accordingly, the agreement to institute this limited order requirement is intended as a legislative accommodation to provide additional statutory protections for U.S. person information that is incidentally collected under Section 702.

This order requirement, along with the restrictions on the use of Section 702 information in criminal prosecutions, should provide further assurances to the American public that the purpose of this critical national security tool is to discover and mitigate foreign threats to the United States, and the handling and use of Section 702 information against U.S. persons is carefully controlled and managed.