Congress of the United States
Washington, DC 20515

January 31, 2006

By U.S. Mail & Facsimile to (202) 456-1806

President George W. Bush
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

Seven days after our country was attacked on September 11, 2001, Congress exercised its authority under the Constitution and granted the United States the authority to use military force against those who launched attacks against the United States. In recent weeks, this authorization, which is codified as Public Law 107-40 and hereinafter referred to as the AUMF, has been the subject of debate. The debate has centered around the legislative intent of this authorization and whether it authorized, implicitly or explicitly, the use of warrantless surveillance of American citizens on American soil.

During your press conference on December 19, 2005, you stated that you were granted the legal authority to authorize the interception of telephone calls and other communications without a warrant by Congress pursuant to the AUMF. Since that time, both you and the Vice President have repeated that justification. Moreover, in the document titled "Legal Authorities Supporting the Activities of the National Security Agency Described by the President" issued by the Department of Justice on January 19, 2006, the attorneys for the Department make a seven page argument that the "AUMF confirms and supplements the President's inherent power to use warrantless surveillance against the enemy in the current armed conflict." The document goes on to state that "[t]he text of the AUMF demonstrates . . . that Congress authorized the President to conduct warrantless electronic surveillance against the enemy." This argument suggests that the AUMF gave you unlimited authority to bypass existing laws and belies the effort that we took not to make any express statements that could be construed as expanding executive powers in excess of the U.S. Constitution and existing law.

The NSA Surveillance program remains largely secret due to its highly classified nature. However, officials familiar with it say that the NSA eavesdrops without warrants on up to 500 people in the United States at any given time and some reports indicate that the total number of people monitored domestically has reached into the thousands. This program has monitored American citizens in the exercise of their First Amendment rights, with the Fourth Amendment expectation of privacy, and who have not been identified as "the enemy."

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At no point during the floor debate of the AUMF Resolution was there any discussion that the authorization to use military force would extend to the use of warrantless searches and vest you with the broad authority to intercept telephone calls and other electronic communications of American citizens on American soil without first obtaining a warrant. To the contrary, it was stated during the debate that the authorization "provides no new or additional grants of power to the President."[1]

It is our duty to uphold the provisions of the U.S. Constitution, preserve the system of checks and balances between branches of our Government, and to protect the rights of the American people to the greatest extent possible. We stand firm on our commitment to protect the United States from terrorist attacks and will continue to exercise our legislative responsibility to support any lawful means of preventing any future terrorist activity. However, we feel that it is our duty to clarify the mischaracterization of our actions. We, the undersigned Members of Congress, did not intend for the AUMF to be used as justification for programs such as the one currently in use by the NSA. We therefore strongly oppose any statement indicating that our actions granted you the power to authorize warrantless electronic surveillance. Any statements made by you or other members of the Administration, including Department of Justice attorneys acting on your behalf, indicating that the AUMF that we enacted was done with the intent to authorize the use of warrantless surveillance is false and misleading to the American public.

Sincerely,

Maxine Waters

John Conyers Jr.

Bob G. Jarvis

Maurice Hinchey

Sheila Jackson Lee

Major R. Owens

Bob Filner

Chaka Fattah

[1] Cong. Rec. 14 September 2001: H5677

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Signatories:

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