Congress of the United States

House of Representatives

Washington, DC 20515

September 14, 2006

Glenn A. Fine, Inspector General
United States Department of Justice
950 Pennsylvania Avenue, N.W., Suite 4706
Washington, DC 20530-0001

Dear Inspector General Fine:

Ever since The New York Times broke the news about the National Security Agency's (NSA) warrantless spying program, we have actively tried to get more information from DOJ about the details of the program. To date, our questions remain unanswered. Thirty-nine members of this Congress sent you a letter on December 20, 2005 asking that you investigate the program. You responded to that letter stating that an investigation of this program "falls outside the jurisdiction of the OIG. Specifically, the actions of the Attorney General or other Department attorneys in providing legal advice regarding the legality of warrantless surveillance by NSA relates to the legal duties of the Department attorneys, which falls within the jurisdiction of the Department's Office of Professional Responsibility (OPR), not OIG."

However, as you know, the office that you asserted would be the appropriate office, the Office of Professional Responsibility, was unable to get the necessary security clearances to conduct an investigation. On the same day that we found out that it was President Bush who denied the Office of Professional Responsibility the necessary security clearances, we also found out that your office is now charged with investigating the program and has received the necessary security clearances. Thus, we write you today, in yet another effort, to receive answers to our questions and get a better understanding of the NSA's warrantless spying program.

As you are aware, this program goes against the protocol established in the Foreign Intelligence Surveillance Act (FISA). Under that Act, Foreign Intelligence Surveillance Courts were established to review and authorize the type of surveillance that the president authorized under the NSA spying program. Since 1978, only a handful of requests for surveillance have been denied. If the president believed that the current system of getting authorization was an ineffective and burdensome way to track alleged terrorists he should have worked with Congress to present his case and find a legislative solution. Instead of coming to Congress and making a suggestion, the president -- on his own -- authorized a program that allows for the warrantless surveillance of American citizens in a way that seems in direct conflict with FISA as well as the Fourth Amendment to the Constitution.

To help us determine the scope and legality of the domestic surveillance initiative and DOJ's role in the matter, we request that you investigate the following questions:

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- Did the president, the attorney general and the director of the National Security Agency violate the Foreign Intelligence Surveillance Act by authorizing, enforcing and carrying out the NSA warrantless spying program?
- When did DOJ first authorize the president's request for the NSA to conduct domestic surveillance without warrants? What was the process that led to that authorization?
- Did the administration enact the surveillance initiative prior to DOJ's approval? If so, when and how was the program originally implemented?
- What is the process for reauthorizing the program and how often does reauthorization occur? Has DOJ been an active part of reauthorization every time?
- Why did then-Acting Attorney General James Comey object in 2004 to the reauthorization of the surveillance program?
- Following Comey's refusal to sign off on the reauthorization of the surveillance program, White House Chief of Staff Andrew Card and then-White House Counsel Alberto Gonzales visited then-Attorney General John Ashcroft -- for whom Comey was filling in -- in the hospital as he recovered from surgery to obtain his reauthorization of the surveillance program. According to The New York Times, Ashcroft raised objections to the program, but it is unclear whether he eventually gave his permission. Did Ashcroft reauthorize the program while in the hospital or did the White House move forward with the initiative without his approval?
- What percentage of the surveillance conducted under this presidential authorization involves communications in which both parties are located within the United States?
- What were DOJ's criticisms and justifications of the monitoring both prior to and after DOJ's audit of the program in 2004?

We look forward to finally receiving a response to these questions as well as receiving any other related information you may discover during the course of such an investigation. Since we have been waiting since January to receive answers to our questions about this program, your timely effort in this regard will be much appreciated and will assure the American people that its government is committed to working within the law and holding its leaders accountable for any inappropriate or illegal actions.

Sincerely,

Maurice D. Hinchey
Member of Congress

Zoe Lofgren
Member of Congress

Henry A. Waxman
Member of Congress

John Lewis
Member of Congress

Lynn C. Woolsey
Member of Congress

George Miller
Member of Congress

Carolyn B. Maloney
Member of Congress

Edward J. Markey
Member of Congress

Raúl M. Grijalva
Member of Congress

Dennis J. Kucinich
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James P. McGovern
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José E. Serrano
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Robert C. "Bobby" Scott
Member of Congress

Pete Stark
Member of Congress

Lloyd Doggett
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Hilda L. Solis
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Darlene Hooley
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Timothy H. Bishop
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William D. Delahunt
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Jim McDermott
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Diana DeGette
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Michael M. Honda
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Robert A. Brady
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Tom Lantos

Tom Lantos
Member of Congress