Congress of the United States
Washington, DC 20515

May 11, 2006

The President
The White House
Washington, D.C. 20500

Dear President Bush:

Recent reports state that the NSA's domestic surveillance of Americans is much more expansive than you previously stated. You said that the NSA surveillance program only targets international communications between Americans and suspected members of al Qaeda. Now we learn the NSA routinely collects the call records of tens of millions of Americans from telecommunications companies collectively serving more than 200 million Americans.[1] These reports also suggest that the NSA has equipment on AT&T's network to monitor all Internet data passing over it.[2] If true, these reports are truly shocking. We urge you once again to direct the appointment of a Special Counsel fully empowered to investigate the NSA's domestic surveillance programs and report its findings to Congress.

It is time the American public and the Congress had more than press reports to establish the facts about NSA's domestic surveillance programs. Several Members of Congress wrote to you nearly three months ago asking for the appointment of a Special Counsel to investigate the NSA's surveillance of Americans.[3] We still have not received your response.

Every practical avenue for investigation has been stymied based on the feeblest of excuses. When Members of Congress wrote to the Inspector Generals of the Justice and Defense Departments, they refused to investigate.[4] The Justice Department handed the matter to its Office of Professional Responsibility for an investigation of professional legal misconduct, and then denied security clearances to its own investigators.[5] The Defense Department handed the matter to NSA's Inspector General, who never responded and who approved the eavesdropping at issue. The Government Accountability Office refused to investigate, anticipating you would block access to

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[1] *See* USA Today, "NSA Has Massive Database of Americans' Phone Calls," Leslie Cauley, May 11, 2006.
[2] *See* Wired News, "Wiretap Whistleblower's Statement," reprinting public statement of Mark Klein, April 7,2006.
[3] *See* Letter from Members of Congress to President Bush dated February 26, 2006.
[4] *See* Letter from Glenn A. Fine, Inspector General, Department of Justice, to Congresswoman Zoe Lofgren, dated Jan. 4, 2006; *and* Letter from Thomas F. Gimble, Acting Inspector General, Department of Defense, to Congresswoman Zoe Lofgren, dated Jan. 10, 2006.
[5] *See* Letter from H. Marshall Jarrett, Counsel, Office of Professional Responsibility, to Congresswoman Zoe Lofgren, dated May 10, 2006.

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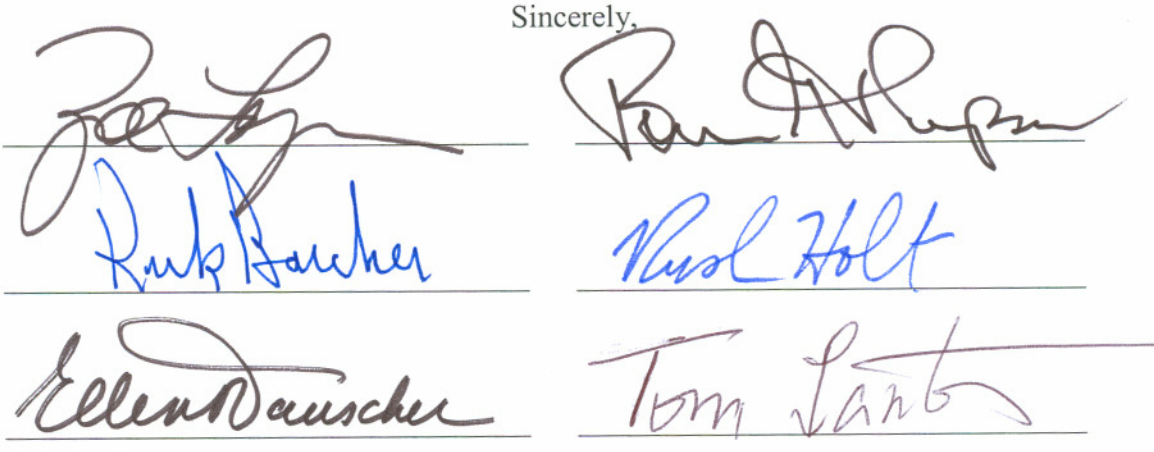
records by designating them foreign intelligence or counterintelligence materials.[6] While the House and Senate Judiciary Committees have held hearings, they have not issued a single subpoena for witnesses or documentary evidence. Instead of investigation, all that emerges is a pattern of resisting investigation into the facts that Congress and the public deserve.

Given the Attorney General's authorization of domestic eavesdropping by the NSA and his highly public defense of it, a Special Counsel is needed to avoid any conflict of interest in investigating the NSA programs. The Attorney General's recent testimony in the House Judiciary Committee suggests he has much to hide. The Attorney General acknowledged under oath that the Deputy Attorney General initially disapproved of an NSA eavesdropping program separate from the warrantless eavesdropping you described on international communications with al Qaeda members. But the Attorney General refused to tell the House Judiciary Committee anything about that separate NSA eavesdropping program. If the news reports cited above are true, the Attorney General also provided highly misleading testimony when asked whether the NSA was eavesdropping on calls entirely within the United States.

Without a complete and impartial investigation of the facts, Members of Congress are robbed of their Article I oversight responsibilities under the Constitution. The American public is robbed of its ability to hold Article II officials accountable for their conduct. While we appreciate the need to safeguard sensitive classified information, existing legal protections for handling of classified information would allow an investigation to proceed without compromising national security.

Mr. President, both our Constitutional duties and yours are to protect the security of the nation from terrorist threats and to protect and uphold the laws of our nation. The NSA's domestic eavesdropping programs may fail in both. Without a thorough investigation into the facts, we can simply never know. We urge you once again to direct the appointment of a Special Counsel fully empowered to investigate the NSA's domestic eavesdropping programs and report its findings to Congress.

Sincerely,



[6] *See* Letter from Gloria Jarmon, Managing Director for Congressional Relations, U.S. Government Accountability Office, to Congresswoman Zoe Lofgren, dated Feb. 7, 2006.

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