United States Senate

WASHINGTON, DC 20510

November 10, 2005

The Honorable Alberto R. Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Gonzales:

According to "The FBI's Secret Scrutiny," a November 6, 2005 story in *The Washington Post*, the Federal Bureau of Investigation issues "more than 30,000 national security letters a year, according to government sources, a hundredfold increase over historic norms."

As you know, National Security Letters (NSLs), which are issued by FBI agents without judicial or grand jury approval, require disclosure of phone, Internet, financial, credit and other sensitive personal records. The recipient of an NSL is subject to a permanent automatic gag order. In order to assuage public concern and better inform the American people about the use of this authority, we believe it is important to declassify the number of NSLs issued since enactment of the USA PATRIOT Act.

Specifically, we request that you declassify the aggregate number of NSLs issued for each of the last four calendar years (2001, 2002, 2003, 2004), pursuant to each of the following authorities: Section 2709 of Title 18 of the United States Code, Section 1114(a)(5) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)), Section 625 of the Fair Credit Reporting Act (15 U.S.C. 1681u), and Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681v).

Senator Durbin made a similar request in a July 25, 2005 letter to you. In response, Assistant Attorney General William E. Moschella said, "Public disclosure of the information is not, however, appropriate at this time in light of the national security interests in question." Mr. Moschella did not elaborate on the national security interests that would be implicated by declassifying the number of NSLs issued.

In fact, declassifying the number of NSLs issued would not reveal any information about specific terrorism or intelligence investigations. It would not identify the target of any NSL, the recipient of any NSL, the information obtained by any NSL, or how such information was used. By way of comparison, you have declassified the number of orders that the Justice Department has obtained pursuant to Section 215 of the PATRIOT Act, as well as details about the types of information obtained by such orders, actions which presumably did not unduly threaten national security interests.

The American people do not know how often the FBI is using this authority to obtain their sensitive personal records. As Congress debates legislation that would reauthorize and revise the PATRIOT Act, the American people are entitled to this information. As the independent bipartisan 9/11 Commission concluded, "The burden of proof for retaining a particular governmental power should be on the executive."

In light of imminent Congressional action on PATRIOT Act reauthorization, we request that you respond to this letter by November 16, 2005. Thank you for your time and consideration.

Sincerely,

Richard J. Durbin

Larry E. Craig

Russell D. Feingold

John E. Sununu

Ken Salazar