Opening Statement of
Deputy Attorney General James Cole
Before the House Judiciary Committee
February 4, 2014, 10:00 A.M.

Thank you, Mr. Chairman, Ranking Member Conyers, and Members of the Committee, for inviting us here to continue the discussion of certain intelligence collection activities and our efforts to protect privacy and civil liberties. We have all invested a considerable amount of energy over these past few months in reviewing specific intelligence collection programs and the legal framework under which they are conducted. I think it's fair to say that all of us—the members of the Privacy and Civil Liberties Oversight Board (PCLOB), the members of the Presidential Review Group (PRG), the Administration, and the Congress—want the same thing: to maintain our national security while upholding the liberties that we all cherish. It is not always easy to agree on how best to accomplish these

objectives, but we will continue to work in earnest to advance our common interests, and we appreciate the good faith in which everyone has engaged in this endeavor.

We have benefited from the consideration of these difficult issues by the PCLOB and the PRG and it is a pleasure to appear with them today. In his speech on January 17th, the President laid out a series of measures to reform our surveillance activities that draw upon many of the core recommendations issued by the PCLOB and PRG. The work to develop or carry out these measures is well underway, and I would like to highlight just a few of the most significant initiatives announced by the President that the Department of Justice is working to implement in close coordination with the Intelligence Community (IC).

First, we are examining alternatives to the collection of bulk telephony metadata under Section 215, which the President

has said will end as it currently exists. The President has said that the capability that this program was designed to provide is important and must be preserved, but we must find a new approach that does not require the government to hold this bulk metadata. The Section 215 program as currently constituted is subject to an extensive framework of laws and judicial orders and to oversight by all three branches of government designed to prevent abuse. Neither the PCLOB nor the PRG has questioned the rigor of that oversight system. Nor has anyone identified any intentional misuse of the telephony metadata. Nevertheless, we recognize that any time large amounts of data are collected, whether by the government or private companies, there is a potential for misuse, and it will be important that the new approach remain subject to a rigorous oversight regime.

Insofar as the legality of the program is concerned, it is important to remember that the courts—the final arbiters of the

law—have repeatedly found the program lawful, including 15 separate judges of the Foreign Intelligence Surveillance Court (FISC) and two district courts. There has been only one contrary district court ruling which is now on appeal. The PCLOB undertook its own analysis of the legality, but its members were unable to agree on whether it was authorized under the statute. Although we continue to believe the program is lawful, we recognize that it has raised significant controversy and legitimate privacy concerns, and as I have said we are working on developing a new approach as the President has directed.

Second, we are working to develop additional restrictions on the government's ability to retain, search, and use in criminal cases U.S. person information incidentally collected when we target non-U.S. persons overseas under Section 702 of the Foreign Intelligence Surveillance Act (FISA).

Third, the President recognized that our global leadership position requires us to take steps to maintain the trust and cooperation of people not only here at home but around the world. Accordingly, he has also determined that, as a matter of policy, certain privacy safeguards afforded for signals intelligence containing U.S. person information will be extended to non-U.S. persons, where consistent with national security. We will be working with our colleagues in the IC to implement that policy directive.

Fourth, the Department is working to change how we use National Security Letters so that the nondisclosure requirements authorized by statute will terminate within a fixed time, unless the government demonstrates a need for further secrecy. Although these nondisclosure obligations are important in preserving the viability of national security investigations, these

reforms will ensure that secrecy extends no longer than necessary.

Fifth, the President called upon Congress to authorize the establishment of a panel of advocates from outside the government to provide an independent voice in significant cases before the FISC. While we believe the ex parte process has functioned well, the court should be able to hear independent views in certain FISA matters that present significant or novel questions. We will provide our assistance to Congress as it considers legislation on this subject.

Sixth, we have already taken steps to promote greater transparency about the number of national security orders issued to technology companies, the number of customer accounts targeted under those orders, and the legal authorities behind those requests. As a result of the procedures we have adopted in this regard, technology companies have withdrawn their lawsuit

concerning this issue. Through these new reporting methods, technology companies will be permitted to disclose more information to their customers than ever before.

We look forward to consulting with Congress as we work to implement the reforms outlined by the President and as you consider various legislative proposals to address these issues. I would be happy to take any questions that you may have.