IN THESE TIMES WE CAN'T BLINDLY TRUST GOVERNMENT TO RESPECT FREEDOM OF ASSOCIATION

One of my friends, who works in a strategic role at American Federation of Teachers, is Iranian-American. I asked him a few weeks ago whom he called in Iran; if I remember correctly (I've been asking a lot of Iranian-Americans whom they call in Iran) he said it was mostly his grandmother, who's not a member of the Republican Guard or even close. Still, according to the statement that Dianne Feinstein had confirmed by NSA Director Keith Alexander, calls "related to Iran" are fair game for queries of the dragnet database of all Americans' phone metadata.

Chances are slim that my friend's calls to his grandmother are among the 300 identifiers the NSA queried last year, unless (as is possible) they monitored all calls to Iran. But nothing in the program seems to prohibit it, particularly given the government's absurdly broad definitions of "related to" for issues of surveillance and its bizarre adoption of a terrorist program to surveil another nation-state. And if someone chose to query on my friend's calls to his grandmother, using the two-degrees-of-separation query they have used in the past would give the government — not always the best friend of teachers unions — a pretty interesting picture of whom the AFT was partnering with and what it had planned.

In other words, nothing in the law or the known minimization rules of the Business Records provision would seem to protect some of the AFT's organizational secrets just because they happen to employ someone whose grandmother is in Iran. That's not the only obvious way labor

discussions might come under scrutiny; Colombian human rights organizers with tangential ties to FARC is just one other one.

When I read labor organizer Louis Nayman's "defense of PRISM," it became clear he's not aware of many details of the programs he defended. Just as an example, Nayman misstated this claim:

> According to NSA officials, the surveillance in question has prevented at least 50 planned terror attacks against Americans, including bombings of the New York City subway system and the New York Stock Exchange. While such assertions from government officials are difficult to verify independently, the lack of attacks during the long stretch between 9/11 and the Boston Marathon bombings speaks for itself.

Keith Alexander didn't say NSA's use of Section 702 and Section 215 have thwarted 50 planned attacks against Americans; those 50 were in the US **and overseas**. He said only around 10 of those plots were in the United States. That works out to be less than 20% of the attacks thwarted in the US just between January 2009 and October 2012 (though these programs have existed for a much longer period of time, so the percentage must be even lower). And there are problems with three of the four cases publicly claimed by the government — from false positives and more important tips in the Najibullah Zazi case, missing details of the belated arrest of David Headley, to bogus claims that Khalid Ouazzan ever planned to attack NYSE. The sole story that has stood up to scrutiny is some guys who tried to send less than $10,000 to al-Shabaab.

While that doesn't mean the NSA surveillance programs played no role, it does mean that the government's assertions of efficacy (at least as it pertains to terrorism) have proven to be overblown.

Yet from that, Nayman concludes these programs have “been effective in keeping us safe” (given Nayman’s conflation of US and overseas, I wonder how families of the 166 Indians Headley had a hand in killing feel about that) and defends giving the government legal access (whether they’ve used it or not) to — among other things — metadata identifying the strategic partners of labor unions with little question.

And details about the success of the program are not the only statements made by top National Security officials that have proven inaccurate or overblown. That’s why Nayman would be far better off relying on Mark Udall and Ron Wyden as sources for whether or not the government can read US person emails without probable cause than misstating what HBO Director David Simon has said (Simon said that entirely domestic communications require probable cause, which is generally but not always true). And not just because the Senators are actually read into these programs. After the Senators noted that Keith Alexander had “portray[ed] protections for Americans’ privacy as being significantly stronger than they actually are” — specifically as it relates to what the government can do with US person communications collected “incidentally” to a target — Alexander withdrew his claims.

Nayman says, “As people who believe in government, we cannot simply assume that officials are abusing their lawfully granted responsibility and authority to defend our people from violence and harm.” I would respond that neither should we simply assume they’re not abusing their authority, particularly given evidence those officials have repeatedly misled us in the past.

Nayman then admits, “We should do all we can to assure proper oversight any time a surveillance program of any size and scope is launched.” But a big part of the problem with these programs is that the government has either not implemented or refused such oversight. Some holes in the

oversight of the program are:

- NSA has not said whether queries of the metadata dragnet database are electronically recorded; both SWIFT and a similar phone metadata program queries have been either sometimes or always oral, making them impossible to audit
- The FISC does not itself audit this metadata access and — given Dianne Feinstein's uncertainty about what queries consist of — it appears neither do the Intelligence Committees; Adam Schiff recommended this practice but Keith Alexander was resistant
- The government opposed mandated Inspector General reviews of the Section 215 use in the last PATRIOT Act renewal; while DOJ's Inspector General is, on his predecessors own initiative, reviewing its use, he's only now reviewing the program as it existed four years ago
- DOJ and CIA's Inspectors General have limited ability to review what FBI and CIA do with the unminimized data they get form NSA's Section

    702 collection (though DOJ's IG does have the authority to review what the NSA does)
- The government refuses to count (and doesn't appear to document) what happens with the US person information "incidentally" collected under Section 702 that is subsequently searched or read

That's just a partial list. And all that's before you get to things **we know** the government does with this data, like keeping encrypted communications indefinitely, treating threats to property as threats to human life, and only respecting attorney-client privilege for indicted defendants (Note, the first two of these are some of the exceptions to Simon's assertion that entirely domestic communications require probable cause).

How does someone looking to "level[] the playing field between concentrated privilege and the rest of us" defend a program that secretly treats corporate property as human life?

Ultimately, though, Nayman seems most worried about empowering the dwindling TeaParty movement.

> So, let's be very careful about doing the Tea Party's dirty work by running to the defense of every leaker with the inclination and means to poke a stick in the government's eye.

This displays another misunderstanding about who on the right really opposes these programs. While Rand Paul has — as he did earlier with the drone program — offered clown show legislation to play off worries about these programs, Justin Amash is the TeaParty figure most legitimately

active in countering these programs (and he has been disempowered by his own party). Amash is joined in his efforts by progressive stalwarts like Barbara Lee and Zoe Lofgren, along with a fascinating mix of others, including paleocons. In the Senate, Mike Lee has been the most effective quiet champion of efforts to bring more oversight to the program, but he has been joined by Lisa Murkowksi and Dean Heller. And often not Rand Paul.

Meanwhile, Nayman is joined in his position attacking Edward Snowden by TeaParty Caucus Chair Michele Bachmann.

One of the biggest problems with blindly trusting the government on these programs is that they've secretly breached First Amendment Freedom of Association for some, including Iranian-Americans, those who encrypt their email, and those who might threaten corporate property. Without unfettered Freedom of Association, the power of labor unions and all others fighting for the rights of working men and women is at risk.

Nayman may be comfortable with that risk so long as we have a Democratic president (though teachers unions are one of the labor groups that should not be). But one President's labor organizer may be the next President's terrorist. And with this dragnet infrastructure in place, it will be far too late at that point to reverse this power grab.