



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 5, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable John D. Rockefeller IV
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Silvestre Reyes
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen:

On August 5, 2007, the President signed the Protect America Act of 2007 ("Act"), which amended the Foreign Intelligence Surveillance Act of 1978 (FISA). The Act moves FISA toward its original focus and provides critical new authority to conduct surveillance on foreign intelligence targets located overseas with more of the speed and agility necessary to safeguard the American people. We are grateful to Congress for identifying and remedying the vulnerability caused by the outdated FISA statute.

The Department of Justice is committed to ensuring that any use of the new authority is consistent with the Act and with the protection of the privacy and civil liberties of Americans. Use of this authority will be subject to rigorous oversight by any intelligence agency that uses it, by the Department, and by the Office of the Director of National Intelligence (ODNI). In addition, the Department will inform Congress of acquisitions authorized by the Attorney General and the Director of National Intelligence and of the reviews it conducts to assess compliance by the implementing agencies.

The implementation and use of this new authority will be subject to the following oversight measures:

- Regular reviews by the internal compliance office of any agency that exercises authority given it under section 105B of FISA;

- An audit/review by the Department and ODNI, within fourteen days of the initiation of collection under this new authority, of an agency's use of the authority to assess compliance with the Act, including with the procedures by which the agency determines that the acquisition of foreign intelligence information concerns persons reasonably believed to be located outside the United States and with the applicable minimization procedures;
- Subsequent audit/reviews by the Department and ODNI at least once every thirty days;
- An agency using this authority will be under an ongoing obligation to report promptly to the Department and to ODNI incidents of noncompliance by its personnel.

The Department's compliance audits/reviews will be conducted by attorneys of the Department's National Security Division with experience in undertaking reviews of the use of FISA and other national security authorities, in consultation with the Department's Privacy and Civil Liberties Office, as appropriate, and ODNI's Civil Liberties Protection Officer.

The Department also appreciates the need for regular and meaningful reporting to Congress, so that Congress can fully understand our use of this surveillance authority as it considers its reauthorization. Accordingly, the Department will make itself available to brief and report to the committees listed below and their staff in the following ways:

- The Act requires the Attorney General to report on acquisitions under section 105B on a semiannual basis to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary of the Senate and of the House of Representatives. This report must include incidents of noncompliance with the procedures used to determine whether a person is reasonably believed to be located outside the United States, noncompliance by a recipient of a directive, and the number of certifications issued during the reporting period.
- In addition to fulfilling these statutory requirements, Department representatives will be available to brief these committees after completing the first compliance review and after each subsequent review. At these briefings, Department representatives will report on the results of the compliance review, as well as incidents of noncompliance reported to it by an implementing agency. Such briefings will also include a discussion of what remedial efforts have been or will be undertaken in light of the findings of these reviews. The Department will make available to the committees any written reports of these reviews.

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- Department representatives will be available to brief the committees on a monthly basis to update them on the results of further compliance reviews and generally on our use of the authority under section 105B.
- Because of the exceptional importance of making the new authority permanent and of enacting the remainder of the Administration's proposal to modernize FISA, the Department will make appropriately redacted documents (accommodating the Intelligence Community's need to protect critical intelligence sources and methods) concerning implementation of this new authority available, not only to the Intelligence committees, but also to members of the Judiciary committees and to their staff with the necessary clearances.

The Department is committed to working with the Congress to ensure that the authority granted by the Act is used to safeguard the nation's security in a manner consistent with the privacy and civil liberty interests of Americans. Please do not hesitate to contact this office if we may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Benczkowski". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Arlen Specter
The Honorable Christopher S. Bond
The Honorable Lamar S. Smith
The Honorable Peter Hoekstra