

THE EXPIRATION OF THE PAA WILL NOT HARM U.S. NATIONAL SECURITY

When the Protect America Act (PAA) expires in February, the Intelligence Community will NOT “go dark” as some in the Administration have suggested.

- The authority under the PAA allows the Administration to conduct surveillance here in the United States of any foreign target. These orders may cover every terrorist group without limitation.
- Unlike last summer, there is no backlog of cases to slow down getting surveillance approvals from the FISA court.

“We’re caught up to all of it now.”

- Mike McConnell, Director of National Intelligence, 2/7/08

- The authorizations issued under the PAA are in effect for up to one full year. This means that all of the surveillance in effect today will *remain* in effect for at least six more months.

“Kenneth L. Wainstein, assistant attorney general for national security, said in an interview that if the August bill was allowed to expire in 10 days, intelligence officials would still be able to continue eavesdropping on already approved targets for another year under the law.”

- NY Times, 1/23/08

- In the event that a new phone number or email address is identified, the NSA can add it to the existing orders, and surveillance can begin immediately.

Even if a new terrorist group is identified, the Administration has very broad surveillance authorities beyond the PAA.

- The Intelligence Community, including the NSA and the FBI, can use its authority under Executive Order 12,333 to conduct surveillance abroad of any known or suspected terrorist. This surveillance can begin immediately. There is no requirement for a warrant. There is no requirement for probable cause. Most of NSA’s collection occurs under this authority.
- The NSA or FBI can also use the robust authorities under the Foreign Intelligence Surveillance Act (FISA) for any other surveillance needs.
 - In an emergency, NSA or the FBI may begin surveillance immediately – without a court order. They need only go to the FISA Court within three days after surveillance begins.

“It can happen extremely quickly. We have done it in a very short time, minutes sometimes.”

- James Baker, former Counsel to the Justice Department’s Office of Intelligence Policy and Review under President George W. Bush, 9/18/07

- The FISA Court can approve surveillance orders very quickly, and it has approved nearly every application for a warrant from the Department of Justice over the past 30 years.

Even after the expiration of the PAA on February 16, the Intelligence Community will still be able to collect all the intelligence it needs to keep the country safe.