

THE WHITE HOUSE

Office of the Press Secretary

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STATEMENT BY THE PRESS SECRETARY

Democratic leaders said today that if the Protect America Act expires, there will be no impact on our intelligence gathering capabilities, and no cost to our national security. They are wrong.

Although PAA authorizations permitting *current* intelligence activities will not immediately expire with expiration of the Act, Senator Reid is wrong and irresponsibly misleading to say that we will be just as safe if the PAA expires as we are with the PAA in effect. The House's willingness to permit the PAA to expire without passing the bipartisan Senate bill will harm our ability to conduct surveillance to detect new threats to our security, including the locations, intentions, and capabilities of terrorists and other foreign intelligence targets abroad. The Attorney General and the Director of National Intelligence would be stripped of the power to authorize new certifications against foreign intelligence targets, including international terrorists, abroad. And they could be stripped of their power to compel the assistance of a private company not already helping us. This means that surveilling new terrorist threats will require the Intelligence Community to go back to the old pre-PAA process of seeking court approvals that created the dangerous intelligence gap that we temporarily closed with passage of the PAA last August. The Intelligence Community will be stuck with the authorities it currently has and would be hampered in its ability to protect us from new terrorist threats that emerge. This risks creating new intelligence gaps, which damages our national security and makes no sense if the first priority is making sure our citizens are safe.

The House's failure to act will also raise risks with respect to current intelligence activities. This is because the PAA provides liability protection for our private sector partners assisting in current activities,

but those partners are likely to raise questions about whether the liability protection they currently enjoy expires with the PAA. Similar questions could arise regarding whether the PAA's provisions authorizing courts to compel cooperation by the private sector also expire with the Act. At a minimum, the private sector would become less willing to help our efforts to defend the country because of this uncertainty; at worst, they would cease helping us at all. And if we don't have their cooperation, we don't have a program.

The terrorist threats to our nation are very real and grave, and inaction by the House in the face of these risks is unacceptable.

Democrat leaders know that if they put the Senate bill on the House floor today, it would pass with bipartisan support. Make no mistake - letting the PAA expire without replacing it with the bipartisan Senate bill results in greater risk to our national security, and it is irresponsible and false for Democrats to suggest otherwise.

Democratic Assertions:

Statement: After Republicans refused to work with Democrats to extend the Protect America Act for 21 days, House and Senate leaders are continuing to work to craft legislation that modernizes FISA and protects America and Americans' civil liberties.

- o The House has failed to meet its own deadline on the Protect America Act.
- o It had six months to achieve long-term FISA modernization legislation under the Protect America Act.
- o When it said it needed 15 more days to act, the President agreed to that extension.
- o The House leadership should bring the Senate bill to the floor and hold a simple up or down vote.

Statement: In the interim, it is important to note that the intelligence community will still have all the tools it needs to continue current surveillance and begin new surveillance on any terrorist threat.

- o As the Director of National Intelligence (DNI) and the Attorney General (AG) explained in their letter to Senator Reid on February 5, 2008, if Congress lets the Protect America Act expire, the Intelligence Community's ability to obtain vital foreign intelligence information, including the location, intentions, and capabilities of terrorists and other foreign intelligence targets abroad, will be weakened.
- The Attorney General (AG) and the Director of National Intelligence (DNI) would be stripped of the power to authorize new certifications against foreign intelligence targets abroad.
- They would be unable to issue directives to compel the assistance of private entities not assisting the Government now but whose assistance may be needed in the future to collect this foreign intelligence information about terrorists and other threats.
- Thus, if a new target fell outside the scope of an existing certification or directive, like before the Protect America Act, the Government would be forced to go to the FISA court to obtain prior court authorization for new collection to acquire the communications of terrorists and other foreign intelligence threats abroad.

Statement: The intelligence community has expansive authorizations for wide ranging surveillance that will still be in effect for at least another six months. If any new surveillance needs to begin, the FISA court can approve a request within minutes. In the case of an emergency, surveillance can begin immediately and FISA approval can be obtained later.

- o Any details of what authorizations are in place under the Protect America Act are classified.
- o Reverting to the outdated FISA statute risks our national security.

- FISA's outdated provisions created the dangerous intelligence gaps in the first place and that's why Congress passed the Protect America Act.
- o The length of time it takes the FISA Court to approve an application is irrelevant.
 - FISA applications are lengthy, detailed documents that typically require hours of preparation.
- o Going back to the regular FISA process for this type of surveillance returns us to a situation in which foreign terrorists overseas receive constitutional protections in American courts.
 - To obtain a traditional FISA Court order, the Government must establish probable cause that the foreign target is a "foreign power" or an "agent of a foreign power," as defined those terms are defined in FISA.
 - o This requires compiling detailed facts necessary to establish that showing and this can result in dangerous delays.
 - o And this results in foreign terrorists overseas receiving the quasi-constitutional protections of American courts before we can surveil them.
 - o Emergency authorizations under FISA also require probable cause and can create the same delays.
- o It makes no sense to give foreign terrorists the protections of American courts and reverting back to this situation prevents us from gathering the foreign intelligence we need to protect America.

Statement: "The House already passed a carefully crafted bill - in November 2007 - that will modernize FISA, give the intelligence community the tools it needs to track terrorists and protect the constitutional rights of innocent Americans. Our efforts to bridge the gap between the Senate, White House and the House and pass this legislation are ongoing."

- o Unlike the Senate bill, the House bill was not coordinated with our intelligence professionals and it is does not give our intelligence agencies the tools they need to protect the Nation.
- o The House has known since November 15th that the House bill is not one the President can sign and that the Senate bill was one that could lead to an acceptable law.
 - As we explained in our November Statement of Administration Policy, the House bill "falls far short of providing the Intelligence Community with the tools it needs" to collect effectively the foreign intelligence information vital for the security of the Nation and the Director of National Intelligence and the President's other senior advisers would recommend that the President veto that bill.
- o Even though it has known for three months that its bill was unacceptable, the House has failed to take the necessary steps to achieve FISA legislation before the deadline it set to act.
- o The balanced and bipartisan Senate bill gives the Intelligence Community the tools it needs to protect the Nation and protects the civil liberties of Americans.
- o That's why it passed the Senate on a bipartisan, 68-29 vote, and the House should act quickly on that legislation.

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