

Bush administration seeking to expand spying powers

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16 April 2007

The Bush administration has requested Congress to pass amendments to the 1978 Foreign Intelligence Surveillance Act that will expand the powers of the government to spy on the population in and outside the United States.

The proposals are part of an effort to roll back provisions in the 1978 act that the Bush administration considers too restrictive. FISA was established after revelations of massive politically-motivated domestic spying. It places restrictions on spying against US citizens and other residents, requiring that the government seek warrants through the FISA court. Since 2001, the government has routinely violated these restrictions, in particular through a program of massive warrantless domestic wiretapping overseen by the National Security Agency.

The new Director of National Intelligence, John McConnell, who replaced John Negroponte in February, set the tone for the proposed changes in FISA in an April 4 speech. “The laws that we had coming out of Vietnam, Watergate, Church-Pike hearings of the ’70s served us well,” he said. “But it also set up barriers and cultures and processes that did not make us well suited to combat a new ‘ism,’ in this case terrorism.”

In other words, these minimal barriers to spying must be torn down, using the “war on terror” as a pretext.

There are several components to the government’s proposed changes to the FISA Act. Under current law, the FISA court grants the government warrants to spy on individuals who the government claims are part of foreign intelligence or terrorism investigations. The proposed amendments would change this to allow warrants for surveillance of any non-citizens in the US “reasonably expected to possess, control, transmit, or receive foreign intelligence information while such a

person is in the United States” as well as anyone who is suspected of activities related to purchasing or developing weapons of mass destruction.

Another change would expand the definition of “electronic surveillance” to bring more types of communications under the domain of the act. The act would be “technologically neutral,” according to the administration, and allow spying on all communications originating from a particular individual.

Significantly, the proposed legislation would allow the government to keep and use information obtained “unintentionally” as part of surveillance, but unrelated to what was authorized by the court, if it contains “significant foreign intelligence.” Such a provision would have the effect of vastly expanding government powers to spy on anyone without a warrant, so long as the spying is done “unintentionally” as part of some other investigation.

The proposed changes would shield telecommunications companies from lawsuits that arise from their cooperation with the government in handing over phone records and emails to the government. According to a summary of the changes issued by the administration, “Companies that cooperate with the Government in the war on terror deserve our appreciation and protection—not litigation. This provision would protect providers from liability based upon allegations that they assisted the government in connection with alleged classified communications intelligence activities.”

This section of the amendments would apply retroactively to September 11, 2001, meaning that the several lawsuits that have been filed against AT&T and other telecommunications companies for violating the privacy of their customers would have to be thrown

out. In particular, as part of the NSA warrantless domestic spying program, telecommunications companies have established close ties with the government, handing over massive databases of communications.

Other changes include extending to one week, from 72 hours, the period in which the Justice Department can conduct surveillance on its own authority, prior to requesting a warrant from the FISA court. The amendments would also significantly reduce the amount of material that the government is required to give to the FISA court to justify a warrant.

Warrants for electronic surveillance of a non-US person who is an agent of a foreign power would be extended from 120 days to one year. The government's summary indicates the purpose of this change, stating, "This change will reduce time spent preparing applications for renewals relating to non-US persons thereby allowing more resources to be devoted to cases involving US persons."

Finally, the changes would also expand the powers of the Attorney General to order spying without a court warrant to obtain "technical intelligence, other than the spoken communications of individuals, from property or premises under the control of a foreign power."

In addition to these proposed changes to FISA, the Bush administration has also declared its intention to veto the Senate version of an intelligence authorization bill, on the grounds that it places undue restrictions on the executive branch.

In a Statement of Administration Policy released April 12, the Director of National Intelligence and the Justice Department object to a requirement that the government provide Congress with more information on spying, detention and interrogation practices. "In addition to raising grave constitutional issues, such matters are appropriately left to sensitive handling in the normal course between the intelligence committees and the executive branch and should not be the subject of detailed statutory reporting requirements," the statement says.

These steps by the Bush administration indicate that it is on a renewed offensive to roll back democratic rights and expand government powers to spy on the population. This comes only months after revelations of massive illegal spying by the FBI through the improper use of National Security Letters.

The administration has committed numerous impeachable offenses through the violation of existing law, including the FISA Act, and Constitutional protections against unreasonable searches and seizures. And yet it faces no serious opposition within the political establishment.

It is not certain that the administration will get all of the changes it wants passed by Congress, but its ability to demand an expansion of government powers is a reflection of the complicity of the Democratic Party in the assault on democratic rights in the United States. As has happened repeatedly in the past, the two big business parties will come to an agreement that further erodes democratic rights in the US.



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