

Congress authorizes vast expansion of domestic spying

Kate Randall
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The House of Representatives approved legislation Saturday that provides sweeping new powers to the government to spy on the American population. The 227-183 vote in the Democratic-controlled House capped a weeklong campaign by the Bush administration to push through changes in laws governing wiretapping surveillance, in which Bush officials branded any legislators opposed to the revisions as “soft on terror.”

The Democrats’ surrender to White House demands to pass the legislation was extraordinary even by their standard of repeated capitulation. Despite popular feeling that the Bush administration has engineered a war based on lies, and despite countless exposures of lawless and criminal government behavior—torture, CIA “renditions” and secret prisons, illegal spying, the concentration camp at Guantánamo Bay—the Democrats provided the votes required to pass legislation that tramples on Fourth Amendment constitutional protections against unreasonable searches and seizures.

For months, the Bush administration has been lobbying for proposed changes to essentially gut Foreign Intelligence Surveillance Act (FISA) court oversight of its domestic spying operations. The new legislation grants the government the authority to intercept, without a court order, international phone calls or emails between a surveillance target outside the United States and any person in the US.

Under the Bush plan, the attorney general—and not the FISA court—would have the authority to order the interception of communications for up to a year, as long as he determines that there is a “reasonable belief” that surveillance is directed at someone outside the US.

The US government has always reserved the right to carry out spying on anyone who lives outside the borders of this country, but agencies like the NSA and CIA have been banned, at least officially, from spying domestically. Domestic spying is the preserve of the FBI and other police agencies, and supposedly only conducted on the basis of a warrant approved by an independent judicial body.

The Bush administration essentially wants to scrap this distinction, and it has seized on a peculiarity of new communications technologies to provide the pretext. Modern cellphone and email communications may well pass through network servers and switches located in the United States, even when both parties to the communication are outside the country.

The Bush administration claims that the FISA court has restricted its surveillance efforts by forbidding wiretapping when a suspected foreign terrorist is communicating by cell phone or email with another foreign suspect and that communication makes a connection through a US location, on the grounds that the US connection makes the communication domestic and not international. Considering the Bush

administration’s track record of lying about secret surveillance and much else, there is no reason to believe its story of judicial obstruction, which seems to have been concocted for the purpose of stampeding through the legislation.

The conduct of the administration since it began raising the issue of a revision of FISA rules several months ago strongly suggests that its real goal is to leverage the technical issue to legitimize widespread spying on US citizens. It is essentially arguing that since technology has largely blurred the difference between “domestic” and “international” communications, the old restraints on the operations of the NSA should be scrapped.

Congressional Democrats offered to enact a bill that would exempt foreign-to-foreign calls from FISA scrutiny, regardless of whether these calls passed through US networks. But the Bush administration rejected this, demanding instead a provision that permits warrantless wiretapping of any call in which at least one party is “believed to be” located outside the United States. This would greatly expand the data collection by including millions of phone calls and emails originating or terminating at US locations—and both ends of the communications, domestic as well as foreign, would be monitored.

In a press release criticizing the Bush plan, the American Civil Liberties Union charged that the legislation would “allow mass collection of Americans’ communications” and would have the potential to “permit the vast amount of data to be subsequently data-mined.”

In its high-pressure campaign for the legislation, the White House rejected all efforts by the congressional Democrats to enact a slightly watered-down version, demanding acceptance of the administration version down to the last detail. In the end, enough Democrats joined a near-unanimous Republican caucus to approve a bill that breaches constitutional protections against government spying on US citizens.

The only concession made by Bush officials was a provision that allows the legislation to be reconsidered in six months. Senator Russ Feingold, a Wisconsin Democrat, referring to this provision, said, “We just can’t suspend the Constitution for six months.” But there was no effort by Senate Democrats to filibuster a law which in effect does just that.

The Senate passed the bill on Friday evening by a 60-28 margin. Democrats in the House failed to win the necessary two-thirds majority later that night for a proposal that would have provided limited judicial oversight of domestic spying operations.

That day, President Bush threatened that he would order Congress to remain in session and not break for its August recess if the legislation were not approved. Speaking from FBI headquarters where he was meeting with Department of Homeland Security officials, Bush said,

“So far the Democrats in Congress have not drafted a bill I can sign ... we are not going to put our national security at risk. Time is short.”

The implication was that a terrorist attack was imminent and failure to pass the bill would expose the US to attack before Congress reconvened in September after the break. The Democrats, who have consistently provided the votes to push through police-state measures authored by the Bush administration, once again surrendered to the terror threat scenario promoted by the White House.

Democrats described the pressure campaign mounted by the Bush administration to which they ultimately capitulated. New York Rep. Jerrold Nadler said legislators were “stampeded by fearmongering and deception” into voting for the bill. Another Democrat, speaking on condition of anonymity to the *Washington Post*, said, “It was tantamount to being railroaded.”

The last stage of this campaign was signaled in an appearance on Fox News on Tuesday by House Minority Leader John Boehner, who claimed that an unnamed FISA judge had issued a ruling that the government had overstepped its authority in its broad surveillance of communications between two locations overseas that passed through routing stations in the US. The judge’s ruling, the Bush administration claimed, had the potential of making illegal the entire NSA spying operation that has been in existence since the 9/11 terrorist attacks or before.

President Bush acknowledged the existence of the NSA spying operation following its exposure in an article in the *New York Times* in December 2005. While defending the program, the administration has never revealed the full extent of its domestic spying operations, of which the NSA program is only a part. Under the new legislation, the government is not required to reveal what information has been gathered by the NSA spying operation in its nearly six years of operation.

The Foreign Intelligence Surveillance Act was passed in 1978 in a reaction to revelations of widespread violations of civil liberties and government spying against domestic political opponents. FISA set out procedures for the physical and electronic surveillance and collection of “foreign intelligence information” between or among “foreign powers.” FISA was amended in 2001 by the USA Patriot Act to include terrorism on behalf of groups that are not specifically backed by a foreign government.

On Wednesday, Congressional Democrats outlined a plan that would have temporarily permitted FISA to authorize broad orders approving eavesdropping on communications involving suspects outside the United States and others within the US.

Under the proposal by Senate Intelligence Committee Chairman Jay Rockefeller (Democrat, West Virginia), the secret court would not have authorized specific individual spying, but would have required the administration to seek approval from the FISA court for blanket authorization targeting foreign suspected terrorists—and not a specific phone call or email—if they could make a case that the surveillance was likely to net primarily foreign communications.

On Thursday, House Democratic leaders reached what they believed was a compromise deal on the legislation with Director of Nation Intelligence Mike McConnell. But the Democratic versions of the legislation crafted in both the House and Senate were rejected by McConnell, who came back with the counterproposal on Friday.

The intelligence director said the administration would agree to a review by the FISA court for the domestic spying—but only 120 days after surveillance had already begun. Until that time, McConnell and Attorney General Alberto Gonzales would oversee and the

surveillance. Bush threatened to veto any bill that did not meet with McConnell’s approval.

McConnell’s role in pushing through the surveillance legislation represents an unprecedented intervention by the intelligence apparatus in a political dispute between Congress and the White House. McConnell essentially blackmailed Democrats with the threat that unless they passed it, they could be held to blame for a terrorist attack on the United States.

The Bush administration did not relent until the entire content of its proposal was accepted. As Democratic Congresswoman Jan Schakowsky of Illinois commented, “I think the White House didn’t want to take ‘yes’ for an answer from the Democrats.” In the end, sufficient numbers of Democrats succumbed to the intelligence director’s ultimatum, and passed the legislation exactly as prescribed by the White House.

The White House demanded that this process apply to the monitoring of all foreign targets, whether or not suspects end up communicating with another foreigner or someone in the US, and whether the individuals are suspected terrorists or have been targeted for some other undisclosed reason. McConnell demanded that the FISA statute be amended so that a court order would no longer be needed before wiretapping anyone “reasonably believed to be located outside the United States.”

The Democrats’ capitulation was the latest in its actions supporting the Bush administration’s “war on terror” throughout its two terms in office. They have provided the key votes to authorize the USA Patriot Act and the Military Commissions Act of 2006 and enthusiastically supported the establishment of the Department of Homeland Security.

Democrats on the Senate Intelligence Committee gave their support in May 2006 to the nomination of General Michael Hayden, the principal architect of the NSA spying program, to head the Central Intelligence Agency, paving the way for his confirmation by the Democratic-controlled Senate.



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