Democrats reach agreement with Bush administration on domestic spying bill

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The Bush White House has reportedly reached an agreement with key Democratic leaders in the US Senate on a bill that will authorize the administration's warrantless domestic wiretapping program for a period of six years, while granting immunity to corporations that have handed over customer data to the government.

A parallel bill in the House of Representatives, which did not include the immunity provision and contained a few additional restrictions, was pulled by Democrats on Wednesday after it ran into opposition from House Republicans and the administration. These developments make more likely the final passage of a bill that will codify the unconstitutional and antidemocratic spying programs run by the National Security Agency (NSA).

The various proposals in Congress are intended to take the place of legislation passed in August and set to expire in February. That law, passed by a Democratic-controlled Congress, amends the 1978 Foreign Intelligence Surveillance Act, which requires warrants for spying on communications involving US citizens. The new law granted the administration everything it wanted, including sweeping warrantless spying powers that shred the Constitution's Fourth Amendment protection against unreasonable searches and seizures.

The reported compromise was reached after negotiations between the White House and leaders of both parties on the Senate intelligence committee, including the committee's Democratic chairman, John Rockefeller. Details have not yet been released, but the compromise reportedly has the support of Bush's director of national intelligence, Michael McConnell.

The compromise must still clear the intelligence committee and the judiciary committee before a vote in the full Senate. Several Senators on the judiciary and intelligence committees, including judiciary committee chairman Patrick Leahy, indicated that they might oppose the compromise.

According to the *Washington Post*, which first reported the agreement on Thursday, the compromise includes "full immunity for those companies that can demonstrate to a court that they acted pursuant to a legal directive in helping the government with surveillance in the United States." The immunity would evidently apply to participation in the NSA program as well as programs run by other government agencies, including the FBI.

"Such a demonstration," the *Post* reports, "which the bill says could be made in secret, would wipe out a series of pending lawsuits alleging violations of the privacy rights by telecommunications companies that provided telephone records, summaries of e-mail traffic and other information to the government after Sept. 11, 2001, without receiving court warrants."

The administration has insisted on immunity for the corporate enablers of its illegal actions. This is intended not only to protect the companies—including such major telecommunication firms as AT&T and Verizon—but also throw out lawsuits that threaten to reveal aspects of the spying programs. Bush had said he would veto the House version, in large part because it did not include the immunity provision.

There are some 50 lawsuits currently pending against telecommunications companies for violating the civil liberties of their customers. The administration has so far sought to block these suits by arguing that allowing them to proceed would reveal "state secrets."

The six-year sunset provision is evidently a concession to Democrats, as Bush had previously called for the changes to be made permanent. According to the *Post*, the compromise contains an additional token measure requiring a secret FISA court to "review the government's procedures for deciding who is to be the subject of warrantless surveillance."

While other parts of the measure are unclear, the bill passed in the summer included a provision that allowed for the warrantless spying on US citizens so long as they are in communication with individuals "reasonably believed to be located outside the United States." Given the fact that the White House supports the compromise in the Senate, it is likely that it contains similarly sweeping language.

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The compromise confirms that the law passed in August reflected a bipartisan consensus for a massive attack on democratic rights. The main concern of the Democratic Party has been the creation of some pseudo-legal framework through which the NSA programs can be conducted. The administration's position has been that the president has no need for a legal framework because warrantless spying is part of his commander-in-chief powers in the "war on terrorism."

The scuttling of the House bill, on the other hand, highlighted the cringing attitude of the Democrats in the face of fear-mongering from the White House and the Republican Party. The House version was withdrawn by the Democratic Party leadership after the Republicans introduced a motion with language declaring that nothing in the bill would restrict surveillance of Osama bin Laden, Al Qaeda or "other foreign terrorist organizations."

Because of the procedural rules in the House, approval of the motion would have sent the bill back into committee, delaying it for a considerable period of time. Democratic lawmakers, perpetually afraid of charges that they are "soft on terror," were reluctant to oppose the Republican-sponsored motion. The leadership decided to pull the bill rather than letting the motion come to a vote.

It is now accepted by the entire political establishment that some changes to the FISA act are necessary in order to expand executive powers. At the same time, the Democrats, despite controlling both houses of Congress and despite the massive unpopularity of the Bush administration, have been unable to impose even the most minor restrictions on the White House.

As part of the Senate compromise, the *Post* reported that the White House turned over to the intelligence committee some unspecified documents relating to the warrantless spying program. The legal arguments for these programs, and the extent to which the government has gathered information on the American people, have never been revealed. So far there is no indication that Democrats on the intelligence committee will release the documents to the public.

The importance of the immunity provision for the administration has been underscored by recently released documents relating to the case of former Qwest CEO Joseph Nacchio. As part of proceedings in an insider trading trial, Nacchio has argued that the administration retaliated against his company for refusing to comply with government requests for data that began in February 2001, months before the September 11 attacks.

The concern of the administration is that if trials are allowed to proceed against the companies that have complied with government requests, they could also reveal that the programs were much more expansive—and began much earlier—than has been acknowledged. One lawsuit that is currently part of a consolidated case in the federal district court in San Francisco argues that AT&T began constructing a facility for the NSA a few days after Bush assumed the presidency in early 2001.

Several other developments in recent weeks point to the vast scope of the attack on democratic rights. In an October 12 letter to Democratic congressmen, Verizon reported that since 2005 it had complied with 720 emergency requests from federal agencies for information without a court order. It had responded to about 63,000 emergency requests from state and local officials.

In its letter, Verizon also confirmed previous reports that federal agencies had requested "community of interest" data—information not only on a particular target, but on that target's contacts and the contacts of those contacts. Verizon said that it did not keep such information so could not turn it over.

Verizon prefaced its letter by saying that it "necessarily excludes any information, discussion, reference to or representations concerning its cooperation, if any, with classified intelligence gathering activities." Thus its collaboration with the government is likely far more extensive than the letter acknowledges.

Last week, the American Civil Liberties Union reported that newly uncovered documents confirm previous reports that the military has used "national security letters" to request information on US citizens without a warrant. According to the documents, the military has employed this power—used primarily by the FBI—to obtain records on 455 occasions.

Under these conditions, the Democrats are moving swiftly to confirm Michael Mukasey, the administration's choice to replace outgoing attorney general Alberto Gonzales. In testimony before Congress this week, Mukasey refused to comment on the NSA spying program but said he thought warrantless domestic spying is constitutional. He also refused to say that waterboarding—a particularly odious form of torture that has been employed by the US government—is unconstitutional.

Mukasey has the strong support of several prominent Democrats and is almost certain to be easily confirmed by the Senate.

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