

Obama administration to seek extension of Patriot Act spy powers

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In a letter from the Justice Department to the Senate Judiciary Committee, the Obama administration has gone on record for the first time supporting the extension of key provisions of the USA Patriot Act, including the notorious provision that gives the federal government the power to subpoena library records of any individual.

Several provisions of the Patriot Act, legislation adopted in the immediate aftermath of the 9/11 attacks that grants sweeping surveillance powers to US intelligence agencies, are scheduled to expire December 31, unless renewed by Congress. The House and Senate judiciary committees have scheduled hearings next week on the proposed reauthorizations.

In a letter to Senator Patrick Leahy of Vermont, chairman of the Senate panel, sent Monday and reported in the press Wednesday, Assistant Attorney General Ronald Weich argues for reauthorization of three expiring sections of the Patriot Act:

- Section 206, which provides for roving surveillance of targets who take evasive measures like using throw-away cell phones. In such cases, US intelligence agencies can monitor any telecommunications device that might be used by the suspect, without being compelled to specify the number in advance or get a warrant.

- Section 215, dubbed by civil liberties groups the “library provision,” which allows federal agents to obtain business, medical, library and other records simply by presenting a written demand, called a national security letter, to the organization maintaining the records. This provision has been used 220 times over the past eight years, Justice Department officials said, but it is not clear whether a single letter to a large corporation, like AT&T or Verizon, could be used to make repeated demands for

information. The national security letters must be approved by a secret Foreign Intelligence Surveillance Court, which almost never rejects such surveillance requests.

- The third section has been nickname the “Lone Wolf” provision, since it authorizes intelligence gathering against any non-citizen, regardless of whether the individual is suspected of being linked to a foreign government or terrorist organization. The Obama administration claims that the provision has never been actually used, but that the power needs to be held in reserve in case of need.

Assistant Attorney General Weich claims in his letter to Leahy that the roving wiretap provision has been used only 20 times. But last March, in testimony before Congress, FBI Director Robert S. Mueller said that his agency alone had used roving wiretaps in terrorism investigations a total of 147 times since 2001.

The discrepancy only underscores the lack of credibility of all declarations from the spy agencies about their secret surveillance tactics. In practice, the US intelligence apparatus (as well as the Pentagon) conduct their operations without any oversight or accountability, with the complicity of their supposed watchdogs in the congressional intelligence committees.

Section 215 is the most expansive of the three sections, since it allows the FBI and other agencies to demand electronic records of any business, as well as “any tangible things” like bank and credit card statements, as well as medical and mental health records, on any individual.

The Obama administration letter explicitly defends the

record of the Bush administration in exercising surveillance powers under Section 215. Weich writes:

“At the time of the USA PATRIOT Act, there was concern that the FBI would exploit the broad scope of the business records authority to collect sensitive personal information on constitutionally protected activities, such as the use of public libraries. This simply has not occurred, even in the environment of heightened terrorist threat activity.”

The assistant attorney general then argues that the good behavior of the Bush administration justifies an extension of the “library” provision:

“Based upon this operational experience, we believe that the FISA business records authority should be reauthorized. There will continue to be instances in which FBI investigators need to obtain transactional information that does not fall within the scope of authorities relating to national security letters and are operating in an environment that precludes the use of less secure criminal authorities.”

The reaction of congressional Democrats to the proposed extension of Patriot Act powers has been overwhelmingly favorable. In a statement issued Wednesday, Senate Judiciary Chairman Leahy said, “I am pleased that the Justice Department has signaled its willingness to work with Congress in addressing the expiring provisions of the USA PATRIOT Act. It is important that Congress and the executive branch work together to ensure that we protect both our national security and our civil liberties.”

Senate Majority Whip Richard Durbin of Illinois and liberal Senator Russell Feingold of Wisconsin issued a joint statement favorably contrasting the Obama administration’s willingness to consult with Congress to the Bush administration’s simple assertion of executive powers. The two Democrats are introducing a bill to provide a fig leaf for the reauthorization of the Patriot Act by supposedly tightening the legal standard for obtaining national security letters, including requiring the government to show some “nexus” to terrorism. The two introduced similar legislation previously, with the support of then-Senator Barack Obama.

The Durbin-Feingold bill would repeal the legal

immunity given to telecommunications companies that collaborated with illegal government spying. Obama voted last year in favor of the legislation that granted the telecoms immunity, and his administration strongly opposes any repeal.

The American Civil Liberties Union took essentially the same position as the Senate liberals, calling the administration position on Patriot Act reauthorization “a mixed bag,” while hailing its willingness to work with Congress as “definitely a sea change from what we’ve seen in the past.”

On the same day as the Justice Department letter on the Patriot Act, the Obama administration filed an 85-page legal document with the US Circuit Court of Appeals for the District of Columbia arguing that prisoners at the US-run prison at Bagram, near Kabul, Afghanistan, should not have access to US courts. A lower federal court ruled that prisoners seized in other countries and taken to Afghanistan by the US government can challenge their detention in US courts through habeas corpus, like the prisoners at Guantánamo Bay.

While Obama has publicly vowed to close Guantánamo Bay by next January, only a handful of the nearly 250 prisoners have been moved to other facilities or released, and the CIA and military are building up Bagram as an even larger facility for interrogation and imprisonment without trial. There are an estimated 600 detainees now at Bagram, an unknown number of them non-Afghans brought into the country on CIA and military planes.



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