US Congress moves to legalize unconstitutional surveillance programs

Eric London
22 November 2013

In the wake of damning revelations about the Obama administration's illegal surveillance operations, Democrats and Republicans in Congress are moving forward competing bills that would both secure the indefinite use of the spying programs.

The proposal with the widest Congressional support, a bill sponsored by California Democratic Sen. Dianne Feinstein and Georgia Republican Sen. Saxby Chambliss, would entrench and expand many of the most sinister features of the National Security Agency (NSA) programs.

The bill would "legalize" backdoor warrantless content searches of government-collected metadata, authorize bulk record collection of phone and Internet data under Section 215 of the USA PATRIOT Act, allow for bulk data to be kept by the government for five years, and maintain non-adversarial, *ex-parte* judicial proceedings in the secret FISA [Foreign Intelligence Surveillance Act] Court [FISC].

Section 6 of the Feinstein-Chambliss bill states explicitly that the proposal "does not limit the authority of law enforcement agencies to conduct [content] queries of data acquired pursuant to Section 702 of FISA [the bulk-collection provision] for law enforcement purposes."

As Michelle Richardson of the ACLU noted, Section 6 ensures that "for the first time, the statute would explicitly allow the government to proactively search through the NSA data troves of information without a warrant."

In defense of the bill, Feinstein said that "the NSA call-records program is legal and subject to extensive congressional and judicial oversight, and I believe it contributes to our national security."

In a sweeping move, the bill would also permit the warrantless surveillance of foreigners entering the United States for a 72-hour period while the government seeks a court order to conduct further surveillance. In "emergency" circumstances, the bill would allow the executive branch to unilaterally certify continued surveillance without legal justification.

The Senate bill, titled the FISA Improvements Act, flew through the Senate Intelligence Committee by an 11 to four margin during a secret session held on October 31.

Leadership in the House of Representatives announced Wednesday that it had cancelled committee consideration of the House version of the Feinstein-Chambliss bill and instead sought to push the bill straight to a floor vote. This move is part of a bipartisan effort to crush debate and move the bill forward without amendment, while ensuring its swift passage before the winter recess.

The efforts by leading Democrats and Republicans to rapidly and secretly move forward the codification of the unconstitutional spying operations blow the lid off of claims that the Feinstein-Chambliss bill is aimed at expanding privacy protection.

Elizabeth Goitein, the co-director of the National Security Program at the Brennan Center for Justice, said that although "this bill is being presented as a way to narrow the NSA's authorities… at its core, the bill would legalize a program—bulk collection of Americans' telephone records—that is on shaky legal footing at best. In that sense, the bill not only preserves the NSA's powers, it enhances them."

Contrary to assertions made by Feinstein's office that her bill "increases privacy protections and public transparency," efforts to secure the bill's passage are motivated in large part by a desire to make permanent the spying programs in the face of deepening popular hostility.

© World Socialist Web Site

There is genuine fear and trepidation behind the government's efforts to strengthen the police-state apparatus. Feinstein hinted at this when she explained that she hoped her bill would "build public support for privacy protections in place," further noting that "there's huge [sic] misunderstanding about this NSA database program, and how vital I think it is to protecting this country."

The bill's history underscores the anti-democratic character of its proposed revisions. In recent weeks, the Senate Intelligence Committee has rejected any amendment proposal that would limit the scope of the NSA's surveillance capacities.

A provision to prevent the NSA from bulk collection of cell-site information showing where a caller is physically located when making or receiving a call was struck down by a seven to eight vote. An additional provision to cap the retention of telephone records in NSA databases at three years failed by the same vote margin, as did a third proposal that would have made public those FISA Court decisions where constitutional violations were found to have occurred.

The efforts to push through the Feinstein bill are in part driven by a desire to stifle alternate Congressional proposals for even mild changes to the NSA programs. A bill sponsored by Democratic Sen. Patrick Leahy (Vermont) and Republican Rep. James Sensenbrenner (Wisconsin) introduced last month has failed to receive any committee vote.

The Leahy-Sensenbrenner bill, which has received the backing of some Democrats as well as far-right libertarian Republicans, would entail the appointment of Special Advocates to participate in proceedings before the FISA Court, would mandate periodic audits of bulk collection programs and national security letters and would require a showing by the government that requests for content are "relevant and material" to a foreign intelligence investigation or to protect against the threat of terrorism.

Although this last standard is ostensibly more difficult for the government to reach than the "reasonable, articulable suspicion" standard currently in place and proposed by the Feinstein bill, its likely effect on Section 215 collection would be negligible.

An October 29 press release published by Sensenbrenner's congressional office noted that the USA PATRIOT Act, which the Wisconsin Republican authored, "helped keep Americans safe by ensuring information is shared among those responsible for defending our country and enhancing the tools the intelligence community needs to identify and track terrorists."

Noting that "somewhere along the way, the balance between security and privacy was lost," Sensenbrenner emphasized that his bill would more effectively minimize public opposition to the government's anti-democratic measures. "Washington must regain Americans' trust in their government," he said.

Though the Feinstein-Chambliss and Leahy-Sensenbrenner bills differ as to whether even cosmetic changes are needed to assuage public hostility, the two proposals share a desire to shore up and prolong the unconstitutional surveillance of hundreds of millions of Americans with minimal political repercussions.

By expanding and codifying the NSA programs, the American ruling elite is demonstrating that its response to deepening public opposition to its policies will be to strengthen the police-state apparatus. It is proving through its own actions that the purpose of the surveillance programs is not to protect "national security," but rather to monitor the activities and political proclivities of the population at large.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site