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Congress Set to Renew Patriot Act Spy Provisions

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As night follows day, you can count on Congress to serve as loyal servants and willing accomplices of our out-of-control National Security State.

Last week, in another shameless demonstration of congressional "bipartisanship," Senate Majority Leader Harry Reid (D-NV), Senate Minority leader Mitch McConnell (R-KY) and House Speaker John Boehner (R-OH) forged a filthy backroom deal that reauthorizes insidious surveillance provisions of the Patriot Act for an additional four years.

"Like clockwork," the **ACLU** reports, Reid and McConnell "introduced a bill, **S. 1038**, that will extend the provisions until June 1, 2015." As of this writing, the text of that measure has yet to be published.

And, like a faint echo from the past when the Patriot Act was signed into law nearly a decade ago in the wake of the 9/11 provocation and the anthrax attacks, the ACLU tells us that "the Senate begins its debate on Monday with votes possible that same night."

But why not forego a vote altogether. After all, with the White House "skipping a legal deadline to seek congressional authorization of the military action in Libya" under the War Powers Act, "few on the Hill are objecting," the ***Associated Press*** reports.

Why not extend congressional "courtesy" to the White House over demands that their illegal spying on Americans continue indefinitely "as long as consultations with Congress continue"?

Consensus by congressional Democrats and Republicans over extending the provisions, the ***World Socialist Web Site*** reports, "meets the demands of the Obama administration and the Justice Department for a 'clean' extension, that is, one that does not make any concessions to concerns over the infringement of civil liberties, particularly in relation to the authorization to seize the records of libraries and other institutions."

"The idea," the ***Associated Press*** informs us, "is to pass the extension *with as little debate as possible* to avoid a protracted and familiar argument over the expanded power the law gives to the government." (emphasis added)

While most of the surveillance powers handed the security apparat were permanent, three controversial provisions had expiration dates attached to the law due to the potential for serious civil rights abuses. Such suspicions were certainly warranted as dozens of reports by Congress and the Justice Department, media investigations and Freedom of Information Act and other lawsuits subsequently disclosed.

The provisions set for renewal include the following:

• The “roving wiretap” provision grants the FBI authority to obtain wiretaps from the secret Foreign Intelligence Surveillance Court (FISC) under color of the Foreign Intelligence Surveillance Act and its bastard stepchild, the FISA Amendments Act, which granted retroactive immunity to the government’s telecommunications’ partners. This section of the law allows the Bureau to spy on anyone of “interest” to the FBI during the course of a “national security” investigation, without identifying a specific target to be surveilled or which communication medium will be tapped. Anyone caught in the FBI’s surveillance dragnet can *themselves* come under scrutiny, even if they were not named in the original warrant. Insidiously, under the “roving wiretap” provision, even if a warrant is executed by a judge in one jurisdiction, it can be made valid anywhere in the United States, solely on the say-so of the FBI. Essentially, this amounts to the issuance of a blank warrant that further marginalizes the Fourth Amendment’s explicit requirement that warrants are only issued “particularly describing the place to be searched.”

• Section 215, the so-called “business records” provision, allows FISC warrants for virtually any type of record or “tangible thing:” banking and financial statements, credit card purchases, travel itineraries, cell phone bills, medical histories, you name it, without government snoops having to declare that the information they seek has any connection whatsoever to a terrorism, espionage or “national security” investigation. The government does not have to demonstrate “probable cause.” Government officials need only certify to a judge, without providing evidence or proof, that the search meets the statute’s overly-broad requirements and the court has been stripped of its authority to reject the state’s application. Surveillance orders under Section 215 can even be based on a person’s protected First Amendment activities: the books they read, web sites searched or articles they have published. In other words, exercising free speech under the Constitution can become the basis for examining personal records. Third parties served with such sweeping orders are prohibited from disclosing the search to anyone. In fact, with built-in gag orders forbidding disclosure subjects may never know they have be scrutinized by federal authorities, thereby undercutting their ability to challenge illegitimate searches.

• The “lone wolf” provision, a particularly onerous and intrusive investigative device allows the federal government to spy on individuals not connected to a terrorist organization but who may share ideological affinities with groups deemed suspect by the secret state. The definition of who may be a “lone wolf” is so vague that it greatly expands the category of individuals who may be monitored by the security apparat.

After Congress passed several earlier extensions, the three provisions were set to “sunset” on February 28, 2011. But with the Obama administration and the FBI insisting that no new civil liberties protections be added that would undercut their domestic spying powers, a 90-day temporary extension was approved earlier this year and is now set to expire on May 27.

This temporary extension followed an embarrassing loss in early February by the House Republican leadership who had failed to win a two-thirds majority passage of the proposal which barred amendments. In fact, 26 newly-elected Republican members, including those self-identified with the so-called “Tea Party” caucus, joined 122 Democrats in opposition and defeated the bill.

While Attorney General Eric Holder and Director of National Intelligence James Clapper have

urged Congress to extend the provisions, permanently if possible or for an extended period if not, because they allege short-term extensions have a deleterious effect on "counterterrorism investigations" and "increase the uncertainties borne by our intelligence and law enforcement agencies in carrying out their missions." Such mendacious claims however, are not borne out by the facts.

Indeed, the Department of Justice's own Office of the Inspector General's (**OIG**) 2008 report found that "[t]he evidence showed no instance where the information obtained from a Section 215 order described in the body of the report resulted in a major investigative development."

True enough as far as it goes, but such snooping provided an unprecedented view of the comings and goings of citizens now subjects of scattershot data-mining, dossier building and ginned-up federal prosecutions.

In fact, the **OIG** demonstrated conclusively that widespread abuses by the FBI in their issuance of constitution-shredding National Security Letters, handed out without probable cause and attached with built-in secret gag orders, have been used by the Bureau to target innocent Americans.

While Barack Obama promised to curtail the worst abuses of the previous administration when he assumed office in January 2009, the Justice Department **reported** there has been a huge increase in domestic spying during the first two years of his administration.

As ***Antifascist Calling*** reported earlier this month, according to figures supplied by the Justice Department "in 2010, the FBI made 24,287 NSL requests (excluding requests for subscriber information only) for information concerning United States persons. These sought information pertaining to 14,212 different United States persons." Additionally, the FBI made 96 applications to the rubber-stamp FISC court in 2010 on 215 orders, a four-fold increase over 2009.

None of this should come as a shock to readers. As I have pointed out many times, the Obama administration has not simply extended the previous regime's assault on civil liberties and political rights but has *greatly accelerated* the downward spiral towards a presidential dictatorship lorded-over by the Pentagon and the national security apparat.

Justice Department Stonewall Continues

Moves to renew the Patriot Act's spy provisions follow closely on the heels of administration demands to expand the scope of National Security Letters. As ***The Washington Post*** reported last summer, the White House "is seeking to make it easier for the FBI to compel companies to turn over records of an individual's Internet activity without a court order if agents deem the information relevant to a terrorism or intelligence investigation."

"The administration," the *Post* disclosed, "wants to add just four words–'electronic communication transactional records'– to a list of items that the law says the FBI may demand without a judge's approval."

"Government lawyers," the *Post* averred, "say this category of information includes the addresses to which an Internet user sends e-mail; the times and dates e-mail was sent and received; and possibly a user's browser history."

Additionally, the White House is demanding that the manufacturers of electronic devices such as iPhones and Blackberries, as ***The New York Times*** revealed last fall, make their products "technically capable of complying if served with a wiretap order. The mandate would include being able to intercept and unscramble encrypted messages." In other words, the state is demanding that government-mandated backdoors be built into the existing architecture of the internet in order to further facilitate driftnet spying.

Meanwhile, Obama's Justice Department continues to stonewall Congress and privacy advocates "demanding the release of a secret legal memo used to justify FBI access to Americans' telephone records without any legal process or oversight."

The Electronic Frontier Foundation (**EFF**) disclosed that the secret state satrapy that brought us **COINTELPRO** and employed Al-Qaeda triple agent **Ali Mohamed** as a "confidential informant," refuses to tell us what that authority is or how their abusive power-grab squares with rights guaranteed by the Constitution.

> "A report released last year by the DOJ's Office of the Inspector General," EFF attorneys write, "revealed how the FBI, in defending its past violations of the Electronic Privacy Communications Act (ECPA), had come up with a new legal argument to justify secret, unchecked access to private telephone records." The heavily-redacted report revealed that the "Office of the Legal Counsel (OLC) had issued a legal opinion agreeing with the FBI's theory."

"The decision not to release the memo," ***McClatchy Newspapers*** reported last week, "is noteworthy because the Obama administration–in particular the Office of Legal Counsel–has sought to portray itself as more open than the Bush administration was."

> "By turning down the foundation's request for a copy," journalist Marisa Taylor writes, "the department is ensuring that its legal arguments in support of the FBI's controversial and discredited efforts to obtain telephone records will be kept secret."

"Even officials within the Justice Department itself are concerned that the FBI's secret legal theory jeopardizes privacy and government accountability, especially considering the FBI's demonstrated history of abusing surveillance law," averred EFF senior staff attorney Kevin Bankston.

> "The Justice Department has said it can't release the document for national security reasons," McClatchy noted, "but it hasn't elaborated on that assertion. At the same time, the department and the FBI have refused to comment on the legal position itself."

According to published reports, "the bureau devised an informal system of requesting the records from three telecommunications firms to create what one agent called a 'phone database on steroids' that included names, addresses, length of service and billing information."

The OIG later concluded, Taylor writes, "that the FBI and employees of the telecom companies treated Americans' telephone records in such an informal and cavalier way that in some cases the bureau abused its authority."

Last year the Inspector General's report asserted that "the OLC agreed with the FBI that under certain circumstances (word or words redacted) allows the FBI to ask for and obtain these records on a voluntary basis from the providers, without legal process or a qualifying emergency."

That **report** "A Review of the Federal Bureau of Investigation's Use of Exigent Letters and Other Informal Requests for Telephone Records," revealed widespread abuses by the Bureau and their telecom partners.

So-called "exigent" or emergency letters were used by the FBI to illegally obtain the phone records of thousands of Americans. According to an earlier report by **EFF**, "while we had known since 2007 that the FBI improperly sought phone records by falsely asserting emergency circumstances, the report shows the situation inside the FBI's Communications Analysis Unit (CAU) degenerated even further, sometimes replacing legal process with sticky notes."

Senior staff attorney Kurt Opsahl wrote at the time that "employees of three telecoms," since identified as AT&T, Verizon and MCI, "worked directly out of the CAU office, right next to their FBI colleagues."

According to the Inspector General's report, Opsahl averred, "even exigent letters became too much work: an FBI analyst explained that 'it's not practical to give the [exigent letter] for every number that comes in.' Instead, the telecoms would provide phone records pursuant to verbal requests and even post-it notes with a phone number stuck on the carrier reps' workstations."

As ***Salon*** columnist Glenn Greenwald writes, "the way a republic is supposed to function is that there is transparency for those who wield public power and privacy for private citizens."

However, "the National Security State has reversed that dynamic completely, so that the Government (comprised of the consortium of public agencies and their private-sector 'partners') knows virtually everything about what citizens do, but citizens know virtually nothing about what they do (which is why WikiLeaks specifically and whistleblowers generally, as one of the very few remaining instruments for subverting that wall of secrecy, are so threatening to them)."

"Fortified by always-growing secrecy weapons," Greenwald avers, "everything they do is secret–including even the 'laws' they secretly invent to authorize their actions–while everything you do is open to inspection, surveillance and monitoring."

"This is what the Surveillance State, at its core, is designed to achieve," Greenwald cautions, "the destruction of privacy for individual citizens and an impenetrable wall of secrecy for those with unlimited surveillance power."

As this filthy system continues to implode amidst an orgy of financial and political corruption that would make a Roman emperor blush, the capitalist oligarchy is hell-bent on shielding themselves from any meaningful oversight or accountability, thus ensuring that the secret state's war on democracy itself continues.

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