DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

July 25, 2007

The Honorable Silvestre Reyes
House Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Reyes:

I write in response to your letter to the President of July 18, 2007, in which you stress the imperative of the President's taking steps to protect the Nation in light of recent findings regarding terrorist risks to our homeland. I appreciate the commitment in your letter to make immediate changes to the Foreign Intelligence Surveillance Act (FISA) if clarifications to the law were necessary. I am writing to reiterate my belief that such clarifications are urgently needed and are reflected in the FISA modernization proposal that the Administration has submitted to Congress. I hope that Congress will be able to act immediately, as your letter suggests, to provide the legislative changes needed to protect the nation in this period of heightened threat.

As you note, our Nation faces an intelligence "gap"— a situation in which our Intelligence Community everyday is "missing a significant portion of what we should be getting" in order to protect the American people. I stressed the same point in recent testimony before the Senate by explaining that "[w]e must make the requested changes [to FISA] to protect our citizens and the nation" because, under FISA today, "[w]e are significantly burdened in capturing overseas communications of foreign terrorists planning to conduct attacks inside the United States." Put differently, as the head of our Nation's Intelligence Community, I am obligated to provide warning of threats of terrorist activity and I have deep concern about the current threat situation.

Like you, I believe that this situation is unacceptable in the current, heightened threat environment. The recent National Intelligence Estimate concluded that our Nation faces a determined enemy in Al Qaeda. If we are to stay a step ahead of the terrorists and protect the American people, I firmly believe that we need to be able to use our capabilities to collect foreign intelligence about foreign targets overseas without requirements imposed by an out-of-date FISA statute. Accordingly, I share your view that it is essential that the Administration and Congress work together and without delay to close the current intelligence gap by amending the FISA statute.

Hearings before the House Permanent Select Committee on Intelligence (HPSCI) in 2006 discussed this gap, in addition to open and closed hearings before the Senate in 2006. See, for example, Lt. General Alexander's statement before the Senate Judiciary Committee on July 26,

2006 at a hearing on "FISA for the 21st Century." While these hearings have resulted in discussion of the issues, FISA remains in need of modernization. Today, for instance, the statute requires in a number of important situations that we obtain court orders to most effectively obtain foreign terrorist communications. Simply put, in a significant number of cases, we are in the unfortunate position of having to obtain court orders to effectively collect foreign intelligence about foreign targets located overseas.

Let me also emphasize that Congress's providing additional resources to the Executive Branch will not remedy intelligence gap. It is necessary and essential that Congress modernize FISA. I believe it is not feasible, nor is it wise, to remove significant numbers of our most critical analytic resources – counterterrorist analysts who understand the languages, organization, and operations of our enemies – from tracking current threats to the nation and devote large numbers of them to writing detailed probable cause justifications in cases where the foreign targets are located overseas. The classified annex outlines the scope of the issue and explains in more detail why providing additional resources are not the answer. In short, resource allocation is not the fundamental issue we face in this area, but instead a fundamental problem with a law that requires modification to ensure we are protecting America, while respecting the privacy rights of Americans.

Please contact me if you have any questions or additional views on how to amend FISA immediately.

Sincerely,

J.M. McConnell

cc: HPSCI members