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Hoekstra Releases Letter to Reyes on Terrorist Surveillance

WASHINGTON, D.C. – U.S. Rep. Pete Hoekstra, R-Mich., the top Republican on the House Permanent Select Committee on Intelligence, released the following letter in response to House Intelligence Committee Chairman Silvestre Reyes', D-Texas, letter to the president:

February 15, 2008

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

Dear Mr. Chairman:

Although you did not provide me with a copy of your letter to the President of yesterday per the understood Committee courtesy, I have read it in the public domain and felt it necessary to respond. While I am disappointed that several of your statements appear to be inaccurate or misleading and wish to correct the record, at the outset I would like to again personally urge you to prevail upon the Democratic leadership of the House to act immediately to carry out the will of bipartisan majorities of both the House and the Senate to pass S. 2248, the Senate FISA modernization bill.

The merits and urgency of the Senate bill are not a partisan issue. The bill was developed with the leadership of your Democratic counterpart, Senator Rockefeller, along with Senator Bond. Twenty one Democratic members of the House Blue Dog Caucus have indicated their support for this bill, and 19 Democratic Senators voted for the bill. It is unconscionable for the Democratic leadership – which represents a minority of the House on this issue – to abuse its power to block consideration of this critical national security bill and to prevent a fair vote on the House floor.

Moreover, this partisan gamesmanship endangers our national security as well as the national security of our allies overseas who are assisted by the U.S. Intelligence Community. In the last week alone, we have seen these threats from radical jihadists:

- In Denmark, three jihadists were arrested in a plot to murder a cartoonist for drawing an editorial cartoon years ago that they found objectionable.
- In the Philippines, jihadsts with Abu Sayyaf and Jemaah Islamiyah – terrorist groups associated with al Qaeda – are said to be plotting the assassination of the Philippine president and bombing Western embassies.
- In Iraq, the reputed leader of al-Qaeda in Iraq posted on a jihadi Web site a call for war with Israel and for jihadists to use Iraq as a “launching pad to seize Jerusalem.”
- Just yesterday morning, Hezbollah chief Hassan Nasrallah, raised the prospect of war with Israel declaring, “Zionists, if you want this kind of open war, let the whole world listen: Let this war be open.”

The consequences of the failure to enact permanent FISA modernization should be clear, and I am stunned that you would so cavalierly attempt to dismiss them in your letter to the President, especially based on selective statements that you should know well are inaccurate or incomplete.

First, you suggested that the NSA could conduct collection overseas under Executive Order 12333. This claim fundamentally misunderstands the critical issues at stake. As DNI McConnell has repeatedly explained, the Protect America Act and permanent modernization to FISA are necessary to deal with the problem of the communications that nonetheless may require time consuming orders from U.S. judges under the Foreign Intelligence Surveillance Act. This is not intelligence collection subject to Executive Order 12333.

Second, you suggested that residual authority under certifications issued under the Protect America Act could sufficiently protect our country. As you know, however, certifications currently in place only apply to currently known and identified threats. Obviously, it is impossible to authorize surveillance in advance for threats that are currently unknown. It is irresponsible to suggest that the existing certifications will cover all potentially needed surveillance. It is unclear whether a court would find any directives under the PAA enforceable once the Act expires. And if a previously unknown group were to attack or kidnap American soldiers tomorrow, it would not be covered under the certifications of the Protect America Act.

Third, you selectively cited testimony from a Committee hearing to inaccurately suggest that a FISA court order could be obtained in “minutes” to cover any additional surveillance. You should be well aware from repeated and detailed discussion of this subject in Committee hearings and briefings that this is not the case. Foreign terrorist targets in foreign countries should not require such an order in the first place, and critical time would be lost in developing the probable cause necessary to obtain such an order. Moreover, it is inaccurate to suggest that the FISA Court could react quickly to potential new threats. We need look no further than the court’s lengthy delay in approving the procedures for the PAA – despite the fact that the law was enacted last August, the Court did not complete its review of the procedures until just last month. Speed and agility is not measured in months, and the terrorists will not give us months of warning of their plots.

Even putting that aside, Mr. Baker later expressly clarified his statement in the same hearing. He told me: “Well, I have been thinking about that during the break, Mr. Hoekstra. As I testified, when you were Chairman, I testified about this process at length, and I think it took us a while, I think, actually to get through and for me to give a full and complete—what I believe at the time was a full and complete explanation of how the emergency process works. The emergency process, there are complications to it. I don’t mean to sit here today that you push a button, or it is not like click ‘buy now’ on the Internet. It does take time.”

Thank you for notifying me that there may be a conference with respect to this legislation. When the Democratic leadership takes the necessary steps required by the Rules of the House to appoint conferees and initiate a conference, I look forward to further discussing the matter. I would have hoped that these steps would have been done before the current week-long recess to avoid further delay, but it appears that this is yet another area where the Democratic leadership feels no sense of urgency to move forward on national security legislation.

More broadly, it unfortunately appears that the partisanship is not limited to the leadership. I have noted with interest your public statements this week that you have been conducting conference discussions with the Senate on FISA legislation, as I have never been asked to participate in these discussions. If I had been consulted, I would have provided you my view that a conference is unnecessary and inevitably will cause further unacceptable delay for several reasons. The Senate bill already represents a bipartisan consensus and compromise that can be enacted by the President. While I have concerns with a number of provisions in this bill, I would be willing to put those concerns aside to support the current Senate bill in the interest of bipartisan compromise. Should a conference occur, however, I intend to fully pursue those issues of concern. And should substantial changes take place, it is likely that the President will veto the bill. We simply cannot continue to put off vital national security legislation in the face of the continued threat from our radical jihadist enemies.

The ability of our country to detect and prevent terrorist attacks on the United States and our allies will begin to deteriorate immediately upon the expiration of the Protect America Act. The House has had six months and two weeks to consider the relevant issues, and in fact has already given extensive consideration to those issues, as evidenced by the four Committee hearings and five staff interviews conducted last June and July on legal issues relating to the Terrorist Surveillance Program, and the Committee’s review during that month of many documents relevant to the issue of retroactive liability. The time for excuses is over. We must pass the bipartisan compromise Senate bill immediately, and I implore you to end the obstruction and join me and the many Democrats who seek to do so.

Sincerely,

Pete Hoekstra
Ranking Republican

cc: The President

