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<http://intelligence.house.gov>

## **Reyes Writes to President Bush on FISA**

**Washington, D.C.** – *Congressman Silvestre Reyes, D-TX, Chairman of the House Permanent Select Committee on Intelligence, sent the following letter to President George W. Bush today regarding the Foreign Intelligence Surveillance Act (FISA). The text of the letter is below:*

President George W. Bush  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20500

Dear Mr. President:

The Preamble to our Constitution states that one of our highest duties as public officials is to “provide for the common defence.” As an elected Member of Congress, a senior Member of the House Armed Services Committee, and Chairman of the House Permanent Select Committee on Intelligence, I work everyday to ensure that our defense and intelligence capabilities remain strong in the face of serious threats to our national security.

Because I care so deeply about protecting our country, I take strong offense to your suggestion in recent days that the country will be vulnerable to terrorist attack unless Congress immediately enacts legislation giving you broader powers to conduct warrantless surveillance of Americans’ communications and provides legal immunity for telecommunications companies that participated in the Administration’s warrantless surveillance program.

Today, the National Security Agency (NSA) has authority to conduct surveillance in at least three different ways, all of which provide strong capability to monitor the communications of possible terrorists.

First, NSA can use its authority under Executive Order 12333 to conduct surveillance abroad of any known or suspected terrorist. There is no requirement for a warrant. There is no requirement for probable cause. Most of NSA’s collection occurs under this authority.

Second, NSA can use its authority under the Protect America Act, enacted last August, to conduct surveillance here in the U.S of any foreign target. This authority does not “expire” on Saturday, as you have stated. Under the PAA, orders authorizing surveillance may last for one year – until at least August 2008. These orders may cover every terrorist group without limitation. If a new member of the group is identified, or if a new phone number or email address is identified, the NSA may add it to the existing orders, and surveillance can begin immediately. We will not “go dark.”

Third, in the remote possibility that a new terrorist organization emerges that we have never previously identified, the NSA could use existing authority under the Foreign Intelligence Surveillance Act (FISA) to monitor those communications. Since its establishment nearly 30 years ago, the FISA Court has approved nearly every application for a warrant from the Department of Justice. In an emergency, NSA or the Federal Bureau of Investigation (FBI) may begin surveillance immediately, and a FISA Court order does not have to be obtained for three days. The former head of FISA operations for the Department of Justice has testified publicly that emergency authorization may be granted in a matter of minutes.

As you know, the 1978 FISA law, which has been modernized and updated numerous times since 9/11, was instrumental in disrupting the terrorist plot in Germany last summer. Those who say that FISA is outdated do not understand the strength of this important tool.

If our nation is left vulnerable in the coming months, it will not be because we don't have enough domestic spying powers. It will be because your Administration has not done enough to defeat terrorist organizations – including al Qaeda -- that have gained strength since 9/11. We do not have nearly enough linguists to translate the reams of information we currently collect. We do not have enough intelligence officers who can penetrate the hardest targets, such as al Qaeda. We have surged so many intelligence resources into Iraq that we have taken our eye off the ball in Afghanistan and Pakistan. As a result, you have allowed al Qaeda to reconstitute itself on your watch.

You have also suggested that Congress must grant retroactive immunity to telecommunications companies. As someone who has been briefed on our most sensitive intelligence programs, I can see no argument why the future security of our country depends on whether past actions of telecommunications companies are immunized.

The issue of telecom liability should be carefully considered based on a full review of the documents that your Administration withheld from Congress for eight months. However, it is an insult to the intelligence of the American people to say that we will be vulnerable unless we grant immunity for actions that happened years ago.

Congress has not been sitting on its hands. Last November, the House passed responsible legislation to authorize the NSA to conduct surveillance of foreign terrorists and to provide clarity and legal protection to our private sector partners who assist in that surveillance.

The proper course is now to conference the House bill with the Senate bill that was passed on Tuesday. There are significant differences between these two bills and a conference, in regular order, is the appropriate mechanism to resolve the differences between these two bills. I urge you, Mr.

President, to put partisanship aside and allow Republicans in Congress to arrive at a compromise that will protect America and protect our Constitution.

I, for one, do not intend to back down – not to the terrorists and not to anyone, including a President, who wants Americans to cower in fear.

We are a strong nation. We cannot allow ourselves to be scared into suspending the Constitution. If we do that, we might as well call the terrorists and tell them that they have won.

Sincerely,

Silvestre Reyes  
Member of Congress  
Chairman, House Permanent Select Committee on Intelligence