

PATRIOT Act Reauthorization

34. As you are aware, three provisions of the USA PATRIOT Act are set to expire at the end of this year. Without action, law enforcement would not be able to use these three important tools after December 31, 2009: section 206 of the USA PATRIOT Act, which governs “roving” wiretaps; section 215 of the USA PATRIOT Act, which allows federal agents to ask a court for an order to obtain business records in national security terrorism cases; and section 6001 of the Intelligence Reform and Terrorism Prevention Act (“IRTPA”), which allows intelligence investigations of lone terrorists not connected to a foreign nation or organization (also known as the “lone wolf” provision).

a. Last week, Assistant Attorney General Ronald Weich sent a views letter to Chairman Leahy recommending renewal of all three of these tools. The letter noted that the Office of the Director of National Intelligence concurred with the recommendations for renewal. In that letter, the Department of Justice specifically stated that the roving wiretaps provision “has functioned as intended and has addressed an investigative requirement that will continue to be critical to national security operations.” Do you agree?

Response:

The response to this inquiry is classified and is, therefore, provided separately.

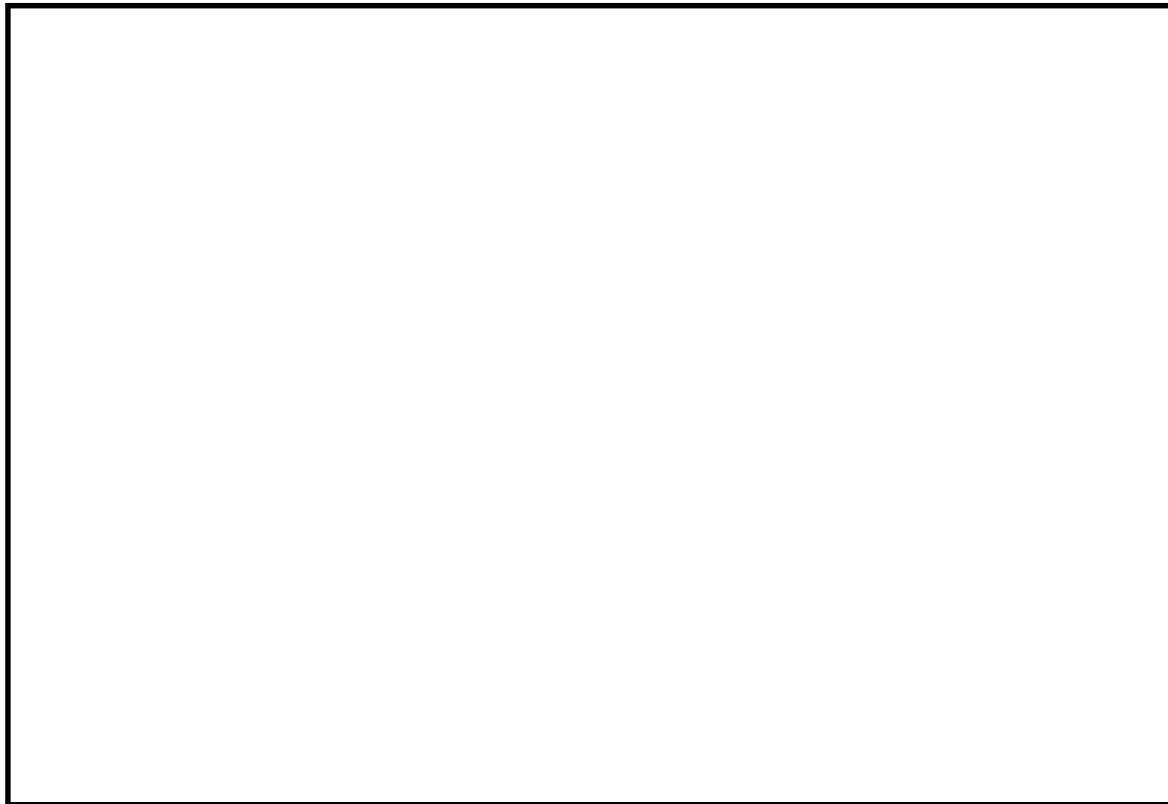
b. In that same letter, the Department of Justice also recommended the renewal of section 215, the business records provision. It stated, “the availability of a generic, court-supervised FISA business records authority is the best option for advancing national security investigations in a manner

consistent with civil liberties. The absence of such an authority could force the FBI to sacrifice key intelligence opportunities.” Do you agree?

Response:

Yes. This authority has been exceptionally useful in our national security investigations. It allows us to obtain records in national security investigations that we may be unable to obtain using National Security Letters (NSLs); the records that can be obtained using this tool are those that are typically obtained in a criminal case by using a grand jury subpoena. The operational security requirements of most intelligence investigations require the secrecy afforded by this FISA authority. We anticipate that there will always be national security investigations in which the FBI needs to obtain records that are not available through the use of NSLs and in which criminal investigative tools are either unavailable or insufficiently secure. The authority to obtain records under the supervision of the FISA Court in such cases is entirely appropriate. Moreover, the FISA Court’s track record since this provision was added to FISA clearly establishes that the court is sensitive to the need to protect the privacy rights of unconsenting U.S. persons who may have some connection to the documents received pursuant to such an order.

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