



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 12, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter, dated July 1, 2005, requesting additional information relating to the recent series of hearings the Committee has held on reauthorizing the USA PATRIOT Act.

While we have already provided significant amounts of information to Congress related to many of these, and other requests, we are pleased to provide additional information in response to specific requests relating to the various issues Members raised during the Committee's hearings. We would request that these documents be made part of the official record for their respective hearings.

We were very pleased to participate in the 11 hearings held by the Committee to which we were invited to testify and strongly believe we have provided information that demonstrates why the Committee should reauthorize the USA PATRIOT Act.

We appreciate the leadership, interest and support of the Committee throughout this very important debate. If we can be of further assistance regarding this or any other matter, please do not hesitate to contact this office.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.,
Ranking Minority Member

The Honorable Howard Coble
The Honorable Robert C. "Bobby" Scott

Hearing #1, April 6, 2005
Opening USA PATRIOT Act Reauthorization/Oversight

pp.26-27

Mr. CONYERS. Well, let me just ask you, can we on this committee cooperate with you to open up those Mayfield files so we can learn exactly how the PATRIOT Act was used in this case?

Attorney General GONZALES. Again, Congressman, this matter is in litigation so I'm likely to be limited about what information I can share with you, but I'm happy to go back and see what we can do to provide information to the committee in connection with this case.

RESPONSE: The Department provided additional information on this matter in a letter to Senator Feinstein dated April 26, 2005 (attached). The letter was provided to the Committee and entered into the record at the hearings on the USA PATRIOT Act that were held on April 26, and April 28, 2005. We note that this information is also the subject of questions for the record from the Minority.

p.37

Mr. SMITH OF TEXAS. . . . Could you point to the number of individuals, the number of would-be terrorists who might have been detected and apprehended? Can you point to terrorist rings that might have been disrupted or broken up to substantiate that statement [that the USA PATRIOT Act is working and has prevented additional terrorist attacks]?

Attorney General GONZALES. It's kind of hard to sort of prove a negative.

pp.38-40

Mr. SMITH OF TEXAS. General Gonzales, how many convictions have you obtained?

Attorney General GONZALES. I don't know, but I can get that information to you.

RESPONSE: This information has been provided to the Committee by several witnesses who have appeared at several of the Committee's hearing. We also note that this information was the subject of questions for the record from the Minority.

To date, since September 11, 2001, we have charged over 400 defendants in matters arising from terrorism investigations with an international nexus. The Department does not differentiate among those cases that specifically involve al Qaeda, because the connections defendants have to al Qaeda vary significantly – from full-fledged operatives such as shoe-bomber Richard Reid, to those who have been known to funnel money to al Qaeda, to those seeking to join or fight alongside the terrorist organization, like the Portland Cell defendants. Sometimes, a defendant's al Qaeda connections are not completely known, or they may be classified and not part of the public record. However, it is public that a number of individuals have been charged with and

convicted of crimes that connect them to al Qaeda. Some examples, though not an exhaustive list, include:

- Zacarias Moussaoui, who recently pleaded guilty to a number of crimes, including providing material support to a terrorist organization (18 U.S.C. § 2339B).
- John Walker Lindh, who pleaded guilty to providing material support to a terrorist organization (50 U.S.C. § 1705(b)).
- Iyman Faris, who pleaded guilty to providing material support to a terrorist organization (18 U.S.C. § 2339B).
- Shoe-bomber Richard Reid, who pleaded guilty to a number of charges, including placing a destructive device aboard an aircraft (49 U.S.C. § 46505) and attempted use of a weapon of mass destruction (18 U.S.C. § 2332a).
- Saajid Badat, charged in the District of Massachusetts with a number of charges related to his conspiracy with Richard Reid (18 U.S.C. §§ 32, 2332A, 2332, 1113, 924; 49 U.S.C. §§ 46505, 46506).
- Uzair Paracha, currently charged in the Southern District of New York with providing material support to al Qaeda (18 U.S.C. § 2339B).
- Ahmed Abu Ali, charged in the Eastern District of Virginia with several crimes, including providing material support to al Qaeda (18 U.S.C. § 2339B) and providing material support to terrorists (18 U.S.C. § 2339A).
- Umar and Hamid Hayat, recently charged in the Central District of California with making false statements relating to their participation at an al Qaeda training camp (18 U.S.C. § 1001).

To be clear, the above data reflects cases identified by the Criminal Division as matters arising from terrorism investigations with an international nexus. These cases include certain investigations conducted by Joint Terrorism Task Force (JTTF) agents and any other cases known to the Criminal Division in which there is evidence that an individual was engaged in terrorist activity or associated with terrorists or foreign terrorist organizations. The charges and convictions tracked by the Criminal Division reflect not only terrorism charges such as violations of the material support statutes, 18 U.S.C. §§ 2339A and 2339B, but also non-terrorism charges such as immigration, firearms, and document fraud violations that have some nexus to international terrorism. It should be noted, however, that the Criminal Division tracks a subset of cases that are reported through the United States Attorneys' Offices (USAOs) case management system. The USAO's case management system reflects that, during Fiscal Year 2004, U.S. Attorneys' Offices filed a total of 570 terrorism and anti-terrorism cases against 725 defendants. For the purposes of this system, "Terrorism" cases include International Terrorism, Domestic Terrorism, Terrorist Financing, and Terrorism-Related Hoaxes, and "Anti-Terrorism" cases include immigration, identity theft, OCDETF, Environmental, and Violent Crime - all in cases where the defendant

is reasonably linked to terrorist activity or where the case results from activity intended to prevent or disrupt potential or actual terrorist threats.

pp.60-61

Ms. JACKSON LEE. . . .One, would you be able to provide the numbers of Pakistani who were required to sign up on the registration list in the early part of 2002-2003, the numbers of them? . . . How many terrorists were found off of that list?

Attorney General GONZALES. I don't have the information on Pakistan. I'll see what I can learn and see what information can be provided.

RESPONSE: What the Congresswoman may be referring to is the Attorney General's "special registration" program, which required certain nonimmigrant aliens to register with the Immigration and Naturalization Service between January 13, 2003 and February 21, 2003. *See Registration of Certain Nonimmigrant Aliens from Designated Countries*, 67 Fed. Reg. 77642 (Dec. 18, 2002). This requirement applied, among others, to male Pakistani nationals over the age of 16 who had been admitted to the United States before September 30, 2002 and who intended to remain in the United States after February 21, 2003. However, primary responsibility for enforcement of our nation's immigration authorities has been transferred to the Department of Homeland Security (DHS), so -- if this is what the Congresswoman is referring to -- the question would be better addressed to DHS.

pp. 60-61

Ms. JACKSON LEE. . . . [D]o you think it's viable that we should have as a provision of any PATRIOT Act the removal of one's natural born citizenship that is protected under the 14th Amendment?

Attorney General GONZALES. . . . In terms of removal of citizens, I don't recall the specific provision you're referring to in what was, quote, PATRIOT --

Ms. JACKSON LEE. Five-oh-one.

Attorney General GONZALES. PATRIOT Two, but I'd be happy to look at it and give you my views about it.

RESPONSE: As you are aware, neither the Administration nor the Department ever formally transmitted a comprehensive anti-terrorism bill to the Congress during the 108th or 109th Congress. Nor are we aware that the provision referenced above has ever been introduced as part of a bill or is currently pending in Congress. Therefore, the Department has taken no position on it.

p. 73

Mr. SCOTT. . . . Now, are you willing to limit this power [FISA roving wiretaps] to terrorism?

Attorney General GONZALES. Am I willing to limit Section 206 to terrorism?

Mr. SCOTT. Right.

Attorney General GONZALES. Mr. Scott, I would have to look at that, and I'd be happy to consider that. . . .

RESPONSE: Limiting section 206 and the availability of FISA multi-point wiretaps to use in "international terrorism" cases would prevent investigators from using this important tool in critical clandestine intelligence (*e.g.*, espionage) investigations, which would undermine our national security efforts. Given that such a limit on section 206 would weaken an important tool used to protect Americans and the values we cherish, we would not support such a limitation.

pp. 73-75

Mr. SCOTT. . . . Shouldn't we require that you ascertain that the target is actually the one using the phone before you can start listening in?...

Attorney General GONZALES. I would have to look at that, Mr. Scott.

RESPONSE: No, an ascertainment requirement in the FISA multi-point wiretap is not an amendment that the Department would support. The Department provided detailed views in a classified letter transmitted to the Committee on June 2, 2005 (a declassified version of the letter, redacted to protect the national security, is attached).

As the Committee knows, FISA currently requires an order approving electronic surveillance to specify, among other things: (1) the identity, if known, or a description of the target of the electronic surveillance; and (2) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known. A requirement that FISA surveillance be conducted when the presence of the target at a particular facility or place is ascertained by the person conducting the surveillance would be a dangerous amendment. Such a restriction would significantly hamper the Department's ability to conduct surveillance of sophisticated international terrorists. It is important to remember that in the FISA context -- where surveillance is often long-running and subject to extensive and sophisticated counter-surveillance measures -- an ascertainment requirement would likely threaten not only the ongoing investigation but the safety of our agents. Such a risk is unacceptable to the Department. Indeed, such a restriction would make it harder to use multi-point wiretaps in terrorism and espionage investigations than in drug trafficking and other ordinary criminal investigations. Congress should not impose restrictions that make it more difficult for investigators to

conduct multi-point wiretaps directed against international terrorists than it is to conduct such wiretaps against drug dealers and those participating in organized crime.

FISA already contains sufficient safeguards to ensure that the government does not intrude on the privacy of innocent Americans. First, the target of roving surveillance must be identified or described in the order of the FISA Court. A roving wiretap order is therefore always connected to a particular target of surveillance. Second, the FISA Court must find that there is probable cause to believe the particular target of the surveillance is either a foreign power or an agent of a foreign power, such as a terrorist or spy. Third, roving surveillance can be ordered only after the FISA Court makes a finding that the actions of the target of the application may have the effect of thwarting the surveillance. Fourth, FISA requires the use of court-approved minimization procedures that limit the acquisition, retention, and dissemination by the government of information or communications involving United States persons.

p. 75

Mr. SCOTT. . . . If the purpose of the warrant – of getting a FISA wiretap is something other than foreign intelligence, what is it? . . .

Attorney General GONZALES. Mr. Scott, I would want to study this and get back to you on this.

RESPONSE: We have provided additional information on this issue at numerous hearings that followed the Attorney General's hearing. We also have addressed this matter specifically in a letter to Congressman Scott dated July 11, 2005 (attached).

Hearing #6, April 28, 2005
Section 218

p.49

Ms. JACKSON LEE. But do you know if they've answered any of the problems dealing with the 70 misrepresentations?

p.51

Mr. CHABOT. The gentlelady's time has expired. I think the gentleman on his time is going to ask for a follow-up, because we're already on seven minutes on yours.

Ms. JACKSON LEE. If . . . Mr. Fitzgerald can answer, I'd appreciate it.

RESPONSE: The Department provided a classified briefing to Members of the Subcommittee on Crime, Terrorism and Homeland Security on June 7, 2005. If additional briefings would be helpful to the Committee in its consideration of the USA PATRIOT Act, we would be pleased to provide a classified briefing at the request of the Chairman.

Hearing #7, May 3, 2005
Sections 201, 202, 223 & 213

p.41

Mr. SCOTT. What is the sanction for not letting them know?

Mr. ROSENBERG. . . . I'm not an expert here, but I imagine there would be some civil remedy.

RESPONSE: An Agent conducting a delayed notice search under section 213 of the PATRIOT Act has an obligation to return the warrant to the court and to provide notification to the individual whose property was searched. A status hearing date is typically set by the court at the time the warrant is issued to ensure these notification requirements are met. If the Agent does not follow these procedures, it would be up to the court to determine the sanction. It could consider holding the Agent in contempt (if the failure to comply were willful); it could refer the Agent to his or her employer for disciplinary action; or, if there is a related criminal case pending, it could consider additional sanctions, particularly if the defendant can show some prejudice from notice being delayed beyond the period ordered by the court – a highly unlikely event.

P. 59

Mr. SCOTT. Thank you. Now, Mr. Barr, in your testimony, you ask several questions about what we know about the use of 213. And I am going to ask Mr. Rosenberg, do you know how many times Section 213 has been used in the 155 cases? How many of those were terrorist cases? How many we used against U.S. citizens? How many times the secret warrants have actually led to prosecutions? And how many of those were terrorism cases? And what happens to the contents of such searches if no charges are brought? . . .

Mr. ROSENBERG. I cannot answer all of those off the top of my head.

Mr. SCOTT. If you could provide us with that information.

RESPONSE: We have provided additional information to the Committee on this issue by letter dated June 28, 2005. In addition, we sent a specific response to Congressman Scott dated July 5, 2005 (attached).

Hearing #8 , May 5, 2005
Section 212

p.33

Mr. DEMPSEY. . . . In 2002 in the Homeland Security Act, this committee mandated a one-year report from the Justice Department on disclosures of content under Section 212. That report was due on November 25, 2003, and as far as I know, it hasn't been submitted yet.

RESPONSE: The report is classified and was transmitted to the Committee by letter dated July 11, 2005.

p.43

Mr. FLAKE. According to Judge Lambert, a FISA Court did bar one FBI agent from ever appearing before the court again for filing a series of misleading affidavits. Were you aware of that? . . . Okay. Do you know of any action that has been taken against this agent?

Mr. MOSCHELLA. I'd have to check into that.

Mr. FLAKE. Could you get back to my office on that?

Mr. MOSCHELLA. Yes, sir.

RESPONSE: The Department provided a classified briefing to Members of the Subcommittee on Crime, Terrorism and Homeland Security (including Mr. Flake) on June 7, 2005. If additional briefings would be helpful to the Committee in its consideration of the USA PATRIOT Act, we would be pleased to provide a classified briefing at the request of the Chairman.

P. 64

Mr. LUNGREN. I don't think I heard an answer from you about whether or not the administration would be opposed to considering the suggestion I made [having a magistrate judge take a look after the fact to see if in fact it was appropriate and to make a judgment as to whether or not someone ought to be given notice that their information has been viewed by the government.]

Mr. MOSCHELLA. We would certainly consider it.

RESPONSE: The Department is opposed to having an after-the-fact notification of all emergency disclosures pursuant to section 212 of the USA PATRIOT Act. Among other things, amended 18 U.S.C. 2702(b) to allow Internet service providers voluntarily to disclose the contents of electronic communications in emergencies involving immediate danger of death or serious physical injury. The Department would consider reporting to the Congress on an annual basis the number of accounts on which

there has been a disclosure of the contents of communications under 18 U.S.C. 2702(b)(8) and a summary of the basis for disclosure in certain circumstances if necessary to address concerns that this authority is not subject to adequate congressional, judicial or public oversight (particularly in situations where the authority is used but criminal charges do not result). This should alleviate any concerns that oversight is lacking in any facets of use of this authority, without undermining important law enforcement prerogatives, and without tipping off perpetrators, while preserving individuals' privacy concerns and the vitality of this life-saving authority.

p.76

Ms. JACKSON LEE. . . . This question is to just ask you to provide for us the steps that the Department of Justice has taken to ensure the more than 70 errors and misrepresentations regarding information sharing, unauthorized dissemination of information which are described in the Foreign Intelligence Surveillance Court's 2002 opinion order so that we know it will not be repeated.

RESPONSE: The Department provided a classified briefing to Members of the Subcommittee on Crime, Terrorism and Homeland Security on June 7, 2005. If additional briefings would be helpful to the Committee in its consideration of the USA PATRIOT Act, we would be pleased to provide a classified briefing at the request of the Chairman.

Hearing #9, May 10, 2005
Material Support

pp. 70 - 71

Mr. GOHMERT. I thank you, Mr. Chairman. Mr. Sabin, let me follow up on a matter of previous questioning, and ask you, is there any group that is operating, or allegedly operating, out of Saudi Arabia, that has been designated as a terrorist organization?

Mr. SABIN. Specific foreign terrorist organization? I mean, there are groups – there are individuals of groups in that country that – al Qaeda representatives, and the like. Off the top of my head, of the 40 groups that have been designated, I think the answer is no. But I can check, and get back to you on that.

RESPONSE: To the best of our knowledge, Mr. Sabin's statement was correct. However, the Department would defer to the Intelligence Community as to whether any of the 40 designated Foreign Terrorist Organizations (FTOs) listed by the State Department operates primarily out of Saudi Arabia. We have attached the State Department's list of designated FTOs for the Committee's consideration.

P. 76

Mr. DELAHUNT. . . . I sent a letter recently to the Attorney General, Mr. Gonzales. I guess this would be under the IEEPA. . . . I've asked Attorney General after Attorney General, what is the status of an individual that I believe to still be in the United States, by the name of "Emanuel Todo Constant," who is the leader of the FRAP, a foreign terrorist organization if there ever should be one. Is he on – if you know, is he on the – you know, the terrorist - the identified terrorist list?

Mr. SABIN. I'll look into it and get back to you, sir.

Mr. DELAHUNT. . . . You don't. And then, there's an individual who recently, yesterday was on the front page of the New York Times, who allegedly was responsible in the late 1970s for the killing of some 73 innocent civilians aboard a Cuban airline, by the name of "Luis Posada Carriles; . . . Is he on the is he an identified terrorist on the list?

Mr. SABIN. . . . What I'm saying is, I can go back; and we can provide you that, transparently.

RESPONSE: Regarding the first issue, we have attached a listing published pursuant to the International Emergency Economic Powers Act, (50 United States Code, §§ 1701-1706), and pursuant to Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," issued by the President on September 23, 2001 (SDN List). The name "Emanuel Todo Constant" does not appear to be listed as that name (as transcribed) but we have attached the SDN List so the Committee can do its own independent analysis.

The SDN List is also available and can be search on the world wide web at the following link: <http://www.treas.gov/offices/enforcement/ofac/sdn/>.

Regarding the second issue, we responded directly to Congressman Delahunt via letter dated July 11, 2005, and attached for the Committee's review.