

bill is to allow immediate and real-time surveillance of overseas targets as soon as they become apparent in the course of a foreign-intelligence investigation. FISA had never been intended to block surveillance of such targets, but a 2007 FISA court decision interpreted FISA to apply to even foreign-to-foreign communications that are routed through the United States. Because of changes in technology and U.S. dominance in the telecommunications industry, even phone calls from Afghanistan to Pakistan could be routed through the United States. As a result, a FISA order could be required before communications between two suspected al-Qaida members outside the United States could be monitored.

This system made overseas surveillance a practical impossibility in many cases and caused valuable intelligence to be lost. Our best tool against al-Qaida and other terrorists is intelligence; it is absolutely critical that we gather whatever intelligence is available.

In the summer of 2007, Congress enacted a 6-month restoration of U.S. agents' surveillance capabilities with the Protect America Act. Today—over 4 months after the PAA expired—Congress finally acts to extend this surveillance authority for another 4½ years. I am heartened to note that the Attorney General and the Director of National Intelligence both strongly support this bill and believe that it provides them with the tools they need to gather intelligence about America's foreign enemies.

Critically, this bill allows immediate and real-time surveillance of foreign targets located overseas whenever the Justice Department and the intelligence community find that, without immediate surveillance, "intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance" of a court order prior to such surveillance. This provision, in a new section 702(c)(2) of FISA, addresses the exact problem that intelligence agencies faced in 2007. Congress expects our intelligence agents to use every tool that is technologically available to monitor al-Qaida and those associated with it. With this reform, we make such surveillance possible.

I also think that it is important that, in new section 702(i), the FISA Amendments Act allows pending surveillance certifications to be immediately amended to allow surveillance of new targets related to or growing out of previous surveillance. This should help to reduce the paperwork burden of FISA, allowing our agents to focus more time on monitoring the enemy and less on filling out forms. Also, the judicial review authorized by this section is appropriately limited and recognizes the intelligence community's primary role in deciding what foreign targets to monitor. The court's role is limited to reviewing whether certifi-

cations are procedurally proper and are accompanied by reasonable procedures to limit potential impact on U.S. persons. Thus, courts could block any obviously bad faith or improper use of foreign surveillance that might affect U.S. persons, but courts will not be second-guessing intelligence judgments, and should not be imposing procedures or making demands that will consume intelligence resources and divert agents from their primary mission. This limited role should also allow the FISA Court to decide these cases very quickly, minimizing the burden on both the intelligence community and on those judges who are assigned to the FISA Court.

I should also note that this bill contains important provisions that will allow all of the lawsuits against telecommunications companies to be dismissed upon certification by the Attorney General. Foreign intelligence surveillance is a matter that our Constitution entrusts to the executive in consultation with Congress, not to private litigants and the judiciary. These lawsuits all should have been dismissed immediately; this bill will finally produce that result. Title II is a critical part of this bill that should have been enacted long ago. Frankly, I find it odd that much of the early criticism of this bill has been directed at this of all provisions. Those who are opposed to the President's efforts to monitor al-Qaida's communications after 9/11 should take their argument to the President, not to the private companies that patriotically complied with government requests to help this country. Monitoring of al-Qaida's electronic communications cannot be conducted without the cooperation of private companies. The general rule that private citizens acting in good faith to assist law enforcement are immune from suit has deep roots and serves important public policies. As Justice Cardozo noted in the 1928 case of *Babbington v. Yellow Taxi Corporation*, the rule ensures that "the citizenry may be called upon to enforce the justice of the State, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand."

Finally, I should note that this bill's so-called "exclusive means" provision, like the similar provision in the 1978 FISA, is hortatory verbiage that obviously yields the Constitutional authority of the President. The FISA Court of Review, in its 2002 decision in *In re Sealed Cases*, made the point:

The [Fourth Circuit in the *Truong* case], as did all the other courts to have decided the issue, held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information. . . . We take for granted that the President does have that authority and, assuming that is so, FISA could not encroach on the President's constitutional power.

Indeed, every administration since FISA was enacted—including the Carter administration—has concluded that Congress cannot take away the

President's power to monitor foreign enemies of the United States without a warrant, and that to the extent that FISA purports to do so, it is unconstitutional. The Constitution's framers vested the executive with primary responsibility and authority to protect the United States from foreign attack. Section 102 repeats FISA's "exclusive-means" claims, yet provides in the same section of the bill, at subsection (c), an amendment to the immunity provisions for electronic communications service providers in 18 U.S.C. 2511(2) to require that certifications conferring immunity identify the "specific statutory provision" that allows the surveillance, but only if the certification "for assistance to obtain foreign intelligence information is based on statutory authority." This provision, in the same section making claims of exclusive means, acknowledges that not all surveillance is based on statutory authority, but may, instead, be based on the executive's constitutional authority. If this nation again finds itself under attack as it did on September 11, those in charge of our security should not conclude from the exclusive-means language in section 102 that they may not act in any constitutionally appropriate way to protect this country.

Finally, the "sunset" provision in section 403, which will repeal the authorities in the bill at the end of 2012, is problematic. As the Attorney General and the Director of National Intelligence have said: "[t]he Intelligence Community operates more effectively when the rules governing our intelligence professionals' ability to track our enemies are firmly established." The need to modernize FISA has been extensively debated since 2006, including numerous hearings, briefings, and floor debates that "involved the discussion in open settings of extraordinary information dealing with sensitive intelligence operations." As the Attorney General and the Director of National Intelligence have pointed out, "[e]very time we repeat this process it risks exposing our intelligence sources and methods to our adversaries."

Despite these flaws, the bill before us is needed. It is very similar to the bill that the Senate passed earlier this Congress and on which the House refused to act. It has passed the House by a 3-to-1 margin, and I expect that we will see a similar margin in the Senate, as the bill already appears to have gained the support of some Senators who opposed last year's bill. I look forward to the passage of this bill.

#### WORLD REFUGEE DAY

Mr. LEVIN. Mr. President, I would like to take a moment to talk about World Refugee Day, which we recently recognized, and offer some observations on the millions of refugees around the world and our efforts to aid them.

Refugees find themselves in the immensely difficult position of being unable to return to their homeland, yet stuck without any place else to turn. They are often the targets of persecution due to their race, religion, political associations, or other traits that should be worthy of respect rather than a threat on one's life. The theme of this year's World Refugee Day is "protection," with a particular focus on shining a bright light on the plight of refugees around the world, so that the world community takes action to ensure their safety.

While refugees deserving of our attention exist in many places around the world, one area of significant concern is the refugee situation in Iraq. The U.N. estimates that over 4 million Iraqis have been displaced by violence, with 1.5 million living in Syria and over 1 million in Jordan, Iran, Egypt, Lebanon, Yemen and Turkey. It is a staggering humanitarian crisis. As part of the National Defense Authorization Act for Fiscal Year 2008, Congress adopted the Iraqi Refugee Crisis Act, which I sponsored along with a number of my colleagues. This legislation creates a process for Iraqis who have offered assistance to our forces in Iraq to apply directly to the United States for refugee status. It is clear that the United States has a special obligation to help this population. The largest community of Iraqi Christians in the world outside of Iraq is in Michigan, which makes this issue particularly significant for me and my constituents.

The stark reality is that Iraq is just one small part of the tragic refugee situation around the world. Thon Chol, who was one of the "Lost Boys of Sudan," is currently serving as an intern in my Washington, DC, office. He recently graduated with a master's degree in social work from Western Michigan University. His success is hard earned, but his story underscores the point that refugees deserve our attention as well as our aid and protection.

Thon was forced to flee his hometown at age 6. While attempting to reach Ethiopia he was one of thousands who faced dehydration, famine, and attacks from wild animals and Government soldiers alike. He lost most of his family, witnessing many deaths himself. He reached a refugee camp in 1987, was forced back to Sudan due to the civil war in Ethiopia in 1991, and then eventually traveled to live in a refugee camp in Kenya for 8 years before being one of less than 4,000 Lost Boys permitted to settle in the United States and moving to Grand Rapids, MI.

Many are now American citizens. Thon's remarkable educational achievements are in line with others who were in his situation; many have sought degrees beyond high school, ranging from community college to one student who is pursuing a master's degree at Yale University. Thon and others have committed themselves to returning to Sudan to teach democratic values and religious freedom.

There are many challenges even for those very few refugees who have been granted asylum or citizenship in welcoming countries, including cultural adjustments, difficulties in uniting separated families, obtaining work skills, and adapting to an unfamiliar climate. In Michigan, numerous volunteers, community organizations, churches, and businesses have come together to assist refugees who come to our state. On this World Refugee Day, I offer my praise and appreciation for the organizations and individuals—both those local to Michigan and those international in scope—who are committed to helping refugees find some stability and normalcy, and I urge my colleagues to consider what we can do to help the millions who are suffering right now. Individuals who wish to help can begin by visiting the U.N. Refugee Agency website at <http://www.unhcr.org>.

#### GASPEE DAY

Mr. WHITEHOUSE. Mr. President, every student of American history knows the story of the Boston Tea Party, the men who crept onto British ships moored in Boston Harbor on December 16, 1773, to destroy shipments of tea that the English sought to tax. They were patriots who yearned for liberty, for "no taxation without representation," and who stepped into history.

Only a few miles south and more than a year earlier, however, another group of men had engaged in another act of patriotism—yet these men are largely forgotten outside my home State of Rhode Island. Every year, in their memory, Rhode Islanders celebrate Gaspee Day. This is their story.

During the buildup to the Revolutionary War, as tensions between England and its American colonies grew increasingly strained, King George III stationed the HMS *Gaspee*, under the command of LT William Dudingston, in the waters off Rhode Island. Its mission was to search incoming ships for smuggled goods and enforce the payment of taxes.

On June 9, 1772—16 months before the tea party in Boston—the sailing vessel *Hannah* was traveling from Newport to Providence when it was intercepted by the *Gaspee* and ordered to stop to allow a search. On board the *Hannah*, Captain Benjamin Lindsey refused and continued on his course, despite warning shots fired by the *Gaspee*. The smaller and more maneuverable *Hannah* then raced up Narragansett Bay and into the safety of Pawtuxet Cove. The hulking *Gaspee* tried to chase the *Hannah* but ran aground in the shallow waters of Namquid Point. The *Gaspee* was stuck, awaiting the higher tides of the following day.

Meanwhile, Captain Lindsey proceeded on his course, and upon arriving in Providence he met with John Brown, a community leader who later founded Brown University. The two men ar-

ranged for a meeting of local patriots at Sabin's Tavern, in what is now Providence's East Side, later that day. At the meeting, the assembled group of Rhode Islanders decided that action must be taken. *Gaspee* was a symbol of their oppression, and she was helplessly stranded in Pawtuxet Cove. In short, the opportunity was too good to pass up.

As night fell on June 9, 1772, there was no moonlight on the waters of Pawtuxet Cove. The *Gaspee* lay silent on the sand bar at Namquid Point. But just a few miles away in Providence, a team of about 60 men led by John Brown and Abraham Whipple was preparing for an assault that would soon break that silence. They armed themselves, boarded longboats, and set course for the *Gaspee*.

After paddling the longboats 6 miles down the dark waters of Narragansett Bay, the men reached the *Gaspee* and surrounded it. Brown called out and demanded that Lieutenant Dudingston surrender his vessel. Dudingston refused and instead ordered his men to fire upon anyone who attempted to board the *Gaspee*.

True to form, these brave Rhode Islanders seized the challenge. They forced their way aboard the *Gaspee*, and a struggle ensued. In the melee Lieutenant Dudingston was shot in the arm by a musket ball. Rhode Islanders had drawn the first blood of the American Revolution, right there in Pawtuxet Cove.

Brown and Whipple's men took control of the ship from the British crew and transported the captive Englishmen safely to shore. They then returned to the abandoned *Gaspee* for one final act of defiance to the crown. The men set fire to the *Gaspee* and watched as its powder magazine exploded, leaving the whole ship burning down to the water line. The place was eventually renamed Gaspee Point.

If that is not an act that defines the American struggle for independence, then I don't know what does.

Since that night in June when the *Gaspee* burned, Rhode Islanders have marked the event with celebration. This year, as I do every year, I had the good fortune to march in the annual Gaspee Days parade in Warwick, RI.

And every year, I think about what it must have felt like to be among the 60 men hauling on those longboat oars, as they paddled toward destiny.

While it is doubtful that many of those patriots could fully grasp the place they were about to take in history, there must have been a feeling of deep satisfaction known only to those who, in the face of tyranny, have stood up for home, for family, and for country. It is the same feeling that must have accompanied the soldiers of General Washington as they crossed the Delaware, the delegates of the Continental Congress as they signed the Declaration of Independence, and indeed those men in Boston who emptied a shipment of tea into the ocean. I