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Subject: Zombie Patriot Act Will Keep U.S. Spying--Even if the Original Dies  
Posted by [CyberkNight](#) on Mon, 01 Jun 2015 15:46:43 GMT

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Forget the White House's doomsday talk about American intelligence going blind. Thanks to backdoor provisions and alternate collection schemes, U.S. spies will keep on snooping.

President Obama and his top national-security officials spent the past few days warning that once intelligence-gathering authorities in the Patriot Act expired just after midnight Sunday, the United States would face a greater risk of a terrorist attack.

That argument is highly debatable--at least, in the short term. Not only does the U.S. government have all sorts of other ways to collect the same kind of intelligence outlined in the Patriot Act, but there's also a little-noticed back door in the act that allows U.S. spy agencies to gather information in pretty much the same ways they did before.

In other words, there's a zombie Patriot Act--one that lives on, though the existing version is dead.

On Sunday night, senators voted overwhelmingly to end debate on a measure passed in the House, the USA Freedom Act, which will leave most surveillance authorities in the Patriot Act intact. But some of those powers won't expire at least until Tuesday and possibly Wednesday. Administration officials had warned that even a momentary interruption posed a grave risk. "I don't want us to be in a situation in which for a certain period of time those authorities go away and suddenly we're dark, and heaven forbid we've got a problem where we could've prevented a terrorist attack or apprehended someone who was engaged in dangerous activity," Obama told reporters at the White House on Friday. On Sunday, CIA Director John Brennan said on CBS's Face the Nation that there'd "been a little too much political grandstanding and crusading for ideological causes that have skewed the debate on this issue," an apparent reference to Sen. Rand Paul, a Republican presidential candidate, and his promise to force the law to expire, "but these tools are important to American lives."

They may be. But they are far from the only tools in the counterterrorism arsenal, and though they are no longer law as of Monday, the United States still has plenty of authority to collect intelligence on jihadis and foreign spies.

For starters, there will be what's left of the Patriot Act itself. One former U.S. intelligence official told The Daily Beast that Section 214 of the law, which allows "pen register/trap & trace," could be used to collect phone and even email records. That would not only cover the gap from the expiring NSA program that collects the phone records of Americans' landline calls, but potentially expand the government's collection. (No wonder the NSA largely views the bill that would reform the Patriot Act as a major win.)

That former official and another both noted that there are other tools, including under different laws than the Patriot Act, for obtaining "roving wiretaps," which allow the government to monitor one person's multiple communications devices.

Following the Senate vote to proceed on to the Freedom Act, Sen. Jim Inhofe (R-OK) told The Daily Beast that the intelligence agencies did have a means to continue surveillance of terrorists and spies.

"I think there are other tools that can be used, but I'm not going to elaborate on them," Inhofe said.

Director of National Intelligence James Clapper said in a statement Friday if that provision expires, "we will no longer be able to get orders allowing us to effectively track terrorists and spies who switch communications devices."

Maybe not under the Patriot Act. But both former officials said they were confident that a judge would still grant a warrant drawn up for a single suspect and his multiple devices. They also pointed out that the roving-wiretap provision itself has rarely been used. (According to U.S. courts, 11 roving-wiretap orders were issued in 2013, the most recent year for which figures are available.)

Then there's another powerful tool that the FBI and intelligence agencies have long had in their arsenal and still will--national-security letters. They make it relatively easy for investigators to gather up all kinds of communications records. This authority can be used to collect phone, Internet, and financial records.

National-security letters were actually around before the Patriot Act became law in 2001, but the legislation lowered the standard that the government must meet to obtain them. They'll still be comparatively easy to get now that portions of the Patriot Act are off the books.

As for another fearsome sounding and about-to-die provision, the "lone wolf" authority that lets the government track someone who isn't connected to a known terrorist group, it has never been used. That's despite the fact that the very threat for which it was written--attacks by individuals who are merely inspired by extremist groups, such as ISIS, but aren't actually connected to them--appears to be at an all-time high. Whatever provision of law is meant to stop these would-be killers, it's apparently not in the part of the Patriot Act that expired Sunday night.

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