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FOR: SECRETARY OF DEFENSE
DEPUTY SECRETARY OF DEFENSE

FROM: Powell A. Moore, Assistant Secretary of Defense
for Legislative Affairs 697-6210

SUBJECT: Intelligence Reform Legislation (S.2845)

- After extensive involvement from the White House, House and Senate leaders have reached a compromise agreement on S. 2845, the Intelligence Reform Bill. A letter to the conferees from the President is attached.
- The House is expected to vote on and pass the legislation today, with a Senate vote to follow later in the day or on Wednesday, December 8.
- The final negotiations with HASC Chairman Duncan Hunter focused on the powers of the Director of National Intelligence (DNI) as related to intelligence support for the warfighter. The compromise language requires that the DNI authority "respects and does not abrogate the statutory responsibilities of the heads of the departments." This language preserves the current relationships in the military chain of command to the combatant commanders.

Highlights of S. 2845

- The legislation creates a DNI with power to develop and determine the intelligence budget, but the execution of the budget is still controlled by the Pentagon.
- The DNI is outside of the military chain of command and does not interfere with the flow of military intelligence to the battlefield.
- The intelligence budget top-line remains classified.
- S. 2845 creates the National Counterterrorism Center, with authority for the DNI to plan intelligence missions and counterterrorism operations, but the DNI will not have the authority on execution of those missions or operations.



Prepared by Jeanine Esperne, DASD House Affairs, 697-2536

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- The agreement on S. 2845 creates a Privacy and Civil Liberties Oversight Board, per the 9/11 Commission, but does not grant the board the authority to issue subpoenas.
- The FBI would be allowed to conduct surveillance and wiretaps on suspected terrorists with no proven ties to any foreign country or terrorist entity.
- The bill also contains provisions increasing border security, setting standards for granting visas, funding formulas for first-responders, authorizing new aviation security programs, and setting uniform national standards for determining eligibility and issuing of driver's licenses. Also included are provisions enhancing efforts to improve diplomatic relations with Saudi Arabia.
- Absent from the negotiated agreement is immigration language sought by Rep Sensenbrenner, (R-WI), Chairman of the House Judiciary Committee, seeking to change standards for asylum and requiring expedited deportation of illegal aliens without judicial review.

Attachment:
As stated



December 6, 2004

Dear Leaders and Conferees:

My most solemn duty is protecting the American people, and reforming and strengthening our Nation's intelligence capabilities will help ensure the safety of our country. I call on Congress to pass an intelligence reform bill this week. An overarching principle for these needed reforms has been to create a strong Director of National Intelligence with full budget authority while preserving the chain of command within departments and agencies. We are very close to a significant achievement that will better protect our country for generations to come, and now is the time to finish the job for the good of our national security. Therefore, I want to reiterate my views on some issues of concern to Members.

When I met with the Congressional Bipartisan Leadership at the White House on September 8, 2004, I stated that the country needed a strong Director of National Intelligence with full budget authority. At the same time, I have stated that we need a bill that respects the chain of command within departments and agencies, including the Department of Defense, so as to ensure that all of the war-fighters' needs will be met. As Commander-in-Chief, it is ultimately my responsibility to ensure that both of these goals are realized, and they are captured in the attached formulation

Accordingly, in developing implementing guidelines and regulations for this bill, it is my intention to ensure that the principles of unity of command and authority are fully protected. It remains essential to preserve in the heads of the executive departments the unity of authority over and accountability for the performance of those departments. In particular, as we continue to prosecute the global war on terrorism, the integrity of the military chain of command and the principle of battlefield unity of command must continue to be respected and in no way abrogated. These guidelines will also honor my commitment to provide the Director of National intelligence full and meaningful budget authority over the National Intelligence Program. This is critical to make certain that the intelligence community is more effectively managed. The guidelines will also help ensure that the Director of National Intelligence has enhanced management authorities, including the ability to oversee and integrate all the foreign and domestic activities of the intelligence community, to achieve the unity of purpose needed to win the global war on terrorism.



With regard to other provisions in the legislation, I want to congratulate the Conference for adopting important and time-sensitive law enforcement provisions that:

- Strengthen current laws to make certain we can arrest those aiding terrorists, including those who have received military-style training in terror camps.
- Increase our ability to target terrorism financing.
- Ensure that dangerous terrorists are lawfully detained while awaiting trial.
- Help prevent attacks by shoulder-fired anti-aircraft missiles, known as MANPADs, and weapons of mass destruction by mandating appropriate penalties.
- Provide authority to help stop “lone wolf” terrorists.
- Expand our jurisdiction to prosecute those who seek weapons of mass destruction.

It is imperative that Congress act this week to guarantee these vital tools become part of our arsenal immediately.

I also believe the Conference took an important step in strengthening our immigration laws by, among other items, increasing the number of border patrol agents and detention beds. There were other measures proposed that were not incorporated into the bill. My positions on these provisions were detailed in a letter from the Office of Management and Budget to Conferees on October 17, 2004. However, these omissions from the final bill should not prevent the Congress from passing this historic legislation now. I look forward to working with the Congress early in the next session to address these other issues, including improving our asylum laws and standards for issuing driver’s licenses.

I appreciate all the work done to date by this Congress and the September 11th Commission. These are some of the most challenging, complicated, and important issues facing our government. The Leaders and Conferees deserve great credit for working together to protect the safety of the American people.

Sincerely,

/s/

George W. Bush



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Attachment :

The President shall issue guidelines to ensure the effective implementation within the executive branch of the authorities granted to the Director of National Intelligence by this title, which guidelines shall respect and not abrogate the statutory responsibilities of the heads of the departments of the United States Government concerning such departments, including, but not limited to:

- (a) the authority of the Director of the Office of the Management and Budget; and*
- (b) the authority of the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under—*
 - (1) Section 199 of the Revised Statutes (22 USC 2651);*
 - (2) Title II of the Department of Energy Organization Act (42 USC 7131);*
 - (3) State Department Basic Authorities Act of 1956, as amended;*
 - (4) Section 102(a) of the Homeland Security Act of 2002 (6 USC 112 (a)); and*
 - (5) Sections 301 of title 5, 113(b) and 162(b) of title 10, 503 of title 28, and 301(b) of title 31, United States Code.*

