



TOPLINE SUMMARY ON EXPANSION OF THE INTELLIGENCE IDENTITIES PROTECTION ACT

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At the behest of the CIA, Congress is on the verge of dramatically expanding the “Intelligence Identities Protection Act,” or IIPA, which specifically criminalizes the unauthorized disclosure of the identity of individuals with a classified relationship to the intelligence agencies, even by non-government employees such as national security or investigative journalists.

In the House, the bill is included in the 2018 through 2020 intelligence authorization act, currently awaiting a vote in the Rules committee. In the Senate, intelligence authorization has been bundled in the National Defense Authorization Act, which passed the Senate in late June. We understand that the House does not plan to include its intelligence authorization act in the NDAA in that chamber, so we are unsure of how the two chambers will reconcile the legislation.

The relevant provisions are [Section 9305](#) of the Senate NDAA, S. 1790, and [Section 305](#) of the intelligence authorization act in the House, H.R. 3494.

The IIPA was originally intended to cover disclosures that put intelligence employees, officers, agents and informants at risk of physical harm or arrest, which it did by limiting its scope to disclosures concerning individuals who were serving or residing, or who had recently served, overseas. The CIA now wishes to remove that overseas requirement entirely, which would allow it to criminalize, in perpetuity, the disclosure of the identity of anyone with, or who has had, a classified relationship to an intelligence agency. This would subject national security reporters in particular to a heightened fear of criminal liability for the disclosure of classified information, even when it is squarely in the public interest, such as revelations of intelligence agency wrongdoing. More detail follows below.

Detailed Background on the IIPA

In 1975, Philip Agee, a former CIA case officer who claimed he became disillusioned with the CIA’s clandestine and covert support for right-wing dictatorships in Central and South America published a memoir of his time in the agency, which included an appendix naming 250 alleged CIA officers and agents or informants. Agee’s activities sparked a debate in Congress over whether to criminalize disclosures that identify individuals with a classified relationship to the intelligence agencies. In 1982, following six years of debate, Congress passed the Intelligence Identities Protection Act to do so. The legislation was contentious even then as it contained a provision that applied to individuals without authorized access to classified information, such as journalists.

Even though the bill as passed was still controversial, the version that became law, currently codified at 50 U.S.C. §§ 3121 through 3126, was itself a compromise between members concerned about the impact of the IIPA on transparency and press rights and supporters of the intelligence community. As such, it contained two important checks against abuse.

One, it required proof that an individual who disclosed the classified identity of a “covert agent” but did not have authorized access to classified information—i.e., an outsider like a journalist—engaged in a “pattern of activities intended to identify and expose” covert agents.

Two, and crucially, it defined “covert agent” relatively narrowly to only include U.S. intelligence officers, employees, agents and informants with service overseas. For agents and informants, the definition requires that they be serving overseas at the time of the disclosure. For officers and employees, the definition requires that they be serving overseas or have served overseas at some point in the five years preceding the disclosure. As noted repeatedly in the legislative history, this overseas service requirement was included to ensure that the law would only penalize disclosures that put officers, employees, agents or informants at actual risk of arrest or physical harm.

In 1999, Congress amended the IIPA to include retired officers or employees with service overseas in the five years preceding the disclosure. Now, the CIA has proposed to remove the overseas service requirement completely, which means that the CIA or another intelligence element of the government could classify any U.S. person’s relationship to an intelligence agency, and therefore criminalize the disclosure of that relationship in perpetuity.

For instance, the CIA has maintained a classified cover for key officers and employees in recent years, even for very senior officials working on controversial paramilitary operations like the targeted killing program. The law as it stands would only criminalize the disclosure of that person’s identity if the official was serving overseas or had served overseas in the last five years. Under the proposed change, a national security reporter who felt it necessary to identify that senior official could face criminal liability so long as the CIA maintains that classified cover—meaning potentially forever. This would be the case even if the information poses minimal risk to national security, let alone physical harm to the senior official, and even if it is squarely in the public interest and profoundly newsworthy.

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QUOTES FROM THE HOUSE OF REPRESENTATIVES REPORT NO. 97-221 (1981)

“The Committee recognizes fully that the bill’s proscriptions operate in an area fraught with first amendment concerns and has limited its scope” H.R. REP. NO. 97-221, at 6 (1981).

“The Committee has carefully crafted H.R. 4 to insure it does not chill or stifle public criticism of intelligence activities or public debate concerning intelligence policy.” *Id.* at 21.

“[T]he Committee devoted great care in limiting the scope of the intelligence identities the disclosure of which should be criminalized [T]he disclosure of the identity must produce the possibility of harm to a cover agent, or the intelligence identity must be such that disclosure would likely reduce the individual’s future effectiveness for intelligence purposes or impair other intelligence activities.” *Id.* at 7.

“The Committee has given long and careful thought to the definition of ‘covert agent’ and has included within it only those identities which it is absolutely necessary to protect for reasons of imminent danger to life or significant interference with legitimate and vital intelligence activities” *Id.* at 21.

“Undercover officers and employees overseas are in special danger when their identities are revealed” *Id.* at 21.

“U.S. intelligence activities are disrupted severely when the identity of an officer in the clandestine service is disclosed, even when he or she is temporarily in the United States for rest, training, or reassignment.” *Id.* at 21.

“[T]hus, the definition includes those intelligence agency officers or employees whose identities have a classified cover **and** who have served overseas within the previous five years.” *Id.* at 21 (emphasis added).