To reiterate that the Foreign Intelligence Surveillance Act of 1978 and title 18, United States Code, are the exclusive means by which domestic electronic surveillance may be conducted, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2006

Ms. HARMAN (for herself, Mr. CONYERS, Mr. HASTINGS of Florida, Mr. BOSWELL, Mr. REYES, Mr. CRAMER, Ms. ESHOO, Mr. RUPPERSBERGER, Mr. BOUCHER, Mr. NADLER, Mr. SCOTT of Virginia, Ms. ZOE LOFGREN of California, Ms. JACKSON-LEE of Texas, Mr. WEXLER, and Ms. HOOLEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reiterate that the Foreign Intelligence Surveillance Act of 1978 and title 18, United States Code, are the exclusive means by which domestic electronic surveillance may be conducted, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Lawful Intelligence and Surveillance of Terrorists in an Emergency by NSA Act” or the “LISTEN Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Conducting electronic surveillance of al Qaeda and other international terrorist groups is integral to protecting people in the United States from terrorism. Electronic surveillance can assist in the detection and prevention of terrorist plots.

(2) Electronic surveillance may, at times, involve surveillance of persons in the United States. Such electronic surveillance is lawful if conducted in accordance with the Fourth Amendment to the Constitution and the Foreign Intelligence Surveillance Act of 1978 or chapters 119 or 121 of title 18, United States Code.

(3) It is essential that in protecting the United States from enemies, the President does not compromise the civil liberties that the President is charged with safeguarding. In 2004, Justice Sandra Day O’Connor explained in a plurality opinion for the Supreme Court in Hamdi v. Rumsfeld, “We have long since made clear that a state of war is not a
blank check for the President when it comes to the
rights of the Nation’s citizens”.

(4) Section 8 of article I of the Constitution of
the United States provides that “Congress shall have
the Power ... to make all Laws which shall be nec-
essary and proper for carrying into Execution the
foregoing Powers and all other Powers vested in this
Constitution in the Government of the United
States, or in any Department or Officer thereof”.

(5) In passing the Foreign Intelligence Surveil-
ance Act of 1978, Congress expressly determined
that the Foreign Intelligence Surveillance Act of
1978 and chapters 119 and 121 of title 18, United
States Code, are the exclusive means by which sur-
veillance can be conducted in the United States.

(6) The Foreign Intelligence Surveillance Act of
1978 (50 U.S.C. 1801 et seq.) authorizes the Fed-
eral Government to conduct electronic surveillance of
persons in the United States for purposes of gath-
ering intelligence and counterintelligence. The Act
contains emergency procedures under which elec-
tronic surveillance may begin up to 72 hours before
the Federal Government presents to the Foreign In-
telligence Surveillance Court an application for a
court order approving electronic surveillance.
(7) The Fourth Amendment to the Constitution of the United States declares that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized".

(8) A determination of reasonableness under the Fourth Amendment must ultimately be made by an independent magistrate, not by an executive branch official.

(9) The Authorization for Use of Military Force (Public Law 107–40), passed by Congress on September 14, 2001, does not constitute legal authorization for electronic surveillance not authorized by chapters 119 or 121 of title 18, United States Code, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).
SEC. 3. REITERATION OF CHAPTERS 119 AND 121 OF TITLE 18, UNITED STATES CODE, AND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AS THE EXCLUSIVE MEANS BY WHICH DOMESTIC ELECTRONIC SURVEILLANCE MAY BE CONDUCTED.

Notwithstanding any other provision of law, chapters 119 and 121 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted.

SEC. 4. COMPLIANCE WITH FISA REQUIREMENTS.

(a) Ensuring Compliance.—The President shall ensure that all electronic surveillance of persons in the United States is conducted in accordance with chapters 119 or 121 of title 18, United States Code, or title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(b) Procedures.—The President shall ensure that the procedures for applying for an order for electronic surveillance under title I of the Foreign Intelligence Surveillance Act of 1978 continue to be adequate for the timely and efficient electronic surveillance of appropriate targets.

(c) Report.—

(1) In General.—If at any time the President determines that the procedures described in sub-
section (b) are not adequate for the timely and efficient electronic surveillance of appropriate targets in accordance with title I of the Foreign Intelligence Surveillance Act of 1978, the President shall submit to the relevant congressional committees a report containing findings and recommendations with respect to emergency applications and, to the extent deemed necessary by the President, routine applications for an order under such title on—

(A) the level of resources and personnel needed at the National Security Agency and the Department of Justice to handle such applications to the Foreign Intelligence Surveillance Court;

(B) the need for new information technology systems to facilitate the near real-time approval of such applications to the Foreign Intelligence Surveillance Court;

(C) how to streamline the processing of information that must be presented to the Foreign Intelligence Surveillance Court for such an application;

(D) how to expedite review within the National Security Agency, the Department of Justice, or other appropriate agencies or depart-
ments of such applications before such an application is submitted to the Attorney General;

(E) whether a senior official reporting to the Attorney General, such as the Deputy Attorney General or the Assistant Attorney General for National Security, should be authorized to approve such applications; and

(F) the need for any legislative changes to improve such procedures.

(2) DATE OF SUBMISSION.—The report under paragraph (1) shall be submitted to the relevant congressional committees not later than 30 days after the date on which the President determines under such paragraph that the procedures described in subsection (b) are not adequate for the timely electronic surveillance of appropriate targets in the United States.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the President to conduct electronic surveillance other than in accordance with title I of the Foreign Intelligence Surveillance Act of 1978 or chapters 119 or 121 of title 18, United States Code.
SEC. 5. AUTHORIZATION FOR INCREASED RESOURCES TO PROCESS FOREIGN INTELLIGENCE SURVEILLANCE ACT APPLICATIONS.

There are authorized to be appropriated to the National Security Agency and the Department of Justice for the activities of the Office of Intelligence Policy and Review such sums as may be necessary to meet the increased personnel and information technology demands to ensure the timely and efficient processing of applications to the Foreign Intelligence Surveillance Court.

SEC. 6. DEFINITIONS.

In this Act:

(1) ELECTRONIC SURVEILLANCE.—The term “electronic surveillance” has the meaning given the term in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).

(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence Surveillance Court” has the meaning given the term in section 301(3) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(3)).

(3) RELEVANT CONGRESSIONAL COMMITTEES.—The term “relevant congressional committees” means the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee...
on Intelligence and the Committee on the Judiciary of the Senate.