

109TH CONGRESS
2^D SESSION

H. R. 5371

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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) Conducting electronic surveillance of al
8 Qaeda and other international terrorist groups is in-
9 tegral to protecting people in the United States from
10 terrorism. Electronic surveillance can assist in the
11 detection and prevention of terrorist plots.

12 (2) Electronic surveillance may, at times, in-
13 volve surveillance of persons in the United States.
14 Such electronic surveillance is lawful if conducted in
15 accordance with the Fourth Amendment to the Con-
16 stitution and the Foreign Intelligence Surveillance
17 Act of 1978 or chapters 119 or 121 of title 18,
18 United States Code.

19 (3) It is essential that in protecting the United
20 States from enemies, the President does not com-
21 promise the civil liberties that the President is
22 charged with safeguarding. In 2004, Justice Sandra
23 Day O’Connor explained in a plurality opinion for
24 the Supreme Court in *Hamdi v. Rumsfeld*, “We have
25 long since made clear that a state of war is not a

1 blank check for the President when it comes to the
2 rights of the Nation's citizens”.

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

10 (5) In passing the Foreign Intelligence Surveil-
11 lance Act of 1978, Congress expressly determined
12 that the Foreign Intelligence Surveillance Act of
13 1978 and chapters 119 and 121 of title 18, United
14 States Code, are the exclusive means by which sur-
15 veillance can be conducted in the United States.

16 (6) The Foreign Intelligence Surveillance Act of
17 1978 (50 U.S.C. 1801 et seq.) authorizes the Fed-
18 eral Government to conduct electronic surveillance of
19 persons in the United States for purposes of gath-
20 ering intelligence and counterintelligence. The Act
21 contains emergency procedures under which elec-
22 tronic surveillance may begin up to 72 hours before
23 the Federal Government presents to the Foreign In-
24 telligence Surveillance Court an application for a
25 court order approving electronic surveillance.

1 (7) The Fourth Amendment to the Constitution
2 of the United States declares that “The right of the
3 people to be secure in their persons, houses, papers,
4 and effects, against unreasonable searches and sei-
5 zures, shall not be violated, and no Warrants shall
6 issue, but upon probable cause, supported by Oath
7 or affirmation, and particularly describing the place
8 to be searched, and the persons or things to be
9 seized”.

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

14 (9) The Authorization for Use of Military Force
15 (Public Law 107–40), passed by Congress on Sep-
16 tember 14, 2001, does not constitute legal authoriza-
17 tion for electronic surveillance not authorized by
18 chapters 119 or 121 of title 18, United States Code,
19 or the Foreign Intelligence Surveillance Act of 1978
20 (50 U.S.C. 1801 et seq.).

1 **SEC. 3. REITERATION OF CHAPTERS 119 AND 121 OF TITLE**
2 **18, UNITED STATES CODE, AND THE FOREIGN**
3 **INTELLIGENCE SURVEILLANCE ACT OF 1978**
4 **AS THE EXCLUSIVE MEANS BY WHICH DO-**
5 **MESTIC ELECTRONIC SURVEILLANCE MAY BE**
6 **CONDUCTED.**

7 Notwithstanding any other provision of law, chapters
8 119 and 121 of title 18, United States Code, and the For-
9 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
10 1801 et seq.) shall be the exclusive means by which elec-
11 tronic surveillance may be conducted.

12 **SEC. 4. COMPLIANCE WITH FISA REQUIREMENTS.**

13 (a) **ENSURING COMPLIANCE.**—The President shall
14 ensure that all electronic surveillance of persons in the
15 United States is conducted in accordance with chapters
16 119 or 121 of title 18, United States Code, or title I of
17 the Foreign Intelligence Surveillance Act of 1978 (50
18 U.S.C. 1801 et seq.).

19 (b) **PROCEDURES.**—The President shall ensure that
20 the procedures for applying for an order for electronic sur-
21 veillance under title I of the Foreign Intelligence Surveil-
22 lance Act of 1978 continue to be adequate for the timely
23 and efficient electronic surveillance of appropriate targets.

24 (c) **REPORT.**—

25 (1) **IN GENERAL.**—If at any time the President
26 determines that the procedures described in sub-

1 section (b) are not adequate for the timely and effi-
2 cient electronic surveillance of appropriate targets in
3 accordance with title I of the Foreign Intelligence
4 Surveillance Act of 1978, the President shall submit
5 to the relevant congressional committees a report
6 containing findings and recommendations with re-
7 spect to emergency applications and, to the extent
8 deemed necessary by the President, routine applica-
9 tions for an order under such title on—

10 (A) the level of resources and personnel
11 needed at the National Security Agency and the
12 Department of Justice to handle such applica-
13 tions to the Foreign Intelligence Surveillance
14 Court;

15 (B) the need for new information tech-
16 nology systems to facilitate the near real-time
17 approval of such applications to the Foreign In-
18 telligence Surveillance Court;

19 (C) how to streamline the processing of in-
20 formation that must be presented to the For-
21 eign Intelligence Surveillance Court for such an
22 application;

23 (D) how to expedite review within the Na-
24 tional Security Agency, the Department of Jus-
25 tice, or other appropriate agencies or depart-

1 ments of such applications before such an appli-
2 cation is submitted to the Attorney General;

3 (E) whether a senior official reporting to
4 the Attorney General, such as the Deputy At-
5 torney General or the Assistant Attorney Gen-
6 eral for National Security, should be authorized
7 to approve such applications; and

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

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

18 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to authorize the President to con-
20 duct electronic surveillance other than in accordance with
21 title I of the Foreign Intelligence Surveillance Act of 1978
22 or chapters 119 or 121 of title 18, United States Code.

1 **SEC. 5. AUTHORIZATION FOR INCREASED RESOURCES TO**
2 **PROCESS FOREIGN INTELLIGENCE SURVEIL-**
3 **LANCE ACT APPLICATIONS.**

4 There are authorized to be appropriated to the Na-
5 tional Security Agency and the Department of Justice for
6 the activities of the Office of Intelligence Policy and Re-
7 view such sums as may be necessary to meet the increased
8 personnel and information technology demands to ensure
9 the timely and efficient processing of applications to the
10 Foreign Intelligence Surveillance Court.

11 **SEC. 6. DEFINITIONS.**

12 In this Act:

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

17 (2) **FOREIGN INTELLIGENCE SURVEILLANCE**
18 **COURT.**—The term “Foreign Intelligence Surveil-
19 lance Court” has the meaning given the term in sec-
20 tion 301(3) of the Foreign Intelligence Surveillance
21 Act of 1978 (50 U.S.C. 1821(3)).

22 (3) **RELEVANT CONGRESSIONAL COMMIT-**
23 **TEES.**—The term “relevant congressional commit-
24 tees” means the Permanent Select Committee on In-
25 telligence and the Committee on the Judiciary of the
26 House of Representatives and the Select Committee

1 on Intelligence and the Committee on the Judiciary
2 of the Senate.

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