

110TH CONGRESS  
1ST SESSION

# H. R. 11

To reiterate that chapters 119 and 121 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 are the exclusive means by which domestic electronic surveillance may be conducted, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mr. SCHIFF (for himself, Mr. FLAKE, Mr. VAN HOLLEN, Mr. INGLIS of South Carolina, Mr. INSLEE, and Mr. MACK) 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

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## A BILL

To reiterate that chapters 119 and 121 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NSA Oversight Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) On September 11, 2001, acts of treacherous  
4 violence were committed against the United States  
5 and its citizens.

6 (2) Such acts render it both necessary and ap-  
7 propriate that the United States exercise its right to  
8 self-defense by protecting United States citizens  
9 both at home and abroad.

10 (3) The Federal Government has a duty to pur-  
11 sue al Qaeda and other enemies of the United States  
12 with all available tools, including the use of elec-  
13 tronic surveillance, to thwart future attacks on the  
14 United States and to destroy the enemy.

15 (4) The President of the United States pos-  
16 sesses the inherent authority to engage in electronic  
17 surveillance of the enemy outside of the United  
18 States consistent with his authority as Commander-  
19 in-Chief under Article II of the Constitution.

20 (5) Congress possesses the authority to regulate  
21 electronic surveillance within the United States.

22 (6) The Fourth Amendment to the Constitution  
23 guarantees to the American people the right “to be  
24 secure in their persons, houses, papers, and effects,  
25 against unreasonable searches and seizures” and  
26 provides that courts shall issue “warrants” to au-

1       thorize searches and seizures, based upon probable  
2       cause.

3           (7) The Supreme Court has consistently held  
4       for nearly 40 years that the monitoring and record-  
5       ing of private conversations constitutes a “search  
6       and seizure” within the meaning of the Fourth  
7       Amendment.

8           (8) The Foreign Intelligence Surveillance Act of  
9       1978 (50 U.S.C. 1801 et seq.) and chapters 119 and  
10      121 of title 18, United States Code, were enacted to  
11      provide the legal authority for the Federal Govern-  
12      ment to engage in searches of Americans in connec-  
13      tion with criminal investigations, intelligence gath-  
14      ering, and counterintelligence.

15          (9) The Foreign Intelligence Surveillance Act of  
16      1978 and specified provisions of the Federal crimi-  
17      nal code, were expressly enacted as the “exclusive  
18      means by which electronic surveillance ... may be  
19      conducted” domestically pursuant to law (18 U.S.C.  
20      2511(2)(f)).

21          (10) Warrantless electronic surveillance of  
22      Americans inside the United States conducted with-  
23      out congressional authorization may have a serious  
24      impact on the civil liberties of citizens of the United  
25      States.

1           (11) United States citizens, such as journalists,  
2 academics, and researchers studying global ter-  
3 rorism, who have made international phone calls  
4 subsequent to the terrorist attacks of September 11,  
5 2001, and are law-abiding citizens, may have the  
6 reasonable fear of being the subject of such surveil-  
7 lance.

8           (12) Since the nature and criteria of the Na-  
9 tional Security Agency (NSA) program is highly  
10 classified and unknown to the public, many other  
11 Americans who make frequent international calls,  
12 such as Americans engaged in international busi-  
13 ness, Americans with family overseas, and others,  
14 have a legitimate concern they may be the inad-  
15 vertent targets of eavesdropping.

16           (13) The President has sought and signed legis-  
17 lation including the Uniting and Strengthening  
18 America by Providing Appropriate Tools Required to  
19 Intercept and Obstruct Terrorism (USA PATRIOT  
20 ACT) Act of 2001 (Public Law 107–56), and the In-  
21 telligence Reform and Terrorism Protection Act of  
22 2004 (Public Law 108–458), that have expanded  
23 authorities under the Foreign Intelligence Surveil-  
24 lance Act of 1978.

1           (14) It may be necessary and desirable to  
2           amend the Foreign Intelligence Surveillance Act of  
3           1978 to address new challenges in the Global War  
4           on Terrorism. The President should submit a re-  
5           quest for legislation to Congress to amend the For-  
6           eign Intelligence Surveillance Act of 1978 if the  
7           President desires that the electronic surveillance au-  
8           thority provided by such Act be further modified.

9           (15) The Authorization for Use of Military  
10          Force (Public Law 107–40), passed by Congress on  
11          September 14, 2001, authorized military action  
12          against those responsible for the attacks on Sep-  
13          tember 11, 2001, but did not contain legal author-  
14          ization nor approve of domestic electronic surveil-  
15          lance not authorized by chapters 119 or 121 of title  
16          18, United States Code, or the Foreign Intelligence  
17          Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

18 **SEC. 3. REITERATION OF CHAPTERS 119 AND 121 OF TITLE**  
19                                   **18, UNITED STATES CODE, AND THE FOREIGN**  
20                                   **INTELLIGENCE SURVEILLANCE ACT OF 1978**  
21                                   **AS THE EXCLUSIVE MEANS BY WHICH DO-**  
22                                   **MESTIC ELECTRONIC SURVEILLANCE MAY BE**  
23                                   **CONDUCTED.**

24          (a) **EXCLUSIVE MEANS.**—Notwithstanding any other  
25          provision of law, chapters 119 and 121 of title 18, United

1 States Code, and the Foreign Intelligence Surveillance Act  
2 of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive  
3 means by which electronic surveillance may be conducted.

4 (b) FUTURE CONGRESSIONAL ACTION.—Subsection  
5 (a) shall apply until specific statutory authorization for  
6 electronic surveillance, other than as an amendment to  
7 chapters 119 or 121 of title 18, United States Code, or  
8 the Foreign Intelligence Surveillance Act of 1978 (50  
9 U.S.C. 1801 et seq.), is enacted. Such specific statutory  
10 authorization shall be the only exception to subsection (a).

11 **SEC. 4. DISCLOSURE REQUIREMENTS.**

12 (a) REPORT.—As soon as practicable after the date  
13 of the enactment of this Act, but not later than 14 days  
14 after such date, the President shall submit to the Perma-  
15 nent Select Committee on Intelligence of the House of  
16 Representatives and the Select Committee on Intelligence  
17 of the Senate a report—

18 (1) on the Terrorist Surveillance Program of  
19 the National Security Agency;

20 (2) on any program which involves the elec-  
21 tronic surveillance of United States persons in the  
22 United States, and which is conducted by any de-  
23 partment, agency, or other element of the Federal  
24 Government, or by any entity at the direction of a  
25 department, agency, or other element of the Federal

1 Government, without fully complying with the proce-  
2 dures set forth in the Foreign Intelligence Surveil-  
3 lance Act of 1978 (50 U.S.C. 1801 et seq.) or chap-  
4 ters 119 or 121 of title 18, United States Code; and  
5 (3) including a general description of each  
6 United States person who has been the subject of  
7 such electronic surveillance not authorized to be con-  
8 ducted under the Foreign Intelligence Surveillance  
9 Act of 1978 or chapters 119 or 121 of title 18,  
10 United States Code, and the basis for the selection  
11 of each person for such electronic surveillance.

12 (b) FORM.—The report submitted under subsection  
13 (a) may be submitted in classified form.

14 (c) ACCESS.—The Chair of the Permanent Select  
15 Committee on Intelligence of the House of Representatives  
16 and the Chair of the Select Committee on Intelligence of  
17 the Senate shall provide each member of the Committees  
18 on the Judiciary of the House of Representatives and the  
19 Senate, respectively, access to the report submitted under  
20 subsection (a). Such access shall be provided in accordance  
21 with security procedures required for the review of classi-  
22 fied information.

1 **SEC. 5. FOREIGN INTELLIGENCE SURVEILLANCE COURT**  
2 **MATTERS.**

3 (a) **AUTHORITY FOR ADDITIONAL JUDGES.**—The  
4 first sentence of section 103(a) of the Foreign Intelligence  
5 Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended  
6 by striking “judicial circuits” and inserting “judicial cir-  
7 cuits, and any additional district court judges that the  
8 Chief Justice considers necessary for the prompt and time-  
9 ly consideration of applications under section 104,”.

10 (b) **CONSIDERATION OF EMERGENCY APPLICA-**  
11 **TIONS.**—Section 105(f) of such Act (50 U.S.C. 1805(f))  
12 is amended by adding at the end the following new sen-  
13 tence: “The judge receiving an application under this sub-  
14 section shall review such application within 24 hours of  
15 the application being submitted.”

16 **SEC. 6. STREAMLINING FISA APPLICATION PROCESS.**

17 (a) **IN GENERAL.**—Section 104 of the Foreign Intel-  
18 ligence Surveillance Act of 1978 (50 U.S.C. 1804) is  
19 amended—

20 (1) in subsection (a)—

21 (A) in paragraph (6), by striking “detailed  
22 description” and inserting “summary descrip-  
23 tion”;

24 (B) in paragraph (7)—

1 (i) in subparagraph (C), by striking  
2 “techniques;” and inserting “techniques;  
3 and”;

4 (ii) by striking subparagraph (D); and

5 (iii) by redesignating subparagraph  
6 (E) as subparagraph (D); and

7 (C) in paragraph (8), by striking “a state-  
8 ment of the means” and inserting “a summary  
9 statement of the means”; and

10 (2) in subsection (e)(1)(A), by striking “or the  
11 Director of National Intelligence” and inserting “the  
12 Director of National Intelligence, or the Director of  
13 the Central Intelligence Agency”.

14 (b) CONFORMING AMENDMENT.—Section 105(a)(5)  
15 of such Act (50 U.S.C. 1805(a)(5)) is amended by striking  
16 “104(a)(7)(E)” and inserting “104(a)(7)(D)”.

17 **SEC. 7. INTERNATIONAL MOVEMENT OF TARGETS.**

18 Section 105(d) of the Foreign Intelligence Surveil-  
19 lance Act of 1978 (50 U.S.C. 1805(d)), as redesignated  
20 by section 7(4), is amended by adding at the end the fol-  
21 lowing new paragraph:

22 “(4) An order issued under this section shall remain  
23 in force during the authorized period of surveillance not-  
24 withstanding the absence of the target from the United

1 States, unless the Government files a motion to extinguish  
2 the order and the court grants the motion.”.

3 **SEC. 8. EXTENSION OF PERIOD FOR APPLICATIONS FOR**  
4 **ORDERS FOR EMERGENCY ELECTRONIC SUR-**  
5 **VEILLANCE.**

6 Section 105(f) of the Foreign Intelligence Surveil-  
7 lance Act of 1978 (50 U.S.C. 1805(f)) is further amended  
8 by striking “72 hours” each place it appears and inserting  
9 “168 hours”.

10 **SEC. 9. ENHANCEMENT OF ELECTRONIC SURVEILLANCE**  
11 **AUTHORITY IN WARTIME.**

12 Section 111 of the Foreign Intelligence Surveillance  
13 Act of 1978 (50 U.S.C. 1811) is amended by striking “the  
14 Congress” and inserting “the Congress or an authoriza-  
15 tion for the use of military force described in section  
16 2(c)(2) of the War Powers Resolution (50 U.S.C.  
17 1541(c)(2)) if such authorization contains a specific au-  
18 thorization for electronic surveillance under this section.”.

19 **SEC. 10. ACQUISITION OF COMMUNICATIONS BETWEEN**  
20 **PARTIES NOT IN THE UNITED STATES.**

21 The Foreign Intelligence Surveillance Act of 1978  
22 (50 U.S.C. 1801 et seq.) is further amended—

23 (1) by adding at the end of title I the following  
24 new section:

1 “ACQUISITION OF COMMUNICATIONS BETWEEN PARTIES  
2 NOT IN THE UNITED STATES

3 “SEC. 112. (a) IN GENERAL.—Notwithstanding any  
4 other provision of this Act, a court order is not required  
5 for the acquisition of the contents of any communication  
6 between persons that are not located within the United  
7 States for the purpose of collecting foreign intelligence in-  
8 formation, without respect to whether the communication  
9 passes through the United States or the surveillance de-  
10 vice is located within the United States.

11 “(b) TREATMENT OF INTERCEPTED COMMUNICA-  
12 TIONS INVOLVING A DOMESTIC PARTY.—If an acquisition  
13 described in subsection (a) inadvertently collects a commu-  
14 nication in which at least one party to the communication  
15 is within the United States—

16 “(1) in the case of a communication acquired  
17 inside the United States, the contents of such com-  
18 munication shall be handled in accordance with  
19 minimization procedures adopted by the Attorney  
20 General that require that no contents of any commu-  
21 nication to which a United States person is a party  
22 shall be disclosed, disseminated, or used for any pur-  
23 pose or retained for longer than 168 hours unless a  
24 court order under section 105 is obtained or unless  
25 the Attorney General determines that the informa-

1       tion indicates a threat of death or serious bodily  
2       harm to any person; and

3               “(2) in the case of a communication acquired  
4       outside the United States, the contents of such com-  
5       munication shall be handled in accordance with  
6       minimization procedures adopted by the Attorney  
7       General.”; and

8               (2) in the table of contents in the first section,  
9       by inserting after the item relating to section 111  
10      the following:

    “112. Acquisition of communications between parties not in the United  
        States.”.

11 **SEC. 11. ADDITIONAL PERSONNEL FOR PREPARATION AND**  
12                               **CONSIDERATION OF APPLICATIONS FOR OR-**  
13                               **DERS APPROVING ELECTRONIC SURVEIL-**  
14                               **LANCE.**

15       (a) OFFICE OF INTELLIGENCE POLICY AND RE-  
16      VIEW.—

17               (1) IN GENERAL.—The Attorney General may  
18       hire and assign personnel to the Office of Intel-  
19       ligence Policy and Review as may be necessary to  
20       carry out the prompt and timely preparation, modi-  
21       fication, and review of applications under section  
22       104 of the Foreign Intelligence Surveillance Act of  
23       1978 (50 U.S.C. 1804) for orders approving elec-

1       tronic surveillance for foreign intelligence purposes  
2       under section 105 of such Act (50 U.S.C. 1805).

3           (2) ASSIGNMENT.—The Attorney General shall  
4       assign personnel hired and assigned pursuant to  
5       paragraph (1) to and among appropriate offices of  
6       the National Security Agency in order that such per-  
7       sonnel may directly assist personnel of the National  
8       Security Agency in preparing applications under sec-  
9       tion 104 of the Foreign Intelligence Surveillance Act  
10      of 1978 (50 U.S.C. 1804).

11      (b) NATIONAL SECURITY BRANCH OF THE FBI.—

12           (1) IN GENERAL.—The Director of the Federal  
13      Bureau of Investigation may hire and assign per-  
14      sonnel to the National Security Branch as may be  
15      necessary to carry out the prompt and timely prepa-  
16      ration of applications under section 104 of the For-  
17      eign Intelligence Surveillance Act of 1978 (50  
18      U.S.C. 1804) for orders approving electronic surveil-  
19      lance for foreign intelligence purposes under section  
20      105 of such Act (50 U.S.C. 1805).

21           (2) ASSIGNMENT.—The Director of the Federal  
22      Bureau of Investigation shall assign personnel hired  
23      and assigned pursuant to paragraph (1) to and  
24      among the field offices of the Federal Bureau of In-  
25      vestigation in order that such personnel may directly

1 assist personnel of the Federal Bureau of Investiga-  
2 tion in such field offices in preparing applications  
3 under section 104 of the Foreign Intelligence Sur-  
4 veillance Act of 1978 (50 U.S.C. 1804).

5 (c) NATIONAL SECURITY AGENCY.—The Director of  
6 the National Security Agency may hire and assign per-  
7 sonnel as may be necessary to carry out the prompt and  
8 timely preparation of applications under section 104 of the  
9 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
10 1804) for orders approving electronic surveillance for for-  
11 eign intelligence purposes under section 105 of such Act  
12 (50 U.S.C. 1805).

13 (d) FOREIGN INTELLIGENCE SURVEILLANCE  
14 COURT.—The presiding judge designated under section  
15 103(b) of such Act may hire and assign personnel as may  
16 be necessary to carry out the prompt and timely consider-  
17 ation of applications under section 104 of such Act (50  
18 U.S.C. 1804) for orders approving electronic surveillance  
19 for foreign intelligence purposes under section 105 of that  
20 Act (50 U.S.C. 1805).

21 **SEC. 12. DEFINITIONS.**

22 In this Act:

23 (1) The term “electronic surveillance” has the  
24 meaning given the term in section 101(f) of the For-

1        eign Intelligence Surveillance Act of 1978 (50  
2        U.S.C. 1801(f)).

3                (2) The term “foreign intelligence information”  
4        has the meaning given the term in section 101(e) of  
5        such Act (50 U.S.C. 1801(e)).

○