

110TH CONGRESS
1ST SESSION

S. 1114

To reiterate the exclusivity of the Foreign Intelligence Surveillance Act of 1978 as the sole authority to permit the conduct of electronic surveillance, to modernize surveillance authorities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 16, 2007

Mrs. FEINSTEIN (for herself and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reiterate the exclusivity of the Foreign Intelligence Surveillance Act of 1978 as the sole authority to permit the conduct of electronic surveillance, to modernize surveillance authorities, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the

5 “Foreign Intelligence Surveillance Improvement and En-

6 hancement Act of 2007”.

7 (b) TABLE OF CONTENTS.—The table of contents for

8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

**TITLE I—CONSTRUCTION OF FOREIGN INTELLIGENCE
SURVEILLANCE AUTHORITY**

Sec. 101. Reiteration of chapters 119, 121, and 206 of title 18, United States Code, and Foreign Intelligence Surveillance Act of 1978 as exclusive means by which domestic electronic surveillance may be conducted.

Sec. 102. Specific authorization required for any repeal or modification of title I of the Foreign Intelligence Surveillance Act of 1978.

Sec. 103. Information for Congress on the terrorist surveillance program and similar programs.

Sec. 104. Supreme Court review of the Terrorist Surveillance Program.

**TITLE II—APPLICATIONS AND PROCEDURES FOR ELECTRONIC
SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES**

Sec. 201. Extension of period for applications for orders for emergency electronic surveillance.

Sec. 202. Additional authority for emergency electronic surveillance.

Sec. 203. Foreign Intelligence Surveillance Court matters.

Sec. 204. Document management system for applications for orders approving electronic surveillance.

Sec. 205. Additional personnel for preparation and consideration of applications for orders approving electronic surveillance.

Sec. 206. Training of Federal Bureau of Investigation and National Security Agency personnel in foreign intelligence surveillance matters.

Sec. 207. Enhancement of electronic surveillance authority in wartime.

**TITLE III—CLARIFICATIONS TO THE FOREIGN INTELLIGENCE
SURVEILLANCE ACT OF 1978**

Sec. 301. Acquisition of foreign-foreign communications.

Sec. 302. Individualized FISA orders.

TITLE IV—OTHER MATTERS

Sec. 401. Authorization of appropriations.

Sec. 402. Effective date.

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) CONGRESSIONAL INTELLIGENCE COMMIT-

4 TEES.—The term “congressional intelligence com-
5 mittees” means—

6 (A) the Select Committee on Intelligence of

7 the Senate; and

1 (B) the Permanent Select Committee on
2 Intelligence of the House of Representatives.

12 **TITLE I—CONSTRUCTION OF**
13 **FOREIGN INTELLIGENCE**
14 **SURVEILLANCE AUTHORITY**

15 SEC. 101. REITERATION OF CHAPTERS 119, 121, AND 206 OF
16 TITLE 18, UNITED STATES CODE, AND FOR-
17 EIGN INTELLIGENCE SURVEILLANCE ACT OF
18 1978 AS EXCLUSIVE MEANS BY WHICH DOMES-
19 TIC ELECTRONIC SURVEILLANCE MAY BE
20 CONDUCTED.

21 (a) EXCLUSIVE MEANS.—Notwithstanding any other
22 provision of law, chapters 119, 121, and 206 of title 18,
23 United States Code, and the Foreign Intelligence Surveil-
24 lance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the
25 exclusive means by which electronic surveillance (as that

1 term is defined in section 101(f) of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C. 1801(f)) may
3 be conducted.

4 (b) AMENDMENT TO FOREIGN INTELLIGENCE SUR-
5 VEILLANCE ACT OF 1978.—Section 109(a) of the Foreign
6 Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a))
7 is amended by striking “authorized by statute” each place
8 it appears and inserting “authorized by this title or chap-
9 ter 119, 121, or 206 of title 18, United States Code”.

10 (c) AMENDMENT TO TITLE 18, UNITED STATES
11 CODE.—Section 2511(2)(a)(ii)(B) of title 18, United
12 States Code, is amended by striking “statutory require-
13 ments” and inserting “requirements under the Foreign In-
14 telligence Surveillance Act of 1978 (50 U.S.C. 1801 et
15 seq.), this chapter, or chapters 121 or 206 of this title”.

16 **SEC. 102. SPECIFIC AUTHORIZATION REQUIRED FOR ANY**
17 **REPEAL OR MODIFICATION OF TITLE I OF**
18 **THE FOREIGN INTELLIGENCE SURVEIL-**
19 **LANCE ACT OF 1978.**

20 (a) IN GENERAL.—Title I of the Foreign Intelligence
21 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
22 amended by inserting after section 109 the following new
23 section:

3 “SEC. 109A. No provision of law shall be construed
4 to implicitly repeal or modify this title or any provision
5 thereof, nor shall any provision of law be deemed to repeal
6 or modify this title in any manner unless such provision
7 of law, if enacted after the date of the enactment of the
8 Foreign Intelligence Surveillance Improvement and En-
9 hancement Act of 2007, expressly amends or otherwise
10 specifically cites this title.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 for that Act is amended by inserting after the item relat-
13 ing to section 109 the following new item:

“Sec. 109A. Specific authorization required for any repeal or modification of title.”.

14 SEC. 103. INFORMATION FOR CONGRESS ON THE TER-
15 RORIST SURVEILLANCE PROGRAM AND SIMI-
16 LAR PROGRAMS.

17 As soon as practicable after the date of the enactment
18 of this Act, but not later than seven days after such date,
19 the President shall brief and inform each member of the
20 congressional intelligence committees on the following:

21 (1) The Terrorist Surveillance Program of the
22 National Security Agency.

23 (2) Any program which involves, whether in
24 part or in whole, the electronic surveillance of

1 United States persons in the United States for for-
2 eign intelligence purposes, and which is conducted
3 by any department, agency, or other element of the
4 United States Government, or by any entity at the
5 direction of a department, agency, or other element
6 of the United States Government, without fully com-
7 plying with the procedures set forth in the Foreign
8 Intelligence Surveillance Act of 1978 (50 U.S.C.
9 1801 et seq.) or chapter 119, 121, or 206 of title
10 18, United States Code.

11 SEC. 104. SUPREME COURT REVIEW OF THE TERRORIST
12 SURVEILLANCE PROGRAM.

13 (a) IN GENERAL.—Upon petition by the United
14 States or any party to the underlying proceedings, the Su-
15 preme Court of the United States shall review a final deci-
16 sion on the merits concerning the constitutionality of the
17 Terrorist Surveillance Program in at least one case that
18 is pending in the courts of the United States on the date
19 of enactment of this Act.

20 (b) EXPEDITED CONSIDERATION.—It shall be the
21 duty of the Supreme Court of the United States to ad-
22 vance on the docket and to expedite to the greatest pos-
23 sible extent the disposition of any matter brought under
24 subsection (a).

1 (c) DEFINITION.—In this section, the term “Ter-
2 rorist Surveillance Program” means the program identi-
3 fied by the President on December 17, 2005, to intercept
4 international communications into and out of the United
5 States of persons linked to al Qaeda or related terrorist
6 organizations.

7 **TITLE II—APPLICATIONS AND**
8 **PROCEDURES FOR ELECTRONIC SURVEILLANCE FOR**
9 **FOREIGN INTELLIGENCE**
10 **PURPOSES**

12 **SEC. 201. EXTENSION OF PERIOD FOR APPLICATIONS FOR**
13 **ORDERS FOR EMERGENCY ELECTRONIC SUR-**
14 **VEILLANCE.**

15 Section 105(f) of the Foreign Intelligence Surveil-
16 lance Act of 1978 (50 U.S.C. 1805(f)) is amended by
17 striking “72 hours” both places it appears and inserting
18 “168 hours”.

19 **SEC. 202. ADDITIONAL AUTHORITY FOR EMERGENCY ELECTRONIC SURVEILLANCE.**

21 Section 105 of the Foreign Intelligence Surveillance
22 Act of 1978 (50 U.S.C. 1805) is amended—
23 (1) by redesignating subsections (g), (h), (i),
24 and (j) as subsections (h), (i), (j), and (k), respec-
25 tively; and

(2) by inserting after subsection (f) the following new subsection (g):

3 “(g)(1)(A) Notwithstanding any other provision of
4 this title and subject to the provisions of this subsection,
5 the Attorney General may, with the concurrence of the Di-
6 rector of National Intelligence, appoint appropriate super-
7 visory or executive personnel within the Federal Bureau
8 of Investigation and the National Security Agency to au-
9 thorize electronic surveillance on a United States person
10 in the United States on an emergency basis pursuant to
11 the provisions of this subsection.

12 "(B) For purposes of this subsection, an intelligence
13 agent or employee acting under the supervision of a super-
14 visor or executive appointed under subparagraph (A) may
15 conduct emergency electronic surveillance under this sub-
16 section if such supervisor or executive reasonably deter-
17 mines that—

18 “(i) an emergency situation exists with respect
19 to the employment of electronic surveillance to ob-
20 tain foreign intelligence information before an order
21 authorizing such surveillance can with due diligence
22 be obtained; and

23 “(ii) the factual basis exists for the issuance of
24 an order approving such surveillance under this title.

1 “(2) The supervisors and executives appointed by the
2 Attorney General under paragraph (1) may only be offi-
3 cials as follows:

4 “(A) In the case of the Federal Bureau of In-
5 vestigation, officials at or above the level of Special
6 Agent in Charge.

7 “(B) In the case of the National Security Agen-
8 cy, officials at or above the level of head of branch
9 of the National Security Agency.

10 “(3) A supervisor or executive responsible for the
11 emergency employment of electronic surveillance under
12 this subsection shall submit to the Attorney General a re-
13 quest for approval of the surveillance within 24 hours of
14 the commencement of the surveillance. The request shall
15 set forth the ground for the belief specified in paragraph
16 (1), together with such other information as the Attorney
17 General shall require.

18 “(4)(A) The review of a request under paragraph (3)
19 shall be completed by the official concerned under that
20 paragraph as soon as practicable, but not more than 72
21 hours after the commencement of the electronic surveil-
22 lance concerned under paragraph (1).

23 “(B)(i) If the official concerned determines that the
24 electronic surveillance does not meet the requirements of
25 paragraph (1), the surveillance shall terminate imme-

1 diately and may not be recommenced by any supervisor
2 or executive appointed under paragraph (1), or any agent
3 or employee acting under the supervision of such super-
4 visor or executive, absent additional facts or changes in
5 circumstances that lead a supervisor or executive ap-
6 pointed under paragraph (1) to reasonably believe that the
7 requirements of paragraph (1) are satisfied.

8 “(ii) In the event of a determination under clause (i),
9 the Attorney General shall not be required, under section
10 106(j), to notify any United States person of the fact that
11 the electronic surveillance covered by such determination
12 was conducted before the termination of the surveillance
13 under that clause. However, the official making such de-
14 termination shall notify the court established by section
15 103(a) of such determination, and shall also provide notice
16 of such determination in the first report that is submitted
17 under section 108(a) after such determination is made.

18 “(C) If the official concerned determines that the sur-
19 veillance meets the requirements of subsection (f), the sur-
20 veillance may continue, subject to the requirements of
21 paragraph (5).

22 “(5)(A) An application in accordance with this title
23 shall be made to a judge having jurisdiction under section
24 103 as soon as practicable but not more than 168 hours

1 after the commencement of electronic surveillance under
2 paragraph (1).

3 “(B) In the absence of a judicial order approving
4 electronic surveillance commenced under paragraph (1),
5 the surveillance shall terminate at the earlier of—

6 “(i) when the information sought is obtained;

7 “(ii) when the application under subparagraph
8 (A) for an order approving the surveillance is de-
9 nied; or

10 “(iii) 168 hours after the commencement of the
11 surveillance, unless an application under subpara-
12 graph (A) is pending, in which case the surveillance
13 may continue for up to an additional 24 hours while
14 the judge has the application under advisement.

15 “(C) If an application under subparagraph (A) for
16 an order approving electronic surveillance commenced
17 under paragraph (1) is denied, or in any other case in
18 which the surveillance is terminated and no order approv-
19 ing the surveillance is issued by a court, the use of infor-
20 mation obtained or evidence derived from the surveillance
21 shall be governed by the provisions of subsection (f).

22 “(D) The denial of an application submitted under
23 subparagraph (A) may be reviewed as provided in section
24 103.

1 “(6) Any person who engages in the emergency em-
2 plement of electronic surveillance under paragraph (1)
3 shall follow the minimization procedures otherwise re-
4 quired by this title for the issuance of a judicial order ap-
5 proving the conduct of electronic surveillance.

6 “(7) Not later than 30 days after appointing super-
7 visors and executives under paragraph (1) to authorize the
8 exercise of authority in that paragraph, the Attorney Gen-
9 eral, in consultation with the Director of National Intel-
10 ligence, shall submit to the court established by section
11 103(a), the Select Committee on Intelligence of the Sen-
12 ate, and the Permanent Select Committee on Intelligence
13 of the House of Representatives, and bring up to date as
14 required, a report that—

15 “(A) identifies the number of supervisors and
16 executives who have been so appointed and the posi-
17 tions held by such supervisors and executives; and

18 “(B) sets forth guidelines or other directives
19 that describe the responsibilities of such supervisors
20 and executives under this subsection.”.

21 **SEC. 203. FOREIGN INTELLIGENCE SURVEILLANCE COURT
22 MATTERS.**

23 (a) AUTHORITY FOR ADDITIONAL JUDGES.—Section
24 103(a) of the Foreign Intelligence Surveillance Act of
25 1978 (50 U.S.C. 1803(a)) is amended—

10 “(2) In addition to the judges designated under para-
11 graph (1), the Chief Justice of the United States may des-
12 ignate as judges of the court established by paragraph (1)
13 such judges appointed under Article III of the Constitu-
14 tion of the United States as the Chief Justice determines
15 appropriate in order to provide for the prompt and timely
16 consideration under section 105 of applications under sec-
17 tion 104 for electronic surveillance under this title. Any
18 judge designated under this paragraph shall be designated
19 publicly.”.

20 (b) CONSIDERATION OF EMERGENCY APPLICA-
21 TIONS.—Such section is further amended by inserting
22 after paragraph (2), as added by subsection (a)(4) of this
23 section, the following new paragraph:

24 “(3) A judge of the court shall make a determination
25 to approve, deny, or seek modification of an application

1 submitted pursuant to section subsection (f) or (g) of sec-
2 tion 105 not later than 24 hours after the receipt of such
3 application by the court.”.

4 **SEC. 204. DOCUMENT MANAGEMENT SYSTEM FOR APPLICA-**
5 **TIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.**
6

7 (a) **SYSTEM REQUIRED.**—The Attorney General
8 shall, in consultation with the Director of the Federal Bu-
9 reau of Investigation, the Director of the National Secu-
10 rity Agency, and the Foreign Intelligence Surveillance
11 Court, develop and implement a secure, classified docu-
12 ment management system that permits the prompt prepa-
13 ration, modification, and review by appropriate personnel
14 of the Department of Justice, the Federal Bureau of In-
15 vestigation, the National Security Agency, and other appli-
16 cable elements of the United States Government of appli-
17 cations under section 104 of the Foreign Intelligence Sur-
18 veillance Act of 1978 (50 U.S.C. 1804) before their sub-
19 mittal to the Foreign Intelligence Surveillance Court.

20 (b) **SCOPE OF SYSTEM.**—The document management
21 system required by subsection (a) shall—

22 (1) permit and facilitate the prompt submittal
23 of applications to the Foreign Intelligence Surveil-
24 lance Court under section 104 or 105(g)(5) of the

1 Foreign Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1804 and 1805(g)(5)); and

7 SEC. 205. ADDITIONAL PERSONNEL FOR PREPARATION
8 AND CONSIDERATION OF APPLICATIONS FOR
9 ORDERS APPROVING ELECTRONIC SURVEIL-
10 LANCE.

11 (a) OFFICE OF INTELLIGENCE POLICY AND RE-
12 VIEW.—

1 Agency in order that such personnel may directly as-
2 sist personnel of the Agency in preparing applica-
3 tions described in that paragraph.

4 (b) FEDERAL BUREAU OF INVESTIGATION.—

5 (1) ADDITIONAL LEGAL AND OTHER PER-
6 SONNEL.—The National Security Branch of the
7 Federal Bureau of Investigation is hereby authorized
8 such additional legal and other personnel as may be
9 necessary to carry out the prompt and timely prepa-
10 ration of applications under section 104 of the For-
11 eign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1804) for orders under section 105 of that
13 Act (50 U.S.C. 1805) approving electronic surveil-
14 lance for foreign intelligence purposes.

15 (2) ASSIGNMENT.—The Director of the Federal
16 Bureau of Investigation shall assign personnel au-
17 thorized by paragraph (1) to and among the field of-
18 fices of the Federal Bureau of Investigation in order
19 that such personnel may directly assist personnel of
20 the Bureau in such field offices in preparing applica-
21 tions described in that paragraph.

22 (c) ADDITIONAL LEGAL AND OTHER PERSONNEL
23 FOR NATIONAL SECURITY AGENCY.—The National Secu-
24 rity Agency is hereby authorized such additional legal and
25 other personnel as may be necessary to carry out the

1 prompt and timely preparation of applications under sec-
2 tion 104 of the Foreign Intelligence Surveillance Act of
3 1978 (50 U.S.C. 1804) for orders under section 105 of
4 that Act (50 U.S.C. 1805) approving electronic surveil-
5 lance for foreign intelligence purposes.

6 (d) ADDITIONAL LEGAL AND OTHER PERSONNEL
7 FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

8 There is hereby authorized for the Foreign Intelligence
9 Surveillance Court such additional staff personnel as may
10 be necessary to facilitate the prompt and timely consider-
11 ation by that Court of applications under section 104 of
12 the Foreign Intelligence Surveillance Act of 1978 (50
13 U.S.C. 1804) for orders under section 105 of that Act (50
14 U.S.C. 1805) approving electronic surveillance for foreign
15 intelligence purposes. Personnel authorized by this para-
16 graph shall perform such duties relating to the consider-
17 ation of such applications as that Court shall direct.

18 (e) SUPPLEMENT NOT SUPPLANT.—The personnel
19 authorized by this section are in addition to any other per-
20 sonnel authorized by law.

1 SEC. 206. TRAINING OF FEDERAL BUREAU OF INVESTIGA-
2 TION AND NATIONAL SECURITY AGENCY PER-
3 SONNEL IN FOREIGN INTELLIGENCE SUR-
4 VEILLANCE MATTERS.

5 The Director of the Federal Bureau of Investigation
6 and the Director of the National Security Agency shall
7 each, in consultation with the Attorney General—

15 (2) prescribe related training for the personnel
16 of the applicable agency.

17 SEC. 207. ENHANCEMENT OF ELECTRONIC SURVEILLANCE
18 AUTHORITY IN WARTIME.

19 Section 111 of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1811) is amended by striking “fif-
21 teen calendar days following a declaration of war by the
22 Congress.” and inserting “30 calendar days following any
23 of the following:

24 “(1) A declaration of war by the Congress.

1 “(2) An authorization for the use of military
2 force within the meaning of section 2(c)(2) of the
3 War Powers Resolution (50 U.S.C. 1541(c)(2)).

4 “(3) A national emergency created by attack
5 upon the United States, its territories or posses-
6 sions, or the Armed Forces within the meaning of
7 section 2(c)(3) of the War Powers Resolution (50
8 U.S.C. 1541(c)(3)).”.

9 **TITLE III—CLARIFICATIONS TO**
10 **THE FOREIGN INTELLIGENCE**
11 **SURVEILLANCE ACT OF 1978**

12 **SEC. 301. ACQUISITION OF FOREIGN-FOREIGN COMMU-**
13 **NICATIONS.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of this Act or the Foreign Intelligence Surveillance
16 Act of 1978 (50 U.S.C. 1801 et seq.), no court order shall
17 be required for the acquisition through electronic surveil-
18 lance of the contents of any communication between one
19 person who is not located within the United States and
20 another person who is not located within the United States
21 for the purpose of collecting foreign intelligence informa-
22 tion even if such communication passes through, or the
23 surveillance device is located within, the United States.

24 (b) TREATMENT OF INTERCEPTED COMMUNICATIONS
25 INVOLVING DOMESTIC PARTY.—If surveillance conducted

1 as described in subsection (a) inadvertently collects a com-
2 munication in which at least one party is within the
3 United States, the contents of such communications shall
4 be handled in accordance with the minimization proce-
5 dures set forth in section 101(h)(4) of the Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1801(h)(4)).

7 (c) DEFINITIONS.—In this section, the terms “con-
8 tents”, “electronic surveillance”, and “foreign intelligence
9 information” have the meaning given such terms in sec-
10 tion 101 of the Foreign Intelligence Surveillance Act of
11 1978 (50 U.S.C. 1801).

12 **SEC. 302. INDIVIDUALIZED FISA ORDERS.**

13 Any order issued pursuant to section 105 of the For-
14 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
15 1805) authorizing electronic surveillance shall be sup-
16 ported by an individualized or particularized finding of
17 probable cause to believe the target of the electronic sur-
18 veillance is a foreign power or an agent of a foreign power.

19 **TITLE IV—OTHER MATTERS**

20 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

21 There is authorized to be appropriated such sums as
22 may be necessary to carry out this Act and the amend-
23 ments made by this Act.

1 **SEC. 402. EFFECTIVE DATE.**

2 Except as provided in section 103, this Act, and the
3 amendments made by this Act, shall take effect on the
4 date that is 30 days after the date of the enactment of
5 this Act.

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