

OIP GROUP 8

Ahmad, Usman

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov
Sent: Wednesday, November 14, 2007 5:18 PM
To: Seldel, Rebecca; Traccl, Robert N; Gerry, Brett (OLP); Kim, Harold H.
Subject: FW:
Attachments: JEN07G37_xml.pdf

EFF2OLA(2)-56

Damion D. Nielsen
United States Senate
Committee on the Judiciary
Senator Arlen Specter

FOIA Exemption b(6)

From: Hayes, Bradley (Judiciary-Rep)
Sent: Wednesday, November 14, 2007 5:15 PM
To: All Judiciary Users
Subject: FW:

EFF2OLA(2)-57

Clarification:

This amendment doesn't replace "U.S. person" everywhere in the bill, it only replaces it in the Wyden provision, which governs surveillance conducted outside the United States. This amendment would limit this overseas warrant requirement to surveillance targeted at U.S. citizens.

From: Hayes, Bradley (Judiciary-Rep)
Sent: Wednesday, November 14, 2007 4:52 PM
To: All Judiciary Users
Subject:

EFF2OLA(2)-58

Senator Sessions or another Senator may offer the attached amendments to S.2248 (FISA):

JEN07G37: This amendment replaces the phrase "United States person" with "United States citizen" at every place it is used in the bill in order to clarify that the bill only applies to U.S. citizens.

Bradley F. Hayes
Senior Counsel
United States Senate Judiciary Committee
Subcommittee on Administrative Oversight and the Courts

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f

FOIA Exemption b(6)

AMENDMENT NO.

Calendar No.

Purpose: To limit the requirement that a warrant be obtained for overseas foreign-intelligence surveillance to surveillance that is targeted at United States citizens.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SESSIONS

Viz:

- 1 Beginning on page 6, line 17, through page 8, line
- 2 15—
- 3 (1) strike "United States person" each place
- 4 that term appears and insert "United States cit-
- 5 izen"; and
- 6 (2) strike "United States persons" each place
- 7 that term appears and insert "United States citi-
- 8 zens".

Ahmad, Usman

From: Nielsen, Damion (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov
Sent: Wednesday, November 14, 2007 5:17 PM
To: Seldel, Rebecca; Tracchi, Robert N; Gerry, Brett (OLP); Kim, Harold H.
Subject: FW: Possible Markup Amendments to S. 2248, FISA
Attachments: HEN07K37_xml.pdf; HEN07K38_xml.pdf

EFF2OLA(2)-59

Damion D. Nielsen
United States Senate
Committee on the Judiciary
Senator Arlen Specter

[REDACTED] FOIA Exemption b(6)

FOIA Exemption b(6)

From: Van Horne, Bill (Cardin) [mailto:[REDACTED]@cardin.senate.gov]
Sent: Wednesday, November 14, 2007 4:21 PM
To: All Judiciary Users
Subject: Possible Markup Amendments to S. 2248, FISA

EFF2OLA(2)-60

Senator Cardin or another Senator may offer the attached amendments to S. 2248 (FISA):

- (1) **Sunset - 2 year: HEN07K37:** This amendment would shorten the sunset of authorities in Title I of the bill (foreign intelligence surveillance) from 6 years to 2 years. It also makes corresponding technical changes to transition procedures in Title III.
- (2) **Sunset - 4 year: HEN07K38:** This amendment would shorten the sunset of authorities in Title I of the bill (foreign intelligence surveillance) from 6 years to 4 years. It also makes corresponding technical changes to transition procedures in Title III.

Bill Van Horne, Esq.
Judiciary Committee Counsel
Senator Benjamin L. Cardin
United States Senate
509 Hart Senate Office Building
Washington, DC 20510

tel: [REDACTED] FOIA Exemption b(6)
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e-mail: [REDACTED]@cardin.senate.gov
website: <http://cardin.senate.gov/>

AMENDMENT NO. Calendar No.

Purpose: To modify the sunset provision.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CARDIN

Viz:

1 On page 28, line 21, strike "2013" and insert
2 "2009".

3 On page 57, line 18, strike "2013" and insert "2009".

4 On page 57, line 21, strike "2013" and insert
5 "2009".

6 On page 59, line 2, strike "2013" and insert "2009".

1 On page 59, line 6, strike "2013" and insert "2009".

AMENDMENT NO.

Calendar No.

Purpose: To modify the sunset provision.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CARDIN

Viz:

1 On page 28, line 21, strike "2013" and insert
2 "2011".

3 On page 57, line 18, strike "2013" and insert "2011".

4 On page 57, line 21, strike "2013" and insert
5 "2011".

6 On page 59, line 2, strike "2013" and insert "2011".

1 On page 59, line 6, strike "2013" and insert "2011".

Ahmad, Usman

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep) [redacted]@judiciary-rep.senate.gov] EFF2OLA(2)-61
Sent: Wednesday, November 14, 2007 5:16 PM
To: Seldel, Rebecca; Traccl, Robert N; Gerry, Brett (OLP); Kim, Harold H.
Subject: FW: Individual amendments to Title I Substitute
Attachments: HEN07K64_xml.pdf; HEN07L25_xml.pdf; HEN07K70_xml.pdf; HEN07L34_xml.pdf; HEN07L26_xml.pdf; HEN07L27_xml.pdf; HEN07L28_xml.pdf; HEN07L29_xml.pdf; HEN07L30_xml.pdf; HEN07L33_xml.pdf

Damion D. Nielsen
 United States Senate
 Committee on the Judiciary
 Senator Arlen Specter

[redacted] FOIA Exemption b(6)

FOIA Exemption b(6)

From: Espinel, Zullma (Judiciary-Dem) [mailto:[redacted]@Judiciary-dem.senate.gov] EFF2OLA(2)-62
Sent: Wednesday, November 14, 2007 4:48 PM
To: All Judiciary Users
Subject: FW: Individual amendments to Title I Substitute

Attached are the individual amendments that make up the Title I substitute amendment that may be offered by Sen.'s Leahy, Feinstein, Whitehouse and Schumer. These amendments include:

- HEN07K70: Stay pending appeal—the government can move to stay the Court's order pending a review by the Court en banc or to the FISA court of review
- HEN07L27: Adds more court oversight of minimization procedures—compliance review and remedial authority
- HEN07L30: IG Audit
- HEN07L33: Allows the Deputy Director of FBI to be a certifying official only if Director of FBI is unavailable
- HEN07L28: Exclusivity provision —this provision is a substitution for the original exclusivity provision in FISA —this provision strengthens the exclusivity of FISA as the exclusive means for targeting US persons for the purpose of acquiring their communications or communications information for foreign intelligence purposes except where specifically authorized by another statute
- HEN07L34: This strengthens the provision prohibiting reverse targeting
- HEN07L26: Use and dissemination limitation amendment —if the Court finds that the certification provided by the administration is deficient, this provides limitations on the use of information acquired under that certification
- HEN07L25: This amendment codifies section 2.5 of executive order 12,333
- HEN07K64: This amendment strikes the redefinition of electronic surveillance and instead explicitly gives the Administration the additional authority to target persons reasonably believed to be outside the U.S. to acquire foreign intelligence information
- HEN07L29: This amendment adds more congressional oversight —it adds a provision to Section 103 providing that the Attorney General will submit to Congress the FISA court orders

FOIA Exemption b(6)

From: Henderson, John (Legis Counsel) [mailto:[redacted]@slc.senate.gov] EFF2OLA(2)-63
Sent: Wednesday, November 14, 2007 3:32 PM
To: Espinel, Zullma (Judiciary-Dem)
Subject: Individual amendments

Here are the individuals. Some didn't change, but attached the .pdf I sent last week.

Individual amendments

<<HEN07K64_xml.pdf>> <<HEN07L25_xml.pdf>> <<HEN07K70_xml.pdf>> <<HEN07L34_xml.pdf>>
<<HEN07L26_xml.pdf>> <<HEN07L27_xml.pdf>> <<HEN07L28_xml.pdf>> <<HEN07L29_xml.pdf>>
<<HEN07L30_xml.pdf>> <<HEN07L33_xml.pdf>>

AMENDMENT NO. Calendar No.

Purpose: To restore the definition of electronic surveillance.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

- 1 On page 3, strike lines 8 through 14.

- 2 On page 5, lines 21 through 22, strike "any other
3 law" and insert "any other provision of law, including title
4 I".

- 5 On page 12, line 8, after the semicolon add "and".

- 6 On page 12, strike lines 13 through 15.

- 1 On page 29, line 24, strike "(as defined" and all that
- 2 follows through "section 701)" on line 25.

AMENDMENT NO.

Calendar No.

Purpose: To modify the provision relating to United States persons.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1 On page 6, strike line 17 and all that follows through
2 page 9, line 2, and insert the following:

3 “(c) UNITED STATES PERSONS LOCATED OUTSIDE
4 THE UNITED STATES.—

5 “(1) ACQUISITION INSIDE THE UNITED STATES
6 OF UNITED STATES PERSONS OUTSIDE THE UNITED
7 STATES.—An acquisition authorized under sub-
8 section (a) that constitutes electronic surveillance
9 and occurs inside the United States may not inten-

1 tionally target a United States person reasonably be-
2 lieved to be outside the United States, except in ac-
3 cordance with the procedures under title I.

4 “(2) ACQUISITION OUTSIDE THE UNITED
5 STATES OF UNITED STATES PERSONS OUTSIDE THE
6 UNITED STATES.—

7 “(A) IN GENERAL.—An acquisition by an
8 electronic, mechanical, or other surveillance de-
9 vice outside the United States may not inten-
10 tionally target a United States person reason-
11 ably believed to be outside the United States to
12 acquire the contents of a wire or radio commu-
13 nication sent by or intended to be received by
14 that United States person under circumstances
15 in which a person has reasonable expectation of
16 privacy and a warrant would be required for
17 law enforcement purposes if the technique were
18 used inside the United States unless—

19 “(i) the Foreign Intelligence Surveil-
20 lance Court has entered an order approv-
21 ing electronic surveillance of that United
22 States person under section 105, or in the
23 case of an emergency situation, electronic
24 surveillance against the target is being

1 conducted in a manner consistent with title
2 I; or

3 “(ii)(I) the Foreign Intelligence Sur-
4 veillance Court has entered a order under
5 subparagraph (B) that there is probable
6 cause to believe that the United States
7 person is a foreign power or an agent of a
8 foreign power;

9 “(II) the Attorney General has estab-
10 lished minimization procedures for that ac-
11 quisition that meet the definition of mini-
12 mization procedures under section 101(h);
13 and

14 “(III) the dissemination provisions of
15 the minimization procedures described in
16 subclause (II) have been approved under
17 subparagraph (C).

18 “(B) PROBABLE CAUSE DETERMINATION;
19 REVIEW.—

20 “(i) IN GENERAL.—The Attorney
21 General may submit to the Foreign Intel-
22 ligence Surveillance Court the determina-
23 tion of the Attorney General, together with
24 any supporting affidavits, that a United
25 States person who is outside the United

1 States is a foreign power or an agent of a
2 foreign power.

3 “(ii) REVIEW.—The Court shall re-
4 view, any probable cause determination
5 submitted by the Attorney General under
6 this subparagraph. The review under this
7 clause shall be limited to whether, on the
8 basis of the facts submitted by the Attor-
9 ney General, there is probable cause to be-
10 lieve that the United States person who is
11 outside the United States is a foreign
12 power or an agent of a foreign power.

13 “(iii) ORDER.—If the Court, after
14 conducting a review under clause (ii), de-
15 termines that there is probable cause to
16 believe that the United States person is a
17 foreign power or an agent of a foreign
18 power, the court shall issue an order ap-
19 proving the acquisition. An order under
20 this clause shall be effective for 90 days,
21 and may be renewed for additional 90-day
22 periods.

23 “(iv) NO PROBABLE CAUSE.—If the
24 Court, after conducting a review under
25 clause (ii), determines that there is not

1 probable cause to believe that a United
2 States person is a foreign power or an
3 agent of a foreign power, it shall enter an
4 order so stating and provide a written
5 statement for the record of the reasons for
6 such determination. The Government may
7 appeal an order under this clause to the
8 Foreign Intelligence Surveillance Court of
9 Review.

10 “(C) REVIEW OF MINIMIZATION PROCE-
11 DURES.—

12 “(i) IN GENERAL.—The Foreign Intel-
13 ligence Surveillance Court shall review the
14 minimization procedures applicable to dis-
15 semination of information obtained
16 through an acquisition authorized under
17 subparagraph (A) to assess whether such
18 procedures meet the definition of mini-
19 mization procedures under section 101(h)
20 with respect to dissemination.

21 “(ii) REVIEW.—The Court shall issue
22 an order approving the procedures applica-
23 ble to dissemination as submitted or as
24 modified to comply with section 101(h).

1 employment of an acquisition
2 under subparagraph (A) before a
3 determination of probable cause
4 can with due diligence be ob-
5 tained; and

6 “(bb) the factual basis for
7 issuance of a determination
8 under subparagraph (B) to ap-
9 prove such an acquisition exists;

10 “(II) informs a judge of the For-
11 eign Intelligence Surveillance Court at
12 the time of such authorization that
13 the decision has been made to employ
14 an emergency acquisition;

15 “(III) submits a request in ac-
16 cordance with subparagraph (B) to
17 the judge notified under subclause
18 (II) as soon as practicable, but later
19 than 72 hours after the Attorney Gen-
20 eral authorizes such an acquisition;
21 and

22 “(IV) requires that minimization
23 procedures meeting the definition of
24 minimization procedures under section
25 101(h) be followed.

1 “(ii) TERMINATION.—In the absence
2 of a judicial determination finding probable
3 cause to believe that the United States
4 person that is the subject of an emergency
5 employment of an acquisition under clause
6 (i) is a foreign power or an agent of a for-
7 eign power, the emergency employment of
8 an acquisition under clause (i) shall termi-
9 nate when the information sought is ob-
10 tained, when the request for a determina-
11 tion is denied, or after the expiration of 72
12 hours from the time of authorization by
13 the Attorney General, whichever is earliest.

14 “(iii) USE OF INFORMATION.—If the
15 Court determines that there is not prob-
16 able cause to believe that a United States
17 is a foreign power or an agent of a foreign
18 power in response to a request for a deter-
19 mination under clause (i)(III), or in any
20 other case where the emergency employ-
21 ment of an acquisition under this subpara-
22 graph is terminated and no determination
23 finding probable cause is issued, no infor-
24 mation obtained or evidence derived from
25 such acquisition shall be received in evi-

1 dence or otherwise disclosed in any trial,
2 hearing, or other proceeding in or before
3 any court, grand jury, department, office,
4 agency, regulatory body, legislative com-
5 mittee, or other authority of the United
6 States, a State, or political subdivision
7 thereof, and no information concerning any
8 United States person acquired from such
9 acquisition shall subsequently be used or
10 disclosed in any other manner by Federal
11 officers or employees without the consent
12 of such person, except with the approval of
13 the Attorney General if the information in-
14 dicates a threat of death or serious bodily
15 harm to any person.

16 “(3) PROCEDURES.—

17 “(A) SUBMITTAL TO FOREIGN INTEL-
18 LIGENCE SURVEILLANCE COURT.—Not later
19 than 30 days after the date of the enactment of
20 the FISA Amendments Act of 2007, the Attor-
21 ney General shall submit to the Foreign Intel-
22 ligence Surveillance Court the procedures to be
23 used in determining whether a target reason-
24 ably believed to be outside the United States is
25 a United States person.

1 “(B) REVIEW BY FOREIGN INTELLIGENCE
2 SURVEILLANCE COURT.—The Foreign Intel-
3 ligence Surveillance Court shall review, the pro-
4 cedures submitted under subparagraph (A), and
5 shall approve those procedures if they are rea-
6 sonably designed to determine whether a target
7 reasonably believed to be outside the United
8 States is a United States person. If the Court
9 concludes otherwise, the Court shall enter an
10 order so stating and provide a written state-
11 ment for the record of the reasons for such de-
12 termination. The Government may appeal such
13 an order to the Foreign Intelligence Surveil-
14 ance Court of Review.

15 “(C) USE IN TARGETING.—Any targeting
16 of persons reasonably believed to be located out-
17 side the United States shall use the procedures
18 approved by the Foreign Intelligence Surveil-
19 ance Court under subparagraph (B). Any new
20 or amended procedures may be used with re-
21 spect to the targeting of persons reasonably be-
22 lieved to be located outside the United States
23 upon approval of the new or amended proce-
24 dures by the Court, which shall review such
25 procedures under paragraph (B).

1 “(4) TRANSITION PROCEDURES CONCERNING
2 THE TARGETING OF UNITED STATES PERSONS OVER-
3 SEAS.—Any authorization in effect on the date of
4 enactment of the FISA Amendments Act of 2007
5 under section 2.5 of Executive Order 12333 to in-
6 tentionally target a United States person reasonably
7 believed to be located outside the United States, to
8 acquire the contents of a wire or radio communica-
9 tion sent by or intended to be received by that
10 United States person, shall remain in effect, and
11 shall constitute a sufficient basis for conducting
12 such an acquisition of a United States person lo-
13 cated outside the United States, until that author-
14 ization expires or 90 days after the date of enact-
15 ment of the FISA Amendments Act of 2007, which-
16 ever is earlier.

AMENDMENT NO.

Calendar No.

Purpose: To modify the provision relating to stays pending appeal.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1 On page 21, strike line 5 through 13 and insert the
2 following:

3 “(B) STAY PENDING APPEAL.—The Gov-
4 ernment may move for a stay of any order of
5 the Foreign Intelligence Surveillance Court
6 under paragraph (5)(B)(i) pending review by
7 the Court en banc or pending appeal to the
8 Foreign Intelligence Surveillance Court of Re-
9 view.

AMENDMENT NO.

Calendar No.

Purpose: To clarify the limitations on the authority to conduct acquisitions.

IN THE SENATE OF THE UNITED STATES--110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1

2 On page 6, lines 10 and 11, strike "acquisition is to
3 target for surveillance" and insert "targeting is to acquire
4 the communications of".

AMENDMENT NO.

Calendar No.

Purpose: To modify the provision relating to correcting deficiencies.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1 On page 19, strike line 23 and all that follows
2 through page 20, line 14, and insert the following:

3 “(B) CORRECTION OF DEFICIENCIES.—

4 “(i) IN GENERAL.—If the Court finds
5 that a certification required by subsection
6 (g) does not contain all of the required ele-
7 ments, or that the procedures required by
8 subsections (e) and (f) are not consistent
9 with the requirements of those subsections

1 or the fourth amendment to the Constitu-
2 tion of the United States, the Court shall
3 issue an order directing the Government
4 to, at the Government's election and to the
5 extent required by the Court's order—

6 “(I) correct any deficiency identi-
7 fied by the Court's order not later
8 than 30 days after the date the Court
9 issues the order; or

10 “(II) cease the acquisition au-
11 thorized under subsection (a).

12 “(ii) LIMITATION ON USE OF INFOR-
13 MATION.—

14 “(I) IN GENERAL.—Except as
15 provided in subclause (II), no infor-
16 mation obtained or evidence derived
17 from an acquisition under clause (i)(I)
18 shall be received in evidence or other-
19 wise disclosed in any trial, hearing, or
20 other proceeding in or before any
21 court, grand jury, department, office,
22 agency, regulatory body, legislative
23 committee, or other authority of the
24 United States, a State, or political
25 subdivision thereof, and no informa-

1 tion concerning any United States
2 person acquired from such acquisition
3 shall subsequently be used or dis-
4 closed in any other manner by Fed-
5 eral officers or employees without the
6 consent of such person, except with
7 the approval of the Attorney General
8 if the information indicates a threat
9 of death or serious bodily harm to any
10 person.

11 “(II) EXCEPTION.—If the Gov-
12 ernment corrects any deficiency iden-
13 tified by the Court’s order under
14 clause (i), the Court may permit the
15 use or disclosure of information ac-
16 quired before the date of the correc-
17 tion pursuant to such minimization
18 procedures as the Court shall estab-
19 lish for purposes of this clause.

AMENDMENT NO.

Calendar No.

Purpose: To add provisions relating to compliance reviews and remedial authority.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

- 1 On page 21, between lines 21 and 22, insert the fol-
- 2 lowing:
- 3 “(7) COMPLIANCE REVIEW.—The Court may
- 4 review and assess compliance with the minimization
- 5 procedures submitted to the Court pursuant to sub-
- 6 sections (e) and (f) by reviewing the semiannual as-
- 7 sessments submitted by the Attorney General and
- 8 the Director of National Intelligence pursuant to
- 9 subsection (1)(1) with respect to compliance with

1 minimization procedures. In conducting a review
2 under this paragraph, the Court may, to the extent
3 necessary, require the Government to provide addi-
4 tional information regarding the acquisition, reten-
5 tion, or dissemination of information concerning
6 United States persons during the course of an acqui-
7 sition authorized under subsection (a).

8 “(8) REMEDIAL AUTHORITY.—The Foreign In-
9 telligence Surveillance Court shall have authority to
10 fashion remedies as necessary to enforce—

11 “(A) any order issued under this section;

12 and

13 “(B) compliance with any such order.

AMENDMENT NO.

Calendar No.

Purpose: To clarify the provision relating to exclusive means.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

- 1 Strike section 102 and insert the following:
- 2 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
- 3 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
- 4 **TION OF CERTAIN COMMUNICATIONS MAY BE**
- 5 **CONDUCTED.**
- 6 (a) **STATEMENT OF EXCLUSIVE MEANS.**—Title I of
- 7 the Foreign Intelligence Surveillance Act of 1978 (50
- 8 U.S.C. 1801 et seq.) is amended by adding at the end
- 9 the following new section:

1 "STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
2 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
3 TAIN COMMUNICATIONS MAY BE CONDUCTED

4 "SEC. 112. (a) This Act shall be the exclusive means
5 for targeting United States persons for the purpose of ac-
6 quiring their communications or communications informa-
7 tion for foreign intelligence purposes, whether such per-
8 sons are inside the United States or outside the United
9 States, except in cases where specific statutory authoriza-
10 tion exists to obtain communications information without
11 an order under this Act.

12 "(b) Chapters 119 and 121 of title 18, United States
13 Code, and this Act shall be the exclusive means by which
14 electronic surveillance and the interception of domestic
15 wire, oral, or electronic communications may be con-
16 ducted.

17 "(c) Subsections (a) and (b) shall apply unless spe-
18 cific statutory authorization for electronic surveillance,
19 other than as an amendment to this Act, is enacted. Such
20 specific statutory authorization shall be the only exception
21 to subsection (a) and (b)."

22 (b) CONFORMING AMENDMENTS.—

23 (1) IN GENERAL.—Section 2511(2)(a) of title
24 18, United States Code, is amended by adding at
25 the end the following:

1 “(iii) A certification under subparagraph (ii)(B) for
2 assistance to obtain foreign intelligence information shall
3 identify the specific provision of the Foreign Intelligence
4 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that
5 provides an exception from providing a court order, and
6 shall certify that the statutory requirements of such provi-
7 sion have been met.”.

8 (2) TABLE OF CONTENTS.—The table of con-
9 tents in the first section of the Foreign Intelligence
10 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
11 is amended by adding after the item relating to sec-
12 tion 111, the following:

“Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of certain communications may be conducted.”.

13 (c) OFFENSE.—Section 109(a) of the Foreign Intel-
14 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
15 amended by striking “authorized by statute” each place
16 it appears in such section and inserting “authorized by
17 this title or chapter 119, 121, or 206 of title 18, United
18 States Code”.

AMENDMENT NO. Calendar No.

Purpose: To ensure effective congressional oversight.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

- 1 Strike section 103(b) and insert the following:
- 2 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
- 3 OTHER ORDERS.—Such section 601 is further amended
- 4 by adding at the end the following new subsection:
- 5 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
- 6 General shall submit to the committees of Congress re-
- 7 ferred to in subsection (a)—
- 8 “(1) a copy of any decision, order, or opinion
- 9 issued by the Foreign Intelligence Surveillance Court
- 10 or the Foreign Intelligence Surveillance Court of Re-

1 view that includes significant construction or inter-
2 pretation of any provision of this Act, and any
3 pleadings associated with such decision, order, or
4 opinion, not later than 45 days after such decision,
5 order, or opinion is issued; and

6 “(2) a copy of any such decision, order, or opin-
7 ion, and the pleadings associated with such decision,
8 order, or opinion, that was issued during the 5-year
9 period ending on the date of the enactment of the
10 FISA Amendments Act of 2007 and not previously
11 submitted in a report under subsection (a).”

AMENDMENT NO.

Calendar No.

Purpose: To require an audit relating to the Terrorist Surveillance Program.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

- 1 On page 43, between lines 6 and 7, insert the fol-
- 2 lowing:
- 3 **SEC. 110. REVIEW OF PREVIOUS ACTIONS.**
- 4 (a) DEFINITIONS.—In this section—
- 5 (1) the term “element of the intelligence com-
- 6 munity” means an element of the intelligence com-
- 7 munity specified in or designated under section 3(4)
- 8 of the National Security Act of 1947 (50 U.S.C.
- 9 401a(4)); and

1 (2) the term "Terrorist Surveillance Program"
2 means the intelligence program publicly confirmed
3 by the President in a radio address on December 17,
4 2005, and any previous, subsequent or related,
5 versions or elements of that program.

6 (b) AUDIT.—Not later than 180 days after the date
7 of the enactment of this Act, the Inspectors General of
8 the Department of Justice and relevant elements of the
9 intelligence community shall work in conjunction to com-
10 plete a comprehensive audit of the Terrorist Surveillance
11 Program and any closely related intelligence activities,
12 which shall include acquiring all documents relevant to
13 such programs, including memoranda concerning the legal
14 authority of a program, authorizations of a program, cer-
15 tifications to telecommunications carriers, and court or-
16 ders.

17 (c) REPORT.—

18 (1) IN GENERAL.—Not later than 30 days after
19 the completion of the audit under subsection (b), the
20 Inspectors General shall submit to the Permanent
21 Select Committee on Intelligence and the Committee
22 on the Judiciary of the House of Representatives
23 and the Select Committee on Intelligence and the
24 Committee on the Judiciary of the Senate a joint re-
25 port containing the results of that audit, including

1 all documents acquired pursuant to the conduct of
2 that audit.

3 (2) FORM.—The report under paragraph (1)
4 shall be submitted in unclassified form, but may in-
5 clude a classified annex.

6 (d) EXPEDITED SECURITY CLEARANCE.—The Direc-
7 tor of National Intelligence shall ensure that the process
8 for the investigation and adjudication of an application by
9 an Inspector General or any appropriate staff of an In-
10 spector General for a security clearance necessary for the
11 conduct of the audit under subsection (b) is conducted as
12 expeditiously as possible.

13 (e) ADDITIONAL LEGAL AND OTHER PERSONNEL
14 FOR THE INSPECTORS GENERAL.—The Inspectors Gen-
15 eral of the Department of Justice and of the relevant ele-
16 ments of the intelligence community are authorized such
17 additional legal and other personnel as may be necessary
18 to carry out the prompt and timely preparation of the
19 audit and report required under this section. Personnel
20 authorized by this subsection shall perform such duties re-
21 lating to the audit as the relevant Inspector General shall
22 direct. The personnel authorized by this subsection are in
23 addition to any other personnel authorized by law.

AMENDMENT NO.

Calendar No.

Purpose: To provide appropriate authority for the Deputy Director of the Federal Bureau of Investigation under the Foreign Intelligence Surveillance Act of 1978.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1

2 On page 31, lines 21 through 23, strike “if des-
3 igned by the President as a certifying official” and in-
4 sert “if the Director of the Federal Bureau of Investiga-
5 tion is unavailable”.

6 On page 37, lines 3 through 5, strike “if designated
7 by the President as a certifying official”. and insert “if

1 the Director of the Federal Bureau of Investigation is un-
2 available".

Ahmad, Usman

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov

EFF2OLA(2)-OLA-64

Sent: Wednesday, November 14, 2007 5:14 PM

To: Seidel, Rebecca; Traccl, Robert N; Gerry, Brett (OLP); Kim, Harold H.

Subject: Summary of Kyl amendments to S.2248

Damion D. Nielsen
United States Senate
Committee on the Judiciary
Senator Arlen Specter

FOIA Exemption b(6)

From: Matal, Joe (Judiciary-Rep)
Sent: Wednesday, November 14, 2007 5:13 PM
To: Matal, Joe (Judiciary-Rep); All Judiciary Users
Subject: RE: Kyl amendments to S.2248

EFF2OLA(2)-65

Summary of Kyl amendments:

JEN07G16

This amendment modifies the Wyden provision, which requires the U.S. to go to court to obtain a FISA warrant before any overseas surveillance that is targeted at a U.S. person may be initiated. The amendment modifies this provision by: (1) limiting the overseas-surveillance warrant requirement to cases where the surveillance is conducted by tapping calls and other communications that are routed through the United States; and (2) allowing court approval to be sought within 168 days of the initiation of the surveillance, rather than before the surveillance begins.

HEN07L36

This amendment creates an exception to the Wyden overseas-surveillance warrant requirement for cases where a warrant would not be required to monitor the same individual in the same circumstances in the course of an ordinary criminal investigation.

HEN07L37

This amendment creates an exception to the Wyden overseas-surveillance warrant requirement for cases where the Fourth Amendment would not require a warrant if the investigation were conducted inside the United States.

"Kyl Amendment 1"

This amendment modifies the going-forward private-party immunity provisions in the bill by allowing a prevailing party to recover court costs and reasonable attorneys' fees.

JEN07G15

This amendment strikes the bill's requirement that the IG and intelligence agencies report on the number of persons located inside the United States whose communications were reviewed.

"Kyl amendment 2"

This amendment provides that, in the event that the sunset on the bill expires, the United States shall continue to have authority to monitor the activities and communications of Al Qaeda and other foreign terrorist organizations.

AMENDMENT NO.

Calendar No.

Purpose: To amend the FISA Amendments Act of 2007 to require specific statutory language to repeal or modify the provisions in the bill relating to electronic surveillance and interception of domestic communications.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

- 1 Strike section 102 and insert the following:
- 2 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
- 3 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
- 4 **TION OF DOMESTIC COMMUNICATIONS MAY**
- 5 **BE CONDUCTED.**
- 6 (a) **STATEMENT OF EXCLUSIVE MEANS.**—Title I of
- 7 the Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1801 et seq.) is amended by adding at the end
2 the following:

3 "STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
4 TRONIC SURVEILLANCE AND INTERCEPTION OF DO-
5 MESTIC COMMUNICATIONS MAY BE CONDUCTED

6 "SEC. 112. Chapters 119 and 121 of title 18, United
7 States Code, and this Act shall be the exclusive means by
8 which electronic surveillance (as defined in section 101(f),
9 regardless of the limitation of section 701) and the inter-
10 ception of domestic wire, oral, or electronic communica-
11 tions may be conducted. No provision of law shall be con-
12 strued to implicitly repeal or modify this title or any provi-
13 sion thereof, nor shall any provision of law be deemed to
14 repeal or modify this title in any manner unless such pro-
15 vision of law, if enacted after the date of the enactment
16 of the FISA Amendments Act of 2007, expressly amends
17 or otherwise specifically cites this title."

18 (b) TABLE OF CONTENTS.—The table of contents in
19 the first section of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by add-
21 ing after the item relating to section 111, the following:

"Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of domestic communications may be conducted."

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**
3 **SIGNING STATEMENTS**

4 **SEC. 401. DEFINITION.**

5 As used in this title, the term "presidential signing
6 statement" means a statement issued by the President
7 about a bill, in conjunction with signing that bill into law
8 pursuant to Article I, section 7, of the Constitution.

1 **SEC. 402. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
2 **MENTS.**

3 In determining the meaning of this Act, no Federal
4 or State court shall rely on or defer to a presidential sign-
5 ing statement as a source of authority.

6 **SEC. 403. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
7 **COURT PROCEEDINGS OR SUBMIT CLARI-**
8 **FYING RESOLUTION.**

9 (a) **CONGRESSIONAL RIGHT TO PARTICIPATE AS**
10 **AMICUS CURIAE.**—If a presidential signing statement is
11 issued concerning this Act, in any action, suit, or pro-
12 ceeding in any Federal or State court (including the Su-
13 preme Court of the United States), regarding the con-
14 struction or constitutionality, or both, of this Act, the Fed-
15 eral or State Court shall permit the United States Senate,
16 through the Office of Senate Legal Counsel, as authorized
17 in section 701 of the Ethics in Government Act of 1978
18 (2 U.S.C. 288), or the United States House of Represent-
19 atives, through the Office of General Counsel for the
20 United States House of Representatives, or both, to par-
21 ticipate as an amicus curiae, and to present an oral argu-
22 ment on the question of the Act's construction or constitu-
23 tionality, or both. Nothing in this section shall be con-
24 strued to confer standing on any party seeking to bring,
25 or jurisdiction on any court with respect to, any civil or
26 criminal action, including suit for court costs, against

1 Congress, either House of Congress, a Member of Con-
2 gress, a committee or subcommittee of a House of Con-
3 gress, any office or agency of Congress, or any officer or
4 employee of a House of Congress or any office or agency
5 of Congress.

6 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
7 RESOLUTION.—In any suit referenced in subsection (a),
8 the full Congress may pass a concurrent resolution declar-
9 ing its view of the proper interpretation of the Act of Con-
10 gress at issue, clarifying Congress's intent or clarifying
11 Congress's findings of fact, or both. If Congress does pass
12 such a concurrent resolution, the Federal or State court
13 shall permit the United States Congress, through the Of-
14 fice of Senate Legal Counsel, to submit that resolution
15 into the record of the case as a matter of right.

16 (c) EXPEDITED CONSIDERATION.—It shall be the
17 duty of each Federal or State court, including the Su-
18 preme Court of the United States, to advance on the dock-
19 et and to expedite to the greatest possible extent the dis-
20 position of any matter brought under subsection (a).

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**
3 **SIGNING STATEMENTS**

4 **SEC. 401. DEFINITION.**

5 As used in this title, the term “presidential signing
6 statement” means a statement issued by the President
7 about a bill, in conjunction with signing that bill into law
8 pursuant to Article I, section 7, of the Constitution.

1 **SEC. 402. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
2 **MENTS.**

3 In determining the meaning of this Act, no Federal
4 or State court shall rely on or defer to a presidential sign-
5 ing statement as a source of authority.

6 **SEC. 403. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
7 **COURT PROCEEDINGS OR SUBMIT CLARI-**
8 **FYING RESOLUTION.**

9 (a) **CONGRESSIONAL RIGHT TO PARTICIPATE AS**
10 **AMICUS CURIAE.**—If a presidential signing statement is
11 issued concerning this Act, in any action, suit, or pro-
12 ceeding in any Federal or State court (including the Su-
13 preme Court of the United States), regarding the con-
14 struction or constitutionality, or both, of this Act, the Fed-
15 eral or State Court shall permit the United States Senate,
16 through the Office of Senate Legal Counsel, as authorized
17 in section 701 of the Ethics in Government Act of 1978
18 (2 U.S.C. 288), or the United States House of Represent-
19 atives, through the Office of General Counsel for the
20 United States House of Representatives, or both, to par-
21 ticipate as an amicus curiae, and to present an oral argu-
22 ment on the question of the Act's construction or constitu-
23 tionality, or both. Nothing in this section shall be con-
24 strued to confer standing on any party seeking to bring,
25 or jurisdiction on any court with respect to, any civil or
26 criminal action, including suit for court costs, against

1 Congress, either House of Congress, a Member of Con-
2 gress, a committee or subcommittee of a House of Con-
3 gress, any office or agency of Congress, or any officer or
4 employee of a House of Congress or any office or agency
5 of Congress.

6 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
7 RESOLUTION.—In any suit referenced in subsection (a),
8 the full Congress may pass a concurrent resolution declar-
9 ing its view of the proper interpretation of the Act of Con-
10 gress at issue, clarifying Congress's intent or clarifying
11 Congress's findings of fact, or both. If Congress does pass
12 such a concurrent resolution, the Federal or State court
13 shall permit the United States Congress, through the Of-
14 fice of Senate Legal Counsel, to submit that resolution
15 into the record of the case as a matter of right.

16 (c) EXPEDITED CONSIDERATION.—It shall be the
17 duty of each Federal or State court, including the Su-
18 preme Court of the United States, to advance on the dock-
19 et and to expedite to the greatest possible extent the dis-
20 position of any matter brought under subsection (a).

21 **SEC. 404. CONGRESSIONAL RIGHT TO INTERVENE OR SUB-**
22 **MIT CLARIFYING RESOLUTION.**

23 (a) NOTICE TO CONGRESS.—If a presidential signing
24 statement is issued concerning this Act, in any action,
25 suit, or proceeding in the Supreme Court of the United

1 States, wherein the construction or constitutionality, or
2 both, of this Act is at issue, the Supreme Court shall cer-
3 tify such fact to the Office of Senate Legal Counsel and
4 to the Office of General Counsel for the United States
5 House of Representatives.

6 (b) CONGRESSIONAL RIGHT TO INTERVENE.—In any
7 suit referenced in subsection (a), the Supreme Court shall
8 permit the United States Senate, through the Office of
9 Senate Legal Counsel, or the United States House of Rep-
10 resentatives, through the Office of General Counsel for the
11 United States House of Representatives, or both, to inter-
12 vene for presentation of evidence, if evidence is otherwise
13 admissible in the case, and for argument on the question
14 of the Act's construction or constitutionality, or both. The
15 United States Senate and House of Representatives shall,
16 subject to the applicable provisions of law, have all the
17 rights of a party and be subject to all liabilities of a party
18 as to court costs to the extent necessary for a proper pres-
19 entation of the facts and law relating to the question of
20 constitutionality. Nothing in this section shall be con-
21 strued to confer standing on any party seeking to bring,
22 or jurisdiction on any court with respect to, any civil or
23 criminal action, including suit for court costs, against
24 Congress, either House of Congress, a Member of Con-
25 gress, a committee or subcommittee of a House of Con-

1 gress, any office or agency of Congress, or any officer or
2 employee of a House of Congress or any office or agency
3 of Congress.

4 (c) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
5 RESOLUTION.—In any suit referenced in subsection (a),
6 the full Congress may pass a concurrent resolution declar-
7 ing its view of the proper interpretation of the Act of Con-
8 gress at issue, clarifying Congress's intent or clarifying
9 Congress's findings of fact, or both. If Congress does pass
10 such a concurrent resolution, the Supreme Court shall per-
11 mit the United States Congress, through the Office of
12 Senate Legal Counsel, to submit that resolution into the
13 record of the case as a matter of right.

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**

3 **SIGNING STATEMENTS**

4 **SEC. 401. DEFINITION.**

5 As used in this title, the term “presidential signing
6 statement” means a statement issued by the President
7 about a bill, in conjunction with signing that bill into law
8 pursuant to Article I, section 7, of the Constitution.

1 **SEC. 402. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
2 **MENTS.**

3 In determining the meaning of this Act, no Federal
4 or State court shall rely on or defer to a presidential sign-
5 ing statement as a source of authority.

6 **SEC. 403. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
7 **COURT PROCEEDINGS OR SUBMIT CLARI-**
8 **FYING RESOLUTION.**

9 (a) CONGRESSIONAL RIGHT TO PARTICIPATE AS
10 AMICUS CURIAE.—If a presidential signing statement is
11 issued concerning this Act, in any action, suit, or pro-
12 ceeding in any Federal or State court (including the Su-
13 preme Court of the United States), regarding the con-
14 struction or constitutionality, or both, of this Act, the Fed-
15 eral or State Court shall permit the United States Senate,
16 through the Office of Senate Legal Counsel, as authorized
17 in section 701 of the Ethics in Government Act of 1978
18 (2 U.S.C. 288), or the United States House of Represent-
19 atives, through the Office of General Counsel for the
20 United States House of Representatives, or both, to par-
21 ticipate as an amicus curiae, and to present an oral argu-
22 ment on the question of the Act's construction or constitu-
23 tionality, or both. Nothing in this section shall be con-
24 strued to confer standing on any party seeking to bring,
25 or jurisdiction on any court with respect to, any civil or
26 criminal action, including suit for court costs, against

1 Congress, either House of Congress, a Member of Con-
2 gress, a committee or subcommittee of a House of Con-
3 gress, any office or agency of Congress, or any officer or
4 employee of a House of Congress or any office or agency
5 of Congress.

6 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
7 RESOLUTION.—In any suit referenced in subsection (a),
8 the full Congress may pass a concurrent resolution declar-
9 ing its view of the proper interpretation of the Act of Con-
10 gress at issue, clarifying Congress's intent or clarifying
11 Congress's findings of fact, or both. If Congress does pass
12 such a concurrent resolution, the Federal or State court
13 shall permit the United States Congress, through the Of-
14 fice of Senate Legal Counsel, to submit that resolution
15 into the record of the case as a matter of right.

16 (c) EXPEDITED CONSIDERATION.—It shall be the
17 duty of each Federal or State court, including the Su-
18 preme Court of the United States, to advance on the dock-
19 et and to expedite to the greatest possible extent the dis-
20 position of any matter brought under subsection (a).

21 **SEC. 404. CONGRESSIONAL STANDING TO OBTAIN DECLAR-**
22 **ATORY JUDGMENT.**

23 Any court of the United States, upon the filing of
24 an appropriate pleading by the United States Senate,
25 through the Office of Senate Legal Counsel, or the United

1 States House of Representatives, through the Office of
2 General Counsel for the United States House of Rep-
3 resentatives, or both, may declare the legality of any presi-
4 dential signing statement concerning this Act, whether or
5 not further relief is or could be sought. Any such declara-
6 tion shall have the force and effect of a final judgment
7 or decree and shall be reviewable as such.

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**

3 **SIGNING STATEMENTS**

4 **SEC. 401. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
5 **MENTS.**

6 In determining the meaning of this Act, no Federal
7 or State court shall rely on or defer to a presidential sign-
8 ing statement as a source of authority.

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**
3 **SIGNING STATEMENTS**

4 **SEC. 401. SHORT TITLE.**

5 This title may be cited as the "Presidential Signing
6 Statements Act of 2007".

7 **SEC. 402. DEFINITION.**

8 As used in this title, the term "presidential signing
9 statement" means a statement issued by the President

1 about a bill, in conjunction with signing that bill into law
2 pursuant to Article I, section 7, of the Constitution.

3 **SEC. 403. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
4 **MENTS.**

5 In determining the meaning of any Act of Congress,
6 no Federal or State court shall rely on or defer to a presi-
7 dential signing statement as a source of authority.

8 **SEC. 404. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
9 **COURT PROCEEDINGS OR SUBMIT CLARI-**
10 **FYING RESOLUTION.**

11 (a) **CONGRESSIONAL RIGHT TO PARTICIPATE AS**
12 **AMICUS CURIAE.**—In any action, suit, or proceeding in
13 any Federal or State court (including the Supreme Court
14 of the United States), regarding the construction or con-
15 stitutionality, or both, of any Act of Congress in which
16 a presidential signing statement was issued, the Federal
17 or State Court shall permit the United States Senate,
18 through the Office of Senate Legal Counsel, as authorized
19 in section 701 of the Ethics in Government Act of 1978
20 (2 U.S.C. 288), or the United States House of Represent-
21 atives, through the Office of General Counsel for the
22 United States House of Representatives, or both, to par-
23 ticipate as an amicus curiae, and to present an oral argu-
24 ment on the question of the Act's construction or constitu-
25 tionality, or both. Nothing in this section shall be con-

1 strued to confer standing on any party seeking to bring,
2 or jurisdiction on any court with respect to, any civil or
3 criminal action, including suit for court costs, against
4 Congress, either House of Congress, a Member of Con-
5 gress, a committee or subcommittee of a House of Con-
6 gress, any office or agency of Congress, or any officer or
7 employee of a House of Congress or any office or agency
8 of Congress.

9 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
10 RESOLUTION.—In any suit referenced in subsection (a),
11 the full Congress may pass a concurrent resolution declar-
12 ing its view of the proper interpretation of the Act of Con-
13 gress at issue, clarifying Congress's intent or clarifying
14 Congress's findings of fact, or both. If Congress does pass
15 such a concurrent resolution, the Federal or State court
16 shall permit the United States Congress, through the Of-
17 fice of Senate Legal Counsel, to submit that resolution
18 into the record of the case as a matter of right.

19 (c) EXPEDITED CONSIDERATION.—It shall be the
20 duty of each Federal or State court, including the Su-
21 preme Court of the United States, to advance on the dock-
22 et and to expedite to the greatest possible extent the dis-
23 position of any matter brought under subsection (a).

AMENDMENT NO.

Calendar No.

Purpose: To clarify that the Foreign Intelligence Surveillance Court has the authority to continue its review of Government targeting and minimization procedures.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 On page 18, strike line 24 and all that follows
2 through page 19, line 10, and insert the following:

3 “(3) TARGETING PROCEDURES.—

4 “(A) IN GENERAL.—The Court shall re-
5 view the targeting procedures required by sub-
6 section (e) to assess whether the procedures are
7 reasonably designed to ensure that the acqui-
8 sition authorized under subsection (a) is limited

1 to the targeting of persons reasonably believed
2 to be located outside the United States.

3 “(B) CONTINUING OVERSIGHT.—Upon re-
4 ceipt of a semiannual assessment or annual re-
5 view pursuant to subsections (1)(1)(A) and
6 (1)(3)(C) respectively, the Foreign Intelligence
7 Surveillance Court shall consider whether in
8 light of the reports, the targeting and minimiza-
9 tion procedures required by subsection (e) and
10 (f) are being fulfilled, with respect to any acqui-
11 sition previously approved under subsection (i),
12 and if not, shall require action to correct the
13 deficiencies in the manner prescribed by para-
14 graph (5)(B).

15 “(4) MINIMIZATION PROCEDURES.—

16 “(A) IN GENERAL.—The Court shall re-
17 view the minimization procedures required by
18 subsection (f) to assess whether such proce-
19 dures meet the definition of minimization proce-
20 dures under section 101(h).

21 “(B) CONTINUING OVERSIGHT.—Upon re-
22 ceipt of a semiannual assessment or annual re-
23 view pursuant to subsections (1)(1)(A) and
24 (1)(3)(C) respectively, the Foreign Intelligence
25 Surveillance Court shall consider whether in

1 light of the reports, the targeting and minimiza-
2 tion procedures required by subsection (e) and
3 (f) are being fulfilled, with respect to any acqui-
4 sition previously approved under subsection (i),
5 and if not, shall require action to correct the
6 deficiencies in the manner prescribed by para-
7 graph (5)(B).”.

AMENDMENT NO.

Calendar No.

Purpose: To clarify that the FISA court has the authority to continue its review of government targeting and minimization procedures.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

- 1 On page 18, strike line 24 and all that follows
- 2 through on page 19, line 10, and insert the following:
- 3 (3) TARGETING PROCEDURES.—
- 4 (A) IN GENERAL.—The Court shall review
- 5 the targeting procedures required by subsection
- 6 (e) to assess whether the procedures are reason-
- 7 ably designed to ensure that the acquisition au-
- 8 thorized under subsection (a) is limited to the

1 targeting of persons reasonably believed to be
2 located outside the United States.

3 (B) FACTORS TO BE CONSIDERED.—When
4 conducting the review required under subpara-
5 graph (A), the Foreign Intelligence Surveillance
6 Court shall take into account—

7 (i) all support materials offered by the
8 government pursuant to the terms of this
9 Act;

10 (ii) prior applications by the govern-
11 ment under this Act and all submissions
12 offered in support of those applications;

13 (iii) prior authorization orders of the
14 Court;

15 (iv) any Semiannual Assessment re-
16 port submitted to it, pursuant to sections
17 703(l)(1)(A) with information relevant to
18 the targeting procedures under review, un-
19 less such findings and conclusions are
20 found to be clearly erroneous; and

21 (v) any Annual Review report sub-
22 mitted to it pursuant to section
23 703(l)(3)(C) with information relevant to
24 the targeting procedures under review, un-

1 less such findings and conclusions are
2 found to be clearly erroneous.

3 (4) MINIMIZATION PROCEDURES.—

4 (A) IN GENERAL.—The Court shall review
5 the minimization procedures required by sub-
6 section (f) to assess whether such procedures
7 meet the definition of minimization procedures
8 under section 101(h).

9 (B) FACTORS TO BE CONSIDERED.—When
10 conducting the review required under subpara-
11 graph (A), the Foreign Intelligence Surveillance
12 Court shall take into account—

13 (i) all support materials offered by the
14 government pursuant to the terms of this
15 Act;

16 (ii) prior applications by the govern-
17 ment under this Act and all submissions
18 offered in support of those applications;

19 (iii) prior authorization orders of the
20 Court;

21 (iv) any Semiannual Assessment re-
22 port submitted to it, pursuant to sections
23 703(l)(1)(A) with information relevant to
24 the targeting procedures under review, un-

1 less such findings and conclusions are
2 found to be clearly erroneous; and
3 (v) any Annual Review report sub-
4 mitted to it pursuant to section
5 703(1)(3)(C) with information relevant to
6 the minimization procedures under review,
7 unless such findings and conclusions are
8 found to be clearly erroneous.

AMENDMENT NO.

Calendar No.

Purpose: To establish a state secrets privilege in connection with civil actions against the United States or other litigation involving state secrets.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

- 1 On page 55, before line 8, insert the following:
- 2 **SEC. 206. STATE SECRETS PRIVILEGE IN CONNECTION**
- 3 **WITH CIVIL ACTIONS AGAINST THE UNITED**
- 4 **STATES OR OTHER LITIGATION INVOLVING**
- 5 **STATE SECRETS.**
- 6 (a) **STATE SECRETS GENERALLY.**—For the purpose
- 7 of any civil action brought against the United States or
- 8 other litigation involving state secrets, evidence of state
- 9 secrets shall be excluded, and no disclosure ordered or

1 compelled, where the court, upon receipt of a qualifying
2 affidavit, finds that—

3 (1) the interests of national security asserted in
4 the qualifying affidavit are genuine and show a rea-
5 sonable danger of harm from disclosure; or

6 (2) the needs of the litigants can be substan-
7 tially met through less intrusive means than disclo-
8 sure.

9 (b) PROCEDURE.—In evaluating a claim of state se-
10 crets under this section, the court shall examine in camera
11 all classified evidence, addenda, and pleadings filed under
12 seal and ex parte, and shall determine whether there is
13 sufficient cause to support application of the privilege. In
14 making its determination, the court shall give substantial
15 weight to the claims made in the qualifying affidavit un-
16 less those claims are found by the court to be frivolous,
17 unsupported, or substantially outweighed by the need for
18 disclosure as part of further litigation. No need for disclo-
19 sure may be found to exist in any case in which a court
20 can fashion rules and presumptions to permit further pro-
21 ceedings without disclosure or where military secrets are
22 at stake.

23 (c) FURTHER PROCEEDINGS AND PRESUMPTIONS.—
24 If the assertion of the state secrets privilege substantially
25 and unfairly prejudices the claims or interests of a liti-

1 gant, the court, to the extent practicable, shall fashion
2 rules and presumptions to remove any unfair prejudice
3 and to allow for further proceedings without disclosure.

4 (d) QUALIFYING AFFIDAVIT.—In this section, the
5 term “qualifying affidavit” means a written statement,
6 made under oath or pursuant to section 1746 of title 28,
7 United States Code, on behalf of the United States by the
8 head of the department or agency over the matter at issue,
9 that asserts—

10 (1) the disclosure of certain evidence or infor-
11 mation would be inimical to the national security;

12 (2) a specific privilege log and description of
13 the evidence or information at issue (or, with leave
14 of the court, a redacted privilege log and generalized
15 description of the same with a more detailed adden-
16 dum submitted to the court in camera and ex parte);

17 (3) the nature and degree of harm to the na-
18 tional security that could result from disclosure; and

19 (4) that the affiant has personally considered
20 the matters described in the affidavit.

21 (e) PROCEEDINGS GOVERNED BY RULE 1101(D).—

22 Any proceedings under this section shall be governed by
23 rule 1101(d) of the Federal Rule of Evidence.

AMENDMENT NO.

Calendar No.

Purpose: To provide for the substitution of the United States
in certain actions.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

- 1 Strike section 202 and insert the following:
- 2 **SEC. 202. SUBSTITUTION OF THE UNITED STATES IN CER-**
- 3 **TAIN ACTIONS.**
- 4 (a) IN GENERAL.—
- 5 (1) CERTIFICATION.—Notwithstanding any
- 6 other provision of law, a Federal or State court shall
- 7 substitute the United States for an electronic com-
- 8 munication service provider with respect to any
- 9 claim in a covered civil action as provided in this

1 subsection, if the Attorney General certifies to that
2 court that—

3 (A) with respect to that claim, the assist-
4 ance alleged to have been provided by the elec-
5 tronic communication service provider was—

6 (i) provided in connection with an in-
7 telligence activity involving communica-
8 tions that was—

9 (I) authorized by the President
10 during the period beginning on Sep-
11 tember 11, 2001, and ending on Jan-
12 uary 17, 2007; and

13 (II) designed to detect or prevent
14 a terrorist attack, or activities in
15 preparation for a terrorist attack,
16 against the United States; and

17 (ii) described in a written request or
18 directive from the Attorney General or the
19 head of an element of the intelligence com-
20 munity (or the deputy of such person) to
21 the electronic communication service pro-
22 vider indicating that the activity was—

23 (I) authorized by the President;
24 and

25 (II) determined to be lawful; or

1 (B) the electronic communication service
2 provider did not provide the alleged assistance.

3 (2) SUBSTITUTION.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B), upon receiving a certification
6 under paragraph (1), a Federal or State court
7 shall—

8 (i) substitute the United States for
9 the electronic communication service pro-
10 vider as the defendant as to all claims des-
11 ignated by the Attorney General in that
12 certification; and

13 (ii) as to that electronic communica-
14 tion service provider—

15 (I) dismiss all claims designated
16 by the Attorney General in that cer-
17 tification; and

18 (II) enter a final judgment relat-
19 ing to those claims.

20 (B) CONTINUATION OF CERTAIN
21 CLAIMS.—If a certification by the Attorney
22 General under paragraph (1) states that not all
23 of the alleged assistance was provided under a
24 written request or directive described in para-

1 graph (1)(A)(ii), the electronic communication
2 service provider shall remain as a defendant.

3 (3) PROCEDURES.—

4 (A) TORT CLAIMS.—Upon a substitution
5 under paragraph (2), for any tort claim—

6 (i) the claim shall be deemed to have
7 been filed under section 1346(b) of title
8 28, United States Code, except that sec-
9 tions 2401(b), 2675, and 2680(a) of title
10 28, United States Code, shall not apply;
11 and

12 (ii) notwithstanding any other provi-
13 sion of law, the claim shall be deemed
14 timely filed against the United States if it
15 was timely filed against the electronic com-
16 munication service provider.

17 (B) CONSTITUTIONAL AND STATUTORY
18 CLAIMS.—Upon a substitution under paragraph
19 (2), for any claim under the Constitution of the
20 United States or any Federal statute—

21 (i) the claim shall be deemed to have
22 been filed against the United States under
23 section 1331 of title 28, United States
24 Code;

1 (ii) with respect to any claim under a
2 Federal statute that does not provide a
3 cause of action against the United States,
4 the plaintiff shall be permitted to amend
5 such claim to substitute, as appropriate, a
6 cause of action under—

7 (I) section 704 of title 5, United
8 States Code (commonly known as the
9 Administrative Procedure Act);

10 (II) section 2712 of title 18,
11 United States Code, except that para-
12 graphs (1) and (2) of subsection (b)
13 of that section and the minimum
14 amount of damages specified in sub-
15 section (a)(1) of that section shall not
16 apply; or

17 (III) section 110 of the Foreign
18 Intelligence Surveillance Act of 1978
19 (50 U.S.C. 1810), except that sub-
20 section (b) of that section and the
21 minimum amount of damages speci-
22 fied in subsection (a) of that section
23 shall not apply;

24 (iii) notwithstanding any other provi-
25 sion of law, the statutes of limitation appli-

1 cable to the causes of action identified in
2 clause (ii) shall not apply to any amended
3 claim under that clause, and any such
4 cause of action shall be deemed timely filed
5 if any Federal statutory cause of action
6 against the electronic communication serv-
7 ice provider was timely filed; and

8 (iv) notwithstanding any other provi-
9 sions of law, for any amended claim under
10 clause (ii) the United States shall be
11 deemed a proper defendant under any stat-
12 utes described in that clause, and any
13 plaintiff that had standing to proceed
14 against the original defendant shall be
15 deemed an aggrieved party for purposes of
16 proceeding under section 2712 of title 18
17 or section 110 of the Foreign Intelligence
18 Surveillance Act of 1978 (50 U.S.C.
19 1810).

20 (C) DISCOVERY.—

21 (i) IN GENERAL.—In a covered civil
22 action in which the United States is sub-
23 stituted as party-defendant under para-
24 graph (2), any plaintiff may serve third-
25 party discovery requests to any electronic

1 communications service provider as to
2 which all claims are dismissed.

3 (ii) BINDING THE GOVERNMENT.—If
4 a plaintiff in a covered civil action serves
5 deposition notices under rule 30(b)(6) of
6 the Federal Rules of Civil Procedure or re-
7 quests under rule 36 of the Federal Rules
8 of Civil Procedure for admission upon an
9 electronic communications service provider
10 as to which all claims were dismissed, the
11 electronic communications service provider
12 shall be deemed a party-defendant for pur-
13 poses rule 30(b)(6) or rule 36 and its an-
14 swers and admissions shall be deemed
15 binding upon the Government.

16 (b) CERTIFICATIONS.—

17 (1) IN GENERAL.—For purposes of substitution
18 proceedings under this section—

19 (A) a certification under subsection (a)
20 may be provided and reviewed in camera, ex
21 parte, and under seal; and

22 (B) for any certification provided and re-
23 viewed as described in subparagraph (A), the
24 court shall not disclose or cause the disclosure
25 of its contents.

1 (2) NONDELEGATION.—The authority and du-
2 ties of the Attorney General under this section shall
3 be performed by the Attorney General or a designee
4 in a position not lower than the Deputy Attorney
5 General.

6 (c) LIMITATIONS.—

7 (1) SOVEREIGN IMMUNITY.—This section, in-
8 cluding any Federal statute cited in this section that
9 operates as a waiver of sovereign immunity, con-
10 stitute the sole waiver of sovereign immunity with
11 respect to any covered civil action.

12 (2) DAMAGES.—In any covered civil action in
13 which the United States is substituted under sub-
14 section (a), the total amount of damages that may
15 be awarded for the sum total of all plaintiffs shall
16 not exceed \$25,000,000.

17 (d) CIVIL ACTIONS IN STATE COURT.—For purposes
18 of section 1441 of title 28, United States Code, any cov-
19 ered civil action that is brought in a State court or admin-
20 istrative or regulatory bodies shall be deemed to arise
21 under the Constitution or laws of the United States and
22 shall be removable under that section.

23 (e) RULE OF CONSTRUCTION.—Except as expressly
24 provided in this section, nothing in this section may be
25 construed to limit any immunity, privilege, or defense

1 under any other provision of law, including any privilege,
2 immunity, or defense that would otherwise have been
3 available to the United States absent its substitution as
4 party-defendant or had the United States been the named
5 defendant.

6 (f) EFFECTIVE DATE AND APPLICATION.—This sec-
7 tion shall apply to any covered civil action pending on or
8 filed after the date of enactment of this Act.

AMENDMENT No. _____

Calendar No. _____

Purpose: To provide for greater FISA court oversight

IN THE SENATE OF THE UNITED STATES—110TH Cong., 1ST Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

(1) On page 19, strike line 23 strike "If" and insert on line 20, before "the Court", "(i) IN GENERAL.— If"

(2) On page 20, line 9 replace "(i)" with "(I)"

(3) On page 20, line 13 replace "(ii)" with "(II)"

(4) On line 15, before "(C)" insert the following:

(ii) POTENTIAL LIMITATION ON USE OF INFORMATION.— If the Court finds that a certification required by subsection (g) does not contain all of the required elements, or that the procedures required by subsections (e) and (f) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court may issue an order limiting the retention, dissemination, or use of information concerning any United States person acquired from such acquisition.

AMENDMENT No. _____

Calendar No. _____

Purpose: To provide for greater FISA court oversight

IN THE SENATE OF THE UNITED STATES—110TH Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

(1) On page 21, strike line 5 and all that follows through line 13, and insert the following:

“(B) CONTINUATION OF ACQUISITION PENDING REHEARING. — Any acquisitions affected by an order under paragraph (5)(B) may continue during the pendency of any rehearing of the order by the Court en banc.

(C) STAY PENDING APPEAL.— The Government may move for a stay of any order of the Foreign Intelligence Surveillance Court under paragraph (5)(B) during the pendency of any appeal of the order to the Foreign Intelligence Surveillance Court of Review.

(D) CONTINUATION OF ACQUISITION PENDING DISPOSITION OF PETITION FOR STAY PENDING APPEAL. — Any acquisitions affected by an order under paragraph (5)(B) may continue during the pendency of a government request for a stay under paragraph (6)(C).

(2) On page 21, line 14, replace “(C)” with “(B)”

1. Purpose: To provide for the substitution of the United States in certain actions.

2

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4 S. 2248

5

6 To amend the Foreign Intelligence Surveillance Act of
7 1978, to modernize and streamline the provisions of that
8 Act, and for other purposes.

9

10 Referred to the Committee on _____ and ordered to
11 be printed

12 Ordered to lie on the table and to be printed

13 AMENDMENT INTENDED TO BE PROPOSED BY _____

14 Viz:

15 Strike section 202 and insert the following:

16 **SEC. 202. SUBSTITUTION OF THE UNITED STATES**
17 **IN CERTAIN ACTIONS.**

18 (a) In General.—

19 (1) CERTIFICATION.—Notwithstanding any other provision of law, a Federal or
20 State court shall substitute the United States for an electronic communication service
21 provider with respect to any claim in a covered civil action as provided in this
22 subsection, if the Attorney General certifies to that court that—

23 (A) with respect to that claim, the assistance alleged to have been provided
24 by the electronic communication service provider was—

25 (i) provided in connection with an intelligence activity involving
26 communications that was—

27 (I) authorized by the President during the period beginning on
28 September 11, 2001, and ending on January 17, 2007; and

29 (II) designed to detect or prevent a terrorist attack, or activities in
30 preparation for a terrorist attack, against the United States; and

31 (ii) described in a written request or directive from the Attorney General
32 or the head of an element of the intelligence community (or the deputy of
33 such person) to the electronic communication service provider indicating
34 that the activity was—

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- (I) authorized by the President; and
- (II) determined to be lawful; or
- (B) the electronic communication service provider did not provide the alleged assistance.
- (2) SUBSTITUTION.—
 - (A) IN GENERAL.—Except as provided in subparagraph (B), upon receiving a certification under paragraph (1), a Federal or State court shall—
 - (i) substitute the United States for the electronic communication service provider as the defendant as to all claims designated by the Attorney General in that certification; and
 - (ii) as to that electronic communication service provider—
 - (I) dismiss all claims designated by the Attorney General in that certification; and
 - (II) enter a final judgment relating to those claims.
 - (B) CONTINUATION OF CERTAIN CLAIMS.—If a certification by the Attorney General under paragraph (1) states that not all of the alleged assistance was provided under a written request or directive described in paragraph (1)(A)(ii), the electronic communication service provider shall remain as a defendant.
- (3) PROCEDURES.—
 - (A) TORT CLAIMS.—Upon a substitution under paragraph (2), for any tort claim—
 - (i) the claim shall be deemed to have been filed under section 1346(b) of title 28, United States Code, except that sections 2401(b), 2675, and 2680(a) of title 28, United States Code, shall not apply; and
 - (ii) notwithstanding any other provision of law, the claim shall be deemed timely filed against the United States if it was timely filed against the electronic communication service provider.
 - (B) CONSTITUTIONAL AND STATUTORY CLAIMS.—Upon a substitution under paragraph (2), for any claim under the Constitution of the United States or any Federal statute—
 - (i) the claim shall be deemed to have been filed against the United States under section 1331 of title 28, United States Code;
 - (ii) with respect to any claim under a Federal statute that does not provide a cause of action against the United States, the plaintiff shall be permitted to amend such claim to substitute, as appropriate, a cause of action under—
 - (I) section 704 of title 5, United States Code (commonly known as the Administrative Procedure Act);
 - (II) section 2712 of title 18, United States Code, except that

1 paragraphs (1) and (2) of subsection (b) of that section and the
2 minimum amount of damages specified in subsection (a)(1) of that
3 section shall not apply; or

4 (III) section 110 of the Foreign Intelligence Surveillance Act of
5 1978 (50 U.S.C. 1810), except that subsection (b) of that section and
6 the minimum amount of damages specified in subsection (a) of that
7 section shall not apply;

8 (iii) notwithstanding any other provision of law, the statutes of
9 limitation applicable to the causes of action identified in clause (ii) shall
10 not apply to any amended claim under that clause, and any such cause of
11 action shall be deemed timely filed if any Federal statutory cause of action
12 against the electronic communication service provider was timely filed;

13 (iv) notwithstanding any other provisions of law, for any amended
14 claim under clause (ii) the United States shall be deemed a proper
15 defendant under any statutes described in that clause, and any plaintiff that
16 had standing to proceed against the original defendant shall be deemed an
17 aggrieved party for purposes of proceeding under section 2712 of title 18
18 or section 110 of the Foreign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1810).

20 (C) DISCOVERY.—

21 (i) IN GENERAL.— In a covered civil action in which the United States is
22 substituted as party-defendant under paragraph (2), any plaintiff may serve
23 third-party discovery requests to any electronic communications service
24 provider as to which all claims are dismissed.

25 (ii) BINDING THE GOVERNMENT.— If a plaintiff in a covered civil
26 action serves Federal Rules of Civil Procedure Rule 30(b)(6) deposition notices
27 or Rule 36 requests for admission upon an electronic communications service
28 provider as to which all claims were dismissed, the electronic communications
29 service provider shall be deemed a party-defendant for purposes Rule 30(b)(6)
30 or Rule 36 and its answers and admissions shall be deemed binding upon the
31 government.

32 (b) Certifications.—

33 (1) IN GENERAL.— For purposes of substitution proceedings under this section—

34 (A) a certification under subsection (a) may be provided and reviewed in
35 camera, ex parte, and under seal; and

36 (B) for any certification provided and reviewed as described in subparagraph
37 (A), the court shall not disclose or cause the disclosure of its contents.

38 (2) NONDELEGATION.— The authority and duties of the Attorney General under
39 this section shall be performed by the Attorney General or a designee in a position
40 not lower than the Deputy Attorney General.

41 (c) SOVEREIGN IMMUNITY.— This section, including any Federal statute cited in this

1 section that operates as a waiver of sovereign immunity, constitute the sole waiver of
2 sovereign immunity with respect to any covered civil action.

3 (d) Civil Actions in State Court.—For purposes of section 1441 of title 28, United
4 States Code, any covered civil action that is brought in a State court or administrative or
5 regulatory bodies shall be deemed to arise under the Constitution or laws of the United
6 States and shall be removable under that section.

7 (e) Rule of Construction.—Except as expressly provided in this section, nothing in this
8 section may be construed to limit any immunity, privilege, or defense under any other
9 provision of law, including any privilege, immunity, or defense that would otherwise
10 have been available to the United States absent its substitution as party-defendant or had
11 the United States been the named defendant.

12 (f) Effective Date and Application.—This section shall apply to any covered civil
13 action pending on or filed after the date of enactment of this Act.
14

Ahmad, Usman

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov [EFF2OLA(2)-67]
Sent: Wednesday, November 14, 2007 5:13 PM
To: Seidel, Rebecca; Tracci, Robert N; Gerry, Brett (OLP); Kim, Harold H.
Subject: FW: Feingold Amendments to S. 2248
Attachments: JEN07G07_xml-may.pdf; HEN07K46_xml-e1.pdf; HEN07K76_xml-signif.pdf; JEN07G06_xml-sunset.pdf; HEN07L10_xml-imm.pdf; HEN07L24_xml-upfront.pdf; HEN07L20_xml-bulk.pdf; HEN07L09_xml-retro.pdf; HEN07L41_xml-sequ3.pdf

Damion D. Nielsen
 United States Senate
 Committee on the Judiciary
 Senator Arlen Specter

[REDACTED] FOIA Exemption b(6)

FOIA Exemption b(6)

From: Flint, Lara (Judiciary-Dem) [mailto:[REDACTED]@judiciary-dem.senate.gov] [EFF2OLA(2)-68]
Sent: Wednesday, November 14, 2007 4:57 PM
To: All Judiciary Users; Gottesman, E (Intelligence); Grannis, D (Intelligence); Pelofsky, Eric (Intelligence)
Subject: Feingold Amendments to S. 2248

Senator Feingold or another Senator may offer the following amendments to S. 2248. Amendments with asterisks are new amendments not circulated last week, or modified versions of the amendments I sent around last week.

HEN07K46: Limits dissemination of US person information acquired through these new authorities to foreign intelligence information as defined in 50 USC 1801(e)(1).

** HEN07L41: Protects the privacy of Americans whose communications are intercepted through the bill's new surveillance authorities.

** HEN07L20: Clarifies that bulk collection is not permitted under the bill's new surveillance authorities.

HEN07K76: Requires a full FISA Court order where a significant purpose of targeting someone abroad is to acquire the communications of someone reasonably believed to be in the U.S.

JEN07G06: Sunsets the bill at the end of 2009.

JEN07G07: Provides the FISA Court with discretion to limit access to classified information when a directive is challenged by a provider.

**HEN07L09: Strikes Sections 201 and 202.

**HEN07L10: Strikes Title 2.

**HEN07L24: Clarifies that the FISA Court must approve the program warrants prior to their implementation, with an emergency exception.

AMENDMENT NO.

Calendar No.

Purpose: To allow the FISA court additional discretion.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FEINGOLD

Viz:

- 1 In the second sentence of section 703(k)(2) of the
- 2 Foreign Intelligence Surveillance Act of 1978, as added
- 3 by section 101 of the bill, strike "shall" and insert "may".

AMENDMENT NO.

Calendar No.

Purpose: To provide effective minimization procedures and protect Americans' privacy rights.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. FEINGOLD

Viz:

- 1 On page 9, beginning on line 25, strike “, consistent”
- 2 and all that follows through page 10, line 3, and insert
- 3 “minimization procedures for acquisitions authorized
- 4 under subsection (a) that are consistent with the require-
- 5 ments of subsection (h) of section 101, except that dis-
- 6 semination under paragraph (1) or (2) of such subsection
- 7 shall be limited to foreign intelligence information as de-
- 8 fined in section 101(e)(1).”.

1 On page 12, lines 1 through 3, strike “definition of
2 minimization procedures under section 101(h)” and insert
3 “requirements for minimization procedures under sub-
4 section (f)(1)”.

5 On page 19, lines 9 and 10, strike “definition of mini-
6 mization procedures under section 101(h)” and insert “re-
7 quirements for minimization procedures under subsection
8 (f)(1)”.

AMENDMENT NO.

Calendar No.

Purpose: To prohibit reverse targeting and protect the rights of Americans who are communicating with people abroad.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FEINGOLD

Viz:

1 On page 6, strikes lines 10 through 13 and insert
2 the following: "a significant purpose of such acquisition
3 is to acquire the communications of a specific person rea-
4 sonably believed to be located in the United States, except
5 in accordance with title I, and".

6 On page 9, line 18, strike "United States." and insert
7 the following: "United States, and that an application is
8 filed under title I, if otherwise required, when a significant

1 purpose of an acquisition authorized under subsection (a)
2 is to acquire the communications of a specific person rea-
3 sonably believed to be located in the United States.”.

4 On page 11, between lines 19 and 20, insert the fol-
5 lowing:

6 “(iii) the procedures referred to in
7 clause (i) require that an application is
8 filed under title I, if otherwise required,
9 when a significant purpose of an acquisi-
10 tion authorized under subsection (a) is to
11 acquire the communications of a specific
12 person reasonably believed to be located in
13 the United States;

14 On page 19, line 5, strike “United States.” and insert
15 the following: “United States, and are reasonably designed
16 to ensure that an application is filed under title I, if other-
17 wise required, when a significant purpose of an acquisition
18 authorized under subsection (a) is to acquire the commu-
19 nications of a specific person reasonably believed to be lo-
20 cated in the United States.”.

AMENDMENT NO.

Calendar No.

Purpose: To set a reasonable sunset.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. FEINGOLD

Viz:

1 In section 101(c)(1) strike "2013" and insert
2 "2009".

3 In section 302(c)(2)(B) strike "2013" and insert
4 "2009".

5 In section 302(c)(3)(B) strike "2013" and insert
6 "2009".

AMENDMENT NO.

Calendar No.

Purpose: To strike immunity.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FEINGOLD

Viz:

1 Strike title II.

AMENDMENT NO.

Calendar No.

Purpose: To clarify that prior court approval of procedures is required, except in emergencies.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FEINGOLD

Viz:

1 In section 703 of the Foreign Intelligence Surveil-
2 lance Act of 1978, as added by section 101 of the bill,
3 strike "subsection (a)" each place it appears and insert
4 "this section".

5 On page 5, line 23, strike "authorize jointly" and in-
6 sert "apply to a judge of the Foreign Intelligence Surveil-
7 lance Court for an order authorizing".

1 On page 6, line 2, after the period, insert the fol-
2 lowing: "Any application under this section shall include
3 the targeting procedures required by subsection (e), the
4 minimization procedures required under subsection (f),
5 and the certification required under subsection (g).".

6 On page 9, line 8, strike "and" at the end.

7 On page 9, line 10, strike the period and insert "
8 and".

9 On page 9, between lines 10 and 11, insert the fol-
10 lowing:

11 "(3) the order of the Foreign Intelligence Sur-
12 veillance Court authorizing that acquisition.

13 On page 9, line 14, strike "adopt" and insert "submit
14 to the Foreign Intelligence Surveillance Court".

15 On page 9, line 25, strike "adopt" and insert "submit
16 to the Foreign Intelligence Surveillance Court".

17 On page 10, strike lines 8 through 25 and insert the
18 following:

1 “(1) IN GENERAL.—Prior to the initiation of an
2 acquisition authorized under this section, the Attor-
3 ney General and the Director of National Intel-
4 ligence shall submit to the Foreign Intelligence Sur-
5 veillance Court, under oath, a written certification,
6 as described in this subsection.

7 On page 11, line 10, strike “will promptly be” and
8 insert “have been”.

9 On page 12, line 5, strike “will promptly be” and in-
10 sert “have been”.

11 On page 13, line 7, strike “as soon as” and all that
12 follows through “is made” on line 8.

13 On page 18, strike lines 6 through 19 and insert the
14 following:

15 “(1) REVIEW BY THE FOREIGN INTELLIGENCE
16 SURVEILLANCE COURT.—The Foreign Intelligence
17 Surveillance Court shall have jurisdiction to review
18 applications submitted under subsection (a), includ-
19 ing any certification required by subsection (d) or
20 targeting and minimization procedures required by
21 subsections (e) and (f).

1 On page 19, line 13, strike “a certification” and in-
2 sert the following: “an application under subsection (a)
3 meets the requirements of this section, including that the
4 certification”.

5 On page 19, line 19, strike “enter” and insert
6 “issue”.

7 On page 19, line 20, strike “continued” and insert
8 “application and the use”.

9 On page 19, strike line 23 and all that follows
10 through page 20, line 14, and insert the following:

11 “(B) DENIAL OR MODIFICATION.—If the
12 Court finds that an application under sub-
13 section (a) does not meet the requirements of
14 this section, including that the certification re-
15 quired by subsection (g) does not contain all of
16 the required elements, or that the procedures
17 required by subsections (e) and (f) are not con-
18 sistent with the requirements of those sub-
19 sections or the fourth amendment to the Con-
20 stitution of the United States, the Court shall
21 issue an order denying the application or ap-

1 proving the application with modifications to
2 the certifications or procedures.

3 On page 21, between lines 21 and 22, insert the fol-
4 lowing:

5 “(j) EMERGENCY AUTHORIZATION.—

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of this section, the Attorney General and
8 the Director of National Intelligence may authorize
9 the emergency employment of an acquisition under
10 this section if—

11 “(A) the Attorney General and the Direc-
12 tor of National Intelligence reasonably deter-
13 mine that—

14 “(i) an emergency situation exists
15 with respect to the employment of an ac-
16 quisition under this section before an order
17 approving the acquisition can with due dili-
18 gence be obtained; and

19 “(ii) the basis for issuance of an order
20 authorizing such an acquisition exists;

21 “(B) a judge having jurisdiction under
22 subsection (i)(1) is informed by the Attorney
23 General and the Director of National Intel-
24 ligence at the time of such authorization that

1 the decision has been made to employ an emer-
2 gency acquisition under this section; and

3 "(C) an application in accordance with this
4 section is made to the judge notified under sub-
5 paragraph (B) as soon as practicable, but not
6 more than 168 hours after the Attorney Gen-
7 eral and the Director of National Intelligence
8 authorize the emergency employment of an ac-
9 quisition under this section.

10 "(2) MINIMIZATION.—If the Attorney General
11 and the Director of National Intelligence authorize
12 the emergency employment of an acquisition under
13 paragraph (1), the Attorney General and the Direc-
14 tor of National Intelligence shall require that mini-
15 mization procedures meeting the definition of such
16 procedures under section 101(h) be followed.

17 "(3) TERMINATION.—In the absence of a judi-
18 cial determination approving the emergency employ-
19 ment of an acquisition under paragraph (1), the ac-
20 quisition shall terminate when the information
21 sought is obtained, when the application is denied,
22 or after the expiration of 168 hours from the time
23 of authorization by the Attorney General and the Di-
24 rector of National Intelligence, whichever is earliest.

1 “(4) USE OF INFORMATION.—If an application
2 for an order authorizing the emergency employment
3 of an acquisition under paragraph (1) is denied, or
4 in any other case where such acquisition is termi-
5 nated and no order is issued approving the acquisi-
6 tion, no information obtained or evidence derived
7 from such acquisition shall be received in evidence or
8 otherwise disclosed in any trial, hearing, or other
9 proceeding in or before any court, grand jury, de-
10 partment, office, agency, regulatory body, legislative
11 committee, or other authority of the United States,
12 a State, or political subdivision thereof, and no in-
13 formation concerning any United States person ac-
14 quired from such acquisition shall subsequently be
15 used or disclosed in any other manner by Federal of-
16 ficers or employees without the consent of such
17 United States person, except with the approval of
18 the Attorney General if the information indicates a
19 threat of death or serious bodily harm to any per-
20 son.

21 On page 21, line 22, strike “(j)” and insert “(k)”.

22 On page 21, line 25, strike “(k)” and insert “(l)”.

1 On page 22, line 20, strike "(l)" and insert "(m)".

AMENDMENT NO.

Calendar No.

Purpose: To clarify that bulk collection is not permitted.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FEINGOLD

Viz:

- 1 On page 12, between lines 15 and 16, insert the fol-
2 lowing:
3 “(vii) the acquisition is limited to
4 communications to which at least 1 party
5 is a specific individual target who is rea-
6 sonably believed to be located outside of
7 the United States, and a significant pur-
8 pose of the acquisition of the communica-
9 tions of any target is to obtain foreign in-
10 telligence information; and

AMENDMENT NO.

Calendar No.

Purpose: To strike retroactive immunity.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FEINGOLD

Viz:

1 Strike sections 201 and 202.

AMENDMENT NO.

Calendar No.

Purpose: To provide safeguards for communications involving persons inside the United States.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FEINGOLD

Viz:

1 On page 28, between lines 9 and 10, insert the fol-
2 lowing:

3 "SEC. 705. FOREIGN INTELLIGENCE SURVEILLANCE COURT
4 ORDERS AUTHORIZING ACCESS TO CERTAIN
5 COMMUNICATIONS.

6 "(a) IN GENERAL.—

7 "(1) LIMITATIONS ON ACCESS TO COMMUNICA-
8 TIONS.—At such time as it can be reasonably deter-
9 mined that a communication acquired pursuant to

1 this title is to or from a person reasonably believed
2 to be located in the United States, such communica-
3 tion shall be sequestered or specifically designated,
4 and no access to such communication shall be au-
5 thorized except pursuant to title I of this Act or sub-
6 section (b) of this section.

7 “(2) PROCEDURES.—The Attorney General
8 shall make reasonable efforts to determine whether
9 a communication acquired pursuant to this title is to
10 or from a person reasonably believed to be inside the
11 United States, and shall submit to the Foreign In-
12 telligence Surveillance Court for approval procedures
13 for reasonably determining that a communication ac-
14 quired pursuant to this title is to or from a person
15 reasonably believed to be inside the United States.
16 The Attorney General shall submit such procedures
17 to the Court not later than 120 days following pas-
18 sage of this Act. At such time as there is new infor-
19 mation related to the reliability of the procedures or
20 the availability of more reliable procedures, the At-
21 torney General shall submit to the Court such infor-
22 mation.

23 “(b) EMERGENCY EXCEPTION.—In addition to the
24 emergency provision in section 105(f), a communication
25 described in subsection (a)(1) may be accessed and dis-

1 seminated for not more than 7 days without the issuance
2 of a court order if—

3 “(1) an emergency situation exists with respect
4 to access to the communication to obtain foreign in-
5 telligence information (as defined in subsection
6 (e)(1) of section 101);

7 “(2) the Attorney General has submitted to the
8 Foreign Intelligence Surveillance Court procedures
9 to ensure that the Court is notified immediately of
10 each emergency access to such a communication, the
11 Court has approved such procedures, and such noti-
12 fication is made with respect to the communication;
13 and

14 “(3) not later than 7 days after such emergency
15 access is initiated, the Attorney General—

16 “(A) makes an application for an order
17 pursuant to title I; or

18 “(B) submits to the Foreign Intelligence
19 Surveillance Court a document that—

20 “(i) certifies that—

21 “(I) an emergency situation ex-
22 isted with respect to access to the
23 communication to obtain foreign intel-
24 ligence information (as defined in sub-
25 section (e)(1) of section 101); and

1 “(II) there is reasonable sus-
2 picion that the target of the collection
3 is an agent of a foreign power;

4 “(ii) identifies the target of the collec-
5 tion, the party to the communication who
6 is inside the United States, and the extent
7 to which information related to the com-
8 munication has been disseminated; and

9 “(iii) explains the reasons that the At-
10 torney General, or the designee of the At-
11 torney General, has not made an applica-
12 tion for a court order described in sub-
13 paragraph (A).

14 “(c) FAILURE TO NOTIFY.—If, within 7 days after
15 emergency access to a communication is invoked pursuant
16 to subsection (b), no court order is sought and the docu-
17 ment described in subsection (b)(3)(B) is not submitted—

18 “(1) access to the communication shall termi-
19 nate; and

20 “(2) all information obtained or evidence de-
21 rived from such access shall be destroyed.

22 “(d) ADDITIONAL COURT AUTHORITIES.—The For-
23 eign Intelligence Surveillance Court shall be authorized to
24 prohibit future emergency access to communications de-
25 scribed in subsection (a) with respect to a particular target

1 if the Court determines that any certification submitted
2 pursuant to subsection (b)(3)(B)(i) with respect to that
3 target is clearly erroneous. The Court may require the At-
4 torney General to provide the factual basis for such certifi-
5 cations if it would aid in this review.

6 “(e) FAILURE TO OBTAIN COURT ORDER.—If an ap-
7 plication for an order is sought pursuant to subsection
8 (b)(3)(A) and is not approved, access to the communica-
9 tions shall terminate, and no information obtained or evi-
10 dence derived from such access shall be received in evi-
11 dence or otherwise disclosed in any trial, hearing, or other
12 proceeding in or before any court, grand jury, department,
13 office, agency, regulatory body, legislative committee, or
14 other authority of the United States, a State, or political
15 subdivision thereof, and no information concerning any
16 United States person acquired from such access shall sub-
17 sequently be used or disclosed in any manner by Federal
18 officers or employees without the consent of such person,
19 except with the approval of the Attorney General if the
20 information indicates a threat of death or serious bodily
21 harm to any person, unless the Attorney General submits
22 to the court within 72 hours of the denial of its application
23 the document described in subsection (b)(3)(B).”.

Ahmad, Usman

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov

EFF2OLA(2)-69

Sent: Wednesday, November 14, 2007 5:12 PM

To: Seldel, Rebecca; Traccl, Robert N; Gerry, Brett (OLP); Kim, Harold H.

Subject: FW: Proposed Amdts. by Senator Specter

Attachments: FISA_ExcluAmdt_JEN07F99.pdf; GRA07G93_xml.pdf; GRA07G95_xml.pdf; GRA07G97_xml.pdf; GRA07H03_xml.pdf; GRA07H40_xml.pdf; HEN07K42_xml (2).pdf; HEN07K56_xml.pdf; JEN07G34_xml.pdf; JEN07G38_xml.pdf; Limitation on Use Amdmt 11 14 07.doc; Stay Pending Appeal Amdmt 11 14 07.doc; Substitution Amendment Without Caps.doc

Damion D. Nielsen
United States Senate
Committee on the Judiciary
Senator Arlen Specter

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep)

Sent: Wednesday, November 14, 2007 4:58 PM

EFF2OLA(2)-70

To: All Judiciary Users

Subject: Proposed Amdts. by Senator Specter

The attached amendments were circulated last week, with the exception of JEN07G34, JEN07G38, GRA07H40, Limitation on Use, Substitution Amdt. without Caps, and Stay Pending Appeal.

The Leg. Counsel versions will follow shortly for Limitation on Use and Stay Pending Appeal.

JEN07G34: The proposed amendment would create a standard procedure for courts to use in evaluating claims of state secrets privilege in civil cases against the United States or in other litigation involving state secrets. In doing so, the amendment seeks to organize the various standards and balancing tests described in case law. The amendment also allows courts to fashion alternate procedural rules and presumptions to allow further proceedings without causing disclosure in accordance with the language of *Halkin v. Helms*, 609 F.2d 977, 991 (D.C. Cir. 1982).

JEN07G38: Substitutes the United States in place of telecommunications service providers in any covered civil action and caps damages at \$25 million.

Substitution Amendment without Caps [awaiting leg counsel number]: Substitutes the United States in place of telecommunications service providers in any covered civil action.

GRA07H40: Prevents the President from altering the clear meaning of Acts of Congress by instructing courts not to rely on Presidential signing statements. Expressly grants Congress the right to file amicus briefs in any case in which the construction or constitutionality of an Act of Congress is at issue. This amendment contains the same substantive provisions as S.1747, the Presidential Signing Statements Act of 2007.

Limitation on Use [awaiting leg counsel number]: Gives FISC discretion to limit use of information collected pursuant to a certification subsequently deemed defective.

3/13/2008

Stay Pending Appeal [awaiting leg counsel number]: Allows collections to continue pending rehearing in banc, but if disapproved there, the government is forced to request a stay. Continuing collection is permitted pending disposition of the stay request.

Previously Circulated Amendments – November 7, 2007

GRA07H03: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act.

GRA07G93: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act; If the Presidents issues a signing statement for the FISA Amendments Act, expressly grants Congress the right to file amicus briefs in any case in which the construction or constitutionality of the FISA Amendments Act is at issue.

GRA07G97: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act; If the Presidents issues a signing statement for the FISA Amendments Act, expressly grants Congress the right to file amicus briefs in any case in which the construction or constitutionality of the FISA Amendments Act is at issue; Grants Congress standing to seek declaratory judgment on the constitutionality of any presidential signing statement issued for the FISA Amendments Act.

GRA07G95: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act; If the Presidents issues a signing statement for the FISA Amendments Act, expressly grants Congress the right to file amicus briefs in any case in which the construction or constitutionality of the FISA Amendments Act is at issue; Grants Congress standing to intervene for the presentation of evidence and oral argument in any case that comes before the Supreme Court in which a the construction or constitutionality of the FISA Amendments Act if the President issues a signing statement on the Act .

HEN07K56: Sets out a list of factors for the FISA court to consider in conducting judicial review of the targeting and minimization procedures which includes, previous authorizations, matters submitted to the court for those authorizations, and the annual and semi-annual reports submitted to the Court pursuant to subsection 703(1)(1).

HEN07K42: Provides that the annual and semi-annual reports submitted to the FISA court, pursuant to subsection 703(1)(1), shall trigger ongoing review by the court of the targeting and minimization procedures in place, including as they relate to "acquisitions" already approved by the court.

JEN07F99: This amendment, which is based on language from S. 1114, the Feinstein/Specter FISA bill, makes clear that specific statutory language is required to repeal or modify this act. This language is intended to avoid future claims or confusion regarding the effect of authorizing legislation akin to the AUMF on the reach and exclusivity of FISA.

Damion D. Nielsen
United States Senate
Committee on the Judiciary
Senator Arlen Specter

FOIA Exemption b(6)

Ahmad, Usman

FOIA Exemption b(6)

From: Matal, Joe (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov

EFF2OLA(2)-82

Sent: Wednesday, November 14, 2007 11:54 AM

To: Benczkowski, Brian A (OLA); Tracchi, Robert N; Kim, Harold H.

Subject: Kyl amendments to FISA

Brian et al.: can you provide technical advice with regard to the following two amendments to S.2248?

1. Continuing authority in the event of sunset lapse (page 29):

At the end of section 101(c)(2), add the following sentence: "The United States shall continue to have authority to monitor by any available means the communications and activities of persons reasonably believed to be agents of or associated with the Al Qaeda terrorist organization or other foreign terrorist organizations."

2. Fee shifting in suits against persons assisting the government (page 53):

At page 53, insert the following between lines 9 and 10 and redesignate subsequent subsections accordingly:

"(d) RECOVERY OF COSTS AND FEES.--- In any action that is within the scope of this section, a prevailing party shall be entitled to recover costs and a reasonable attorneys' fee."

Ahmad, Usman

FOIA Exemption b(6)

From: Rossi, Nick (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov
Sent: Wednesday, November 07, 2007 2:36 PM
To: Seidel, Rebecca; Traccl, Robert N; Gerry, Brett (OLP)
Cc: Kim, Harold H.
Subject: FW: Latest Update re FISA Markup
Importance: High

EFF2OLA(2)-102

-----Original Message-----

EFF2OLA(2)-103

From: Rossi, Nick (Judiciary-Rep)
Sent: Wednesday, November 07, 2007 2:33 PM
To: Bacak, Brooke (Judiciary-Rep); Hayden, Cindy (Judiciary-Rep); Higgins, Stephen (Judiciary-Rep); Johnson, Jace (Hatch); Kuhn, Walt (Judiciary-Rep); Lari, Rita (Judiciary-Rep); O'Connor, Reed (Judiciary-Rep); O'Neill, Michael (Judiciary-Rep); Petron, Lauren (Judiciary-Rep)
Cc: Cutler, Ashlee (Judiciary-Rep); Fahrenback, Christine (Judiciary-Rep); Huff, Daniel (Judiciary-Rep); Kemerer, Hannibal (Judiciary-Rep); Miner, Matt (Judiciary-Rep); Nielsen, Damion (Judiciary-Rep); Owings, Lisa (Judiciary-Rep); Turner, Adam (Judiciary-Rep); Hayes, Bradley (Judiciary-Rep); Matal, Joe (Judiciary-Rep); Johnson, Matthew (Judiciary-Rep); Tardibono, Timothy (Coburn); Abegg, John (McConnell); Baker, Jesse (Judiciary-Rep); Castle, William (Judiciary-Rep); Podsiadly, Nick (Judiciary-Rep); Morrison, Tim (Kyl); Steen, Nick (Judiciary-Rep)
Subject: Latest Update re FISA Markup
Importance: High

Per Leahy's staff they are hoping/planning only to mark-up Title I tomorrow and reserve the immunity issue for next week. So, they will be circulating a substitute, but it will only cover Title I issues:

- 1) Enhancing the exclusivity provision;
- 2) Permitting the FISC to assess compliance with minimization;
- 3) Adding restrictions on the use and dissemination of US Person information acquired through procedures later deemed improper;
- 4) Making technical and other fixes to the Wyden Amendment (re US Persons overseas);
- 5) Eliminating the redefinition of "electronic surveillance," while keeping the new authorization;
- 6) Striking provision allowing the Deputy Director of the FBI to approve FISA surveillance; and
- 7) Eliminating the requirement that surveillance continue pending appeal, instead allowing the court to make that determination.

By my count, if the Majority Leader gives Chairman Leahy an additional 5 legislative days to complete the markup, we would have until Dec. 6 or 7, depending on whether we are in session on Veterans Day (11/12).

3/13/2008