

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2453

To establish procedures for the review of electronic surveillance programs.

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## IN THE SENATE OF THE UNITED STATES

MARCH 16 (legislative day, MARCH 15), 2006

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To establish procedures for the review of electronic surveillance programs.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “National Security Sur-  
5       veillance Act of 2006”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) After the terrorist attacks of September 11,  
9       2001, President Bush authorized the National Secu-  
10      rity Agency to intercept communications between

1 people inside the United States, including American  
2 citizens, and terrorism suspects overseas.

3 (2) One of the lessons learned from September  
4 11, 2001, is that the enemies who seek to greatly  
5 harm and terrorize our Nation utilize technologies  
6 and techniques that defy conventional law enforce-  
7 ment practices.

8 (3) The Commander in Chief requires the abil-  
9 ity and means to detect and track an enemy that  
10 can master and exploit modern technology.

11 (4) Although it is essential that the President  
12 have all necessary means to protect us against our  
13 enemies, it is equally essential that, in doing so, the  
14 President does not compromise the very civil lib-  
15 erties that the President seeks to safeguard. As Jus-  
16 tice Hugo Black observed, “The President’s power,  
17 if any, to issue [an] order must stem either from an  
18 Act of Congress or from the Constitution itself.”.  
19 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S.  
20 579, 585 (1952) (opinion by Black, J.).

21 (5) In 2004, Justice Sandra Day O’Connor ex-  
22 plained in her plurality opinion for the Supreme  
23 Court in *Hamdi v. Rumsfeld*: “We have long since  
24 made clear that a state of war is not a blank check  
25 for the President when it comes to the rights of the

1 Nation's citizens. *Youngstown Sheet & Tube*, 343  
2 U.S., at 587, 72 S.Ct. 863. Whatever power the  
3 United States Constitution envisions for the Execu-  
4 tive in its exchanges with other nations or with  
5 enemy organizations in times of conflict, it most as-  
6 suredly envisions a role for all three branches when  
7 individual liberties are at stake.”. *Hamdi v. Rums-*  
8 *feld*, 542 U.S. 507, 536 (2004) (citations omitted).

9 (6) Similarly, as Justice Jackson famously ob-  
10 served in his *Youngstown* concurrence: “When the  
11 President acts pursuant to an express or implied au-  
12 thorization of Congress, his authority is at its max-  
13 imum, for it includes all that he possesses in his own  
14 right plus all that Congress can delegate. . . . When  
15 the President acts in absence of either a congres-  
16 sional grant or denial of authority, he can only rely  
17 upon his own independent powers, but there is a  
18 zone of twilight in which he and Congress may have  
19 concurrent authority, or in which its distribution is  
20 uncertain. Therefore, congressional inertia, indiffer-  
21 ence or quiescence may sometimes, at least as a  
22 practical matter, enable, if not invite, measures on  
23 independent presidential responsibility . . . . When the  
24 President takes measures incompatible with the ex-  
25 pressed or implied will of Congress, his power is at

1 its lowest ebb, for then he can rely only upon his  
2 own constitutional powers minus any constitutional  
3 powers of Congress over the matter. Courts can sus-  
4 tain exclusive Presidential control in such a case  
5 only by disabling the Congress from acting upon the  
6 subject.”. *Youngstown Sheet & Tube Co. v. Sawyer*,  
7 343 U.S. 579, 635–38 (1952) (Jackson, J., concur-  
8 ring).

9 (7) The Constitution provides Congress with  
10 broad powers of oversight over national security and  
11 foreign policy, under article I, section 8 of the Con-  
12 stitution of the United States, which confers on Con-  
13 gress numerous powers, including the powers—

14 (A) “To declare War, grant Letters of  
15 Marque and Reprisal, and make Rules con-  
16 cerning Captures on Land and Water”;

17 (B) “To raise and support Armies”;

18 (C) “To provide and maintain a Navy”;

19 (D) “To make Rules for the Government  
20 and Regulation of the land and naval Forces”;

21 (E) “To provide for calling forth the Mili-  
22 tia to execute the Laws of the Union, suppress  
23 Insurrections and repel Invasions”; and

24 (F) “To provide for organizing, arming,  
25 and disciplining the Militia, and for governing

1           such Part of them as may be employed in the  
2           Service of the United States”.

3           (8) It is in our Nation’s best interest for Con-  
4           gress to use its oversight power to establish a system  
5           to ensure that electronic surveillance programs do  
6           not infringe on the constitutional rights of Ameri-  
7           cans, while at the same time making sure that the  
8           President has all the powers and means necessary to  
9           detect and track our enemies.

10           (9) While Attorney General Alberto Gonzales  
11           explained that the executive branch reviews the elec-  
12           tronic surveillance program of the National Security  
13           Agency every 45 days to ensure that the program is  
14           not overly broad, it is the belief of Congress that ap-  
15           proval and supervision of electronic surveillance pro-  
16           grams should be conducted outside of the executive  
17           branch, by the Article III court established under  
18           section 103 of the Foreign Intelligence Surveillance  
19           Act of 1978 (50 U.S.C. 1803). It is also the belief  
20           of Congress that it is appropriate for an Article III  
21           court to pass upon the constitutionality of electronic  
22           surveillance programs that may implicate the rights  
23           of Americans.

24           (10) The Foreign Intelligence Surveillance  
25           Court is the proper court to approve and supervise

1       classified electronic surveillance programs because it  
2       is adept at maintaining the secrecy with which it  
3       was charged and it possesses the requisite expertise  
4       and discretion for adjudicating sensitive issues of  
5       national security.

6               (11) In 1975, then-Attorney General Edward  
7       Levi, a strong defender of executive authority, testi-  
8       fied that in times of conflict, the President needs the  
9       power to conduct long-range electronic surveillance  
10       and that a foreign intelligence surveillance court  
11       should be empowered to issue special warrants in  
12       these circumstances.

13              (12) This Act clarifies and definitively estab-  
14       lishes that the Foreign Intelligence Surveillance  
15       Court has the authority to review electronic surveil-  
16       lance programs and pass upon their constitu-  
17       tionality. Such authority is consistent with well-es-  
18       tablished, longstanding practices.

19              (13) The Foreign Intelligence Surveillance  
20       Court already has broad authority to approve sur-  
21       veillance of members of international conspiracies, in  
22       addition to granting warrants for surveillance of a  
23       particular individual under sections 104, 105, and  
24       402 of the Foreign Intelligence Surveillance Act of  
25       1978 (50 U.S.C. 1804, 1805, and 1842).

1           (14) Prosecutors have significant flexibility in  
2           investigating domestic conspiracy cases. Courts have  
3           held that flexible warrants comply with the fourth  
4           amendment to the Constitution of the United States  
5           when they relate to complex, far reaching, and  
6           multi-faceted criminal enterprises like drug conspir-  
7           acies and money laundering rings. The courts recog-  
8           nize that applications for search warrants must be  
9           judged in a common sense and realistic fashion, and  
10          the courts permit broad warrant language where,  
11          due to the nature and circumstances of the inves-  
12          tigation and the criminal organization, more precise  
13          descriptions are not feasible.

14          (15) Federal agents investigating international  
15          terrorism by foreign enemies are entitled to tools at  
16          least as broad as those used by Federal agents in-  
17          vestigating domestic crimes by United States citi-  
18          zens. The Supreme Court, in the “Keith Case”,  
19          United States v. United States District Court for  
20          the Eastern District of Michigan, 407 U.S. 297  
21          (1972), recognized that the standards and proce-  
22          dures used to fight ordinary crime may not be appli-  
23          cable to cases involving national security. The Court  
24          recognized that national “security surveillance may  
25          involve different policy and practical considerations

1 from the surveillance of ordinary crime” and that  
 2 courts should be more flexible in issuing warrants in  
 3 national security cases. *United States v. United*  
 4 *States District Court for the Eastern District of*  
 5 *Michigan*, 407 U.S. 297, 322 (1972).

6 (16) By authorizing the Foreign Intelligence  
 7 Surveillance Court to review electronic surveillance  
 8 programs, Congress preserves the ability of the  
 9 Commander in Chief to use the necessary means to  
 10 guard our national security, while also protecting the  
 11 civil liberties and constitutional rights that we cher-  
 12 ish.

13 **SEC. 3. DEFINITIONS.**

14 The Foreign Intelligence Surveillance Act of 1978  
 15 (50 U.S.C. 1801 et seq.) is amended—

16 (1) by redesignating title VII as title VIII;

17 (2) by redesignating section 701 as section 801;

18 and

19 (3) by inserting after title VI the following:

20 **“TITLE VII—ELECTRONIC**  
 21 **SURVEILLANCE**

22 **“SEC. 701. DEFINITIONS.**

23 “As used in this title—

24 “(1) the terms ‘agent of a foreign power’, ‘At-  
 25 torney General’, ‘foreign intelligence information’,



1 'foreign power', 'international terrorism', 'minimiza-  
2 tion procedures', 'person', 'United States', and  
3 'United States person' have the same meaning as in  
4 section 101;

5 "(2) the term 'congressional intelligence com-  
6 mittees' means the Select Committee on Intelligence  
7 of the Senate and the Permanent Select Committee  
8 on Intelligence of the House of Representatives;

9 "(3) the term 'electronic communication' means  
10 any transfer of signs, signals, writing, images,  
11 sounds, data, or intelligence of any nature trans-  
12 mitted in whole or in part by a wire, radio, electro-  
13 magnetic, photoelectronic or photooptical system,  
14 cable, or other like connection furnished or operated  
15 by any person engaged as a common carrier in pro-  
16 viding or operating such facilities for the trans-  
17 mission of communications;

18 "(4) the term 'electronic surveillance' means the  
19 acquisition by an electronic, mechanical, or other  
20 surveillance device of the substance of any electronic  
21 communication sent by, received by, or intended to  
22 be received by a person who is in the United States,  
23 where there is a reasonable possibility that the sur-  
24 veillance will intercept communication in which a  
25 person in the United States participating in the

1 communication has a reasonable expectation of pri-  
2 vacy;

3 “(5) the term ‘electronic surveillance program’  
4 means a program to engage in electronic surveil-  
5 lance—

6 “(A) to gather foreign intelligence informa-  
7 tion or to protect against international ter-  
8 rorism or clandestine intelligence activities by  
9 obtaining the substance of or information re-  
10 garding electronic communications sent by, re-  
11 ceived by, or intended to be received by a for-  
12 eign power, an agent or agents of a foreign  
13 power, or a person or persons who have had  
14 communication with a foreign power seeking to  
15 commit an act of international terrorism or  
16 clandestine intelligence activities against the  
17 United States;

18 “(B) where it is not feasible to name every  
19 person or address every location to be subjected  
20 to electronic surveillance; and

21 “(C) where effective gathering of foreign  
22 intelligence information requires an extended  
23 period of electronic surveillance;

1           “(6) the term ‘Foreign Intelligence Surveillance  
2 Court’ means the court, sitting en banc, established  
3 under section 103(a);

4           “(7) the term ‘Foreign Intelligence Surveillance  
5 Court of review’ means the court established under  
6 section 103(b);

7           “(8) the term ‘intercept’ means the acquisition  
8 of the substance of any electronic communication by  
9 a person through the use of any electronic, mechan-  
10 ical, or other device; and

11           “(9) the term ‘substance’ means any informa-  
12 tion concerning the words, purport, or meaning of a  
13 communication, and does not include information  
14 identifying the sender, origin, or recipient of the  
15 communication or the date or time of its trans-  
16 mission.”.

17 **SEC. 4. FOREIGN INTELLIGENCE SURVEILLANCE COURT**  
18 **JURISDICTION TO REVIEW ELECTRONIC SUR-**  
19 **VEILLANCE PROGRAMS.**

20           Title VII of the Foreign Intelligence Surveillance Act  
21 of 1978, as amended by section 3, is amended by adding  
22 at the end the following:

1 **“SEC. 702. FOREIGN INTELLIGENCE SURVEILLANCE COURT**  
2 **JURISDICTION TO REVIEW ELECTRONIC SUR-**  
3 **VEILLANCE PROGRAMS.**

4 “(a) **IN GENERAL.**—The Foreign Intelligence Sur-  
5 veillance Court shall have jurisdiction to issue an order  
6 under this title, lasting not longer than 45 days, that au-  
7 thorizes an electronic surveillance program to obtain for-  
8 eign intelligence information or to protect against inter-  
9 national terrorism or clandestine intelligence activities.

10 “(b) **REAUTHORIZATION.**—In order to continue an  
11 electronic surveillance program after the time period de-  
12 scribed in subsection (a), the Attorney General shall sub-  
13 mit a new application under section 703. There shall be  
14 no limit on the number of times the Attorney General may  
15 seek approval of an electronic surveillance program.

16 “(c) **MODIFICATIONS AND APPEAL IN EVENT APPLI-**  
17 **CATION IS DENIED.**—

18 “(1) **IN GENERAL.**—In the event that the For-  
19 eign Intelligence Surveillance Court refuses to ap-  
20 prove an application under subsection (a), the court  
21 shall state its reasons in a written opinion.

22 “(2) **OPINION.**—The court shall submit a writ-  
23 ten opinion described in paragraph (1) to the Attor-  
24 ney General and to each member of the congres-  
25 sional intelligence committees (or any subcommittee

1       thereof designated for oversight of electronic surveil-  
2       lance programs under this title).

3           “(3) RESUBMISSION OR APPEAL.—The Attor-  
4       ney General shall be permitted to submit a new ap-  
5       plication under section 703 for the electronic surveil-  
6       lance program, reflecting modifications to address  
7       the concerns set forth in the written opinion of the  
8       Foreign Intelligence Surveillance Court. There shall  
9       be no limit on the number of times the Attorney  
10      General may seek approval of an electronic surveil-  
11     lance program. Alternatively, the Attorney General  
12     shall be permitted to appeal the decision of the For-  
13     eign Intelligence Surveillance Court to the Foreign  
14     Intelligence Surveillance Court of Review.

15      “(d) COMMUNICATIONS SUBJECT TO THIS TITLE.—

16           “(1) IN GENERAL.—The provisions of this title  
17       requiring authorization by the Foreign Intelligence  
18       Surveillance Court apply only to interception of the  
19       substance of electronic communications sent by, re-  
20       ceived by, or intended to be received by a person  
21       who is in the United States, where there is a reason-  
22       able possibility that a participant in the communica-  
23       tion has a reasonable expectation of privacy.

24           “(2) EXCLUSION.—The provisions of this title  
25       requiring authorization by the Foreign Intelligence

1 Surveillance Court do not apply to information iden-  
2 tifying the sender, origin, or recipient of the elec-  
3 tronic communication or the date or time of its  
4 transmission that is obtained without review of the  
5 substance of the electronic communication.

6 “(e) EXISTING PROGRAMS SUBJECT TO THIS  
7 TITLE.—

8 “(1) IN GENERAL.—The Attorney General shall  
9 submit an application to the Foreign Intelligence  
10 Surveillance Court for any electronic surveillance  
11 program to obtain foreign intelligence information or  
12 to protect against international terrorism or clandes-  
13 tine intelligence activities.

14 “(2) EXISTING PROGRAMS.—Not later than 45  
15 days after the date of enactment of this title, the At-  
16 torney General shall submit an application under  
17 this title for approval of the electronic surveillance  
18 program sometimes referred to as the ‘Terrorist  
19 Surveillance Program’ and discussed by the Attorney  
20 General before the Committee on the Judiciary of  
21 the United States Senate on February 6, 2006. Not  
22 later than 120 days after the date of enactment of  
23 this title, the Attorney General shall submit applica-  
24 tions under this title for approval of any other elec-  
25 tronic surveillance program in existence on the date

1 of enactment of this title that has not been sub-  
2 mitted to the Foreign Intelligence Surveillance  
3 Court.”.

4 **SEC. 5. APPLICATIONS FOR APPROVAL OF ELECTRONIC**  
5 **SURVEILLANCE PROGRAMS.**

6 Title VII of the Foreign Intelligence Surveillance Act  
7 of 1978, as amended by section 4, is amended by adding  
8 at the end the following:

9 **“SEC. 703. APPLICATIONS FOR APPROVAL OF ELECTRONIC**  
10 **SURVEILLANCE PROGRAMS.**

11 “(a) IN GENERAL.—Each application for approval of  
12 an electronic surveillance program under this title shall—

13 “(1) be made by the Attorney General;

14 “(2) include a statement of the authority con-  
15 ferred on the Attorney General by the President of  
16 the United States;

17 “(3) include a statement setting forth the legal  
18 basis for the conclusion by the Attorney General  
19 that the electronic surveillance program is consistent  
20 with the requirements of the Constitution of the  
21 United States;

22 “(4) certify that the information sought cannot  
23 reasonably be obtained by conventional investigative  
24 techniques or through an application under section  
25 104;

1           “(5) include the name, if known, identity, or de-  
2           scription of the foreign power or agent of a foreign  
3           power seeking to commit an act of international ter-  
4           rorism or clandestine intelligence activities against  
5           the United States that the electronic surveillance  
6           program seeks to monitor or detect;

7           “(6) include a statement of the means and  
8           operational procedures by which the surveillance will  
9           be executed and effected;

10          “(7) include a statement of the facts and cir-  
11          cumstances relied upon by the Attorney General to  
12          justify the belief that at least 1 of the participants  
13          in the communications to be intercepted by the elec-  
14          tronic surveillance program will be the foreign power  
15          or agent of a foreign power that is specified under  
16          paragraph (5), or a person who has had communica-  
17          tion with the foreign power or agent of a foreign  
18          power that is specified under paragraph (5), and is  
19          seeking to commit an act of international terrorism  
20          or clandestine intelligence activities against the  
21          United States;

22          “(8) include a statement of the proposed mini-  
23          mization procedures;

24          “(9) include a detailed description of the nature  
25          of the information sought and the type of commu-



1        nication to be intercepted by the electronic surveil-  
2        lance program;

3               “(10) include an estimate of the number of  
4        communications to be intercepted by the electronic  
5        surveillance program during the requested authoriza-  
6        tion period;

7               “(11) specify the date that the electronic sur-  
8        veillance program that is the subject of the applica-  
9        tion was initiated, if it was initiated before submis-  
10       sion of the application;

11              “(12) certify that any electronic surveillance of  
12        a person in the United States under this title shall  
13        cease 45 days after the date of the authorization,  
14        unless the Government has obtained judicial author-  
15        ization for continued surveillance of the person in  
16        the United States under section 104 or another Fed-  
17        eral statute;

18              “(13) include a statement of the facts con-  
19        cerning all previous applications that have been  
20        made to the Foreign Intelligence Surveillance Court  
21        under this title involving the electronic surveillance  
22        program in the application, including the minimiza-  
23        tion procedures and the means and operational pro-  
24        cedures proposed, and the Foreign Intelligence Sur-

1       veillance Court’s decision on each previous applica-  
2       tion; and

3               “(14) include a statement of the facts con-  
4       cerning the implementation of the electronic surveil-  
5       lance program described in the application, includ-  
6       ing, for any period of operation of the program au-  
7       thorized at least 45 days prior to the date of submis-  
8       sion of the application—

9               “(A) the minimization procedures imple-  
10       mented;

11              “(B) the means and operational procedures  
12       by which the surveillance was executed and ef-  
13       fected;

14              “(C) the number of communications sub-  
15       jected to the electronic surveillance program;

16              “(D) the identity, if known, or a descrip-  
17       tion of any United States person whose commu-  
18       nications sent or received in the United States  
19       were intercepted by the electronic surveillance  
20       program; and

21              “(E) a description of the foreign intel-  
22       ligence information obtained through the elec-  
23       tronic surveillance program.

24       “(b) ADDITIONAL INFORMATION.—The Foreign In-  
25       telligence Surveillance Court may require the Attorney

1 General to furnish such other information as may be nec-  
2 essary to make a determination under section 704.”.

3 **SEC. 6. APPROVAL OF ELECTRONIC SURVEILLANCE PRO-**  
4 **GRAMS.**

5 Title VII of the Foreign Intelligence Surveillance Act  
6 of 1978, as amended by section 5, is amended by adding  
7 at the end the following:

8 **“SEC. 704. APPROVAL OF ELECTRONIC SURVEILLANCE**  
9 **PROGRAMS.**

10 “(a) NECESSARY FINDINGS.—Upon receipt of an ap-  
11 plication under section 703, the Foreign Intelligence Sur-  
12 veillance Court shall enter an ex parte order as requested,  
13 or as modified, approving the electronic surveillance pro-  
14 gram if it finds that—

15 “(1) the President has authorized the Attorney  
16 General to make the application for electronic sur-  
17 veillance for foreign intelligence information;

18 “(2) approval of the electronic surveillance pro-  
19 gram in the application is consistent with the duty  
20 of the Foreign Intelligence Surveillance Court to up-  
21 hold the Constitution of the United States;

22 “(3) there is probable cause to believe that the  
23 electronic surveillance program will intercept com-  
24 munications of the foreign power or agent of a for-  
25 eign power specified in the application, or a person

1       who has had communication with the foreign power  
2       or agent of a foreign power that is specified in the  
3       application and is seeking to commit an act of inter-  
4       national terrorism or clandestine intelligence activi-  
5       ties against the United States;

6               “(4) the proposed minimization procedures  
7       meet the definition of minimization procedures  
8       under section 101(h);

9               “(5) the application contains all statements and  
10       certifications required by section 703; and

11               “(6) an evaluation of the implementation of the  
12       electronic surveillance program, as described in sub-  
13       section (b), supports approval of the application.

14       “(b) EVALUATION OF THE IMPLEMENTATION OF THE  
15       ELECTRONIC SURVEILLANCE PROGRAM.—In determining  
16       whether the implementation of the electronic surveillance  
17       program supports approval of the application for purposes  
18       of subsection (a)(6), the Foreign Intelligence Surveillance  
19       Court shall consider the performance of the electronic sur-  
20       veillance program for at least 3 previously authorized peri-  
21       ods, to the extent such information is available, and  
22       shall—

23               “(1) evaluate whether the electronic surveillance  
24       program has been implemented in accordance with

1 the proposal by the Federal Government by com-  
2 paring—

3 “(A) the minimization procedures proposed  
4 with the minimization procedures implemented;

5 “(B) the nature of the information sought  
6 with the nature of the information obtained;  
7 and

8 “(C) the means and operational procedures  
9 proposed with the means and operational proce-  
10 dures implemented;

11 “(2) consider the number of communications  
12 intercepted by the electronic surveillance program  
13 and the length of time the electronic surveillance  
14 program has been in existence; and

15 “(3) consider the effectiveness of the electronic  
16 surveillance program, as reflected by the foreign in-  
17 telligence information obtained.”.

18 **SEC. 7. CONGRESSIONAL OVERSIGHT.**

19 Title VII of the Foreign Intelligence Surveillance Act  
20 of 1978, as amended by section 6, is amended by adding  
21 at the end the following:

22 **“SEC. 705. CONGRESSIONAL OVERSIGHT.**

23 “(a) IN GENERAL.—The President shall submit to  
24 each member of the congressional intelligence committees  
25 (or any subcommittee thereof designated for oversight of

1 electronic surveillance programs under this title) a report  
2 on the management and operational details of the elec-  
3 tronic surveillance program generally and on any specific,  
4 surveillance conducted under the electronic surveillance  
5 program whenever requested by either of the committees,  
6 or any such subcommittee, as applicable.

7 “(b) SEMI-ANNUAL REPORTS.—

8 “(1) IN GENERAL.—In addition to any reports  
9 required under subsection (a), the President shall,  
10 not later than 6 months after the date of enactment  
11 of this Act and every 6 months thereafter, fully in-  
12 form each member of the congressional intelligence  
13 committees (or any subcommittee thereof designated  
14 for oversight of electronic surveillance programs  
15 under this title) on all electronic surveillance con-  
16 ducted under the electronic surveillance program.

17 “(2) CONTENTS.—Each report under para-  
18 graph (1) shall include the following:

19 “(A) A complete discussion of the manage-  
20 ment, operational details, effectiveness, and ne-  
21 cessity of the electronic surveillance program  
22 generally, and of the management, operational  
23 details, effectiveness, and necessity of all elec-  
24 tronic surveillance conducted under the pro-

1           gram, during the 6-month period ending on the  
2           date of such report.

3           “(B) The total number of targets of elec-  
4           tronic surveillance commenced or continued  
5           under the electronic surveillance program.

6           “(C) The total number of United States  
7           persons targeted for electronic surveillance  
8           under the electronic surveillance program.

9           “(D) The total number of targets of elec-  
10          tronic surveillance under the electronic surveil-  
11          lance program for which an application was  
12          submitted under section 104 for an order under  
13          section 105 approving electronic surveillance,  
14          and, of such applications, the total number ei-  
15          ther granted, modified, or denied.

16          “(E) Any other information specified, in  
17          writing, to be included in such report by the  
18          congressional intelligence committees or any  
19          subcommittees thereof designated for oversight  
20          of the electronic surveillance program.

21          “(F) A description of the nature of the in-  
22          formation sought under the electronic surveil-  
23          lance program, the types of communications  
24          subjected to such program, and whether the in-  
25          formation sought under such program could be

1           reasonably obtained by less intrusive investiga-  
 2           tive techniques in a timely and effective man-  
 3           ner.

4           “(c) FORM OF REPORTS.—Any report or information  
 5 submitted under this section shall be submitted in classi-  
 6 fied form.”.

7 **SEC. 8. EMERGENCY AUTHORIZATION.**

8           Title VII of the Foreign Intelligence Surveillance Act  
 9 of 1978, as amended by section 6, is amended by adding  
 10 at the end the following:

11 **“SEC. 706. EMERGENCY AUTHORIZATION.**

12           “Notwithstanding any other provision of law, the  
 13 President, through the Attorney General, may authorize  
 14 electronic surveillance without a court order under this  
 15 title to, acquire foreign intelligence information for a pe-  
 16 riod not to exceed 45 days following a declaration of war  
 17 by Congress.”.

18 **SEC. 9. CONFORMING AMENDMENT.**

19           The table of contents for the Foreign Intelligence  
 20 Surveillance Act of 1978 is amended by striking the items  
 21 related to title VII and section 701 and inserting the fol-  
 22 lowing:

“TITLE VII—ELECTRONIC SURVEILLANCE

“Sec. 701. Definitions.

“Sec. 702. Foreign Intelligence Surveillance Court jurisdiction to review elec-  
 tronic surveillance programs.

“Sec. 703. Applications for approval of electronic surveillance programs.

“Sec. 704. Approval of electronic surveillance programs.

“Sec. 705. Congressional oversight.



“Sec. 706. Emergency Authorization.

“TITLE VIII—EFFECTIVE DATE

“Sec. 801. Effective date.”.

