

PATRIOT ACT HEARING
Senate Committee on the Judiciary
Non-Patriot Act Issues

April 5, 2005

A. OFFICE OF THE CHIEF INFORMATION OFFICER

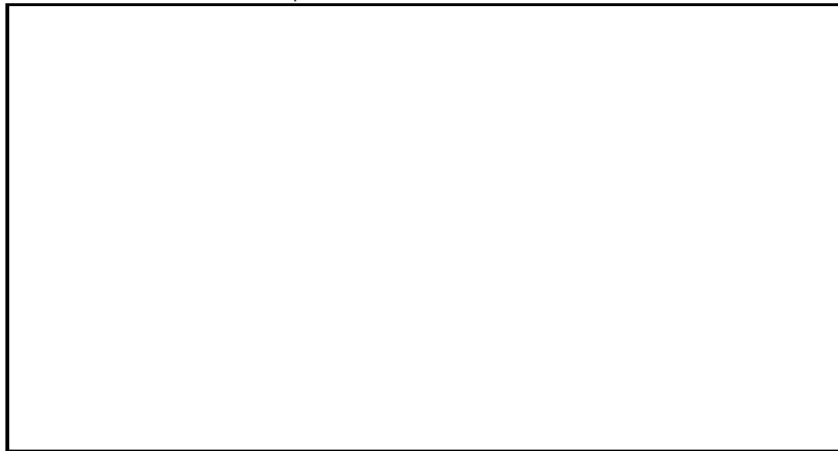


B. INSPECTION DIVISION/OPR

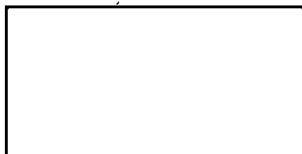


OTHER outside the scope of request

C. CRIMINAL DIVISION



D. COUNTERTERRORISM



NSL VIO-13793

ALL INFORMATION CONTAINED
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DATE 07-09-2007 BY 65179smh/kar/lmf

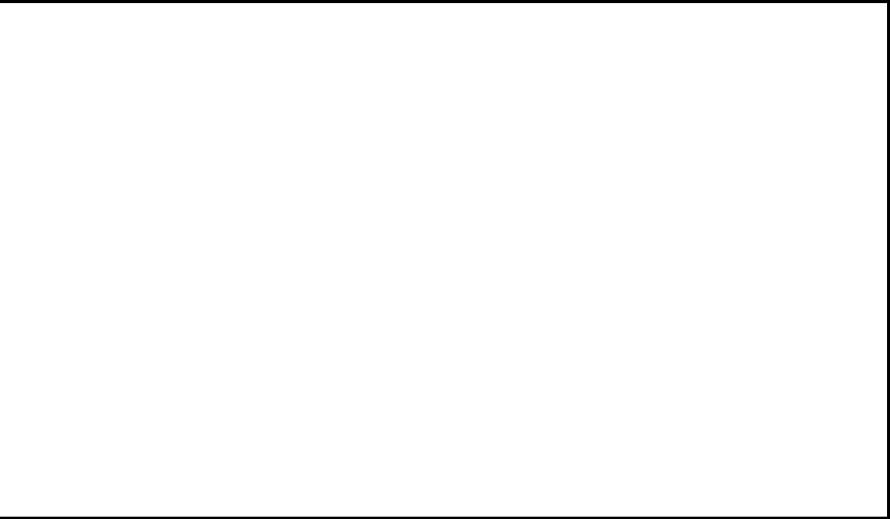
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OTHER outside the scope of request

E. DIRECTORATE OF INTELLIGENCE (DI)

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- 2.
- 3.
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- 5.
- 6.



F. COUNTERINTELLIGENCE

- 1. 

G. OFFICE OF THE GENERAL COUNSEL

- 1. 

NSL VIO-13794

2.

[Redacted]

3. National Security Letter Lawsuit (ACLU vs. DOJ)

4.

[Redacted]

5.

H. LABORATORY DIVISION

1.

[Redacted]

2.

3.

I. CRIMINAL JUSTICE INFORMATION SERVICES

1.

[Redacted]

OTHER outside the scope of request

2.

J. OFFICE OF CONGRESSIONAL AFFAIRS

1.

[Redacted]

2.

3.

K. SECURITY DIVISION

1.

[Redacted]

L. CYBER DIVISION

1.

[Redacted]



ACLU LAWSUIT REGARDING NSLs

- I. **Introduction.** On April 6, 2004, the ACLU, on behalf of itself and a John Doe plaintiff, filed a lawsuit against the Attorney General, the FBI, the Director, and FBI Senior Counsel Marion E. Bowman in the United States District Court for the Southern District of New York. The lawsuit included a facial challenge to the constitutionality of a National Security Letter (NSL) statute, 18 U.S.C. § 2709. The case was filed under seal and large portions remain under seal.
- II. The plaintiffs alleged that the NSL statute violates the First, Fourth and Fifth Amendments to the Constitution. The Government has disputed these claims, and vigorously defended the lawsuit and constitutionality of the statute. Both sides moved for summary judgment and submitted lengthy memoranda in support of their respective positions.
- III. On September 28, 2004, the United States District Court for the Southern District of New York (Marrero, J.) issued an opinion and order granting the plaintiffs' motion for summary judgment and denying the Government's cross motion. The district court held that the manner in which the NSL statute has been applied by the FBI violates the Fourth Amendment because recipients of NSLs are not afforded access to legal advice and a judicial process to contest an NSL. The district court also held that in the absence of meaningful judicial review created by "[the statute's] coercive implementation," there are not adequate procedural protections in place to safeguard the First Amendment anonymous speech and association rights of subscribers of ISPs. The district court further held that the non-disclosure provision contained in the NSL statute was a prior restraint and content-based restriction on speech violative of the First Amendment. The district court enjoined the FBI from issuing NSLs or enforcing the non-disclosure provision in the NSL statute. The court's order is stayed pending appeal and the opinion and order are not under seal.
- IV. The Government filed a Notice of Appeal to the Second Circuit in November, 2004. In addition, representatives of OGC have been conferring with DOJ, including the Office of Legal Policy, to prepare a proposed legislative amendment to the NSL statutes that address the constitutional issues raised in the district court's opinion.
- V. **Conclusion.** The ACLU was successful in convincing the district court that the NSL statute was not consistent with the First and Fourth Amendments to the Constitution. The Government intends to challenge this ruling by pursuing an appeal while simultaneously lobbying Congress to amend the statute to provide for some level of judicial review of NSLs and a mechanism for an NSL recipient to petition for waiver of the statute's non-disclosure provision in limited

circumstances. Because of the stay of the district court's order pending appeal, the FBI's issuance of NSLs and policies and procedures of same have not been affected.

POC: SSA [redacted]
Director's Research Group
(202)324-[redacted]

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Information provided by:
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OGC National Security Law Branch
(202) 324-[redacted]

Approved by OGC Chief Of Staff Patrick W. Kelley

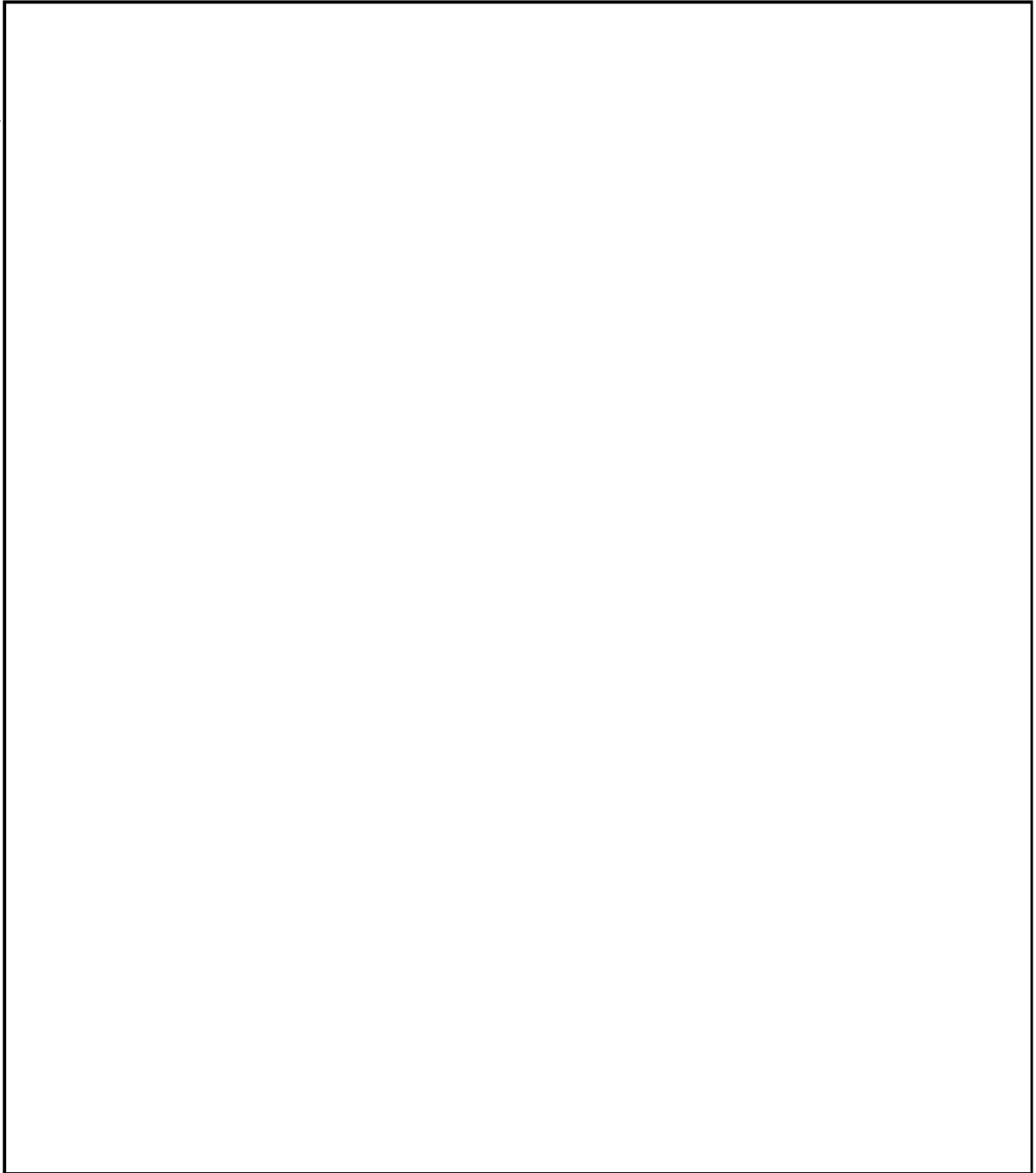
Dated: 03/23/2005



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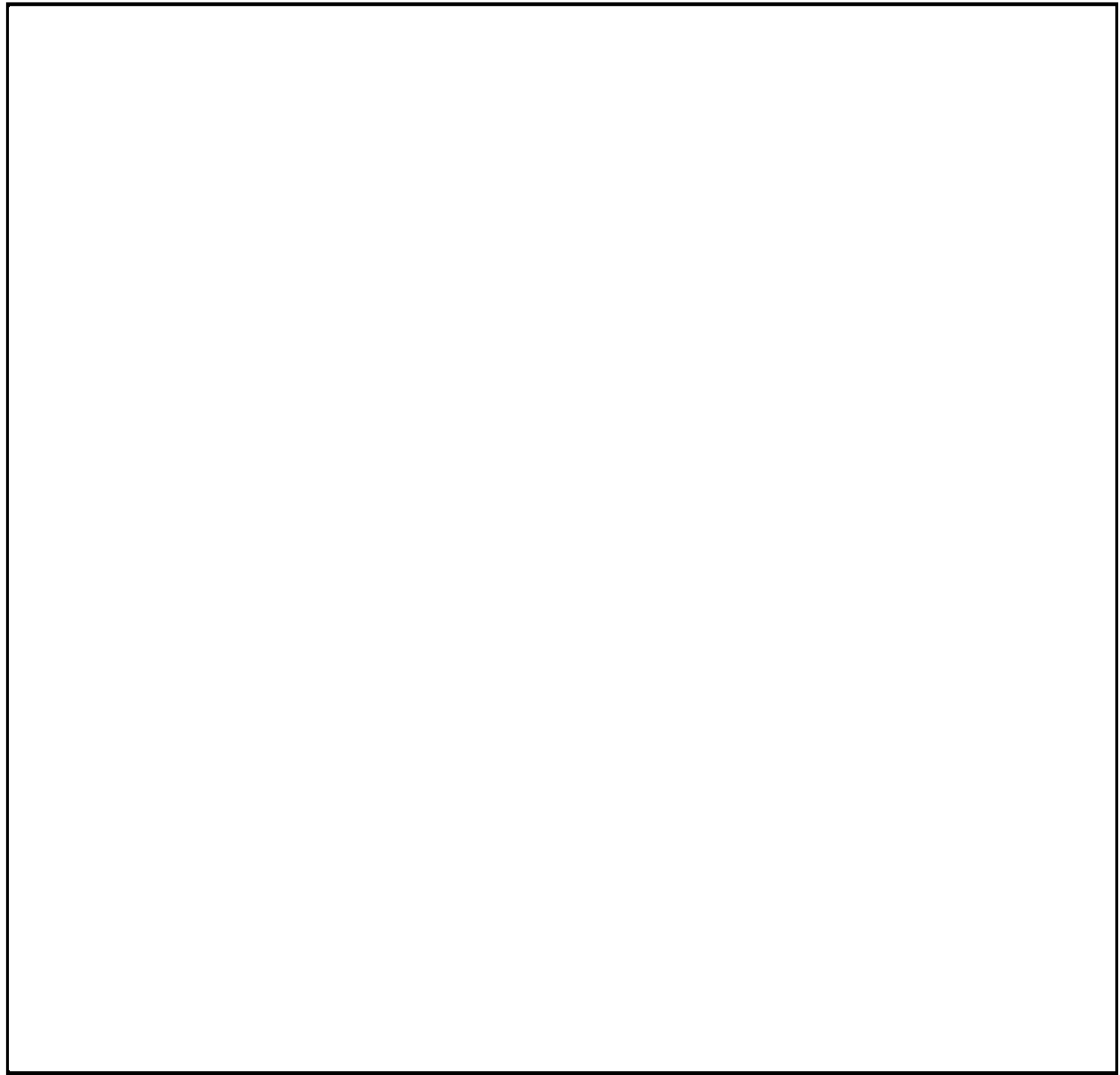
S. 1709: The Security and Freedom Ensured Act (SAFE Act)

I.

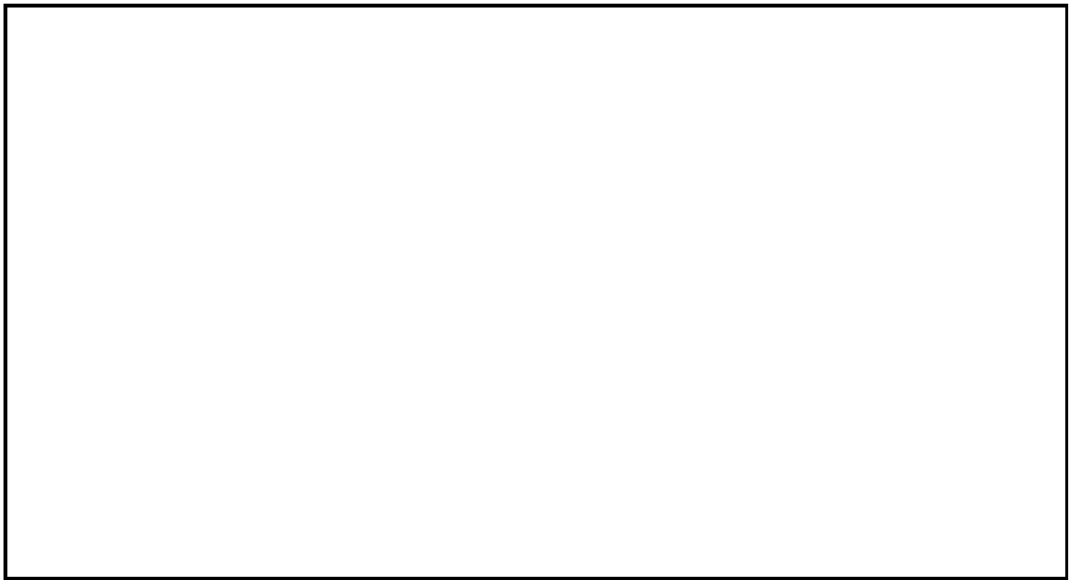


a. endangering the life or physical safety of an individual;

OTHER outside the scope of request



C. **Access to Records under FISA**

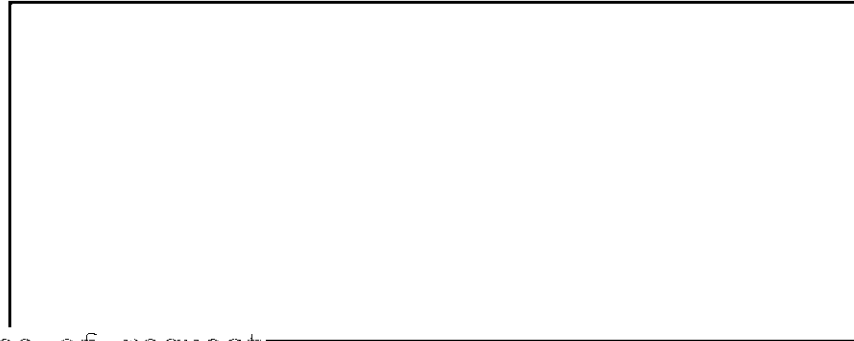


D. **National Security Letters (NSLs)**

1. Current Law: NSLs can be used to obtain subscriber information, toll records or electronic communication transactional records from any wire or electronic communication service provider.
2. SAFE Act: Would shield libraries from such NSLs by exempting them from the definition of wire or electronic communication service providers.

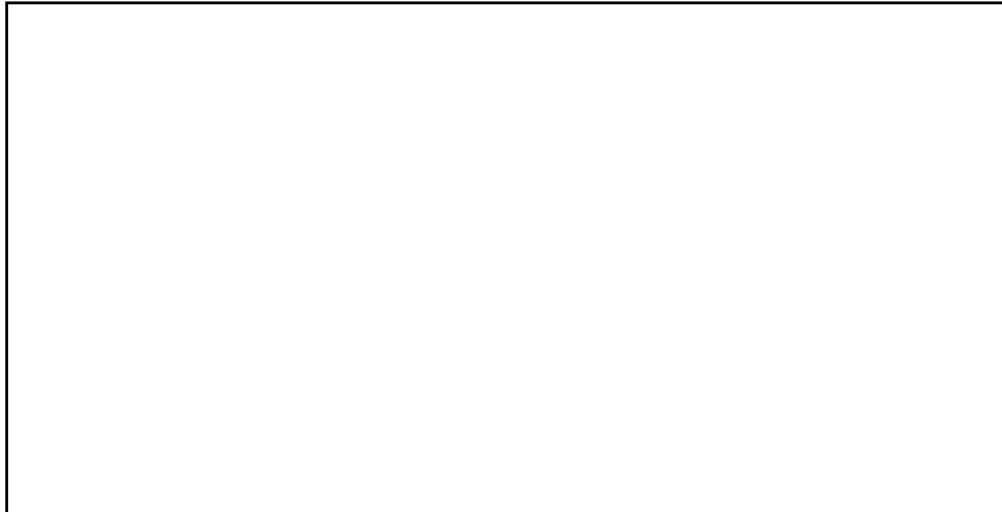
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E. **Sunset Provisions**



- II. Administration Position: The administration does not support this legislation. The SAFE Act has not been re-introduced in the 109th Congress.

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POC:

Director's Research Group
(202) 324-

Information provided by: SSA
Office of Congressional Affairs

Information approved by: Fieni P. Kalisch
Assistant Director, Office of Congressional Affairs

Dated: 03/21/2005