

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a statement of the exclusive means by which electronic surveillance and interception of certain communications may be conducted, and for other purposes.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d 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 CERTAIN COMMUNICATIONS MAY BE**
- 5 **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 new section:

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

6 "SEC. 112. (a) Except as provided in subsection (b),
7 the procedures of chapters 119, 121 and 206 of title 18,
8 United States Code, and this Act shall be the exclusive
9 means by which electronic surveillance (as defined in sec-
10 tion 101(f), regardless of the limitation of section 701)
11 and the interception of domestic wire, oral, or electronic
12 communications may be conducted.

13 "(b) Only an express statutory authorization for elec-
14 tronic surveillance or the interception of domestic wire,
15 oral, or electronic communications, other than as an
16 amendment to this Act or chapters 119, 121, or 206 of
17 title 18, United States Code, shall constitute an additional
18 exclusive means for the purpose of subsection (a)."

19 (b) OFFENSE.—Section 109(a) of the Foreign Intel-
20 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
21 amended by striking "authorized by statute" each place
22 it appears in such section and inserting "authorized by
23 this Act, chapter 119, 121, or 206 of title 18, United
24 States Code, or any express statutory authorization that
25 is an additional exclusive means for conducting electronic
26 surveillance under section 112."

1 (c) AUTHORIZATION FOLLOWING ATTACK OR DEC-
2 LARATION OF WAR.—The Foreign Intelligence Surveil-
3 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended
4 by—

5 (1) striking section 111 and inserting the fol-
6 lowing:

7 “AUTHORIZATION FOLLOWING ATTACK OR DECLARATION
8 OF WAR

9 “SEC. 111. (a) Notwithstanding any other law, the
10 President, through the Attorney General, may authorize
11 electronic surveillance or a physical search of stored elec-
12 tronic communications or stored electronic data that is in
13 the custody of an electronic communication service pro-
14 vider without a court order to acquire foreign intelligence
15 information, if such electronic surveillance or physical
16 search is reasonably related to the applicable circumstance
17 described in paragraph (1), (2), or (3), for a period of
18 not more than 45 days after the date of—

19 “(1) a national emergency created by an attack
20 upon the United States, its territories or posses-
21 sions, or its Armed Forces;

22 “(2) an authorization for the use of military
23 force under the War Powers Resolution (50 U.S.C.
24 1541 et seq.); or

25 “(3) a declaration of war by the Congress.

1 “(b) If the President determines to exercise the au-
2 thority under subsection (a), the President, through the
3 Attorney General, shall, not later than 5 days after mak-
4 ing that determination, submit to the Foreign Intelligence
5 Surveillance Court and the congressional intelligence com-
6 mittees a classified written notification that the use of
7 such authority has been initiated.

8 “(c) The President, through the Attorney General,
9 may authorize 1 extension of any electronic surveillance
10 or physical search of stored electronic communications or
11 stored electronic data that is in the custody of an elec-
12 tronic communication service provider authorized under
13 paragraph (2) or (3) of subsection (a) for a period of not
14 more than 45 days.

15 “(d) Not later than 30 days after the end of the pe-
16 riod for which electronic surveillance or a physical search
17 of stored electronic communications or stored electronic
18 data that is in the custody of an electronic communication
19 service provider is authorized under subsection (a) or ex-
20 tended under subsection (c), the President, through the
21 Attorney General, shall submit to the Foreign Intelligence
22 Surveillance Court and the congressional intelligence com-
23 mittees a written report describing the exercise of such
24 authority during such period.

25 “(e) In this section—

1 “(1) the term ‘congressional intelligence com-
2 mittees’ means the Select Committee on Intelligence
3 of the Senate and the Permanent Select Committee
4 on Intelligence of the House of Representatives;

5 “(2) the term ‘electronic communication service
6 provider’ has the meaning given that term in section
7 801; and

8 “(3) the term ‘Foreign Intelligence Surveillance
9 Court’ means the court established under section
10 103(a).”;

11 (2) striking section 309 and inserting the fol-
12 lowing:

13 “AUTHORIZATION FOLLOWING ATTACK OR DECLARATION
14 OF WAR

15 “SEC. 309. (a) Notwithstanding any other law, the
16 President, through the Attorney General, may authorize
17 a physical search without a court order to acquire foreign
18 intelligence information relating to the applicable cir-
19 cumstance described in paragraph (1) or (2) for a period
20 of not more than 45 days after the date of—

21 “(1) an authorization for the use of military
22 force under the War Powers Resolution (50 U.S.C.
23 1541 et seq.); or

24 “(2) a declaration of war by the Congress.

25 “(b) If the President determines to exercise the au-
26 thority under subsection (a), the President, through the

1 Attorney General, shall, not later than 5 days after mak-
2 ing that determination, submit to the Foreign Intelligence
3 Surveillance Court and the congressional intelligence com-
4 mittees a written notification that sets forth the cir-
5 cumstances necessitating the use of such authority.

6 “(c) The President, through the Attorney General,
7 may authorize 1 extension of any physical search author-
8 ized under subsection (a) for a period of not more than
9 45 days.

10 “(d) Not later than 30 days after the end of the pe-
11 riod for which a physical search is authorized under sub-
12 section (a) or extended under subsection (c), the Presi-
13 dent, through the Attorney General, shall submit to the
14 Foreign Intelligence Surveillance Court and the congres-
15 sional intelligence committees a written report describing
16 the exercise of such authority during such period.

17 “(e) In this section, the term ‘congressional intel-
18 ligence committees’ means the Select Committee on Intel-
19 ligence of the Senate and the Permanent Select Committee
20 on Intelligence of the House of Representatives.”; and

21 (3) striking section 404 and inserting the fol-
22 lowing:

23 “AUTHORIZATION FOLLOWING ATTACK OR DECLARATION
24 OF WAR

25 “SEC. 404. (a) Notwithstanding any other law, the
26 President, through the Attorney General, may authorize

1 the use of a pen register or trap and trace device without
2 a court order to acquire foreign intelligence information,
3 if such use of a pen register or trap and trace device is
4 reasonably related to the applicable circumstance de-
5 scribed in paragraph (1), (2), or (3), for a period of not
6 more than 45 days after the date of—

7 “(1) a national emergency created by an attack
8 upon the United States, its territories or posses-
9 sions, or its Armed Forces;

10 “(2) an authorization for the use of military
11 force under the War Powers Resolution (50 U.S.C.
12 1541 et seq.); or

13 “(3) a declaration of war by the Congress.

14 “(b) If the President determines to exercise the au-
15 thority under subsection (a), the President, through the
16 Attorney General, shall, not later than 5 days after mak-
17 ing that determination, submit to the Foreign Intelligence
18 Surveillance Court and the congressional intelligence com-
19 mittees a classified written notification that the use of
20 such authority has been initiated.

21 “(c) The President, through the Attorney General,
22 may authorize 1 extension of the use of a pen register
23 or trap and trace device authorized under paragraph (2)
24 or (3) of subsection (a) for a period of not more than 45
25 days.

1 “(d) Not later than 30 days after the end of the pe-
2 riod for which the use of a pen register or trap and trace
3 device is authorized under subsection (a) or extended
4 under subsection (c), the President, through the Attorney
5 General, shall submit to the Foreign Intelligence Surveil-
6 lance Court and the congressional intelligence committees
7 a written report describing the exercise of such authority
8 during such period.

9 “(e) In this section—

10 “(1) the term ‘congressional intelligence com-
11 mittees’ means the Select Committee on Intelligence
12 of the Senate and the Permanent Select Committee
13 on Intelligence of the House of Representatives; and

14 “(2) the term ‘Foreign Intelligence Surveillance
15 Court’ means the court established under section
16 103(a).”.

17 (d) CONFORMING AMENDMENTS.—

18 (1) IN GENERAL.—Section 2511(2) of title 18,
19 United States Code, is amended—

20 (A) in paragraph (a), by adding at the end
21 the following:

22 “(iii) If a certification under subparagraph (ii)(B) for
23 assistance to obtain foreign intelligence information is
24 based on statutory authority, the certification shall iden-

1 tify the specific statutory provision, and shall certify that
2 the statutory requirements have been met.”; and

3 (B) in paragraph (f), by striking “, as de-
4 fined in section 101 of such Act,” and inserting
5 “(as defined in section 101(f) of such Act re-
6 gardless of the limitation of section 701 of such
7 Act)”.

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—

12 (A) striking the item relating to section
13 111 and inserting the following:

“Sec. 111. Authorization following attack or declaration of war.

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

14 (B) striking the item relating to section
15 309 and inserting the following:

“Sec. 309. Authorization following attack or declaration of war.”; and

16 (C) striking the item relating to section
17 404 and inserting the following:

“Sec. 404. Authorization following attack or declaration of war.”.