

[DISCUSSION DRAFT]110TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Foreign Intelligence Surveillance Act of 1978 to establish
a procedure for authorizing certain electronic surveillance.

IN THE HOUSE OF REPRESENTATIVES

M____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978
to establish a procedure for authorizing certain electronic
surveillance.

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. PURPOSE.**

4 The purpose of this Act is to facilitate the electronic
5 surveillance of targets reasonably believed to be outside
6 the United States in order to obtain foreign intelligence
7 information relating to international terrorism.

1 **SEC. 2. ADDITIONAL PROCEDURE FOR AUTHORIZING CER-**
2 **TAIN ELECTRONIC SURVEILLANCE.**

3 (a) IN GENERAL.—The Foreign Intelligence Surveil-
4 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended
5 by inserting after section 105 the following:

6 “CLARIFICATION OF ELECTRONIC SURVEILLANCE OF
7 PERSONS OUTSIDE THE UNITED STATES

8 “SEC. 105A. Notwithstanding any other provision of
9 this Act, a court order is not required for the acquisition
10 of the contents of any communication between persons
11 that are not located within the United States for the pur-
12 pose of collecting foreign intelligence information, without
13 respect to whether the communication passes through the
14 United States or the surveillance device is located within
15 the United States.

16 “ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN
17 ELECTRONIC SURVEILLANCE

18 “SEC. 105B. (a) IN GENERAL.—Notwithstanding
19 any other provision of this title, the Attorney General,
20 upon the authorization of the President, may apply to a
21 judge of the court established under section 103(a) for an
22 ex parte order, or an extension of an order, authorizing
23 electronic surveillance for periods of not more than 1 year,
24 for the purpose of acquiring foreign intelligence informa-
25 tion relating to international terrorism, in accordance with
26 this section.

1 “(b) APPLICATION.—

2 “(1) CONTENTS.—Each application for an
3 order, or extension of an order, submitted under
4 subsection (a) shall include—

5 “(A) the identity of the Federal officer
6 seeking to conduct such electronic surveillance;

7 “(B) a description of—

8 “(i) the methods to be used by the At-
9 torney General to determine, during the
10 duration of the order, that there is a rea-
11 sonable belief that the target of the elec-
12 tronic surveillance is outside the United
13 States; and

14 “(ii) the procedures to audit the im-
15 plementation of the methods described in
16 clause (i) to achieve the objective described
17 in that subclause;

18 “(C) a description of the nature of the in-
19 formation sought, including the identity of any
20 foreign power against whom electronic surveil-
21 lance will be conducted; and

22 “(D) a statement of the means by which
23 the electronic surveillance will be effected and
24 such other information about the surveillance

1 techniques to be used as may be necessary to
2 assess the proposed minimization procedures.

3 “(2) SPECIFIC PERSONS AND PLACES NOT RE-
4 QUIRED.—An application for an order, or extension
5 of an order, submitted under subsection (a) shall not
6 be required to identify—

7 “(A) the person, other than a foreign
8 power, against whom electronic surveillance will
9 be directed; or

10 “(B) the specific facilities, places, prem-
11 ises, or property at which the electronic surveil-
12 lance will be directed.

13 “(c) APPLICATION APPROVAL; ORDER.—

14 “(1) APPLICATION APPROVAL.—A judge consid-
15 ering an application for an order, or extension of an
16 order, submitted under subsection (a) shall approve
17 such application if the Attorney General certifies in
18 writing under oath, and the judge upon consider-
19 ation of the application determines, that—

20 “(A) the acquisition does not constitute
21 electronic surveillance within the meaning of
22 paragraph (1) or (3) of section 101(f);

23 “(B) the electronic surveillance is directed
24 at a target reasonably believed to be outside the
25 United States;

1 “(C) the methods described by the Attor-
2 ney General under subsection (b)(1)(B)(i) are
3 reasonably designed to determine whether the
4 target is outside the United States;

5 “(D) a significant purpose of the electronic
6 surveillance is to obtain foreign intelligence in-
7 formation relating to international terrorism;

8 “(E) the electronic surveillance involves ob-
9 taining the foreign intelligence information re-
10 lating to international terrorism from or with
11 the assistance of a communications service pro-
12 vider, custodian, or other person (including any
13 officer, employee, agent, or other specified per-
14 son of such service provider, custodian, or other
15 person) who has the lawful authority to access
16 the communications that are the subject of the
17 electronic surveillance;

18 “(F) guidelines have been established by
19 the Attorney General that ensure that—

20 “(i) an application is filed under sec-
21 tion 104, if otherwise required, if—

22 “(I) the Attorney General seeks
23 to continue electronic surveillance
24 against a target; and

1 “(II) there is reason to believe
2 that a significant number of commu-
3 nications to or from that target in-
4 volve a person who is in the United
5 States; and

6 “(ii) no additional electronic surveil-
7 lance is conducted under this section if
8 there is reason to believe the circumstances
9 described in subclauses (I) and (II) of
10 clause (i) exist; and

11 “(G) the proposed minimization procedures
12 meet the definition of minimization procedures
13 under section 101(h).

14 “(2) ORDER.—A judge approving an applica-
15 tion pursuant to paragraph (1) shall issue an order
16 that—

17 “(A) authorizes electronic surveillance as
18 requested, or as modified by the judge;

19 “(B) requires a specified communications
20 service provider, custodian, or other specified
21 person, to furnish the applicant forthwith with
22 all information, facilities, or technical assistance
23 necessary to accomplish the electronic surveil-
24 lance in a manner that will protect the secrecy
25 of the electronic surveillance and produce a

1 minimum of interference with the services that
2 provider, custodian, or other person is providing
3 the target of electronic surveillance; and

4 “(C) directs the applicant to follow the
5 guidelines established under paragraph (1)(F)
6 and the minimization procedures as proposed or
7 as modified by the court.

8 “(3) ASSESSMENT OF COMPLIANCE WITH MINI-
9 MIZATION PROCEDURES.—At or before the end of
10 the period of time for which electronic surveillance
11 is approved by an order or an extension under this
12 section, the judge may assess compliance with the
13 minimization procedures by reviewing the cir-
14 cumstances under which information concerning
15 United States persons was acquired, retained, or dis-
16 seminated.

17 “(d) SUBMISSION OF ORDERS AND AUDITS.—

18 “(1) ORDERS AND GUIDELINES.—Upon the
19 entry of an order under subsection (c)(2), the Attor-
20 ney General shall submit to the appropriate commit-
21 tees of Congress the order and the guidelines estab-
22 lished under subsection (c)(1)(F).

23 “(2) AUDIT.—Not later than 60 days after the
24 date of the enactment of this section, and every 60
25 days after, the Inspector General of the Department

1 of Justice shall complete an audit on the compliance
2 with the guidelines established under subsection
3 (c)(1)(F) and shall submit to the appropriate com-
4 mittees of Congress, the Attorney General, and the
5 Director of National Intelligence the results of such
6 audit .

7 “(e) REPORT TO COURT.—Not later than 60 days
8 after the date of enactment of this section, and every 60
9 days thereafter until the expiration of all orders issued
10 under this section, the Attorney General shall submit to
11 the court established under section 103(a) a report that,
12 for the 60-day period ending on the date of that report,
13 includes—

14 “(1) a list of any targets against which elec-
15 tronic surveillance has been directed under this sec-
16 tion;

17 “(2) a list of any targets of electronic surveil-
18 lance under this section determined not to have been
19 outside the United States;

20 “(3) a list of any intelligence reports dissemi-
21 nated based on foreign intelligence information ac-
22 quired under this section; and

23 “(4) the number of persons in the United
24 States whose communications have been intercepted
25 under this section.

1 “(f) REPORT TO CONGRESS.—Not later than 60 days
2 after the date of enactment of this section, and every 60
3 days thereafter until the expiration of all orders issued
4 under this section, the Attorney General shall submit to
5 the appropriate committees of Congress a report that, for
6 the 60-day period ending on the date of that report, in-
7 cludes the information described in paragraphs (2), (3),
8 and (4) of subsection (e).

9 “(g) PROHIBITION ON LIABILITY FOR PROVIDING
10 ASSISTANCE.—Section 105(i), relating to protection from
11 liability for the furnishing of information, facilities, or
12 technical assistance pursuant to a court order under this
13 Act, shall apply to this section.

14 “(h) EFFECT OF SECTION ON OTHER AUTHORI-
15 TIES.—The authority under this section is in addition to
16 the authority to conduct electronic surveillance under sec-
17 tions 104 and 105.

18 “(i) DEFINITIONS.—In this section:

19 “(1) APPROPRIATE COMMITTEES OF CON-
20 GRESS.—The term ‘appropriate committees of Con-
21 gress’ means—

22 “(A) the Select Committee on Intelligence
23 and the Committee on the Judiciary of the Sen-
24 ate; and

