A BILL

To ensure that all electronic surveillance of United States persons for foreign intelligence purposes is conducted pursuant to individualized court-issued orders, to streamline the procedures of the Foreign Intelligence Surveillance Act of 1978, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Foreign Intelligence
Surveillance Improvement and Enhancement Act of
2006”.

May 24, 2006
TITLE I—CONSTRUCTION OF FOREIGN INTELLIGENCE SURVEILLANCE AUTHORITY

SEC. 101. REITERATION OF CHAPTERS 119, 121, AND 206 OF TITLE 18, UNITED STATES CODE, AND FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AS EXCLUSIVE MEANS BY WHICH DOMESTIC ELECTRONIC SURVEILLANCE MAY BE CONDUCTED.

(a) Exclusive Means.—Notwithstanding any other provision of law, chapters 119, 121, and 206 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted on a United States person in the United States.

(b) Amendment to Foreign Intelligence Surveillance Act of 1978.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended by striking “authorized by statute” each place it appears and inserting “authorized by this title or chapter 119, 121 or 206 of title 18, United States Code”.

(c) Amendment to Title 18, United States Code.—Section 2511(2)(a)(ii)(B) of title 18, United States Code, is amended by striking “statutory requirements” and inserting “requirements under the Foreign In-
SEC. 102. SPECIFIC AUTHORIZATION REQUIRED FOR ANY REPEAL OR MODIFICATION OF TITLE I OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) IN GENERAL.—Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 109 the following new section:

“SPECIFIC AUTHORIZATION REQUIRED FOR ANY REPEAL OR MODIFICATION OF TITLE

“Sec. 109A. No provision of law shall be construed to implicitly repeal or modify this title or any provision thereof, nor shall any provision of law be deemed to repeal or modify this title in any manner unless such provision of law, if enacted after the date of the enactment of the Foreign Intelligence Surveillance Improvement and Enhancement Act of 2006, expressly amends or otherwise specifically cites this title.”.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by inserting after the item relating to section 109 the following new item:

“Sec. 109A. Specific authorization required for any repeal or modification of title.”.
SEC. 103. PROHIBITION ON USE OF FUNDS FOR ELECTRONIC SURVEILLANCE NOT AUTHORIZED BY LAW.

Commencing on the effective date of this Act, no funds appropriated or otherwise made available by any Act may be obligated or expended to conduct electronic surveillance (as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), except in accordance with the provisions of law as follows:

(1) Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).
(2) Title IV of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq).
(3) Chapter 119 of title 18, United States Code.
(4) Chapter 121 of title 18, United States Code.
(5) Chapter 206 of title 18, United States Code.

SEC. 104. INFORMATION FOR CONGRESS ON THE TERRORIST SURVEILLANCE PROGRAM AND SIMILAR PROGRAMS.

As soon as practicable after the date of the enactment of this Act, but not later than seven days after such date, the President shall brief and inform each member of the congressional intelligence committees on the following:
(1) The Terrorist Surveillance Program of the National Security Agency.

(2) Any program which involves, whether in part or in whole, the electronic surveillance of United States persons in the United States for foreign intelligence purposes, and which is conducted by any department, agency, or other element of the United States Government, or by any entity at the direction of a department, agency, or other element of the United States Government, without fully complying with the procedures set forth in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or chapter 119, 121, or 206 of title 18, United States Code.

TITLE II—APPLICATIONS AND PROCEDURES FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 201. EXTENSION OF PERIOD FOR APPLICATIONS FOR ORDERS FOR EMERGENCY ELECTRONIC SURVEILLANCE.

Section 105(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(f)) is amended by
striking “72 hours” both places it appears and inserting “168 hours”.

SEC. 202. DELEGATION OF AUTHORITY TO APPROVE APPLICATIONS FOR ELECTRONIC SURVEILLANCE.

(a) IN GENERAL.—Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a), by striking “Attorney General based upon his finding” and inserting “Attorney General (or a delegee of the Attorney General under subsection (f)) based upon a finding”; and

(2) by adding at the end the following new subsection:

“(f) The Attorney General may delegate the authority to approve an application under this section for an order approving electronic surveillance under this title to each of the following:

“(1) The Deputy Attorney General.

“(2) The Assistant Attorney General for National Security.”.

(b) CONFORMING AMENDMENT.—Section 102(b) of such Act (50 U.S.C. 1802(b)) is amended by inserting “(or delegee of the Attorney General under section 104(f))” after “Attorney General”.

May 24, 2006
SEC. 203. ADDITIONAL AUTHORITY FOR EMERGENCY ELECTRONIC SURVEILLANCE.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) by redesignating subsections (g), (h), (i), and (j) as subsections (h), (i), (j), and (k), respectively; and

(2) by inserting after subsection (f) the following new subsection (g):

“(g)(1)(A) Notwithstanding any other provision of this title and subject to the provisions of this subsection, the Attorney General may, with the concurrence of the Director of National Intelligence, appoint appropriate supervisory or executive personnel within the Federal Bureau of Investigation and the National Security Agency to authorize electronic surveillance on a United States person in the United States on an emergency basis pursuant to the provisions of this subsection.

“(B) For purposes of this subsection, an intelligence agent or employee acting under the supervision of a supervisor or executive appointed under subparagraph (A) may conduct emergency electronic surveillance under this subsection if such supervisor or executive reasonably determines that—

“(i) an emergency situation exists with respect to the employment of electronic surveillance to ob-
tain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

“(ii) the factual basis exists for the issuance of an order approving such surveillance under this title.

“(2) The supervisors and executives appointed by the Attorney General under paragraph (1) may only be officials as follows:

“(A) In the case of the Federal Bureau of Investigation, officials at or above the level of Special Agent in Charge.

“(B) In the case of the National Security Agency, officials at or above the level of head of branch of the National Security Agency.

“(3) A supervisor or executive responsible for the emergency employment of electronic surveillance under this subsection shall submit to the Attorney General (and, if authorized by the Attorney General, to the Deputy Attorney General and the Assistant Attorney General for National Security) a request for approval of the surveillance within 24 hours of the commencement of the surveillance. The request shall set forth the ground for the belief specified in paragraph (1), together with such other information as the Attorney General shall require.
“(4)(A) The review of a request under paragraph (3) shall be completed by the official concerned under that paragraph as soon as practicable, but not more than 72 hours after the commencement of the electronic surveillance concerned under paragraph (1).

“(B)(i) If the official concerned determines that the electronic surveillance does not meet the requirements of paragraph (1), the surveillance shall terminate immediately and may not be recommenced by any supervisor or executive appointed under paragraph (1), or any agent or employee acting under the supervision of such supervisor or executive, absent additional facts or changes in circumstances that lead a supervisor or executive appointed under paragraph (1) to reasonably believe that the requirements of paragraph (1) are satisfied.

“(ii) In the event of a determination under clause (i), the Attorney General shall not be required, under section 106(j), to notify any United States person of the fact that the electronic surveillance covered by such determination was conducted before the termination of the surveillance under that clause. However, the official making such determination shall notify the court established by section 103(a) of such determination, and shall also provide notice of such determination in the first report that is submitted under section 108(a) after such determination is made.
“(C) If the official concerned determines that the surveillance meets the requirements of subsection (f), the surveillance may continue, subject to the requirements of paragraph (5).

“(5)(A) An application in accordance with this title shall be made to a judge having jurisdiction under section 103 as soon as practicable but not more than 168 hours after the commencement of electronic surveillance under paragraph (1).

“(B) In the absence of a judicial order approving electronic surveillance commenced under paragraph (1), the surveillance shall terminate at the earlier of—

“(i) when the information sought is obtained; or

“(ii) when the application under subparagraph (A) for an order approving the surveillance is denied; or

“(iii) 168 hours after the commencement of the surveillance.

“(C) If an application under subparagraph (A) for an order approving electronic surveillance commenced under paragraph (1) is denied, or in any other case in which the surveillance is terminated and no order approving the surveillance is issued by a court, the use of information obtained or evidence derived from the surveillance shall be governed by the provisions of subsection (f).
“(D) The denial of an application submitted under subparagraph (A) may be reviewed as provided in section 103.

“(6) Any person who engages in the emergency employment of electronic surveillance under paragraph (1) shall follow the minimization procedures otherwise required by this title for the issuance of a judicial order approving the conduct of electronic surveillance.

“(7) Not later than 30 days after appointing supervisors and executives under paragraph (1) to authorize the exercise of authority in that paragraph, the Attorney General, in consultation with the Director of National Intelligence, shall submit to the Foreign Intelligence Surveillance Court and the congressional intelligence committees, and bring up to date as required, a report that—

“(A) identifies the number of supervisors and executives who have been so appointed and the positions held by such supervisors and executives; and

“(B) sets forth guidelines or other directives that describe the responsibilities of such supervisors and executives under this subsection.”.
SEC. 204. FOREIGN INTELLIGENCE SURVEILLANCE COURT MATTERS.

(a) Authority for Additional Judges.—Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by designating the second sentence as paragraph (4) and indenting such paragraph, as so designated, two ems from the left margin; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

“(2) In addition to the judges designated under paragraph (1), the Chief Justice of the United States may designate as judges of the court established by paragraph (1) such judges appointed under Article III of the Constitution of the United States as the Chief Justice determines appropriate in order to provide for the prompt and timely consideration under section 105 of applications under section 104 for electronic surveillance under this title. Any judge designated under this paragraph shall be designated publicly.”.

(b) Consideration of Emergency Applications.—Such section is further amended by inserting after paragraph (2), as added by subsection (a)(3) of this section, the following new paragraph:
“(3) A judge of the court shall make a determination to approve, deny, or seek modification of an application submitted pursuant to section subsection (f) or (g) of section 105 not later than 24 hours after the receipt of such application by the court.”.

SEC. 205. DOCUMENT MANAGEMENT SYSTEM FOR APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.

(a) System Required.—The Attorney General shall, in consultation with the Director of the Federal Bureau of Investigation, the Director of the National Security Agency, and the Foreign Intelligence Surveillance Court, develop and implement a secure, classified document management system that permits the prompt preparation, modification, and review by appropriate personnel of the Department of Justice, the Federal Bureau of Investigation, the National Security Agency, and other applicable elements of the United States Government of applications under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) before their submittal to the Foreign Intelligence Surveillance Court.

(b) Scope of System.—The document management system required by subsection (a) shall—

(1) permit and facilitate the prompt submittal of applications to the Foreign Intelligence Surveil-
lance Court under section 104 or 105(g)(5) of the
Foreign Intelligence Surveillance Act of 1978; and

(2) permit and facilitate the prompt transmittal
of rulings of the Foreign Intelligence Surveillance
Court to personnel submitting applications described
in paragraph (1).

SEC. 206. ADDITIONAL PERSONNEL FOR PREPARATION
AND CONSIDERATION OF APPLICATIONS FOR
ORDERS APPROVING ELECTRONIC SURVEIL-
LANCE.

(a) Office of Intelligence Policy and Re-
view.—

(1) Additional personnel.—The Office of
Intelligence Policy and Review of the Department of
Justice is hereby authorized such additional per-
sonnel, including not fewer than 21 full-time attor-
neys, as may be necessary to carry out the prompt
and timely preparation, modification, and review of
applications under section 104 of the Foreign Intel-
for orders under section 105 of that Act (50 U.S.C.
1805) approving electronic surveillance for foreign
intelligence purposes.

(2) Assignment.—The Attorney General shall
assign personnel authorized by paragraph (1) to and
among appropriate offices of the National Security
Agency in order that such personnel may directly as-
sist personnel of the Agency in preparing applica-
tions described in that paragraph.

(b) Federal Bureau of Investigation.—

(1) Additional legal and other personnel.—The National Security Branch of the Federal Bureau of Investigation is hereby authorized such additional legal and other personnel as may be necessary to carry out the prompt and timely prepar-
ation of applications under section 104 of the For-

(2) Assignment.—The Director of the Federal Bureau of Investigation shall assign personnel au-
thorized by paragraph (1) to and among the field of-
ices of the Federal Bureau of Investigation in order that such personnel may directly assist personnel of the Bureau in such field offices in preparing applica-
tions described in that paragraph.

(c) Additional legal and other personnel for National Security Agency.—The National Secu-

rity Agency is hereby authorized such additional legal and other personnel as may be necessary to carry out the

(d) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

There is hereby authorized for the Foreign Intelligence Surveillance Court such additional staff personnel as may be necessary to facilitate the prompt and timely consideration by that Court of applications under section 104 of the Foreign Intelligence Surveillance Act of 1978 for orders under section 105 of that Act approving electronic surveillance for foreign intelligence purposes. Personnel authorized by this paragraph shall perform such duties relating to the consideration of such applications as that Court shall direct.

(e) SUPPLEMENT NOT SUPPLANT.—The personnel authorized by this section are in addition to any other personnel authorized by law.

SEC. 207. REPORT ON PROCEDURES FOR APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.

(a) REVIEW.—The Attorney General shall, in consultation with the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review,
review the procedures applicable to the submittal under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) of applications for orders under section 105 of that Act (50 U.S.C. 1805) approving electronic surveillance for foreign intelligence purposes.

(b) ELEMENTS.—The review required by subsection (a) shall address the following:

(1) The procedures described in subsection (a).

(2) The requirements, if any, under such procedures that impose recurring, undue impediments on the submittal to the Foreign Intelligence Surveillance Court of applications described in subsection (a), including requirements for the submittal of information that is unnecessary for that Court in its consideration of such applications.

(3) A determination of recommendations for legislative or administrative action in light of the matters addressed under paragraphs (1) and (2).

(4) The average length of time, over the previous calendar year, between—

(A) the submittal of a request or recommendation by a Federal officer to the Department of Justice for an application under section 104 of the Foreign Intelligence Surveil-
lance Act of 1978 for an order under section 105 of that Act; and

(B) the decision of the Department of Justice on such request or recommendation.

(5) The requirements imposed by the Department of Justice in determining whether to submit an application under section 104 of the Foreign Intelligence Surveillance Act of 1978 for an order under section 105 of that Act.

(c) MODIFICATION OF PROCEDURES.—

(1) IN GENERAL.—If the Attorney General determines as a result of the review required by subsection (a) that the procedures described in that subsection should be modified, including modification to address requirements described by subsection (b)(2), the Attorney General shall prescribe in regulations such modifications as the Attorney General considers appropriate. Such modification shall be consistent with the provisions of title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(2) SCOPE.—Any procedures prescribed under paragraph (1) shall, to the extent practicable, apply uniformly among all elements of the Department of Justice, and among any other element of the United
States Government, concerned with the submittal of
applications under section 104 of the Foreign Intel-
ligence Surveillance Act of 1978 for orders under
section 105 of that Act approving electronic surveil-
lance for foreign intelligence purposes.

(d) REPORT.—Not later than 90 days after the effec-
tive date of this Act, the Attorney General shall submit
to the Committee on the Judiciary and the Select Com-
mittee on Intelligence of the Senate and the Committee
the Judiciary and the Permanent Select Committee on In-
telligence of the House of Representatives a report setting
forth the procedures applicable to applications under sec-
tion 104 of the Foreign Intelligence Surveillance Act of
1978 for orders under section 105 of that Act approving
electronic surveillance for foreign intelligence purposes, in-
cluding any modification to such procedures presribed
under subsection (c).

SEC. 208. TRAINING OF FEDERAL BUREAU OF INVESTIGA-
TION AND NATIONAL SECURITY AGENCY PER-
SONNEL IN FOREIGN INTELLIGENCE SUR-
VEILLANCE MATTERS.

The Director of the Federal Bureau of Investigation
and the Director of the National Security Agency shall
each, in consultation with the Attorney General—
(1) develop regulations to establish procedures for conducting and seeking approval of electronic surveillance on an emergency basis, and for preparing and properly submitting and receiving applications and orders, under sections 104 and 105 of the Foreign Intelligence Surveillance Act of 1978; and

(2) prescribe related training for the personnel of the applicable agency.

SEC. 209. ENHANCEMENT OF ELECTRONIC SURVEILLANCE AUTHORITY IN WARTIME.

Section 111 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811) is amended by striking “following a declaration of war by the Congress” and inserting “following any of the following:

“(1) A declaration of war by the Congress.

“(2) An authorization for the use of military force within the meaning of section 2(c)(2) of the War Powers Resolution (50 U.S.C. 1541(c)(2)).

“(3) A national emergency created by attack upon the United States, its territories or possessions, or the Armed Forces within the meaning of section 2(c)(3) of the War Powers Resolution (50 U.S.C. 1541(c)(3)).”.
TITLE III—OTHER MATTERS

SEC. 301. DEFINITIONS.

In this Act:

(1) The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term “Foreign Intelligence Surveillance Court” means the court established by section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(3) The term “Foreign Intelligence Surveillance Court of Review” means the court established by section 103(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(b)).

(4) The term “United States person” has the meaning given such term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.
SEC. 303. EFFECTIVE DATE.

(a) In general.—Except as provided in subsection (b), this Act, and the amendments made by this Act, shall take effect on the date that is 30 days after the date of the enactment of this Act.

(b) Information on Terrorist Surveillance Program.—Section 104 shall take effect on the date of the enactment of this Act.