

**Congress of the United States**  
**Washington, DC 20515**

November 15, 2007

**Support Effective and Flexible Electronic Surveillance**

Dear Colleague:

Today the House is scheduled to consider H.R. 3773, the Responsible Electronic Surveillance That is Overseen, Reviewed and Effective Act (the "RESTORE Act"). The Act updates FISA to provide meaningful and flexible surveillance tools for the Intelligence Community. In the past month, we have continued to improve the RESTORE Act, preserving the best attributes of the Act while clarifying its meaning in response to spurious claims made by opponents of the Act. Updates include explicit provisions that make clear that the Act shall not be construed to prohibit surveillance necessary to:

- Prevent *Osama Bin Laden*, al Qaeda, or any terrorist organization from attacking the US;
- Ensure the *safety and security of American servicemembers*; and
- Protect the US from *weapons of mass destruction* or other threats to national security.

We have also strengthened the Act by increasing the protections for American citizens. The RESTORE Act includes new protections for the dissemination of US Person information. In addition, it contains criteria for the FISA Court to consider in its evaluation of the Executive Branch's guidelines for collection of US Person information.

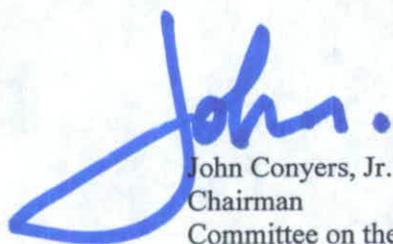
As both the *Los Angeles Times* and the *Washington Post* editorial boards have recognized, the RESTORE Act will both strengthen surveillance efforts and uphold the Constitution. (Those editorials are attached for your review). The Act accomplishes this in several important ways:

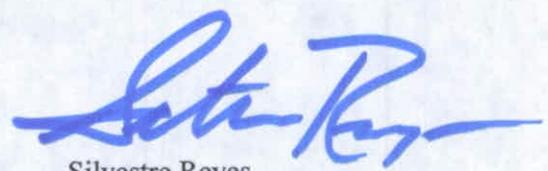
- **The RESTORE Act puts the FISA Court back in the business of protecting Americans' Constitutional rights.**
- **The RESTORE Act mandates that FISA cannot be used to spy on Americans without a warrant.**
- **The RESTORE Act eliminates the requirement for individual court orders for non-US Persons outside the United States, while requiring FISA orders for Americans.**
- **The RESTORE Act clarifies ambiguous and overly broad provisions of the Protect America Act, barring warrantless searches of Americans' homes, medical records and computers.**
- **The RESTORE Act includes critical language reiterating that FISA is the exclusive means of conducting domestic electronic surveillance for foreign intelligence purposes.**
- **The RESTORE Act requires an audit of the President's Terrorist Surveillance Program (TSP) and any other warrantless surveillance programs.**
- **The RESTORE Act mandates record keeping on any interception of the communications of US Persons.**

There are several falsehoods, misconceptions, and misunderstandings about what the RESTORE Act does and what it does not do. We have attached a list of these myths and given you the facts about the RESTORE Act so that you will know the truth about this very important piece of legislation.

We are proud of the RESTORE Act and what it will do for American security and American liberty. It was a good bill in October, and is a better bill now. We hope we can count on your support.

Sincerely,

  
John Conyers, Jr.  
Chairman  
Committee on the Judiciary

  
Silvestre Reyes  
Chairman  
Permanent Select  
Committee on Intelligence

## Myths and Facts about the RESTORE Act of 2007

**Myth:** *The RESTORE Act makes it harder to conduct surveillance on Osama Bin Laden or al Qaeda.*

**Fact: The RESTORE Act does not prohibit the Intelligence Community from spying on Osama Bin Laden or al Qaeda.** The act explicitly states that it shall not be construed to prohibit the intelligence community from conducting surveillance on Osama Bin Laden. In fact, the bill gives more tools to the intelligence community to conduct surveillance on terrorists.

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**Myth:** *The RESTORE Act gives Fourth Amendment rights to terrorists who may have come into the United States under a now-expired visa or under a visa which is no longer valid.*

**Fact: The RESTORE Act does not give Fourth Amendment rights to terrorists.** The RESTORE Act does not alter the definition of "US Person" in FISA, which includes US citizens and persons lawfully admitted for permanent residence (i.e., Green Card holders.) The Act explicitly states that no rights are extended to people who have remained in the US on expired visas, such as the 9/11 hijackers.

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**Myth:** *The RESTORE Act would prevent us from collecting information on soldiers captured in battle.*

**Fact: The RESTORE Act does not impede intelligence collection that is necessary to protect our troops on the battlefield.** The RESTORE Act provides nimble tools to respond to urgent needs on the battlefield.

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**Myth:** *The RESTORE Act would require an individual warrant to listen in on calls of terrorists abroad.*

**Fact: The RESTORE Act does not require an individualized warrant to listening in on terrorists' calls abroad.** No individualized warrant or court order is required for foreign targets under the RESTORE Act. The Court's role is to issue an order approving procedures and guidelines to ensure that Americans are not targeted.

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**Myth:** *The RESTORE Act authorizes the blanket surveillance of Americans under "blanket warrants."*

**Fact: The RESTORE Act does not authorize blanket surveillance of Americans.** The RESTORE Act maintains Fourth Amendment protections and does not alter settled law that *when an American is targeted, the government must get an individualized warrant.* But RESTORE also empowers the Court to approve procedures that ensure that Americans are not targeted for warrantless surveillance.

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**Myth:** *The RESTORE Act requires additional oversight that will unnecessarily delay the collection of foreign intelligence information and may cause us to "go dark" on collection.*

**Fact: The RESTORE Act will not cause us to "go dark" on collection.** The RESTORE Act allows for immediate collection in emergency situations without obtaining court approval, so *we will never go dark.* RESTORE puts the FISA Court back in the business of protecting Americans' private communications. It also mandates meaningful congressional oversight that will ensure that the rights of Americans are protected and that these new authorities will not be abused. And it makes sure that the Intelligence Community will have the resources it needs to satisfy these new requirements.

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**Myth:** *The RESTORE Act would not allow us to collect information on WMD threats.*

**Fact: The RESTORE Act authorizes the collection of information on any threats to national security, including WMD threats.** This includes all information related to the national defense.

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**Myth:** *The legislation is not complete without immunity for telecommunication companies.*

**Fact: The RESTORE Act protects telecommunications companies that assist the government in carrying out surveillance under the Act.** Congress cannot fairly consider a request for retroactive immunity for participating in the NSA Surveillance Program until the Bush Administration responds to bipartisan requests for information and documents describing the authority for the NSA surveillance. *How can Congress grant immunity for past activities if it doesn't know what it is granting immunity for?*

# The Washington Post

AN INDEPENDENT NEWSPAPER

## Surveillance Update

The House considers a balanced bill on collecting foreign intelligence.

WHEN IT comes to updating the Foreign Intelligence Surveillance Act for a new technological age, the Bush administration refuses to take yes for an answer.

The House is poised this week to take up a carefully crafted revision to the law that addresses the administration's valid complaint about the old statute: that because of technological changes in international communications, intelligence agencies were being required to go through the time-consuming process of obtaining court orders to eavesdrop on foreign targets. The measure produced by the House Intelligence and Judiciary committees would alleviate the burden of obtaining individualized warrants in such situations while still maintaining a critical oversight role for the FISA court. Instead of having to seek warrants on a case-by-case basis, intelligence agencies would be able to obtain blanket, year-long orders from the court for such surveillance programs. However, the FISA court would have to approve the procedures under which that

surveillance is conducted -- specifically, to ensure that appropriate safeguards are in place to protect the privacy of Americans whose communications with foreigners happen to be intercepted.

The administration, however, has deemed this sensible change unacceptable. Instead, it wants lawmakers simply to make permanent the overly broad statute rushed into law before Congress left for its August recess. That law virtually eliminates any meaningful role for the FISA court and largely relies on intelligence agencies to police themselves.

The administration says that FISA wasn't intended to cover the collection of intelligence information overseas. That is correct, but many of the communications are being intercepted in the United States and, more important, may involve U.S. citizens. In that situation, and with telephone and e-mail communications between the U.S. and foreign countries far more common than

when FISA was enacted in 1978, it is reasonable to bring the court into the picture. The measure strikes an appropriate balance between the demands of some civil liberties groups for individualized warrants and the administration's desire for sweeping authority.

There is one major area of disagreement between the administration and House Democrats where we think the administration has the better of the argument: the question of whether telecommunications companies that provided information to the government without court orders should be given retroactive immunity from being sued. House Democrats are understandably reluctant to grant that wholesale protection without understanding exactly what conduct they are shielding, and the administration has balked at providing such information. But the telecommunications providers seem to us to have been acting as patriotic corporate citizens in a difficult and uncharted environment.

## Los Angeles Times

Saturday, October 13, 2007

### Bush's chance to RESTORE credibility

**The president should stop threatening to veto the RESTORE Act and acknowledge that his approach to terrorist surveillance was misguided**

October 13, 2007

This week, two House committees made good on a Democratic promise to approve new privacy protections for Americans innocently caught up in the eavesdropping on suspected terrorists by the National Security Agency. But President Bush is threatening to veto the legislation. He is particularly aggrieved that it wouldn't provide retroactive immunity from lawsuits for telephone companies that cooperated with his so-called Terrorist Surveillance Program. If Bush wants Congress to hold the telephone companies blameless, he should accept the legislation approved this week by the House Judiciary and Intelligence committees and make a full accounting of how -- and on what supposed legal basis -- the eavesdropping initiative was approved in the first place.

After the 9/11 attacks, Bush determined that U.S. intelligence agencies needed to be more aggressive in intercepting telephone calls and e-mail between suspected foreign terrorists and people in the United States. He then faced a choice: He could publicly ask Congress to remedy what he saw as shortcomings in the Foreign Intelligence Surveillance Act, the 1978 law that required judicial oversight of domestic wiretapping of suspected foreign agents. Or he could act on his own, and in secret, to authorize the monitoring of electronic communications involving Americans.

Abetted by Vice President Dick Cheney, who long had resented what he regarded as congressional encroachment on executive authority, Bush made the latter choice. It was the wrong one, as even some of the president's lawyers realized (witness the now-famous 2004 confrontation in former Atty. Gen. John Ashcroft's hospital room). Only this year, after the election of a Democratic Congress, did Bush shift ground and agree to allow the program to be supervised by the secret federal court created by FISA.

This acceptance of judicial oversight proved to be short-lived. When the court found fault with aspects of the program -- reportedly ruling that FISA required the government to seek a court order for "foreign-to-foreign" communications that are routed through the United States -- Bush pressed Congress to do much more than close what everyone agreed was a loophole created by advances in technology.

The sorry result was a temporary law approved in August that took the FISA court out of the business of monitoring the wiretapping of anyone authorities reasonably believed to be outside the country -- including Americans abroad on business or a vacation. To their credit, even Democrats who supported the temporary "FISA fix" -- such as California's Sen. Dianne Feinstein -- vowed that Congress would revisit FISA when it returned from summer recess.

That promise is redeemed by the RESTORE Act of 2007 (an acronym for Responsible Electronic Surveillance That is Overseen, Reviewed and Effective) approved by the two House committees. It would require the government to petition the FISA court for generalized orders authorizing the electronic surveillance of foreign individuals or groups outside the United States. Spying on Americans abroad would require a specific court order based on probable cause. And if, as a result of the surveillance of foreigners, an American on the other end of the phone call or e-mail came under suspicion, the government would have to apply for a specific court order to monitor that individual's communications. The court also would approve "minimization" procedures for purging information about Americans that inadvertently was gathered in the surveillance.

Supporters of the legislation concede that it allows the government to listen in on conversations involving people in the United States, at least for a time, without having demonstrated that the "U.S. person" whose words are being recorded is a terrorist suspect. What matters, they say, is that the inspector general of the Justice Department would be obliged to monitor and report to the FISA court and to Congress the extent of incidental eavesdropping on Americans.

Bush should endorse these and other safeguards in the RESTORE Act, which wouldn't prevent the intelligence community from monitoring the communications of suspected foreign terrorists. As for the phone companies, the resistance in Congress to granting them immunity to a great extent reflects the view that lawsuits against them might be the only way to obtain an accounting of exactly what the Terrorist Surveillance Program involved -- wiretapping only, or the widespread data mining of phone records? If the president really wants to spare the companies the threat of litigation, he must level with Congress and the country about how much privacy Americans are sacrificing in the war on terror.