

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 18, 2006

The Honorable Arlen Specter  
Chairman, Committee on the Judiciary  
711 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Specter:

We request that you hold a hearing on your new version of S.2453, a bill to amend the Foreign Intelligence Surveillance Act (FISA), which you have indicated will be acceptable to the Administration if it is not amended.

Although you have held hearings on the so-called Terrorist Surveillance Program and its deviation from FISA, no hearings have yet been held on your new bill. As we expressed in our April 25, 2006, letter to you, we have grave concerns about attempting to evaluate these proposals without much-needed information about the President's authorization of the National Security Agency (NSA) to conduct wiretaps inside the United States without complying with the Foreign Intelligence Surveillance Act (FISA). We have made a number of requests to the Administration for documents and information relating to the NSA program, and we have not received responses to those requests. Indeed, the only Senators on the Judiciary Committee who have received any information about the program, other than the minimal information made public, are the four members who also serve on the Senate Select Committee on Intelligence, which has been briefed on the program. Those four members cannot share any information they have learned with the rest of the Committee.

Several substantive provisions in your latest bill are brand new and quite complex – including, among other things, a new definition of “electronic surveillance,” a key term in FISA that your bill would limit to “targeted” communications and persons. There can be little doubt that many types of surveillance that now require a warrant will no longer require one if your bill is enacted. We need to better understand the scope of those changes.

Your bill also contains far-reaching changes that would, among other things, eliminate the exclusivity of FISA, and statutorily allow persons to act under the “constitutional authority of the executive.” While these provisions were contained in some of your earlier versions of S. 2453, those versions were circulated after the testimony our Committee received from witnesses had ended. In other words, no witness has yet addressed these provisions that are of weighty constitutional significance.

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The upcoming testimony of Attorney General Gonzales at Tuesday's DOJ Oversight hearing is not a substitute. We cannot adequately fulfill our oversight responsibilities if we must use that hearing as our only opportunity to ask about your bill. And even if we did this, we would ultimately hear only the Administration's perspective.

We appreciate your commitment to this issue and the hearings you have previously held. Your previous statements and actions are a testament to the importance of this issue. Given that importance, however, we should not now be forced to mark up a bill that we have had for less than a week, and whose key terms have never been publicly vetted. The Administration's insistence that no amendments be made only reinforces the importance of fully understanding the bill's impact.

Sincerely,

Patrick Leahy Jim DeMint

W. V. Roth

Dick Durbin

Norm Feinstein

Chuck Schumer

Herb Kohl

Joe Manchin