

RESTORE Act of 2007

(Responsible Electronic Surveillance That is Overseen, Reviewed and Effective)
Bill Summary

Security and Liberty: The bill provides the Intelligence Community with effective tools to conduct surveillance of foreign targets outside the United States but restores Constitutional checks and balances that were not contained in the Protect America Act (PAA – the Administration’s FISA bill.)

The RESTORE ACT:

- 1. Clarifies That No Court Warrant is Required to Intercept Communications of Non-United States Persons When Both Ends of the Communications are Outside the United States.**
- 2. Ensures that Nothing in the Bill Inhibits Lawful Surveillance for the Purpose of Protecting the Nation and the Troops from Threats Posed by Osama Bin Laden and Weapons of Mass Destruction.**
- 3. Requires an Individualized Court Warrant from the FISA Court When Targeting Americans in the United States.** (Same as current law.)
- 4. Creates a Program of Court Authorized Targeting of Non-U.S. Persons Outside the United States.** Grants the Attorney General and the Director of National Intelligence authority to apply to the FISA Court for a single order to conduct surveillance of multiple foreign targets for up to one year – but RESTORES the following checks and balances that are absent under the PAA:
 - a. Court Review of Targeting Procedures.** The FISA Court must review targeting procedures on a quarterly basis to ensure that they are reasonably designed to protect Americans and target only people outside the United States. In emergencies, the Government may conduct surveillance for up to 45 days without advanced court approval
 - b. Court Review of Minimization Procedures.** The FISA Court must review minimization procedures on a quarterly basis.
 - c. Court Review of Compliance with Guidelines** on a quarterly basis to ensure that, among other things, when the government seeks to conduct electronic surveillance of Americans, the government obtains a traditional individualized warrant from the FISA Court.
- 5. Clarifies Ambiguous Language on Warrantless Domestic Searches.** The bill clarifies ambiguous language in the PAA that appeared to authorize warrantless searches inside the United States, including physical searches of American homes, offices, computers, and medical records.

6. **A RESTORE ACT Authorization May Not Be Used to Target Any Known U.S. Person.** If the government learns or has reason to know that the target of surveillance is a U.S. Person (for example, an American traveling abroad), it cannot use this new authority.
7. **Limits Authority to Terrorism, Espionage, Sabotage, and Threats to National Security.** The Administration's bill allowed for surveillance for all foreign intelligence, including a broad category of information related to "foreign affairs." This bill allows the Intelligence Community to deal with the threats facing the United States from terrorism, espionage, sabotage, clandestine intelligence activities, and to collect information related to the national defense or security of the U.S., without authorizing the collection on the broad category of "foreign affairs."
8. **Requires Regular Audits and Reports.** Requires audits every 120 days by the Justice Department Inspector General on communications collected under this authority and the number of U.S. persons identified in intelligence reports disseminated pursuant to this collection. These audits would be provided to the FISA Court and to Congress (Intelligence and Judiciary Committees).
9. **Requires an Audit of the President's Surveillance Program and Other Warrantless Surveillance Programs.** This audit mandates a report and documents related to these programs be provided to Congress in unclassified form with a classified annex. A separate provision requires that the President brief the intelligence committees on such programs within seven days after the date of enactment.
10. **Requires Recordkeeping of the Use of United States Persons' Information.** Mandates that the Executive Branch record every instance in which the identity of a U.S. Person whose communication was acquired by the Intelligence Community is disseminated within the Executive Branch and that it submit an annual report to Congress on such dissemination.
11. **Adds Resources for FISA.** Adds funding for training, personnel and technology resources at DOJ, NSA and the FISA Court to speed the FISA process and to ensure that audits can be conducted expeditiously.
12. **Reiterates the Exclusivity of FISA.** Includes House-passed bipartisan Schiff-Flake language stating that FISA is the exclusive means to conduct electronic surveillance of Americans for the purpose of foreign intelligence collection.
13. **No Retroactive Immunity.** The bill is silent on retroactive immunity because the Administration has not provided Congress with documents on the specifics of the President's warrantless surveillance program. However, the bill does provide prospective immunity for those complying with court orders issued pursuant to this authority.
14. **Establishes En Banc Review.** Allows the FISA Court to sit en banc. The FISA Court requested this, and the Administration does not oppose it.

15. **Provides Sunset, Transition Procedures and Report on PAA.** Sunsets this new authority on December 31, 2009, when certain PATRIOT Act provisions also sunset. However, the legislation will allow for a transition from the existing warrants to the new ones to ensure that the Intelligence Community does not go “dark” on any surveillance. The Administration will be required to submit a report on U.S.-person information collected and disseminated under the PAA authorities.