

Congress of the United States
Washington, DC 20515

February 8, 2007

The Honorable Alberto R. Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Attorney General Gonzales:

We are writing to you to seek information relating to your January 17, 2007 letter to the Senate Judiciary Committee Chairman and Ranking Minority Member about new developments regarding the Administration's Terrorist Surveillance Program (TSP).

As you may know, last year we introduced legislation to ensure that all domestic electronic surveillance activities, including those involved in the TSP, comply fully with and are conducted within the Foreign Intelligence Surveillance Act of 1978 (FISA). While we regret that the Department ignored repeated requests for comment or feedback on our proposal prior to re-introduction in early January, we are pleased that the Administration has finally conceded that electronic surveillance occurring as part of the TSP should cease to operate without the approval of the Foreign Intelligence Surveillance Court (FISC).

Nevertheless, a number of important questions remain with regard to the Administration's new approach to engaging in this manner of domestic electronic surveillance. Indeed, your letter states that these orders are "innovative," "complex" and that it took "considerable time and work for the Government to develop the approach that was proposed to the Court."

We are eager to learn more about this new arrangement and request that you provide responses, under classified cover where necessary, to the following questions without delay and in advance of any future appearance you will make before the House of Representatives:

1. Your letter of January 17, 2007 states that you are targeting for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization.
 - a) Does this standard differ in any way from the standard that was used to target individuals under the TSP?
 - b) Are there individuals who were targeted under the TSP who could not be targeted under the new FISC order?

2. Your letter refers to “orders” issued by the FISC, implying that more than one order has been issued.
 - a) How many orders have been issued by the FISC under this program?
 - b) When did you apply for the order or orders finally granted on January 10, 2007?
 - c) How many total individuals have been implicated by these orders?
 - d) Are the FISC orders made on an individualized basis or do they provide broader programmatic approval?
 - e) Are these new FISC orders directed at individuals or entire groups of unnamed individuals?
 - f) If not individualized, how many individuals will be the subject of surveillance pursuant to each order?

3. During a recent Senate Judiciary Committee hearing, you stated the following: “Truth of the matter is, we looked at FISA and we all concluded: There's no way we can do what we believe we have to to protect this country under the strict reading of FISA.”
 - a) Please identify the sections of FISA, if read strictly, that you believe would prohibit the Administration’s surveillance program or prohibit the Administration from doing what must be done to protect the country.
 - b) Please provide specific suggested modifications that can be made to FISA to enable the Administration to do what must be done to protect the country.

4. Your letter states that the President is committed to using all lawful tools to protect our nation, including “making maximum use of authorities provided by FISA and taking full advantage of developments in the law.” At a recent Senate Judiciary Committee hearing, you also stated, “we began working in earnest to try to be creative, to push the envelope.”
 - a) Which specific “developments in the law” are you referencing?
 - b) Please help us understand what you meant by working to “push the envelope” by citing all legal authorities relied upon by the Justice Department.

5. As you know, the TSP operated in virtual secrecy for several years. Now that this program will be allowed to expire, please provide us with important information regarding the previous work of the program.
 - a) How many U.S. persons have been targeted under the TSP without a court warrant?
 - b) On what basis was each person selected as a target under the program?
 - c) How many U.S. persons who have been a target under this program have been the subject of a FISA application? What was the result of each application?

d) How many U.S. persons have been investigated by the FBI or law enforcement agencies as a result of surveillance under the program? What was the result of each investigation?

6. Are there any other surveillance programs in existence that involve warrantless surveillance of U.S. persons that are conducted outside of FISA or Title 18 of the United States Code?
7. The Authorization for Use of Military Force (Public Law 107-40) makes no mention of domestic surveillance. Nevertheless, the Administration asserted that this law grants authority to the President to conduct domestic surveillance without seeking warrants from the FISC. What other surveillance programs are in existence that involve warrantless surveillance of U.S. persons where the Authorization for Use of Military Force is similarly relied upon as providing legal authority to engage in such activity?

Thank you for your prompt attention to this matter. We look forward to working with you on this important issue.

Sincerely,



ADAM B. SCHIFF
Member of Congress



JEFF FLAKE
Member of Congress