

AMENDMENT NO. _____ Calendar No. _____

Purpose: To increase transparency related to the use of authorities under the Foreign Intelligence Surveillance Act of 1978.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 1197

To authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. WYDEN (for himself, Mr. UDALL of Colorado, and Ms. MIKULSKI)

Viz:

1 At the end of subtitle H of title X, add the following:

2 **SEC. 1082. PUBLIC DISCLOSURE OF INFORMATION RE-**

3 **GARDING SURVEILLANCE ACTIVITIES UNDER**

4 **THE FOREIGN INTELLIGENCE SURVEIL-**

5 **LANCE ACT OF 1978.**

6 (a) DEFINITIONS.—In this section:

7 (1) FISA COURT.—The term “FISA Court”

8 means a court established under section 103 of the

1 Foreign Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1803).

3 (2) INTELLIGENCE COMMUNITY.—The term
4 “intelligence community” has the meaning given
5 that term in section 3(4) of the National Security
6 Act of 1947 (50 U.S.C. 3003(4)).

7 (b) REQUIREMENT TO DISCLOSE.—

8 (1) IN GENERAL.—If a FISA Court issues a de-
9 cision that determines that surveillance activities
10 conducted by the Government of the United States
11 have violated the laws or Constitution of the United
12 States, the Attorney General shall publicly disclose
13 the decision in a manner consistent with the protec-
14 tion of the national security of the United States.

15 (2) DISCLOSURE DESCRIBED.—For each disclo-
16 sure required by paragraph (1), the Attorney Gen-
17 eral shall make available to the public documents
18 sufficient to identify with particularity the statutory
19 or constitutional provision that was determined to
20 have been violated.

21 (3) DOCUMENTS DESCRIBED.—The Attorney
22 General shall satisfy the disclosure requirements in
23 paragraph (2) by—

24 (A) releasing a FISA Court decision in its
25 entirety or as redacted; or

1 (B) releasing a summary of a FISA Court
2 decision.

3 (4) EXTENSIVE DISCLOSURE.—The Attorney
4 General shall release as much information regarding
5 the facts and analysis contained in a decision de-
6 scribed in paragraph (1) or documents described in
7 paragraph (3) as is consistent with legitimate na-
8 tional security concerns.

9 (5) TIMING OF DISCLOSURE.—A decision that
10 is required to be disclosed under paragraph (1) shall
11 be disclosed not later than 60 days after the decision
12 is issued.

13 (c) DIRECTOR OF NATIONAL INTELLIGENCE DISCLO-
14 SURES TO CONGRESS AND THE PUBLIC.—

15 (1) REQUIREMENT FOR DISCLOSURES TO CON-
16 GRESS.—Not later than 90 days after the date of
17 the enactment of this Act, the Director of National
18 Intelligence shall provide to Congress, in writing, the
19 following information:

20 (A) Whether the National Security Agency
21 or any other element of the intelligence commu-
22 nity has ever collected the cell-site location in-
23 formation of a large number of United States
24 persons with no known connection to suspicious

1 activity, or made plans to collect such informa-
2 tion.

3 (B) A description of the type and amount
4 of evidence the Director of National Intelligence
5 believes is required to permit the collection of
6 cell-site location information of United States
7 persons for intelligence purposes.

8 (C) Whether the National Security Agency
9 or any other element of the intelligence commu-
10 nity has ever conducted a warrantless search of
11 a collection of communications collected under
12 section 702 of the Foreign Intelligence Surveil-
13 lance Act of 1978 (50 U.S.C. 1881a) in an ef-
14 fort to find the communications of a particular
15 United States person (other than a corpora-
16 tion).

17 (D) If the National Security Agency or any
18 other element of the intelligence community has
19 conducted a search described in subparagraph
20 (C), the number of such searches that have
21 been conducted or an estimate of such number
22 if it is not possible to provide a precise count.

23 (E) A specific description of when the
24 United States Government first began relying
25 on authorities under the Foreign Intelligence

1 Surveillance Act of 1978 (50 U.S.C. 1801 et
2 seq.) to justify the collection of records per-
3 taining to large numbers of United States per-
4 sons with no known connection to suspicious ac-
5 tivity.

6 (F) Whether representations made to the
7 Supreme Court of the United States by the De-
8 partment of Justice in the case of *Clapper v.*
9 *Amnesty International USA* accurately de-
10 scribed the use of authorities under the Foreign
11 Intelligence Surveillance Act of 1978 by the
12 United States Government, and if any represen-
13 tations were inaccurate, which representations
14 were inaccurate and how such representations
15 have been corrected.

16 (G) A listing of FISA Court opinions that
17 identified violations of the law, the Constitution,
18 or FISA Court orders with regard to collection
19 carried out pursuant to section 402, 501, or
20 702 of the Foreign Intelligence Surveillance Act
21 of 1978 (50 U.S.C. 1842, 1861, and 1881a)
22 and a description of the violations identified by
23 a FISA Court.

24 (2) FORM OF DISCLOSURES.—

1 (A) DISCLOSURES TO THE PUBLIC.—The
2 written submission required by paragraph (1)
3 shall be made available to the public not later
4 than 15 days after the date it is submitted to
5 Congress.

6 (B) REDACTIONS.—If the Director of Na-
7 tional Intelligence believes that public disclosure
8 of information in the written submission re-
9 quired by paragraph (1) could cause significant
10 harm to national security, the Director may re-
11 dact such information from the version made
12 available to the public.

13 (C) SUBMISSION TO CONGRESS.—If the
14 Director redacts information under subpara-
15 graph (B), not later than 30 days after the date
16 the written submission required by paragraph
17 (1) is made available to the public under sub-
18 paragraph (A), the Director shall submit to the
19 Select Committee on Intelligence of the Senate
20 and the Permanent Select Committee on Intel-
21 ligence of the House of Representatives a state-
22 ment explaining the specific harm to national
23 security that the disclosure of such information
24 could cause.

1 (d) ASSESSMENT OF ECONOMIC IMPACT OF SURVEIL-
2 LANCE ACTIVITIES.—

3 (1) REQUIREMENT FOR ASSESSMENT.—The
4 Comptroller General of the United States, in con-
5 sultation with the United States International Trade
6 Commission, shall conduct an assessment of the eco-
7 nomic impact of bulk collection programs conducted
8 under title IV and title V of the Foreign Intelligence
9 Surveillance Act of 1978 (50 U.S.C. 1841 et seq.),
10 as modified by the USA PATRIOT Act (Public Law
11 107–56; 115 Stat. 272), and of surveillance pro-
12 grams conducted under section 702 of the Foreign
13 Intelligence Surveillance Act of 1978 (50 U.S.C.
14 1881a), in light of the fact that such programs are
15 now public.

16 (2) EVALUATION.—The assessment required by
17 paragraph (1) shall include an evaluation of the im-
18 pact of these disclosures on United States commu-
19 nication service providers’ ability to compete in for-
20 eign markets.

21 (3) SUBMISSION TO CONGRESS.—Not later than
22 270 days after the date of the enactment of this Act,
23 the Comptroller General shall submit to Congress
24 the findings of the assessment required by para-
25 graph (1).