

AMENDMENT NO.

Calendar No.

Purpose: To provide a statement of the exclusive means by which electronic surveillance and interception of certain communications may be conducted.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 2248

AMENDMENT No. 3910

To ar t a By Feinstein & others 978, Act,

To: _____

S. 2248

Refe 4 and

Page(s)

GPC:2008 30-772 (Mac)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. FEINSTEIN (for herself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. WYDEN, Mr. HAGEL, Mr. MENENDEZ, and Ms. SNOWE) AND MR. SPECTER

Viz:

- 1 Strike section 102, and insert the following:
- 2 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
- 3 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
- 4 **TION OF CERTAIN COMMUNICATIONS MAY BE**
- 5 **CONDUCTED.**
- 6 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
- 7 the Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1801 et seq.) is amended by adding at the end
2 the following new section:

3 "STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
4 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
5 TAIN COMMUNICATIONS MAY BE CONDUCTED

6 "SEC. 112. (a) Except as provided in subsection (b),
7 the procedures of chapters 119, 121 and 206 of title 18,
8 United States Code, and this Act shall be the exclusive
9 means by which electronic surveillance (as defined in sec-
10 tion 101(f), regardless of the limitation of section 701)
11 and the interception of domestic wire, oral, or electronic
12 communications may be conducted.

13 "(b) Only an express statutory authorization for elec-
14 tronic surveillance or the interception of domestic wire,
15 oral, or electronic communications, other than as an
16 amendment to this Act or chapters 119, 121, or 206 of
17 title 18, United States Code, shall constitute an additional
18 exclusive means for the purpose of subsection (a).".

19 (b) OFFENSE.—Section 109 of the Foreign Intel-
20 ligence Surveillance Act of 1978 (50 U.S.C. 1809) is
21 amended—

22 (1) in subsection (a), by striking "authorized by
23 statute" each place it appears in such section and
24 inserting "authorized by this Act, chapter 119, 121,
25 or 206 of title 18, United States Code, or any ex-
26 press statutory authorization that is an additional

1 exclusive means for conducting electronic surveil-
2 lance under section 112.”; and

3 (2) by adding at the end the following:

4 “(c) DEFINITION.—For the purpose of this section,
5 the term ‘electronic surveillance’ means electronic surveil-
6 lance as defined in section 101(f) of this Act regardless
7 of the limitation of section 701 of this Act.”.

8 (c) CONFORMING AMENDMENTS.—

9 (1) TITLE 18, UNITED STATES CODE.—Section
10 2511(2) of title 18, United States Code, is amend-
11 ed—

12 (A) in paragraph (a), by adding at the end
13 the following:

14 “(iii) If a certification under subpara-
15 graph (ii)(B) for assistance to obtain for-
16 eign intelligence information is based on
17 statutory authority, the certification shall
18 identify the specific statutory provision,
19 and shall certify that the statutory require-
20 ments have been met.”; and

21 (B) in paragraph (f), by striking “, as de-
22 fined in section 101 of such Act,” and inserting
23 “(as defined in section 101(f) of such Act re-
24 gardless of the limitation of section 701 of such
25 Act)”.

1 (2) TABLE OF CONTENTS.—The table of con-
2 tents in the first section of the Foreign Intelligence
3 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
4 is amended by adding after the item relating to sec-
5 tion 111, the following:

“Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of certain communications may be conducted.”