

**Text of Amendment to be Considered as Adopted**

**AMENDMENT TO H.R. 3773****OFFERED BY M** . \_\_\_\_\_

At the appropriate place in the bill insert the following new section:

1 **SEC. \_\_\_\_ . SURVEILLANCE TO PROTECT THE UNITED**  
2 **STATES.**

3 This Act and the amendments made by this Act shall  
4 not be construed to prohibit the intelligence community  
5 (as defined in section 3(4) of the National Security Act  
6 of 1947 (50 U.S.C. 401a(4))) from conducting lawful sur-  
7 veillance that is necessary to—

8 (1) prevent Osama Bin Laden, al Qaeda, or any  
9 other terrorist or terrorist organization from attack-  
10 ing the United States, any United States person, or  
11 any ally of the United States;

12 (2) ensure the safety and security of members  
13 of the United States Armed Forces or any other of-  
14 ficer or employee of the Federal Government in-  
15 volved in protecting the national security of the  
16 United States; or

17 (3) protect the United States, any United  
18 States person, or any ally of the United States from

1 threats posed by weapons of mass destruction or  
2 other threats to national security.

In section 105B(b)(2) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 3 of the bill, amend subparagraph (D) to read as follows:

3 “(D)(i) the guidelines that will be used to  
4 ensure that an application is filed under section  
5 104, if otherwise required by this Act, when a  
6 significant purpose of an acquisition is to ac-  
7 quire the communications of a specific United  
8 States person reasonably believed to be located  
9 in the United States; and

10 “(ii) the criteria for determining if  
11 such a significant purpose exists, which  
12 shall require consideration of whether—

13 “(I) the department or agency of  
14 the Federal Government conducting  
15 the acquisition has made an inquiry to  
16 another department or agency of the  
17 Federal Government to gather infor-  
18 mation on the specific United States  
19 person;

20 “(II) the department or agency  
21 of the Federal Government conducting

1 the acquisition has provided informa-  
2 tion that identifies the specific United  
3 States person to another department  
4 or agency of the Federal Government;

5 “(III) the department or agency  
6 of the Federal Government conducting  
7 the acquisition determines that the  
8 specific United States person has been  
9 the subject of ongoing interest or re-  
10 peated investigation by a department  
11 or agency of the Federal Government;  
12 and

13 “(IV) the specific United States  
14 person is a natural person.”.

In section 105B(d)(2) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 3 of the bill, amend subparagraph (C) to read as follows:

15 “(C)(i) the guidelines referred to in sub-  
16 section (b)(2)(D) are reasonably designed to en-  
17 sure that an application is filed under section  
18 104, if otherwise required by this Act, when a  
19 significant purpose of an acquisition is to ac-  
20 quire the communications of a specific United

1 States person reasonably believed to be located  
2 in the United States; and

3 “(ii) the criteria for determining if  
4 such a significant purpose exists require  
5 consideration of whether—

6 “(I) the department or agency of  
7 the Federal Government conducting  
8 the acquisition has made an inquiry to  
9 another department or agency of the  
10 Federal Government to gather infor-  
11 mation on the specific United States  
12 person;

13 “(II) the department or agency  
14 of the Federal Government conducting  
15 the acquisition has provided informa-  
16 tion that identifies the specific United  
17 States person to another department  
18 or agency of the Federal Government;

19 “(III) the department or agency  
20 of the Federal Government conducting  
21 the acquisition determines that the  
22 specific United States person has been  
23 the subject of ongoing interest or re-  
24 peated investigation by a department

1 or agency of the Federal Government;  
2 and  
3 “(IV) the specific United States  
4 person is a natural person.”.

In section 105B(e)(1)(D)(3) of the Foreign Intel-  
ligence Surveillance Act of 1978, as proposed to be  
amended by section 3 of the bill, insert “provide” before  
“a certification”.

In section 105C(b)(1) of the Foreign Intelligence  
Surveillance Act of 1978, as proposed to be amended by  
section 4 of the bill, amend subparagraph (H) to read as  
follows:

5 “(H)(i) there are guidelines that will be  
6 used to ensure that an application is filed under  
7 section 104, if otherwise required by this Act,  
8 when a significant purpose of an acquisition is  
9 to acquire the communications of a specific  
10 United States person reasonably believed to be  
11 located in the United States; and  
12 “(ii) the criteria for determining if  
13 such a significant purpose exists require  
14 consideration of whether—  
15 “(I) the department or agency of  
16 the Federal Government conducting

1 the acquisition has made an inquiry to  
2 another department or agency of the  
3 Federal Government to gather infor-  
4 mation on the specific United States  
5 person;

6 “(II) the department or agency  
7 of the Federal Government conducting  
8 the acquisition has provided informa-  
9 tion that identifies the specific United  
10 States person to another department  
11 or agency of the Federal Government;

12 “(III) the department or agency  
13 of the Federal Government conducting  
14 the acquisition determines that the  
15 specific United States person has been  
16 the subject of ongoing interest or re-  
17 peated investigation by a department  
18 or agency of the Federal Government;  
19 and

20 “(IV) the specific United States  
21 person is a natural person.”.

After section 5, insert the following new section:

1 **SEC. 6. DISSEMINATION OF COMMUNICATIONS OF NON-**  
2 **UNITED STATES PERSONS LOCATED OUTSIDE**  
3 **OF THE UNITED STATES WHO MAY BE COM-**  
4 **MUNICATING WITH PERSONS INSIDE THE**  
5 **UNITED STATES.**

6 The Foreign Intelligence Surveillance Act of 1978  
7 (50 U.S.C. 1801 et seq.) is amended by inserting after  
8 section 105D (as added by section 5) the following new  
9 section:

10 “DISSEMINATION OF COMMUNICATIONS OF NON-UNITED  
11 STATES PERSONS LOCATED OUTSIDE OF THE  
12 UNITED STATES WHO MAY BE COMMUNICATING  
13 WITH PERSONS INSIDE THE UNITED STATES

14 “SEC. 105E. The contents of communications col-  
15 lected under section 105B or section 105C, and intel-  
16 ligence reports based on such contents, shall not be dis-  
17 closed or disseminated with information that identifies a  
18 United States person unless an officer or employee of the  
19 Federal Government whose rate of basic pay is not less  
20 than the minimum rate payable under section 5382 of title  
21 5, United States Code (relating to rates of pay for the  
22 Senior Executive Service) determines that the identity of  
23 the United States person is necessary to—

24 “(1) understand the foreign intelligence col-  
25 lected under section 105B or 105C or assess the im-  
26 portance of such intelligence; and

1           “(2) protect the national security of the United  
2           States, the citizens, employees, or officers of the  
3           United States, or the members of the United States  
4           Armed Forces.”.

          In section 12(a) in the matter preceding paragraph  
(1), strike “the Department of Justice, for the activities  
of the Office of the Inspector General, the appropriate  
elements of the National Security Division, and the Na-  
tional Security Agency” and insert “to the Department  
of Justice, for the activities of the Office of the Inspector  
General and the appropriate elements of the National Se-  
curity Division, and to the National Security Agency”.

          Strike section 18 and insert the following:

5   **SEC. 18. NO RIGHTS UNDER THE RESTORE ACT FOR UN-**  
6                                   **DOCUMENTED ALIENS.**

7           This Act and the amendments made by this Act shall  
8           not be construed to prohibit surveillance of, or grant any  
9           rights to, an alien not permitted to be in or remain in  
10          the United States.

          In the table of contents in the first section of the  
Foreign Intelligence Surveillance Act of 1978, as pro-  
posed to be amended by section 19(a) of the bill, after  
the item relating to section 105D insert the following new  
item:

“Sec. 105E. Dissemination of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.”.