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February 24, 2006

The Honorable Alberto Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Gonzales:

Pursuant to the Committee on the Judiciary's oversight responsibilities, on February 8, 2006, I submitted a list of questions to the Department regarding certain aspects of the National Security Agency's (NSA's) terrorist surveillance program.

Since that time, several Democratic Members have brought to my attention further important questions regarding this program. As Chairman of the Committee, I am requesting that the Department also provide responses to these enclosed questions.

Please focus on providing an expeditious response to the comprehensive list of questions I submitted on February 8th by the deadline indicated on the letter, March 2, 2006. It is not necessary to forestall completion based on the Minority's additional questions.

Please provide your responses to Beth Sokul, Special Counsel on Homeland Security and Terrorism, and Greg Barnes, Counsel to Ranking Member Conyers.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

FJS/rr
Enclosure

Questions on the NSA Domestic Surveillance Program

Targets of Surveillance

1. Approximately how many persons located in the US have been targets of government intelligence activity under the warrantless surveillance program?

2. What criteria is used by NSA staff to determine whether one party to the communication is a person working in support of al Qaeda?

3. Is the internal standard used to decide whether to monitor the communications of a person in the United States under the Program identical to the FISA standard? In other words, before someone's communications are targeted for interception, does someone determine that there is probable cause to believe the target is knowingly conspiring with a foreign terrorist?

4. Once the NSA decides to monitor the communications of a person in the United States, do they also target and monitor the communications of any person in the United States who communicates with the original target? If so, does someone first determine whether the second target is knowingly conspiring with a foreign terrorist?

Scope of NSA Program

5. How many hours and dollars have been spent searching or seizing the phone calls or emails of people in the US, and how much of this has been spent on people who have never been charged with any crime?

6. How many people in the US have been referred to the FBI for further inquiry or investigation? How many people whose emails or phone calls have been monitored have never been referred to the FBI?

7. Are the names, phone numbers or email addresses of persons in the United States who have had their communications monitored as part of the Program been included on any watch lists?

Telecommunications Companies

8. Telecommunications companies and Internet Service Providers ("ISPs") are protected from criminal and civil liability if they are provided a court order from the FISA court or criminal court or if a high-ranking DOJ official has certified in writing that "No warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required." Has anyone at the Justice Department provided any telephone companies or ISPs with these certifications in the course of implementing the NSA's program?

9. Which telecommunications firms have opened American communications arteries to the NSA without a warrant?

Use of Information

10. To what extent has information collected included details of the targets' personal lives or political views, and has such information been immediately destroyed? Have intelligence agencies taken any actions beyond surveillance with regard to such individuals?

11. Was evidence obtained from the NSA classified surveillance program subsequently used to obtain a warrant from the FISA court? If so, how many times has this occurred?

12. What is done with the information collected from the warrantless surveillance program that ends up not being useful for law enforcement or security purposes?

Administration Review of Program

13. Other than the President, what individuals at the White House are briefed on the program, and how often are they briefed?

14. When was James Baker read into the Program?

15. Who at the Department of Justice was informed of the Program? When?

16. When was the Solicitor General's office and the Deputy Attorney General's office informed of the program?

17. Does the Attorney General personally approve or authorize each interception of a United States person's communication? If not, who approves each interception?

18. Does anyone independent of the NSA check persons in the US whose phone calls or emails are searched or seized to make sure that they are not being targeted based on their political opinions?

Minimization Procedure

19. Executive Order, 12,3333 provides that intelligence agencies are only authorized to collect information on US persons consistent with the provisions of that Executive Order and procedures established by the head of the agency and approved the Attorney General. (Sec. 2.3). What minimization procedures are in effect concerning information gathered by the NSA concerning persons in the U.S.?

20. Has United States Signals Intelligence Directive [USSID] 18, "Legal Compliance and Minimization Procedures," July 27, 1993, applicable to the NSA been changed since January 2001? Is it still in effect? Does that Directive, as amended or not, apply to all surveillance being undertaken by the NSA of persons inside the US outside of the procedures set forth in FISA?

21. When were the minimization procedures last changed? Did the Attorney General approve those changes? When?

22. When was the last time you supplied any Member of the House Judiciary Committee or any Committee of the Congress a copy of such minimization procedures?

Concerns About the NSA Program from Within the Administration

23. How many federal employees have expressed concerns about or objections to this program and what has been done regarding those employees of the NSA or other federal agencies or in response?

24. Why was the NSA program suspended in 2004?

Presidential Claim of Inherent Authority

25. What is the limiting principle of the President's claimed inherent authority as commander-in-chief? For example, does this interpretation of the law authorize the opening of first-class mail of U.S. citizens under the DOJ's interpretation, and if not, why not?

26. Under the Administration's legal interpretation, does the President have the authority to wiretap Americans' domestic calls and emails under his inherent constitutional power and the AUMF, if he feels it involves al Qaeda activity?

Authorization for Use of Military Force (AUMF)

27. When did the Administration and DOJ decide that the Authorization for Use of Military Force (AUMF) granted the Administration the power to create the NSA program?

28. Are there any other actions under the AUMF that, without the President's inherent constitutional power, would not be permitted because of the FISA statute? Are there any programs currently being used like that?

29. Under the Administration's interpretation of AUMF, has the President ever invoked his authority as commander-in-chief through either secret order or directive other than NSA surveillance?

30. How do you reconcile the Attorney General's statement that Congress would not have granted the Executive such authority and at the same time, contend that this authority is

something that Congress intended to give under the AUMF?

Foreign Intelligence Surveillance Act (FISA)

31. When did the Administration reach the conclusion that FISA did not have to be followed to use the NSA program?

32. Did the increasing number of modified and rejected requests for FISA warrants since 2001 implicate the Administration's determination to bypass FISA?

33. Do you know of any other President who has authorized warrantless wiretaps outside of FISA since FISA was passed in 1978? If so, please explain.

34. In a press briefing on December 19, 2005, General Hayden stated that the NSA was using a subtly softer trigger which precluded going to the FISA court. What exactly constitutes this softer trigger?

35. How many FISA judges were informed of the warrantless surveillance program?

36. Was any judge on the FISA court of review informed of the NSA program as part of the briefing of the 2002 appellate case, *In re Sealed Case*? Were any of the lawyers on that case read into the program? How many?

37. Are there currently any plans to take the entire NSA program to the FISA Court within the broad parameters of what is reasonable and constitutional and ask the FISA Court to approve it or disapprove it? If not, why not?

38. What aspects of FISA are too burdensome for the Administration to comply with? Why did the Administration fail to utilize the emergency provision of FISA?_____

Miscellaneous

39. According to the Administration, a line NSA analyst rather than an independent judge determines whether or not an intrusion into an citizen's privacy is reasonable. Do you think that there are appropriate checks and balances under this framework?

40. Have any purely domestic calls intercepted through the NSA program? What happens if

such calls are intercepted, to the information and the responsible employee?

41. Is the NSA engaged in keyword analysis or pattern analysis of purely domestic communications?

42. Is the NSA engaged in keyword analysis or pattern analysis of the communications of people in the United States who call or email overseas?

43. Has information obtained through warrantless NSA interceptions been used in any criminal prosecutions?

44. Are their any plans by the Bush administration to inform those US individuals whose phone calls or emails were searched or seized but they have been cleared of any wrongdoing?

45. Are any communications between attorneys and their clients or doctors and patients being captured?