

110TH CONGRESS  
1ST SESSION

# H. RES. 626

Censuring the President and the Attorney General.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 2007

Mr. HINCHEY (for himself, Ms. BALDWIN, Mr. CAPUANO, Mr. COHEN, Mr. DAVIS of Illinois, Mr. FARR, Mr. FILNER, Mr. GRIJALVA, Mr. HALL of New York, Mr. HONDA, Ms. KAPTUR, Mr. KUCINICH, Ms. LEE, Mrs. MALONEY of New York, Mr. MORAN of Virginia, Mr. PASTOR, Ms. SCHAKOWSKY, Ms. WATSON, Ms. SHEA-PORTER, and Mr. ROTHMAN) submitted the following resolution; which was referred to the Committee on the Judiciary

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## RESOLUTION

Censuring the President and the Attorney General.

1       *Resolved,*

2       **SECTION 1. BASIS FOR CENSURE.**

3       (a) NATIONAL SECURITY AGENCY WIRETAPPING.—

4       The House of Representatives finds the following:

5               (1) Congress passed the Foreign Intelligence  
6       Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),  
7       and in so doing provided the executive branch with  
8       clear authority to wiretap suspected terrorists inside  
9       the United States.

1           (2) Section 201 of the Foreign Intelligence Sur-  
2           veillance Act of 1978 states that it and the criminal  
3           wiretap law are the “exclusive means by which elec-  
4           tronic surveillance” may be conducted by the United  
5           States Government, and section 109 of that Act  
6           makes it a crime to wiretap individuals without com-  
7           plying with this statutory authority.

8           (3) The Foreign Intelligence Surveillance Act of  
9           1978 both permits the Government to initiate wire-  
10          tapping immediately in emergencies as long as the  
11          Government obtains approval from the court estab-  
12          lished under section 103 of the Foreign Intelligence  
13          Surveillance Act of 1978 (50 U.S.C. 1803) within  
14          72 hours of initiating the wiretap, and authorizes  
15          wiretaps without a court order otherwise required by  
16          the Foreign Intelligence Surveillance Act of 1978 for  
17          the first 15 days following a declaration of war by  
18          Congress.

19          (4) The Authorization for Use of Military Force  
20          that became law on September 18, 2001 (Public  
21          Law 107–40; 50 U.S.C. 1541 note), did not grant  
22          the President the power to authorize wiretaps of  
23          Americans within the United States without obtain-  
24          ing the court orders required by the Foreign Intel-  
25          ligence Surveillance Act of 1978.

1           (5) The President's inherent constitutional au-  
2           thority does not give him the power to violate the ex-  
3           plicit statutory prohibition on warrantless wiretaps  
4           in the Foreign Intelligence Surveillance Act of 1978.

5           (6) George W. Bush, President of the United  
6           States, authorized the National Security Agency to  
7           wiretap Americans within the United States without  
8           obtaining the court orders required by the Foreign  
9           Intelligence Surveillance Act of 1978 for more than  
10          5 years.

11          (7) Alberto R. Gonzales, as Attorney General of  
12          the United States and as Counsel to the President,  
13          reviewed and defended the legality of the President's  
14          authorization of wiretaps by the National Security  
15          Agency of Americans within the United States with-  
16          out the court orders required by the Foreign Intel-  
17          ligence Surveillance Act of 1978.

18          (8) President George W. Bush repeatedly mis-  
19          led the public prior to the public disclosure of the  
20          National Security Agency warrantless surveillance  
21          program by indicating his Administration was rely-  
22          ing on court orders to wiretap suspected terrorists  
23          inside the United States.

24          (9) Alberto R. Gonzales misled Congress in  
25          January 2005 during the hearing on his nomination

1 to be Attorney General of the United States by indi-  
2 cating that a question about whether the President  
3 has the authority to authorize warrantless wiretaps  
4 in violation of statutory prohibitions presented a  
5 “hypothetical situation,” even though he was fully  
6 aware that a warrantless wiretapping program had  
7 been ongoing for several years.

8 (10) In statements about the supposed need for  
9 the National Security Agency warrantless surveil-  
10 lance program after the public disclosure of the pro-  
11 gram, President George W. Bush falsely implied  
12 that the program was necessary because the execu-  
13 tive branch did not otherwise have authority to wire-  
14 tap suspected terrorists inside the United States.

15 (11) Attorney General Alberto R. Gonzales, de-  
16 spite his admitted awareness that congressional crit-  
17 ics of the program support wiretapping terrorists in  
18 accordance with the Foreign Intelligence Surveil-  
19 lance Act of 1978, attempted to create the opposite  
20 impression by making public statements such as  
21 “[s]ome people will argue that nothing could justify  
22 the Government being able to intercept conversations  
23 like the ones the Program targets”.

24 (12) President George W. Bush inaccurately  
25 stated in his January 31, 2006, State of the Union

1 address that “[p]revious Presidents have used the  
2 same constitutional authority I have, and federal  
3 courts have approved the use of that authority.”,  
4 even though the Administration has failed to identify  
5 a single instance since the Foreign Intelligence Sur-  
6 veillance Act of 1978 became law in which another  
7 President has authorized wiretaps inside the United  
8 States without complying with the Foreign Intel-  
9 ligence Surveillance Act of 1978, and no Federal  
10 court has evaluated whether the President has the  
11 inherent authority to authorize wiretaps inside the  
12 United States without complying with the Foreign  
13 Intelligence Surveillance Act of 1978.

14 (13) At a Senate Judiciary Committee hearing  
15 on February 6, 2006, Attorney General Alberto R.  
16 Gonzales defended the President’s misleading state-  
17 ments in the January 31, 2006, State of the Union  
18 address.

19 (14) Attorney General Alberto R. Gonzales has  
20 misled Congress and the American people repeatedly  
21 by stating that there was no serious disagreement  
22 among Government officials “about” or “relate[d]  
23 to” the National Security Agency program con-  
24 firmed by the President.

1           (15) According to testimony from former Dep-  
2        uty Attorney General James Comey, Alberto R.  
3        Gonzales, while serving as Counsel to the President,  
4        participated in a visit to then-Attorney General John  
5        Ashcroft in the intensive care unit of the hospital in  
6        an attempt to convince Mr. Ashcroft to overturn the  
7        decision by Mr. Comey, then serving as Acting At-  
8        torney General due to Mr. Ashcroft's illness, not to  
9        certify the legality of a classified intelligence pro-  
10       program, in what Mr. Comey described as "an effort to  
11       take advantage of a very sick man".

12       (b) DETAINEE AND TORTURE POLICY.—The House  
13 of Representatives finds the following:

14           (1) The United States is a party to the Conven-  
15        tion Against Torture, the Geneva Conventions, and  
16        the International Covenant on Civil and Political  
17        Rights.

18           (2) Common Article 3 of the Geneva Conven-  
19        tions requires that detainees in armed conflicts other  
20        than those between nations "shall in all cir-  
21        cumstances be treated humanely," and the Third  
22        Geneva Convention on the Treatment of Prisoners of  
23        War provides additional protections for detainees  
24        who qualify as "prisoners of war".

1           (3) United States law criminalizes any “act spe-  
2           cifically intended to inflict severe physical or mental  
3           pain or suffering” under sections 2340 and 2340A  
4           of title 18, United States Code, and the War Crimes  
5           Act (18 U.S.C. 2441) and recognizes the gravity of  
6           such offenses by further providing for civil liability  
7           under the Torture Victim Protection Act and the  
8           Alien Tort Claims Act.

9           (4) In a draft memorandum dated January 25,  
10          2002, Alberto R. Gonzales, in his capacity as Coun-  
11          sel to the President, argued that the protections of  
12          the Third Geneva Convention should not be afforded  
13          to Taliban and al Qaeda detainees, and described  
14          provisions of the Convention as “quaint” and “obso-  
15          lete”.

16          (5) The January 25, 2002, memorandum by  
17          then-Counsel to the President Alberto R. Gonzales  
18          cited “reduc[ing] the threat of domestic criminal  
19          prosecution” as a “positive” consequence of dis-  
20          avowing the Geneva Conventions’ applicability, as-  
21          serting that such a disavowal “would provide a solid  
22          defense to any future prosecution” in the event a  
23          prosecutor brought charges under the domestic War  
24          Crimes Act.

1           (6) Secretary of State Colin Powell responded  
2           in a January 26, 2002, memorandum that such an  
3           attempt to evade the Geneva Conventions would “re-  
4           verse over a century of U.S. policy and practice in  
5           supporting the Geneva Conventions and undermine  
6           the protections of the rule of law for our troops”.

7           (7) Despite the warnings of the Secretary of  
8           State and in contravention of the language of the  
9           Third Geneva Convention, President George W.  
10          Bush announced on February 7, 2002, that—

11                   (A) he did not consider the Convention to  
12                   apply to al Qaeda fighters; and

13                   (B) Taliban detainees would not be enti-  
14                   tled to “prisoner of war” status under the Con-  
15                   vention, despite the fact that Article 5 of the  
16                   Convention and United States Army regulations  
17                   expressly require such determinations to be  
18                   made by a “competent tribunal”.

19          (8) The Supreme Court, in *Hamdan v. Rums-*  
20          *feld*, confirmed that Common Article 3 of the Gene-  
21          va Conventions applies to Taliban forces and al  
22          Qaeda forces, and characterized a central legal  
23          premise by which the President sought to avoid the  
24          obligations of international law as “erroneous”.



1           (9) Alberto R. Gonzales, acting as Counsel to  
2           the President, solicited and accepted the August 1,  
3           2002, Office of Legal Counsel memorandum entitled  
4           “Standards of Conduct for Interrogation under 18  
5           U.S.C. §§ 2340–2340A”, which took the untenable  
6           position that “mere infliction of pain” is not “tor-  
7           ture” unless “the victim . . . experiences intense pain  
8           or suffering of the kind that is equivalent to the  
9           pain that would be associated with serious physical  
10          injury so severe that death, organ failure, or perma-  
11          nent damage resulting in a loss of significant body  
12          function will likely result.”.

13          (10) According to the “Review of Department  
14          of Defense Detention Operations and Detainee In-  
15          terrogation Techniques” (the “Church Report”),  
16          issued on March 7, 2005, then-Secretary of Defense  
17          Donald Rumsfeld on December 2, 2002, authorized  
18          the use on Guantanamo Bay detainees of harsh in-  
19          terrogation techniques not listed in the Army Field  
20          Manual, including stress positions, hooding, the use  
21          of military dogs to exploit phobias, prolonged isola-  
22          tion, sensory deprivation, and forcing Muslim men to  
23          shave their beards.

24          (11) According to the “Article 15–6 Investiga-  
25          tion of CJSOTF–AP [Combined Joint Special Oper-

1 ations Task Force-Arabian Peninsula] and 5th SF  
2 [Special Forces] Group Detention Operation (For-  
3 mica Report)” and Department of Defense docu-  
4 ments released under the Freedom of Information  
5 Act, Guantanamo Bay detainees were chained to the  
6 floor, subjected to loud music, fed only bread and  
7 water, and kept for some period of time in cells  
8 measuring 4 feet by 4 feet by 20 inches.

9 (12) The March 2004 investigative report of  
10 Major General Antonio Taguba documented “sadis-  
11 tic, blatant and wanton criminal abuses” against de-  
12 tainees at the Abu Ghraib detention facility, includ-  
13 ing sexual and physical abuse, the threat of torture,  
14 the forcing of detainees to perform degrading acts  
15 designed to assault their religious identity, and the  
16 use of dogs to frighten detainees.

17 (13) According to Department of Defense docu-  
18 ments released under the Freedom of Information  
19 Act, the United States Armed Forces held certain  
20 Iraqis as “ghost detainees,” who were “not ac-  
21 counted for” and were hidden from the observation  
22 of the International Committee of the Red Cross  
23 (ICRC).

24 (14) Military autopsy reports and death certifi-  
25 cates released pursuant to the Freedom of Informa-

1       tion Act revealed that at least 39 deaths, and prob-  
2       ably more, have occurred among detainees in United  
3       States custody overseas, approximately half of which  
4       were homicides and 7 of which appear to have been  
5       caused by “strangulation,” “asphyxiation” or fatal  
6       “blunt force injuries”.

7               (15) On September 6, 2006, President George  
8       W. Bush stated that he had authorized the incom-  
9       municado detention of certain suspected terrorist  
10      leaders and operatives at secret sites outside the  
11      United States under a “separate program” operated  
12      by the Central Intelligence Agency.

13              (16) President George W. Bush has authorized  
14      the indefinite detention, without charge or trial, of  
15      more than 700 individuals at Guantanamo Bay  
16      Naval Base on the ground that they are “enemy  
17      combatants” and therefore may be held until the  
18      cessation of hostilities under the laws of war.

19              (17) Department of Justice lawyers, rep-  
20      resenting President George W. Bush and the De-  
21      partment of Defense in a Federal lawsuit brought on  
22      behalf of Guantanamo detainees, took the unprece-  
23      dented position that the term “enemy combatant”  
24      could in theory justify the indefinite detention of a  
25      “little old lady in Switzerland who writes checks to

1 what she thinks is [a] charity that helps orphans in  
2 Afghanistan but is really a front to finance al-Qaeda  
3 activities” and “a person who teaches English to the  
4 son of an al Qaeda member”.

5 (18) After the Supreme Court in *Hamdi v.*  
6 *Rumsfeld* and *Rasul v. Bush* rejected the claim that  
7 an alleged “enemy combatant” could be detained in-  
8 definitely without any meaningful opportunity to  
9 challenge the designation, the Deputy Secretary of  
10 Defense issued an order on July 7, 2004, creating  
11 “Combatant Status Review Tribunals” (CSRTs) for  
12 the stated purpose of “review[ing] the detainee’s sta-  
13 tus as an enemy combatant”.

14 (19) Such Order—

15 (A) did not allow detainees to be rep-  
16 resented by counsel in Combatant Status Re-  
17 view Tribunal proceedings, but instead specified  
18 that a “military officer” would be assigned to  
19 “assist[ ]” each detainee and required such  
20 military officers to inform the detainees that “I  
21 am neither a lawyer nor your advocate,” and  
22 that “[n]one of the information you provide me  
23 shall be held in confidence”;

24 (B) allowed the detainee to be excluded  
25 from attendance during review proceedings in-

1           volving “testimony or other matters that would  
2           compromise national security if held in the  
3           presence of the detainee”;

4           (C) allowed the decision-maker to rely on  
5           hearsay evidence and specified that “[t]he Tri-  
6           bunal is not bound by the rules of evidence such  
7           as would apply in a court of law”; and

8           (D) specified that “there shall be a rebut-  
9           table presumption in favor of the Government’s  
10          evidence”.

11          (20) The Government has relied on the above  
12          procedures to deprive individuals of their liberty for  
13          an indefinite period of time without a meaningful  
14          opportunity to confront and rebut the evidence on  
15          which that detention is predicated.

16          (21) President George W. Bush and the De-  
17          partment of Defense designated at least 2 United  
18          States citizens as “enemy combatants,” claimed the  
19          right to detain them indefinitely on United States  
20          soil without charge and without access to counsel,  
21          and argued that allowing meaningful judicial review  
22          of their detention would be “constitutionally intoler-  
23          able”.

24          (22) The Supreme Court established in *Hamdi*  
25          *v. Rumsfeld* that meaningful review by a neutral de-

1 cisionmaker of the detention of United States citi-  
2 zens is constitutionally required, that “the risk of an  
3 erroneous deprivation of a citizen’s liberty . . . is very  
4 real,” and that the Constitution mandates that a  
5 United States citizen be given a fair opportunity to  
6 rebut the Government’s “enemy combatant” des-  
7 ignation.

8 (23) The administration, having consistently  
9 claimed that according United States citizens des-  
10 ignated as “enemy combatants” the due process pro-  
11 tections accorded to criminal defendants in civilian  
12 courts would jeopardize national security interests of  
13 the utmost importance, elected to pursue criminal  
14 charges against alleged “enemy combatant” Jose  
15 Padilla in a civilian court after holding him in mili-  
16 tary custody for 3 years.

17 (24) The administration, having contended that  
18 alleged “enemy combatant” and United States citi-  
19 zen Yaser Esam Hamdi was so dangerous that  
20 merely allowing him to meet with counsel “jeopard-  
21 izes compelling national security interests” because  
22 he might “pass concealed messages through unwit-  
23 ting intermediaries,” released Mr. Hamdi from cus-  
24 tody after 3 years and allowed him to return to  
25 Saudi Arabia.

1           (25) President George W. Bush issued “Mili-  
2           tary Order of November 13, 2001, Detention, Treat-  
3           ment, and Trial of Certain Non-Citizens in the War  
4           Against Terrorism,” which authorized the creation  
5           of military tribunals to try suspected al Qaeda mem-  
6           bers and other international terrorist suspects for  
7           violations of the law of war.

8           (26) Alberto R. Gonzales, as Counsel to the  
9           President, in a November 30, 2001, newspaper edi-  
10          torial, defended these military tribunals and  
11          misleadingly represented that they would have ade-  
12          quate procedural safeguards, by stating: “Everyone  
13          tried before a military commission will know the  
14          charges against him, be represented by qualified  
15          counsel and be allowed to present a defense.”.

16          (27) The military tribunals’ procedural rules as  
17          outlined in Military Commission Order No. 1, issued  
18          on March 21, 2002, and as subsequently amended—

19                 (A) permitted the accused and his civilian  
20                 counsel to be excluded from any part of the  
21                 proceeding that the presiding officer decided to  
22                 close, and never learn what was presented dur-  
23                 ing that portion of the proceeding;

24                 (B) permitted the introduction of any evi-  
25                 dence that the presiding officer determined

1 would have probative value to a reasonable per-  
2 son, thereby permitting the admission of hear-  
3 say and evidence obtained through undue coer-  
4 cion; and

5 (C) restricted appellate review of the com-  
6 missions to a panel appointed by the Secretary  
7 of Defense, followed by review by the Secretary  
8 of Defense and a final decision by the Presi-  
9 dent, with no provision for direct appeal to the  
10 Federal courts for review by civilian judges.

11 (28) Nearly 5 years after the military order was  
12 signed, the Supreme Court in *Hamdan v. Rumsfeld*  
13 struck down the military commissions as unlawful,  
14 finding that—

15 (A) the military commissions as con-  
16 stituted were not expressly authorized by any  
17 congressional act, including the Authorization  
18 for Use of Military Force, the Uniform Code of  
19 Military Justice (UCMJ), and the Detainee  
20 Treatment Act;

21 (B) the military commission procedures  
22 violated the UCMJ, which mandates that rules  
23 governing military commissions be as similar to  
24 those governing courts-martial “as practicable,”



1 and which affords the accused the right to be  
2 present;

3 (C) the military commission procedures  
4 violated Common Article 3 of the Geneva Con-  
5 ventions, which is part of the “law of war”  
6 under UCMJ Article 21 and requires trial in “a  
7 regularly constituted court affording all the ju-  
8 dicial guarantees which are recognized as indis-  
9 pensable by civilized peoples”.

10 (29) President George W. Bush sought to pre-  
11 vent the Guantanamo detainees from obtaining judi-  
12 cial review of their indefinite confinement by claim-  
13 ing that the writ of habeas corpus was categorically  
14 unavailable to non-citizens held at Guantanamo Bay.

15 (30) The Supreme Court in *Rasul v. Bush*  
16 squarely rejected this claim, holding that the legal  
17 precedent on which the President relied “plainly  
18 does not preclude the exercise of [statutory habeas]  
19 jurisdiction” over the detainees’ claims, and that the  
20 general presumption against extraterritorial applica-  
21 tion of a statute, cited by the President, “certainly  
22 has no application” with respect to detainees at  
23 Guantanamo Bay where the United States exercises  
24 “complete jurisdiction and control”.

1           (c) UNITED STATES ATTORNEY FIRINGS AND EXEC-  
2 UTIVE PRIVILEGE.—The House of Representatives finds  
3 the following:

4           (1) At least 9 United States Attorneys were  
5 told in 2006 that they must step down under the au-  
6 thority of President George W. Bush, who had the  
7 final decision-making power in terminating the em-  
8 ployment of United States Attorneys.

9           (2) Attorney General Alberto R. Gonzales and  
10 subordinates under his supervision repeatedly misled  
11 Congress and attempted to block legitimate congress-  
12 sional oversight efforts concerning the firing of at  
13 least nine United States Attorneys.

14           (3) Attorney General Alberto R. Gonzales re-  
15 peatedly obscured the true scope of the firings, origi-  
16 nally declining to cite a specific number of individ-  
17 uals fired in his testimony on January 18, 2007, ac-  
18 knowledging only seven in his USA Today op-ed  
19 published on March 6, 2007, acknowledging eight  
20 firings in his testimony on April 19, 2007, tacitly  
21 conceding there had been nine individuals fired in  
22 his testimony on May 10, 2007, and testifying on  
23 July 24, 2007, that “there may have been others”  
24 but he did not know the exact number.

1           (4) Attorney General Alberto R. Gonzales ini-  
2           tially characterized the firings as “an overblown per-  
3           sonnel matter,” claiming that the United States At-  
4           torneys had lost his confidence and were fired for  
5           “performance reasons” when many of those same in-  
6           dividuals had received only the highest performance  
7           reviews prior to their dismissal.

8           (5) Attorney General Alberto R. Gonzales testi-  
9           fied before the Senate on January 18, 2007, that he  
10          would “never, ever make a change in a United  
11          States attorney for political reasons,” but in later  
12          testimony on April 19, 2007, and July 24, 2007, ad-  
13          mitted that he does not know who selected each indi-  
14          vidual United States Attorney for firing or why they  
15          were included on the list of United States Attorneys  
16          to be fired.

17          (6) Prior to their selection for firing, both  
18          former New Mexico United States Attorney David  
19          Iglesias and former Washington United States At-  
20          torney John McKay received inappropriate phone  
21          calls from Members of Congress or their staffs re-  
22          garding ongoing, politically sensitive investigations  
23          and the White House received complaints about the  
24          manner in which they were conducting those inves-  
25          tigations.

1           (7) Attorney General Alberto R. Gonzales testi-  
2           fied before the Senate on January 18, 2007, that he  
3           would not fire a United States Attorney “if it would  
4           in any way jeopardize an ongoing serious investiga-  
5           tion,” but later testified, as did his subordinates,  
6           that concerns about whether ongoing investigations  
7           would be jeopardized were not explored prior to the  
8           firings and were specifically ignored when some fired  
9           United States Attorneys asked for a delay in their  
10          departure dates to allow them to wrap up ongoing  
11          investigations.

12          (8) Attorney General Alberto R. Gonzales pub-  
13          licly stated on March 13, 2007, that he was “not in-  
14          volved in seeing any memos, was not involved in any  
15          discussions about what was going on” regarding the  
16          process leading up to the firing of the United States  
17          Attorneys, but later testimony from his subordinates  
18          and documents released by the Department of Jus-  
19          tice indicate that the Attorney General was, in fact,  
20          regularly briefed on the process and did receive at  
21          least one memo in November 2005 regarding the  
22          planned firings.

23          (9) Attorney General Alberto R. Gonzales pub-  
24          licly stated on May 15, 2007, that Deputy Attorney  
25          General Paul McNulty’s participation in the firing of

1 the United States Attorneys was of central impor-  
2 tance to the validity of the process and to the Attor-  
3 ney General's decision to fire the specific individuals,  
4 but he had previously testified on April 19, 2007,  
5 that he did not discuss the process with Mr. McNul-  
6 ty prior to firing the United States Attorneys, and  
7 that "looking back . . . I would have had the deputy  
8 attorney general more involved, directly involved".

9 (10) Attorney General Alberto R. Gonzales tes-  
10 tified on May 10, 2007, that, after the start of the  
11 congressional investigation into the firings, he had  
12 refrained from discussing the firings with anyone in-  
13 volved because he did not want to interfere with the  
14 ongoing investigations, but former White House Li-  
15 aison for the Department of Justice, Monica Good-  
16 ling, testified on May 23, 2007, that the Attorney  
17 General spoke with her in late March of 2007 and  
18 "laid out . . . his general recollection . . . of some of  
19 the process regarding the replacement of the United  
20 States Attorneys."

21 (11) Former White House Liaison for the De-  
22 partment of Justice, Monica Goodling, also testified  
23 on May 23, 2007, that she did not respond to what  
24 Attorney General Alberto R. Gonzales said about his  
25 recollection because "I did not know if it was appro-

1        piate for us to both be discussing our recollections  
2        of what had happened, and I just thought maybe we  
3        shouldn't have that conversation.”

4            (12) President George W. Bush has consistently  
5        stonewalled congressional attempts at oversight by  
6        refusing to turn over White House documents relat-  
7        ing to the firing of at least 9 United States Attor-  
8        neys and refusing to allow current or former White  
9        House officials to testify before Congress on this  
10       matter, based on an excessively broad and legally in-  
11       sufficient assertion of executive privilege.

12           (13) President George W. Bush has asserted  
13       executive privilege in refusing even to turn over cor-  
14       respondence between non-Executive Branch officials  
15       and White House officials concerning the firings of  
16       at least 9 United States Attorneys, even though such  
17       communications could not reasonably be classified as  
18       falling within the privilege.

19           (14) President George W. Bush has directed at  
20       least two staff members, former and current, to ig-  
21       nore congressional subpoenas altogether, ordering  
22       former Counsel to the President Harriet Miers and  
23       current Deputy Chief of Staff and Senior Adviser to  
24       the President Karl Rove not to appear at Congres-  
25       sional oversight hearings based on the assertion that

1 immediate presidential advisors are “immune from  
2 compelled Congressional testimony about matters  
3 that arose during [their] tenure,” rather than simply  
4 instructing them to refrain from answering questions  
5 that might be covered by a proper assertion of execu-  
6 tive privilege.

7 (15) President George W. Bush has refused to  
8 work to find a compromise with Congress or other-  
9 wise accommodate legitimate congressional oversight  
10 efforts, disregarding the proper relationship between  
11 the executive and legislative branches and dem-  
12 onstrating a belief that he and his Administration  
13 are above oversight and the rule of law.

14 (d) MISLEADING STATEMENTS ON THE USA PA-  
15 TRIOT ACT.—The House of Representatives finds the fol-  
16 lowing:

17 (1) President George W. Bush made misleading  
18 claims during the course of the Administration’s  
19 2005 campaign to reauthorize the USA PATRIOT  
20 Act of 2001, by suggesting that Federal officials did  
21 not have access to the same tools to investigate ter-  
22 rorism as they did to investigate other crimes.

23 (2) In 2005 the Federal Bureau of Investiga-  
24 tion transmitted to Attorney General Alberto R.  
25 Gonzales multiple reports of violations of law in con-

1 nection with provisions of the USA PATRIOT Act  
2 and related authorities, including unauthorized sur-  
3 veillance and improper collection of communications  
4 data that were serious enough to require notification  
5 of the President’s Intelligence Oversight Board.

6 (3) Despite these reports, Attorney General  
7 Alberto R. Gonzales told Congress and the American  
8 people in the course of the Administration’s 2005  
9 campaign to reauthorize the USA PATRIOT Act of  
10 2001 that “[t]he track record established over the  
11 past three years has demonstrated the effectiveness  
12 of the safeguards of civil liberties put in place when  
13 the Act was passed,” that “[t]here has not been one  
14 verified case of civil liberties abuse,” and that “no  
15 one has provided me with evidence that the Patriot  
16 Act is being abused or misused”.

17 (4) The United States Department of Justice  
18 sent a 10-page letter to Congress dated November  
19 23, 2005—

20 (A) stating that a November 6, 2005,  
21 Washington Post story detailing the Federal  
22 Bureau of Investigation’s use of National Secu-  
23 rity Letters was a “materially misleading por-  
24 trayal” full of “distortions and factual errors”;



1 (B) defending its use of National Security  
2 Letters by pointing to the Department’s “ro-  
3 bust mechanisms for checking misuse,” “signifi-  
4 cant internal oversight and checks,” and re-  
5 ports to Congress regarding the number of Na-  
6 tional Security Letters issued; and

7 (C) stating that the November 6, 2005,  
8 Washington Post story was inaccurate in stat-  
9 ing that “The FBI now issues more than  
10 30,000 National Security Letters a year, ... a  
11 hundredfold increase over historic norms.”.

12 (5) On March 9, 2007, the Inspector General  
13 for the United States Department of Justice issued  
14 a report on the Federal Bureau of Investigation’s  
15 use of National Security Letters from 2003 through  
16 2005—

17 (A) that the Inspector General said found  
18 “widespread and serious misuse of the FBI’s  
19 national security letter authorities” that “in  
20 many instances ... violated NSL statutes, At-  
21 torney General Guidelines, or the FBI’s own in-  
22 ternal policies,” and found that “the FBI did  
23 not provide adequate guidance, adequate con-  
24 trols, or adequate training on the use of these  
25 sensitive authorities”; and

1           (B) that indicated the Federal Bureau of  
2           Investigation issued approximately 39,000 Na-  
3           tional Security Letter requests in 2003, 56,000  
4           National Security Letter requests in 2004, and  
5           47,000 National Security Letter requests in  
6           2005.

7           (6) The United States Department of Justice  
8           sent a letter on March 9, 2007, to Congress, admit-  
9           ting that it had “determined that certain statements  
10          in our November 23, 2005 letter need clarification”  
11          in light of the Inspector General’s findings and that  
12          “the reports [The Department of Justice] provided  
13          Congress in response to statutory reporting require-  
14          ments did not accurately reflect the FBI’s use of  
15          NSLs”.

16          (e) SIGNING STATEMENTS.—The House of Rep-  
17          resentatives finds the following:

18               (1) President George W. Bush has lodged more  
19               than 800 challenges to duly enacted provisions of  
20               law by issuing signing statements that indicate that  
21               the President does not believe he must comply with  
22               such provisions of law.

23               (2) Such signing statements effectively assign  
24               to the executive branch alone the decision whether to  
25               fully comply with the laws that Congress has passed.

1           (3) On December 30, 2005, President George  
2           W. Bush signed the Department of Defense Emer-  
3           gency Supplemental Appropriations to Address Hur-  
4           ricanes in the Gulf of Mexico, and Pandemic Influenza  
5           Act, 2006, title X of which prohibits the Govern-  
6           ment from subjecting any individual “in the cus-  
7           tody or under the physical control of the United  
8           States Government, regardless of nationality or  
9           physical location” to “cruel, inhuman, or degrading  
10          treatment or punishment”.

11          (4) President George W. Bush issued a signing  
12          statement to such Act that suggested he believed he  
13          did not have to comply with the prohibition on tor-  
14          ture and cruel, inhuman and degrading treatment,  
15          stating: “The executive branch shall construe Title  
16          X in Division A of the Act, relating to detainees, in  
17          a manner consistent with the constitutional author-  
18          ity of the President to supervise the unitary execu-  
19          tive branch and as Commander in Chief and con-  
20          sistent with the constitutional limitations on the ju-  
21          dicial power, which will assist in achieving the  
22          shared objective of the Congress and the President,  
23          evidenced in Title X, of protecting the American  
24          people from further terrorist attacks.”.

1           (5) On March 9, 2006, President George W.  
2           Bush signed the USA PATRIOT Improvement and  
3           Reauthorization Act of 2005, which requires that  
4           the executive branch furnish reports to Congress on  
5           certain surveillance activities.

6           (6) President George W. Bush issued a signing  
7           statement to such Act that suggested he believed he  
8           did not have to comply fully with these reporting re-  
9           quirements, stating: “The executive branch shall  
10          construe the provisions of H.R. 3199 that call for  
11          furnishing information to entities outside the execu-  
12          tive branch, such as sections 106A and 119, in a  
13          manner consistent with the President’s constitu-  
14          tional authority to supervise the unitary executive  
15          branch and to withhold information the disclosure of  
16          which could impair foreign relations, national secu-  
17          rity, the deliberative processes of the Executive, or  
18          the performance of the Executive’s constitutional du-  
19          ties.”.

20          (7) On December 20, 2006, President George  
21          W. Bush signed the Postal Accountability and En-  
22          hancement Act, which protects certain classes of  
23          sealed domestic mail from being opened except in  
24          specifically defined circumstances.

1           (8) President George W. Bush issued a signing  
2 statement to such Act that suggested he believed he  
3 did not have to comply with this provision, stating:  
4           “The executive branch shall construe subsection  
5 404(c) of title 39, as enacted by subsection 1010(e)  
6 of the Act, which provides for opening of an item of  
7 a class of mail otherwise sealed against inspection,  
8 in a manner consistent, to the maximum extent per-  
9 missible, with the need to conduct searches in exi-  
10 gent circumstances, such as to protect human life  
11 and safety against hazardous materials, and the  
12 need for physical searches specifically authorized by  
13 law for foreign intelligence collection.”

14           (9) The American Bar Association Task Force  
15 on Presidential Signing Statements and the Separation  
16 of Powers Doctrine concluded that President  
17 George W. Bush’s misuse of signing statements  
18 “weaken[s] our cherished system of checks and bal-  
19 ances and separation of powers”.

20 **SEC. 2. CENSURE BY THE HOUSE OF REPRESENTATIVES.**

21           The House of Representatives censures George W.  
22 Bush, President of the United States, and Alberto R.  
23 Gonzales, Attorney General of the United States, and con-  
24 demns their lengthy record of—

1           (1) undermining the rule of law and the separa-  
2           tion of powers;

3           (2) disregarding statutes, treaties ratified by  
4           the United States, and the Constitution; and

5           (3) repeatedly misleading the American people.

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