

United States Senate

WASHINGTON, DC 20510

June 30, 2006

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Gonzales:

As you know, the Department of Justice released a memorandum on the legality of the NSA's warrantless surveillance program in January. Though the memorandum vigorously defended the legality of the Administration's program, the Supreme Court's recent decision in *Hamdan v. Rumsfeld* appears to put much of the document's rationale in doubt.

In light of the *Hamdan* decision, I write to ask that you review the legal justifications contained in the NSA memorandum and revise it as necessary. Alternatively, if you believe that the *Hamdan* case has no effect on the reasoning in the memorandum, please advise me of that fact. I also ask that you complete any review in advance of your appearance before the Senate Judiciary Committee hearing that Chairman Specter has currently scheduled for July 18th.

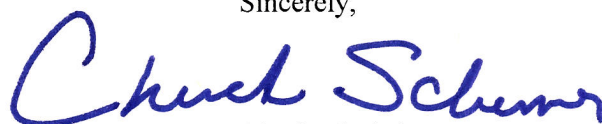
In the DOJ memorandum, the Department asserts that both the Authorization to Use Military Force (AUMF) and the President's inherent powers under Article II of the Constitution provided the necessary legal authority for the Administration to conduct warrantless surveillance.

The reasoning of *Hamdan*, however, calls into question the sweep of the AUMF and raises questions about the legal justifications for the NSA program contained in the DOJ memorandum. In *Hamdan*, for example, the Administration argued that the Uniform Code of Military Justice (UCMJ), read together with the AUMF, authorized its plan for trying terror suspects before special military tribunals. The majority specifically rejected this reasoning, however, concluding that "there is nothing in the text or legislative history of the AUMF even hinting that Congress intended to expand or alter the authorization set forth in Article 21 of the UCMJ." *Hamdan* may also bear on your Department's argument that the President's Article II powers can override a lawfully enacted statute, like FISA.

In light of *Hamdan*, then, the issue of whether the President exceeded his lawful authority in approving the NSA surveillance program is an open question now more than ever. In these circumstances, it is imperative that you undertake a review of the legal arguments made in support of the NSA surveillance program, and other related programs, and advise the Congress to what extent you believe they are still valid.

I appreciate your attention to this matter, and I look forward to your prompt reply.

Sincerely,



Charles E. Schumer
United States Senator