

***In the Senate of the United States,***

*July 29, 2005.*

*Resolved,* That the bill from the House of Representatives (H.R. 3199) entitled “An Act to extend and modify authorities needed to combat terrorism, and for other purposes.”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the*  
 3 *“USA PATRIOT Improvement and Reauthorization Act of*  
 4 *2005”.*

5 (b) *TABLE OF CONTENTS.*—*The table of contents of this*  
 6 *Act is as follows:*

*Sec. 1. Short title; table of contents.*

*Sec. 2. Patriot section 206; additional requirements for multipoint electronic surveillance under FISA.*

*Sec. 3. Patriot section 207; duration of FISA surveillance of non-United States persons.*

*Sec. 4. Patriot section 212; enhanced oversight of good-faith emergency disclosures.*

*Sec. 5. Patriot section 213; limitations on delayed notice search warrants.*

*Sec. 6. Patriot section 214; authority for disclosure of additional information in connection with orders for pen register and trap and trace authority under FISA.*

*Sec. 7. Patriot section 215; procedural protections for court orders to produce records and other items in intelligence investigations.*

*Sec. 8. Patriot section 505; procedural protections for national security letters.*

*Sec. 9. Sunset provisions.*

*Sec. 10. Enhancement of sunshine provisions.*

7 **SEC. 2. PATRIOT SECTION 206; ADDITIONAL REQUIRE-**  
 8 **MENTS FOR MULTIPOINT ELECTRONIC SUR-**  
 9 **VEILLANCE UNDER FISA.**

10 (a) *PARTICULARITY REQUIREMENT.*—*Section*  
 11 *105(c)(1)(A) of the Foreign Intelligence Surveillance Act of*  
 12 *1978 (50 U.S.C. 1805(c)(1)(A)) is amended by inserting be-*  
 13 *fore the semicolon at the end the following: “, and if the*  
 14 *nature and location of each of the facilities or places at*  
 15 *which the surveillance will be directed is not known, and*  
 16 *if the identity of the target is not known, the order shall*  
 17 *include sufficient information to describe a specific target*  
 18 *with particularity”.*

1       (b) *ADDITIONAL DIRECTIONS.*—Section 105(c) of the  
2 *Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
3 *1805(c)) is amended—*

4           (1) *by striking “An order approving an elec-*  
5 *tronic surveillance under this section shall—”;*

6           (2) *in paragraph (1), by inserting before “speci-*  
7 *fy” the following: “SPECIFICATIONS.—An order ap-*  
8 *proving an electronic surveillance under this section*  
9 *shall”;*

10          (3) *in paragraph (1)(F), by striking “; and” and*  
11 *inserting a period;*

12          (4) *in paragraph (2), by inserting before “di-*  
13 *rect” the following: “DIRECTIONS.—An order approv-*  
14 *ing an electronic surveillance under this section*  
15 *shall”; and*

16          (5) *by adding at the end the following:*

17           “(3) *SPECIAL DIRECTIONS FOR CERTAIN OR-*  
18 *DERS.—An order approving an electronic surveillance*  
19 *under this section in circumstances where the nature*  
20 *and location of each of the facilities or places at*  
21 *which the surveillance will be directed is unknown*  
22 *shall direct the applicant to provide notice to the*  
23 *court within 10 days after the date on which surveil-*  
24 *lance begins to be directed at any new facility or*  
25 *place of—*

1           “(A) the nature and location of each facility  
2 or place at which the electronic surveillance is  
3 directed;

4           “(B) the facts and circumstances relied  
5 upon by the applicant to justify the applicant’s  
6 belief that each facility or place at which the  
7 electronic surveillance is directed is being used,  
8 or is about to be used, by the target of the sur-  
9 veillance; and

10           “(C) a statement of any proposed mini-  
11 mization procedures that differ from those con-  
12 tained in the original application or order, that  
13 may be necessitated by a change in the facility  
14 or place at which the electronic surveillance is  
15 directed.”.

16       (c) *ENHANCED OVERSIGHT.*—

17           (1) *REPORT TO CONGRESS.*—Section 108(a)(1) of  
18 the *Foreign Intelligence Surveillance Act of 1978* (50  
19 *U.S.C. 1808(a)(1)*) is amended by inserting “, and  
20 the *Committee on the Judiciary of the House of Rep-*  
21 *resentatives and the Committee on the Judiciary of*  
22 *the Senate,”* after “*Senate Select Committee on Intel-*  
23 *ligence*”.

24           (2) *MODIFICATION OF SEMIANNUAL REPORT RE-*  
25 *QUIREMENT ON ACTIVITIES UNDER FOREIGN INTEL-*

1 *LIGENCE SURVEILLANCE ACT OF 1978.—Paragraph (2)*  
2 *of section 108(a) of the Foreign Intelligence Surveil-*  
3 *lance Act of 1978 (50 U.S.C. 1808(a)) is amended to*  
4 *read as follows:*

5 “(2) *Each report under the first sentence of*  
6 *paragraph (1) shall include a description of—*

7 “(A) *the total number of applications made*  
8 *for orders and extensions of orders approving*  
9 *electronic surveillance under this title where the*  
10 *nature and location of each facility or place at*  
11 *which the electronic surveillance will be directed*  
12 *is not known; and*

13 “(B) *Each criminal case in which informa-*  
14 *tion acquired under this Act has been authorized*  
15 *for use at trial during the period covered by such*  
16 *report.”.*

17 **SEC. 3. PATRIOT SECTION 207; DURATION OF FISA SURVEIL-**  
18 **LANCE OF NON-UNITED STATES PERSONS.**

19 (a) *ELECTRONIC SURVEILLANCE ORDERS.—Section*  
20 *105(e) of the Foreign Intelligence Surveillance Act (50*  
21 *U.S.C. 1805(e)) is amended—*

22 (1) *in paragraph (1)(B), by striking “, as de-*  
23 *finied in section 101(b)(1)(A)” and inserting “who is*  
24 *not a United States person”; and*

1           (2) in paragraph (2)(B), by striking “as defined  
2           in section 101(b)(1)(A)” and inserting “who is not a  
3           United States person”.

4           (b) *PHYSICAL SEARCH ORDERS*.—Section 304(d) of  
5           the *Foreign Intelligence Surveillance Act* (50 U.S.C.  
6           1824(d)) is amended—

7           (1) in paragraph (1)(B), striking “as defined in  
8           section 101(b)(1)(A)” and inserting “who is not a  
9           United States person”; and

10          (2) in paragraph (2), striking “as defined in sec-  
11          tion 101(b)(1)(A)” and inserting “who is not a  
12          United States person”.

13          (c) *PEN REGISTERS*.—Section 402(e) of the *Foreign*  
14          *Intelligence Surveillance Act* (50 U.S.C. 1842(e)) is amend-  
15          ed by—

16          (1) inserting after “90 days” the first place it  
17          appears the following: “, except that in cases where  
18          the applicant has certified that the information likely  
19          to be obtained is foreign intelligence information not  
20          concerning a United States person, an order issued  
21          under this section may be for a period not to exceed  
22          1 year”; and

23          (2) inserting after “90 days” the second place it  
24          appears the following: “, except that in cases where  
25          the applicant has certified that the information likely



1           (b) *TECHNICAL AMENDMENTS TO CONFORM COMMU-*  
2 *NICATIONS AND CUSTOMER RECORDS EXCEPTIONS.—*

3           (1) *VOLUNTARY DISCLOSURES.—Section 2702 of*  
4 *title 18, United States Code, is amended—*

5           (A) *in subsection (b)(8), by striking “Fed-*  
6 *eral, State, or local”;* and

7           (B) *by striking subsection (c)(4) and insert-*  
8 *ing the following:*

9           “*(4) to a governmental entity, if the provider, in*  
10 *good faith, believes that an emergency involving dan-*  
11 *ger of death or serious physical injury to any person*  
12 *requires disclosure without delay of the information.”.*

13           (2) *DEFINITIONS.—Section 2711 of title 18,*  
14 *United States Code, is amended—*

15           (A) *in paragraph (2), by striking “and” at*  
16 *the end;*

17           (B) *in paragraph (3), by striking the period*  
18 *at the end and inserting “; and”;* and

19           (C) *by adding at the end the following:*

20           “*(4) the term ‘governmental entity’ means a de-*  
21 *partment or agency of the United States or any State*  
22 *or political subdivision thereof.”.*

1 **SEC. 5. PATRIOT SECTION 213; LIMITATIONS ON DELAYED**  
2 **NOTICE SEARCH WARRANTS.**

3 (a)  *GROUNDS FOR DELAY.*—Section 3103a(b)(1) of  
4  *title 18, United States Code, is amended by striking “may*  
5  *have an adverse result (as defined in section 2705);” and*  
6  *inserting “may—*

7  *“(A) endanger the life or physical safety of*  
8  *an individual;*

9  *“(B) result in flight from prosecution;*

10  *“(C) result in the destruction of or tam-*  
11  *pering with evidence;*

12  *“(D) result in intimidation of potential*  
13  *witnesses; or*

14  *“(E) otherwise seriously jeopardize an in-*  
15  *vestigation;”.*

16 (b)  *LIMITATION ON REASONABLE PERIOD FOR*  
17  *DELAY.*—Section 3103a of title 18, United States Code, is  
18  *amended—*

19  *(1) by striking subsection (b)(3) and inserting*  
20  *the following:*

21  *“(3) the warrant provides for the giving of such*  
22  *notice not later than 7 days after the date of its exe-*  
23  *cution, or on a later date certain if the facts of the*  
24  *case justify a longer period of delay.”; and*

25  *(2) by adding at the end the following:*

1       “(c) *EXTENSIONS OF DELAY.*—Any period of delay au-  
2 thORIZED by this section may be extended by the court for  
3 good cause shown, subject to the condition that extensions  
4 should only be granted upon an updated showing of the need  
5 for further delay and that each additional delay should be  
6 limited to periods of 90 days or less, unless the facts of the  
7 case justify a longer period of delay.”

8       (c) *ENHANCED OVERSIGHT.*—Section 3103a of title 18,  
9 United States Code, is amended by adding at the end the  
10 following:

11       “(c) *REPORTS.*—

12               “(1) *REPORT BY JUDGE.*—Not later than 30  
13 days after the expiration of a warrant authorizing de-  
14 layed notice (including any extension thereof) entered  
15 under this section, or the denial of such warrant (or  
16 request for extension), the issuing or denying judge  
17 shall report to the Administrative Office of the United  
18 States Courts—

19                       “(A) the fact that a warrant was applied  
20 for;

21                       “(B) the fact that the warrant or any exten-  
22 sion thereof was granted as applied for, was  
23 modified, or was denied;

1           “(C) the period of delay in the giving of no-  
2           tice authorized by the warrant, and the number  
3           and duration of any extensions; and

4           “(D) the offense specified in the warrant or  
5           application.

6           “(2) *REPORT BY ADMINISTRATIVE OFFICE OF*  
7           *THE UNITED STATES COURTS.*—In April of each year,  
8           the Director of the Administrative Office of the  
9           United States Courts shall transmit to Congress a full  
10          and complete report—

11           “(A) concerning the number of applications  
12          for warrants and extensions of warrants author-  
13          izing delayed notice pursuant to this section,  
14          and the number of warrants and extensions  
15          granted or denied pursuant to this section dur-  
16          ing the preceding calendar year; and

17           “(B) that includes a summary and analysis  
18          of the data required to be filed with the Adminis-  
19          trative Office by paragraph (1).

20           “(3) *REGULATIONS.*—The Director of the Admin-  
21          istrative Office of the United States Courts, in con-  
22          sultation with the Attorney General, is authorized to  
23          issue binding regulations dealing with the content  
24          and form of the reports required to be filed under  
25          paragraph (1).”.

1 **SEC. 6. PATRIOT SECTION 214; AUTHORITY FOR DISCLO-**  
2 **SURE OF ADDITIONAL INFORMATION IN CON-**  
3 **NECTION WITH ORDERS FOR PEN REGISTER**  
4 **AND TRAP AND TRACE AUTHORITY UNDER**  
5 **FISA.**

6 (a) *RECORDS.*—Section 402(d)(2) of the Foreign Intel-  
7 *ligence Surveillance Act of 1978 (50 U.S.C. 1842(d)(2)) is*  
8 *amended—*

9 (1) *in subparagraph (A)—*

10 (A) *in clause (ii), by adding “and” at the*  
11 *end; and*

12 (B) *in clause (iii), by striking the period at*  
13 *the end and inserting a semicolon; and*

14 (2) *in subparagraph (B)(iii), by striking the pe-*  
15 *riod at the end and inserting “; and”; and*

16 (3) *by adding at the end the following:*

17 “(C) shall direct that, upon the request of  
18 the applicant, the provider of a wire or electronic  
19 communication service shall disclose to the Fed-  
20 eral officer using the pen register or trap and  
21 trace device covered by the order—

22 “(i) *in the case of the customer or sub-*  
23 *scriber using the service covered by the*  
24 *order (for the period specified by the*  
25 *order)—*

1           “(I) the name of the customer or  
2 subscriber;

3           “(II) the address of the customer  
4 or subscriber;

5           “(III) the telephone or instrument  
6 number, or other subscriber number or  
7 identifier, of the customer or sub-  
8 scriber, including any temporarily as-  
9 signed network address or associated  
10 routing or transmission information;

11           “(IV) the length of the provision  
12 of service by such provider to the cus-  
13 tomer or subscriber and the types of  
14 services utilized by the customer or  
15 subscriber;

16           “(V) in the case of a provider of  
17 local or long distance telephone service,  
18 any local or long distance telephone  
19 records of the customer or subscriber;

20           “(VI) if applicable, any records  
21 reflecting period of usage (or sessions)  
22 by the customer or subscriber; and

23           “(VII) any mechanisms and  
24 sources of payment for such service, in-  
25 cluding the number of any credit card

1                   or bank account utilized for payment  
2                   for such service; and

3                   “(ii) if available, with respect to any  
4                   customer or subscriber of incoming or out-  
5                   going communications to or from the service  
6                   covered by the order—

7                                 “(I) the name of such customer or  
8                                 subscriber;

9                                 “(II) the address of such customer  
10                                or subscriber;

11                               “(III) the telephone or instrument  
12                               number, or other subscriber number or  
13                               identifier, of such customer or sub-  
14                               scriber, including any temporarily as-  
15                               signed network address or associated  
16                               routing or transmission information;  
17                               and

18                               “(IV) the length of the provision  
19                               of service by such provider to such cus-  
20                               tomer or subscriber and the types of  
21                               services utilized by such customer or  
22                               subscriber.”.

23           (b) *ENHANCED OVERSIGHT*.—Section 406(a) of the  
24 *Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
25 *1846(a)) is amended by inserting “, and the Committee on*

1 *the Judiciary of the House of Representatives and the Com-*  
 2 *mittee on the Judiciary of the Senate,” after “of the Sen-*  
 3 *ate”.*

4 **SEC. 7. PATRIOT SECTION 215; PROCEDURAL PROTECTIONS**  
 5 **FOR COURT ORDERS TO PRODUCE RECORDS**  
 6 **AND OTHER ITEMS IN INTELLIGENCE INVES-**  
 7 **TIGATIONS.**

8 *(a) FACTUAL BASIS FOR REQUESTED ORDER.—*

9 *(1) APPLICATION.—Section 501(b)(2) of the For-*  
 10 *oreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
 11 *1861(b)(2)) is amended to read as follows:*

12 *“(2) shall include a statement of facts showing*  
 13 *that there are reasonable grounds to believe that the*  
 14 *records or other things sought—*

15 *“(A) are relevant to an authorized inves-*  
 16 *tigation conducted in accordance with subsection*  
 17 *(a)(2) to obtain foreign intelligence information*  
 18 *not concerning a United States person or to pro-*  
 19 *tect against international terrorism or clandes-*  
 20 *tine intelligence activities; and*

21 *“(B)(i) pertain to a foreign power or an*  
 22 *agent of a foreign power;*

23 *“(i) are relevant to the activities of a sus-*  
 24 *pected agent of a foreign power who is the subject*  
 25 *of such authorized investigation; or*

1           “(iii) pertain to an individual in contact  
2           with, or known to, a suspected agent of a foreign  
3           power.”.

4           (2) *ORDER.*—Section 501(c)(1) of the Foreign  
5           Intelligence Surveillance Act of 1978 (50 U.S.C.  
6           1861(c)(1)) is amended to read as follows:

7           “(c)(1) Upon an application made pursuant to this  
8           section, the judge shall enter an *ex parte* order as requested,  
9           or as modified, approving the release of records or tangible  
10          things if the judge finds that—

11           “(A) the statement of facts contained in the ap-  
12          plication establishes reasonable grounds to believe that  
13          the records or other things sought are relevant to an  
14          authorized investigation conducted in accordance with  
15          subsection (a)(2) to obtain foreign intelligence infor-  
16          mation not concerning a United States person or to  
17          protect against international terrorism or clandestine  
18          intelligence activities;

19           “(B) the statement of facts contained in the ap-  
20          plication establishes reasonable grounds to believe that  
21          the records or other things sought—

22           “(i) pertain to a foreign power or an agent  
23          of a foreign power;

1           “(ii) are relevant to the activities of a sus-  
2           pected agent of a foreign power who is the subject  
3           of such authorized investigation; or

4           “(iii) pertain to an individual in contact  
5           with, or known to, a suspected agent of a foreign  
6           power; and

7           “(C) the application meets the other require-  
8           ments of this section.”.

9           (b) *ADDITIONAL PROTECTIONS*.—Section 501(c) of the  
10 *Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
11 *1861(c)) is amended—*

12           (1) in paragraph (2), by inserting after “An  
13           order under this subsection” the following:

14           “(A) shall describe the tangible things con-  
15           cerned with sufficient particularity to permit  
16           them to be fairly identified;

17           “(B) shall prescribe a return date which  
18           will provide a reasonable period of time within  
19           which the tangible things can be assembled and  
20           made available;

21           “(C) shall provide clear and conspicuous  
22           notice of the principles and procedures set forth  
23           in subsection (d);

24           “(D) shall not require the production of  
25           anything that would be protected from produc-

1            *tion under the standards applicable to a sub-*  
2            *poena duces tecum issued by a court of the*  
3            *United States in aid of a grand jury investiga-*  
4            *tion; and*

5            *“(E)”.*

6            *(c) DIRECTOR APPROVAL FOR CERTAIN APPLICA-*  
7            *TIONS.—Section 501(a) of the Foreign Intelligence Surveil-*  
8            *lance Act of 1978 (50 U.S.C. 1861(a)) is amended—*

9            *(1) in paragraph (1), by striking “The Director”*  
10           *and inserting “Except as provided in paragraph (3),*  
11           *the Director”;* and

12           *(2) by adding at the end the following:*

13           *“(3) No application shall be made under this*  
14           *section for an order requiring the production of li-*  
15           *brary circulation records, library patron lists, book*  
16           *sales records, book customer lists, firearms sales*  
17           *records, or medical records containing personally*  
18           *identifiable information without the prior written ap-*  
19           *proval of the Director of the Federal Bureau of Inves-*  
20           *tigation. The Director may delegate authority to ap-*  
21           *prove such an application to the Deputy Director of*  
22           *the Federal Bureau of Investigation, but such author-*  
23           *ity may not be further delegated.”.*

1       (d) *PROHIBITION ON DISCLOSURE.*—Section 501(d) of  
2 *the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
3 *1861(d)) is amended to read as follows:*

4       “(d)(1) *No person shall disclose to any other person*  
5 *that the Federal Bureau of Investigation has sought or ob-*  
6 *tained tangible things pursuant to an order under this sec-*  
7 *tion other than to*

8             “(A) *those persons to whom such disclosure is*  
9 *necessary to comply with such order;*

10            “(B) *an attorney to obtain legal advice or assist-*  
11 *ance with respect to the production of things in re-*  
12 *sponse to the order; or*

13            “(C) *other persons as permitted by the Director*  
14 *of the Federal Bureau of Investigation or the designee*  
15 *of the Director.*

16       “(2)(A) *Any person having received a disclosure under*  
17 *subparagraph (A), (B), or (C) of paragraph (1) shall be*  
18 *subject to the prohibitions on disclosure under that para-*  
19 *graph.*

20       “(B) *Any person making a further disclosure author-*  
21 *ized by subparagraph (A), (B), or (C) of paragraph (1)*  
22 *shall notify the person to whom the disclosure is made of*  
23 *the prohibitions on disclosure under this subsection.*

1       “(3) *An order under this section shall notify, in writ-*  
2 *ing, the person to whom the order is directed of the non-*  
3 *disclosure requirements under this subsection.*”.

4       *(e) JUDICIAL REVIEW.—Section 501 of the Foreign In-*  
5 *telligence Surveillance Act of 1978 (50 U.S.C. 1861) is*  
6 *amended by adding at the end the following:*

7       “(f)(1)(A) *Any person receiving an order to produce*  
8 *any tangible thing under this section may challenge the le-*  
9 *gality of that order, including any prohibition on disclo-*  
10 *sure, by filing a petition in the court established under sec-*  
11 *tion 103(a).*

12       “(B) *That petition may be considered by any judge*  
13 *of the court.*

14       “(C) *The judge considering the petition may modify*  
15 *or set aside the order if the judge finds that the order does*  
16 *not meet the requirements of this section or is otherwise un-*  
17 *lawful.*

18       “(D) *Any petition for review of a decision to affirm,*  
19 *modify, or set aside an order or prohibition on disclosure*  
20 *under this paragraph by the United States or any person*  
21 *receiving such order shall be sent to the court of review es-*  
22 *tablished under section 103(b), which shall have jurisdiction*  
23 *to consider such petitions.*

24       “(E) *The court of review shall immediately provide for*  
25 *the record a written statement of the reasons for its decision*

1 *and, on petition of the United States or any person receiv-*  
2 *ing such order for a writ of certiorari, the record shall be*  
3 *transmitted under seal to the Supreme Court, which shall*  
4 *have jurisdiction to review such decision.*

5 “(2)(A) *Judicial proceedings under this subsection*  
6 *shall be concluded as expeditiously as possible.*

7 “(B) *The record of proceedings, including applications*  
8 *made and orders granted, shall be maintained under secu-*  
9 *rity measures established by the Chief Justice of the United*  
10 *States in consultation with the Attorney General and the*  
11 *Director of National Intelligence.*

12 “(3) *All petitions under this subsection shall be filed*  
13 *under seal, and the court, upon the request of the Govern-*  
14 *ment, shall review any Government submission, which may*  
15 *include classified information, as well as the application*  
16 *of the Government and related materials, ex parte and in*  
17 *camera.*

18 “(4) *Not later than 60 days after the date of enactment*  
19 *of the USA PATRIOT Improvement and Reauthorization*  
20 *Act of 2005, the court established under section 103(a) shall*  
21 *develop and issue procedures for the review of petitions filed*  
22 *under paragraph (1).”.*

23 (f) *ENHANCED OVERSIGHT.—Section 502 of the For-*  
24 *ign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862)*  
25 *is amended*

1           (1) *in subsection (a), by inserting “, and the*  
2 *Committee on the Judiciary of the House of Rep-*  
3 *resentatives and the Committee on the Judiciary of*  
4 *the Senate,” after “of the Senate”; and*

5           (2) *in subsection (b)—*

6           (A) *by striking “On a semiannual basis”*  
7 *through “the preceding 6-month period” and in-*  
8 *serting “In April of each year, the Attorney Gen-*  
9 *eral shall transmit to the Congress a report set-*  
10 *ting forth with respect to the preceding calendar*  
11 *year”;*

12           (B) *in paragraph (1), by striking “and” at*  
13 *the end;*

14           (C) *in paragraph (2), by striking the period*  
15 *at the end and inserting “; and”; and*

16           (D) *by adding at the end the following:*

17           “(3) *the total number of applications made for*  
18 *orders approving requests for the production of tan-*  
19 *gible things under section 501, and the total number*  
20 *of orders either granted, modified, or denied, when the*  
21 *application or order involved any of the following:*

22           “(A) *The production of tangible things from*  
23 *a library, as defined in section 213(2) of the Li-*  
24 *brary Services and Technology Act (20 U.S.C.*  
25 *9122(2)).*

1           “(B) *The production of tangible things from*  
2           *a person or entity primarily engaged in the sale,*  
3           *rental, or delivery of books, journals, magazines,*  
4           *or other similar forms of communication whether*  
5           *in print or digitally.*

6           “(C) *The production of records related to*  
7           *the purchase of a firearm, as defined in section*  
8           *921(a)(3) of title 18, United States Code.*

9           “(D) *The production of health information,*  
10          *as defined in section 1171(4) of the Social Secu-*  
11          *rity Act (42 U.S.C. 1320d(4)).*

12          “(E) *The production of taxpayer return in-*  
13          *formation, return, or return information, as de-*  
14          *fined in section 6103(b) of the Internal Revenue*  
15          *Code of 1986 (26 U.S.C. 6103(b)).*

16          “(c) *Each report under subsection (b) shall be sub-*  
17          *mitted in unclassified form, but may include a classified*  
18          *annex.*

19          “(d) *In April of each year, the Attorney General shall*  
20          *transmit to the Administrative Office of the United States*  
21          *Courts and to Congress a report setting forth with respect*  
22          *to the preceding calendar year—*

23                 “(1) *the total number of applications made for*  
24                 *orders approving requests for the production of tan-*  
25                 *gible things under section 501; and*

1           “(2) the total number of such orders either grant-  
2           ed, modified, or denied.”.

3 **SEC. 8. PATRIOT SECTION 505; PROCEDURAL PROTECTIONS**  
4           **FOR NATIONAL SECURITY LETTERS.**

5           (a) *IN GENERAL.*—Section 2709(a) of title 18, United  
6 States Code, is amended—

7           (1) by striking “A wire or electronic communica-  
8           tion service provider” and inserting the following:

9           “(1) *IN GENERAL.*—A wire or electronic commu-  
10           nication service provider”; and

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

12           “(2) *JUDICIAL REVIEW.*—A wire or electronic  
13           communication service provider who receives a re-  
14           quest under subsection (b) may, at any time, seek a  
15           court order from an appropriate United States dis-  
16           trict court to modify or set aside the request. Any  
17           such motion shall state the grounds for challenging  
18           the request with particularity. The court may modify  
19           or set aside the request if compliance would be unrea-  
20           sonable or oppressive or would violate any constitu-  
21           tional or other legal right or privilege of the peti-  
22           tioner.”.

23           (b) *NONDISCLOSURE.*—Section 2709(c) of title 18,  
24 United States Code, is amended—

1           (1) *by striking “No wire or electronic commu-*  
2 *nication service provider” and inserting the following:*

3           “*(1) IN GENERAL.—No wire or electronic com-*  
4 *munication service provider”;* and

5           (2) *by adding at the end the following:*

6           “*(3) JUDICIAL REVIEW.—A wire or electronic*  
7 *communication service provider who receives a re-*  
8 *quest under subsection (b) may, at any time, seek a*  
9 *court order from an appropriate United States dis-*  
10 *trict court challenging the nondisclosure requirement*  
11 *under paragraph (1). Any such motion shall state the*  
12 *grounds for challenging the nondisclosure requirement*  
13 *with particularity.*

14           “*(4) STANDARD OF REVIEW.—The court may*  
15 *modify or set aside such a nondisclosure requirement*  
16 *if there is no reason to believe that disclosure may en-*  
17 *danger the national security of the United States,*  
18 *interfere with a criminal, counterterrorism, or coun-*  
19 *terintelligence investigation, interfere with diplomatic*  
20 *relations, or endanger the life or physical safety of*  
21 *any person. In reviewing a nondisclosure require-*  
22 *ment, the certification by the Government that the*  
23 *disclosure may endanger the national security of the*  
24 *United States or interfere with diplomatic relations*

1       *shall be treated as conclusive unless the court finds*  
2       *that the certification was made in bad faith.”.*

3       (c) *ENFORCEMENT OF NATIONAL SECURITY LET-*  
4 *TERS.—Section 2709(a) of title 18, United States Code, as*  
5 *amended by subsection (b), is amended by adding at the*  
6 *end the following:*

7               “(3) *ENFORCEMENT OF REQUESTS.—The Attor-*  
8       *ney General may seek enforcement of a request under*  
9       *subsection (b) in an appropriate United States dis-*  
10       *trict court if a recipient refuses to comply with the*  
11       *request.”.*

12       (d) *DISCLOSURE OF INFORMATION.—*

13               (1) *SECURE PROCEEDINGS.—Section 2709 of*  
14       *title 18, United States Code, as amended by sub-*  
15       *sections (b) and (c), is amended—*

16               (A) *in subsection (a), by adding at the end*  
17       *the following:*

18               “(4) *SECURE PROCEEDINGS.—The disclosure of*  
19       *information in any proceedings under this subsection*  
20       *may be limited consistent with the requirements of the*  
21       *Classified Information Procedures Act (18 U.S.C.*  
22       *App)”; and*

23               (B) *in subsection (c), by adding at the end*  
24       *the following:*

1           “(4) *SECURE PROCEEDINGS.*—*The disclosure of*  
2           *information in any proceedings under this subsection*  
3           *may be limited consistent with the requirements of the*  
4           *Classified Information Procedures Act (18 U.S.C.*  
5           *App).*”.

6           (2) *DISCLOSURE TO NECESSARY PERSONS.*—*Sec-*  
7           *tion 2709(c)(1) of title 18, United States Code, as*  
8           *amended by subsection (b), is amended—*

9                   (A) *by inserting after “any person” the fol-*  
10                  *lowing: “, except for disclosure to an attorney to*  
11                  *obtain legal advice regarding the request or to*  
12                  *persons to whom disclosure is necessary in order*  
13                  *to comply with the request,”; and*

14                   (B) *by adding at the end the following:*  
15                  *“Any attorney or person whose assistance is nec-*  
16                  *essary to comply with the request who is notified*  
17                  *of the request also shall not disclose to any per-*  
18                  *son that the Federal Bureau of Investigation has*  
19                  *sought or obtained access to information or*  
20                  *records under this section.”.*

21 **SEC. 9. SUNSET PROVISIONS.**

22           (a) *MODIFICATION OF PATRIOT ACT SUNSET PROVI-*  
23           *SION.*—*Section 224(a) of the USA PATRIOT Act (18*  
24           *U.S.C. 2510 note) is amended to read as follows:*

1       “(a) *IN GENERAL.*—*Except as provided in subsection*  
2 *(b), sections 206 and 215, and the amendments made by*  
3 *those sections, shall cease to have effect on December 31,*  
4 *2009, and any provision of law amended or modified by*  
5 *such sections shall take effect on January 1, 2010, as in*  
6 *effect on the day before the effective date of this Act.*”.

7       (b) *EXTENSION OF SUNSET ON “LONE WOLF” PROVI-*  
8 *SION.*—*Subsection (b) of section 6001 of the Intelligence Re-*  
9 *form and Terrorism Prevention Act of 2004 (50 U.S.C.*  
10 *1801 note) is amended to read as follows:*

11       “(b) *SUNSET.*—

12               “(1) *IN GENERAL.*—*Except as provided in para-*  
13 *graph (2), the amendment made by subsection (a)*  
14 *shall cease to have effect on December 31, 2009.*

15               “(2) *SPECIAL RULE.*—*With respect to any par-*  
16 *ticular foreign intelligence investigation that began*  
17 *before the date on which the amendment made by sub-*  
18 *section (a) ceases to have effect, section 101(b)(1) of*  
19 *the Foreign Intelligence Surveillance Act of 1978, as*  
20 *amended by subsection (a), shall continue in effect.*”.

21       (c) *REPEAL OF SUNSET PROVISION RELATING TO SEC-*  
22 *TION 2332B AND THE MATERIAL SUPPORT SECTIONS OF*  
23 *TITLE 18, UNITED STATES CODE.*—*Section 6603 of the In-*  
24 *telligence Reform and Terrorism Prevention Act of 2004*

1 *(Public Law 108–458; 118 Stat. 3762) is amended by strik-*  
2 *ing subsection (g).*

3 *(d) TECHNICAL AMENDMENT.—Section 1(a) of the*  
4 *Uniting and Strengthening America by Providing Appro-*  
5 *priate Tools Required to Intercept and Obstruct Terrorism*  
6 *(USA PATRIOT ACT) Act of 2001 is amended to read as*  
7 *follows:*

8 *“(a) SHORT TITLE.—This Act may be cited as the*  
9 *‘Uniting and Strengthening America by Providing Appro-*  
10 *priate tools Required to Intercept and Obstruct Terrorism*  
11 *Act of 2001’ or the ‘USA PATRIOT Act’.”.*

12 **SEC. 10. ENHANCEMENT OF SUNSHINE PROVISIONS.**

13 *(a) RULES AND PROCEDURES FOR FISA COURTS.—*  
14 *Section 103 of the Foreign Intelligence Surveillance Act of*  
15 *1978 (50 U.S.C. 1803) is amended by adding at the end*  
16 *the following:*

17 *“(e)(1) The courts established pursuant to subsections*  
18 *(a) and (b) may establish such rules and procedures, and*  
19 *take such actions, as are reasonably necessary to administer*  
20 *their responsibilities under this Act.*

21 *“(2) The rules and procedures established under para-*  
22 *graph (1), and any modifications of such rules and proce-*  
23 *dures, shall be recorded, and shall be transmitted to the fol-*  
24 *lowing:*

1           “(A) *All of the judges on the court established*  
2           *pursuant to subsection (a).*”

3           “(B) *All of the judges on the court of review es-*  
4           *tablished pursuant to subsection (b).*”

5           “(C) *The Chief Justice of the United States.*”

6           “(D) *The Committee on the Judiciary of the*  
7           *Senate.*”

8           “(E) *The Select Committee on Intelligence of the*  
9           *Senate.*”

10          “(F) *The Committee on the Judiciary of the*  
11          *House of Representatives.*”

12          “(G) *The Permanent Select Committee on Intel-*  
13          *ligence of the House of Representatives.*”

14          “(3) *The transmissions required by paragraph (2)*  
15          *shall be submitted in unclassified form, but may include*  
16          *a classified annex.*”

17          (b) *ENHANCED CONGRESSIONAL OVERSIGHT OF FISA*  
18          *EMERGENCY AUTHORITIES.—*

19                 (1) *EMERGENCY ELECTRONIC SURVEILLANCE.—*  
20                 *Section 107 of the Foreign Intelligence Surveillance*  
21                 *Act of 1978 (50 U.S.C. 1807), is amended—*

22                         (A) *in paragraph (a), by striking “and” at*  
23                         *the end;*

24                         (B) *in paragraph (b), by striking the period*  
25                         *at the end and inserting “; and”; and*

1                   (C) by adding at the end the following:

2           “(c) the total number of emergency employments of  
3 electronic surveillance under section 105(f) and the total  
4 number of subsequent orders approving or denying such  
5 electronic surveillance.”.

6           (2) *EMERGENCY PHYSICAL SEARCHES*.—Section  
7 306 of the *Foreign Intelligence Surveillance Act of*  
8 *1978 (50 U.S.C. 1826)* is amended—

9                   (A) in the first sentence, by inserting ,“ and  
10 the Committee on the Judiciary of the House of  
11 Representatives and the Committee on the Judi-  
12 ciary of the Senate,” after “the Senate”;

13                   (B) in the second sentence, by striking “and  
14 the Committees on the Judiciary of the House of  
15 Representatives and the Senate”;

16                   (C) in paragraph (2), by striking “and” at  
17 the end;

18                   (D) in paragraph (3), by striking the pe-  
19 riod at the end and inserting “; and”; and

20                   (E) by adding at the end the following:

21           “(4) the total number of emergency physical  
22 searches authorized by the Attorney General under  
23 section 304(e) (50 U.S.C. 1824(e)), and the total  
24 number of subsequent orders approving or denying  
25 such physical searches.”.

1           (3) *EMERGENCY PEN REGISTERS AND TRAP AND*  
2           *TRACE DEVICES.*—Section 406(b) of the *Foreign Intel-*  
3           *ligence Surveillance Act of 1978 (50 U.S.C. 1846(b))*  
4           *is amended—*

5                   (A) *in paragraph (1), by striking “and” at*  
6           *the end;*

7                   (B) *in paragraph (2), by striking the period*  
8           *at the end and inserting “; and”; and*

9                   (C) *by adding at the end the following:*

10           *“(3) the total number of pen registers and trap*  
11           *and trace devices whose installation and use was au-*  
12           *thorized by the Attorney General on an emergency*  
13           *basis under section 403, and the total number of sub-*  
14           *sequent orders approving or denying the installation*  
15           *and use of such pen registers and trap and trace de-*  
16           *vices.”.*

Attest:

*Secretary.*

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 3199**

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**AMENDMENT**