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1ST SESSION

H. R. 1800

To establish reasonable procedural protections for the use of national security letters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2009

Mr. NADLER of New York (for himself, Mr. FLAKE, Mr. DELAHUNT, Mr. PAUL, Mr. SCOTT of Virginia, Ms. JACKSON-LEE of Texas, Mr. HOLT, Mrs. MALONEY, Mr. GRIJALVA, Mr. FARR, Mr. GUTIERREZ, Mr. STARK, Ms. WOOLSEY, Mr. CARSON of Indiana, Ms. SHEA-PORTER, Mr. McDERMOTT, Ms. LEE of California, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish reasonable procedural protections for the use of national security letters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Security Let-
5 ters Reform Act of 2009”.

1 **SEC. 2. NATIONAL SECURITY LETTER DEFINED.**

2 In this Act, the term “national security letter” means
3 a request for information under one of the following provi-
4 sions of law:

5 (1) Section 2709(a) of title 18, United States
6 Code (to access certain communication service pro-
7 vider records).

8 (2) Section 1114(a)(5)(A) of the Right to Fi-
9 nancial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to
10 obtain financial institution customer records).

11 (3) Section 626 of the Fair Credit Reporting
12 Act (15 U.S.C. 1681u) (to obtain certain financial
13 information and consumer reports).

14 (4) Section 627 of the Fair Credit Reporting
15 Act (15 U.S.C. 1681v) (to obtain credit agency con-
16 sumer records for counterterrorism investigations).

17 **SEC. 3. PROCEDURAL PROTECTIONS FOR NATIONAL SECU-**
18 **RITY LETTERS.**

19 (a) STANDARD.—A national security letter may not
20 be issued unless the official having authority under law
21 to issue such a letter certifies that there are specific and
22 articulable facts giving reason to believe that the informa-
23 tion or records sought by that letter pertain to a foreign
24 power or agent of a foreign power.

25 (b) LIMITATION REGARDING FIRST AMENDMENT AC-
26 TIVITIES.—A national security letter may not be issued

1 in connection with an investigation of a United States per-
2 son solely upon the basis of activities protected by the first
3 amendment to the Constitution of the United States in
4 accordance with the Attorney General's Guidelines on
5 General Crimes, Racketeering Enterprise and Terrorism
6 Enterprise Investigations.

7 (c) OTHER LIMITATIONS.—

8 (1) LETTER MAY NOT CONTAIN UNREASONABLE
9 REQUIREMENTS OR REQUIRE PRIVILEGED MAT-
10 TER.—A national security letter may not—

11 (A) contain any requirement which would
12 be held to be unreasonable if contained in a
13 subpoena duces tecum issued by a court of the
14 United States in aid of a grand jury investiga-
15 tion of espionage or international terrorism; or

16 (B) require the production of any docu-
17 mentary evidence which would be privileged
18 from disclosure if demanded by a subpoena
19 duces tecum issued by a court of the United
20 States in aid of a grand jury investigation of es-
21 pionage or international terrorism.

22 (2) NOTICE OF RIGHTS.—A national security
23 letter shall provide notice of the recipient's right to
24 seek judicial review and explain the procedures for
25 doing so.

1 (d) NONDISCLOSURE.—

2 (1) IN GENERAL.—No recipient, or officer, em-
3 ployee, or agent thereof, shall disclose to any person
4 that the Federal Bureau of Investigation has sought
5 or obtained access to information or records under
6 a national security letter for 30 days after receipt of
7 such request from the Bureau.

8 (2) EXCEPTION.—A recipient, or officer, em-
9 ployee, or agent thereof, of a national security letter
10 may disclose that the Federal Bureau of Investiga-
11 tion has sought or obtained access to information or
12 records under this section to—

13 (A) those persons to whom disclosure is
14 necessary in order to comply with an order
15 under this section; or

16 (B) an attorney in order to obtain legal ad-
17 vice regarding such order.

18 (3) EXTENSION.—The Director of the Federal
19 Bureau of Investigation, or the Director's designee
20 in a position not lower than Deputy Assistant Direc-
21 tor at Bureau headquarters or a Special Agent in
22 Charge of a Bureau field office designated by the
23 Director, may apply for an order prohibiting disclo-
24 sure that the Federal Bureau of Investigation has
25 sought or obtained access to information or records

1 under this section for not more than 180 days after
2 the order is issued.

3 (4) JURISDICTION.—An application for an
4 order pursuant to this subsection shall be filed in
5 the district court of the United States in any district
6 within which the authorized investigation that is the
7 basis for a request pursuant to this section is being
8 conducted.

9 (5) APPLICATION CONTENTS.—An application
10 for an order pursuant to this subsection must state
11 specific and articulable facts giving the applicant
12 reason to believe that disclosure that the Federal
13 Bureau of Investigation has sought or obtained ac-
14 cess to information or records under this section will
15 result in—

16 (A) endangering the life or physical safety
17 of any person;

18 (B) flight from prosecution;

19 (C) destruction of or tampering with evi-
20 dence;

21 (D) intimidation of potential witnesses; or

22 (E) otherwise seriously endangering the
23 national security of the United States by alert-
24 ing a target, a target's associates, or the for-

1 eign power of which the target is an agent, of
2 the Government's interest in the target.

3 (6) STANDARD.—The court may issue an ex
4 parte order in response to an application under
5 paragraph (3) if the court determines that the order
6 is narrowly tailored to meet a compelling interest
7 and that there is reason to believe that disclosure
8 that the Federal Bureau of Investigation has sought
9 or obtained access to information or records under
10 this section will have one of the results described in
11 paragraph (5).

12 (7) RENEWAL.—An order under this subsection
13 may be renewed for additional periods of not more
14 than 180 days upon another application meeting the
15 requirements of paragraph (5) and a determination
16 by the court that the standard of paragraph (6) con-
17 tinues to be met.

18 (8) CONFORMING AMENDMENTS.—

19 (A) Section 2709 of title 18, United States
20 Code, is amended by striking subsection (c).

21 (B) Section 1114(a)(5) of the Right to Fi-
22 nancial Privacy Act of 1978 (12 U.S.C.
23 3414(a)(5)) is amended by striking subpara-
24 graph (D).

1 (C) Section 626 of the Fair Credit Report-
2 ing Act (15 U.S.C. 1681u) is amended by strik-
3 ing subsection (d).

4 (D) Section 627 of the Fair Credit Report-
5 ing Act (15 U.S.C. 1681v) is amended by strik-
6 ing subsection (c).

7 (e) JUDICIAL REVIEW.—

8 (1) PETITION.—Not later than 20 days after
9 any person receives a national security, or at any
10 time before the return date specified in the letter,
11 whichever period is longer, such person may file, in
12 the district court of the United States for the judi-
13 cial district within which such person resides, is
14 found, or transacts business, a petition for such
15 court to modify or set aside such letter. The time al-
16 lowed for compliance with the letter in whole or in
17 part as deemed proper and ordered by the court
18 shall not run while the petition is pending in the
19 court. The petition shall specify each ground upon
20 which the petitioner relies in seeking relief, and may
21 be based upon any failure of the letter to comply
22 with this section or upon any constitutional or other
23 legal right or privilege of such person.

24 (2) NONDISCLOSURE.—

1 (A) IN GENERAL.—A person prohibited by
2 law from disclosing information about the na-
3 tional security letter may file, in the district
4 court of the United States for the judicial dis-
5 trict within which such person resides, is found,
6 or transacts business, a petition for the court to
7 set aside the nondisclosure requirement. Such
8 petition shall specify each ground upon which
9 the petitioner relies in seeking relief, and may
10 be based upon any failure of the nondisclosure
11 requirement to comply with this section or upon
12 any constitutional or other legal right or privi-
13 lege of such person.

14 (B) STANDARD.—The court shall set aside
15 the nondisclosure requirement unless the court
16 determines that the nondisclosure requirement
17 complies with this section and does not violate
18 any constitutional or other legal right or privi-
19 lege of such person.

20 (3) DISCLOSURE OF CLASSIFIED MATERIAL.—

21 In making a determination under this subsection,
22 unless the court finds that such disclosure would not
23 assist in determining any legal or factual issue perti-
24 nent to the case, the court shall disclose to the peti-
25 tioner, the counsel of the petitioner, or both, under

1 the procedures and standards provided in the Classi-
2 fied Information Procedures Act (18 U.S.C. App.),
3 any classified portions of the application, order, or
4 other related materials.

5 (f) USE OF INFORMATION.—

6 (1) IN GENERAL.—

7 (A) CONSENT.—Information acquired from
8 a national security letter concerning any United
9 States person may be used and disclosed by
10 Federal officers and employees without the con-
11 sent of the United States person only in accord-
12 ance with this subsection.

13 (B) LAWFUL PURPOSE.—No information
14 acquired by a national security letter may be
15 used or disclosed by Federal officers or employ-
16 ees except for lawful purposes.

17 (2) DISCLOSURE FOR LAW ENFORCEMENT PUR-
18 POSES.—No information acquired by a national se-
19 curity letter shall be disclosed for law enforcement
20 purposes unless such disclosure is accompanied by a
21 statement that such information, or any information
22 derived therefrom, may only be used in a criminal
23 proceeding with the advance authorization of the At-
24 torney General.

1 (3) NOTIFICATION OF INTENDED DISCLOSURE
2 BY THE UNITED STATES.—Whenever the United
3 States intends to enter into evidence or otherwise
4 use or disclose in any trial, hearing, or other pro-
5 ceeding in or before any court, department, officer,
6 agency, regulatory body, or other authority of the
7 United States against an aggrieved person any infor-
8 mation obtained by or derived from a national secu-
9 rity letter, the United States shall, before the trial,
10 hearing, or other proceeding or at a reasonable time
11 before an effort to so disclose or so use this informa-
12 tion or submit it in evidence, notify the aggrieved
13 person and the court or other authority in which the
14 information is to be disclosed or used that the
15 United States intends to so disclose or so use such
16 information.

17 (4) NOTIFICATION OF INTENDED DISCLOSURE
18 BY STATE OR POLITICAL SUBDIVISION.—Whenever a
19 State or political subdivision of a State intends to
20 enter into evidence or otherwise use or disclose in
21 any trial, hearing, or other proceeding in or before
22 any court, department, officer, agency, regulatory
23 body, or other authority of the State or political sub-
24 division against an aggrieved person any information
25 obtained or derived from a request pursuant to this

1 section, the State or political subdivision thereof
2 shall notify the aggrieved person, the court or other
3 authority in which the information is to be disclosed
4 or used, and the Attorney General that the State or
5 political subdivision thereof intends to so disclose or
6 so use such information.

7 (5) MOTION TO SUPPRESS.—

8 (A) IN GENERAL.—Any aggrieved person
9 against whom evidence obtained or derived from
10 a national security letter is to be, or has been,
11 introduced or otherwise used or disclosed in any
12 trial, hearing, or other proceeding in or before
13 any court, department, officer, agency, regu-
14 latory body, or other authority of the United
15 States, or a State or political subdivision there-
16 of, may move to suppress the evidence obtained
17 or derived from the request, as the case may be,
18 on the grounds that—

19 (i) the information was acquired in
20 violation of the Constitution or laws of the
21 United States; or

22 (ii) the request was not in conformity
23 with the requirements of this section.

24 (B) TIMING.—A motion under subpara-
25 graph (A) shall be made before the trial, hear-

1 ing, or other proceeding unless there was no op-
2 portunity to make such a motion or the ag-
3 grieved person concerned was not aware of the
4 grounds of the motion.

5 (6) JUDICIAL REVIEW.—

6 (A) IN GENERAL.—Whenever—

7 (i) a court or other authority is noti-
8 fied pursuant to paragraph (3) or (4);

9 (ii) a motion is made pursuant to
10 paragraph (5); or

11 (iii) any motion or request is made by
12 an aggrieved person pursuant to any other
13 statute or rule of the United States or any
14 State before any court or other authority
15 of the United States or any State to—

16 (I) discover or obtain materials
17 relating to a request issued pursuant
18 to this section; or

19 (II) discover, obtain, or suppress
20 evidence or information obtained or
21 derived from a request issued pursu-
22 ant to this section;

23 the United States district court or, where
24 the motion is made before another author-
25 ity, the United States district court in the

1 same district as the authority shall, not-
2 withstanding any other provision of law
3 and if the Attorney General files an affi-
4 davit under oath that disclosure would
5 harm the national security of the United
6 States, review in camera the materials as
7 may be necessary to determine whether the
8 request was lawful.

9 (B) DISCLOSURE.—In making a deter-
10 mination under subparagraph (A), unless the
11 court finds that such disclosure would not assist
12 in determining any legal or factual issue perti-
13 nent to the case, the court shall disclose to the
14 aggrieved person, the counsel of the aggrieved
15 person, or both, under the procedures and
16 standards provided in the Classified Informa-
17 tion Procedures Act (18 U.S.C. App.), any clas-
18 sified portions of the application, order, or
19 other related materials, or evidence or informa-
20 tion obtained or derived from the order.

21 (7) EFFECT OF DETERMINATION OF LAWFUL-
22 NESS.—

23 (A) UNLAWFUL ORDERS.—If the United
24 States district court determines pursuant to
25 paragraph (6) that the national security letter

1 was not in compliance with the Constitution or
2 laws of the United States, the court may, in ac-
3 cordance with the requirements of law, suppress
4 the evidence which was unlawfully obtained or
5 derived from the request or otherwise grant the
6 motion of the aggrieved person.

7 (B) **LAWFUL ORDERS.**—If the court deter-
8 mines that the request was lawful, it may deny
9 the motion of the aggrieved person except to
10 the extent that due process requires discovery
11 or disclosure.

12 (8) **BINDING FINAL ORDERS.**—Orders granting
13 motions or requests under paragraph (6), decisions
14 under this section that a national security letter was
15 not lawful, and orders of the United States district
16 court requiring review or granting disclosure of ap-
17 plications, orders, or other related materials shall be
18 final orders and binding upon all courts of the
19 United States and the several States except a
20 United States court of appeals or the Supreme
21 Court.

22 (g) **DEFINITIONS.**—In this Act and in each provision
23 of law authorizing national security letters—

24 (1) the term “agent of a foreign power” has the
25 meaning given such term by section 101(b) of the

1 Foreign Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1801(b));

3 (2) the term “aggrieved person” means a per-
4 son whose name, address, length of service, or local
5 or long distance toll records were sought or obtained
6 under this section; and

7 (3) the term “foreign power” has the meaning
8 given such term by section 101(a) of the Foreign In-
9 telligence Surveillance Act of 1978 (50 U.S.C.
10 1801(a)).

11 **SEC. 4. CAUSE OF ACTION FOR MISUSE OF NATIONAL SECU-
12 RITY LETTERS.**

13 A person to whom records requested by a national
14 security letter pertains may, in a civil action against any
15 person issuing or obtaining the issuing of such letter, ob-
16 tain money damages equal to the greater of the actual
17 damages or \$50,000, if the national security letter was
18 issued contrary to law or the certification on which is was
19 based was without factual foundation.

20 **SEC. 5. SUNSET OF PATRIOT ACT CHANGES TO NATIONAL
21 SECURITY LETTER AUTHORITY.**

22 (a) IN GENERAL.—The authority to issue national
23 security letters shall revert 5 years after the date of the
24 enactment of this Act to that provided by law on October
25 25, 2001.

1 (b) REPORT.—Not later than the date on which the
2 authority to issue national security letters ceases under
3 this Act, the Attorney General shall report to Congress
4 on whether, and if so, how, the authority to issue national
5 security letters furthered investigations as compared to al-
6 ternative methods for obtaining relevant information.

7 **SEC. 6. MINIMIZATION PROCEDURES, DISPOSAL OF**
8 **WRONGLY ACQUIRED INFORMATION, AND**
9 **CONGRESSIONAL REPORTING.**

10 (a) MINIMIZATION PROCEDURES.—The Attorney
11 General shall establish minimization and destruction pro-
12 cedures to ensure that information obtained pursuant to
13 a national security letter regarding persons that are no
14 longer of interest in an authorized investigation is de-
15 stroyed. Such procedures shall be transmitted to the Per-
16 manent Select Committee on Intelligence and the Com-
17 mittee on the Judiciary of the House of Representatives
18 and the Select Committee on Intelligence and the Com-
19 mittee on the Judiciary of the Senate in unclassified for-
20 mat within 3 months of passage, and shall include—

21 (1) specific procedures, that are reasonably de-
22 signed in light of the purpose and technique of the
23 particular surveillance, to minimize the acquisition
24 and retention, and prohibit the dissemination, of
25 nonpublicly available information concerning

1 unconsenting United States persons consistent with
2 the need of the United States to obtain, produce,
3 and disseminate foreign intelligence information;

4 (2) procedures that provide for the destruction
5 of information relating to United States persons that
6 do not reflect activity that would lead a reasonable
7 agent or analyst to believe that the person is an
8 agent of a foreign power as defined in 50 U.S.C.
9 1801(b);

10 (3) procedures for identifying whether the infor-
11 mation returned in response to a national security
12 letter exceeds the scope of the original request and
13 further procedures for returning or destroying the
14 superfluous information as soon as possible and be-
15 fore it is entered into any database or used in any
16 way; and

17 (4) deadlines for destruction, minimization, or
18 return of information described in paragraphs (1)
19 through (3), that require such destruction, mini-
20 mization, or return as soon as possible.

21 (b) DISPOSAL OF WRONGLY ACQUIRED INFORMA-
22 TION.—Each authority of the Government shall have the
23 duty to dispose of all private information obtained without
24 legal authority under color of a national security letter.

1 (c) REPORT.—The Attorney General shall, semiannu-
2 ally, submit to the Permanent Select Committee on Intel-
3 ligence and the Committee on the Judiciary of the House
4 of Representatives and the Select Committee on Intel-
5 ligence and the Committee on the Judiciary of the Senate
6 a unclassified report containing—

7 (1) the total number of national security letters
8 issued during the preceding six months, in unclassi-
9 fied form;

10 (2) for each of the laws authorizing national se-
11 curity letters, the total number of national security
12 letters issued during the preceding six months under
13 the authority of that law;

14 (3) for each of the laws authorizing national se-
15 curity letters, the total number of national security
16 letters issued during the preceding six months under
17 the authority of that law for United States persons;

18 (4) for each of the laws authorizing national se-
19 curity letters, the total number of national security
20 letters issued during the preceding six months under
21 the authority of each such subparagraph for non-
22 United States persons;

23 (5) a description of the minimization procedures
24 adopted by the Attorney General pursuant to sub-
25 section (c), including any changes to minimization

1 procedures previously adopted by the Attorney Gen-
2 eral;

3 (6) a summary of the challenges made by re-
4 cipients of national security letters in court;

5 (7) a description of the extent to which infor-
6 mation obtained with national security letters has
7 aided investigations and an explanation of how such
8 information has aided such investigations; and

9 (8) a description of the extent to which infor-
10 mation obtained with national security letters has
11 aided prosecutions and an explanation of how such
12 information has been used in or aided such prosecu-
13 tions.

14 **SEC. 7. REQUIREMENTS RELATING TO CLAIMS OF EMER-**
15 **GENCY IN CONNECTION WITH CERTAIN NA-**
16 **TIONAL SECURITY LETTERS.**

17 Section 2702 of title 18, United States Code, is
18 amended—

19 (1) in subsection (b), so that paragraph (8)
20 reads as follows:

21 “(8) to a governmental entity, if the provider
22 reasonably believes that an emergency involving im-
23 mediate danger of death or serious physical injury to
24 any person justifies disclosure of the information;”;

1 (2) in subsection (c), so that paragraph (4)
2 reads as follows:

3 “(4) to a governmental entity if the provider
4 has a reasonable belief that an emergency involving
5 the imminent danger of death or serious physical in-
6 jury to any person requires disclosure without delay
7 of information relating to the emergency;” and

8 (3) so that subsection (d) reads as follows:

9 “(d) REPORTING OF EMERGENCY DISCLOSURES.—
10 On a semiannual basis the Attorney General shall submit
11 to the Committee on the Judiciary of the House of Rep-
12 resentatives and the Committee on the Judiciary of the
13 Senate a report containing—

14 “(1) the number of accounts from which the
15 Department of Justice has received voluntary disclo-
16 sures under subsection (b)(8), and a summary of the
17 factual basis for each emergency disclosure; and

18 “(2) the number and type of communications
19 the Department of Justice has received by voluntary
20 disclosure under subsection (c)(4), and a summary
21 of the factual basis for each emergency disclosure.”.

○