

Union Calendar No. 240

111TH CONGRESS
2^D SESSION

H. R. 3845

[Report No. 111-383, Part I]

To extend and modify authorities needed to combat terrorism and protect civil liberties, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2009

Mr. CONYERS (for himself, Mr. NADLER of New York, Mr. SCOTT of Virginia, Mr. COHEN, Ms. HARMAN, Ms. JACKSON-LEE of Texas, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Permanent Select Committee on Intelligence and 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

DECEMBER 16, 2009

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 16, 2009

Referral to the Permanent Select Committee on Intelligence and the Committee on Financial Services extended for a period ending not later than January 29, 2010

JANUARY 29, 2010

Additional sponsors: Ms. SCHAKOWSKY, Mr. HOLT, Mr. MICHAUD, and Ms. PINGREE of Maine

JANUARY 29, 2010

The Permanent Select Committee on Intelligence and the Committee on Financial Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on October 20, 2009]

A BILL

To extend and modify authorities needed to combat terrorism
and protect civil liberties, 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; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“USA PATRIOT Amendments Act of 2009”.*

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

Sec. 1. Short title; table of contents.

TITLE I—USA PATRIOT ACT RELATED AMENDMENTS

Sec. 101. Roving wiretaps.

Sec. 102. Extension of sunset of sections 206 and 215 of USA PATRIOT Act.

Sec. 103. Access to certain tangible things under section 501 of the Foreign Intel-
ligence Surveillance Act of 1978.

Sec. 104. Sunset relating to individual terrorists as agents of foreign powers.

Sec. 105. Audits.

Sec. 106. Criminal “sneak and peek” searches.

Sec. 107. Orders for pen registers and trap and trace devices for foreign intel-
ligence purposes.

Sec. 108. Public reporting on the Foreign Intelligence Surveillance Act of 1978.

Sec. 109. Challenges to nationwide orders for electronic evidence.

Sec. 110. Report on civil liberties and privacy protections.

TITLE II—NATIONAL SECURITY LETTER REFORM

Sec. 201. Short title.

Sec. 202. Sunset.

Sec. 203. National security letter defined.

Sec. 204. Modification of standard.

Sec. 205. Notification of right to judicial review of nondisclosure order.

Sec. 206. Disclosure for law enforcement purposes.

Sec. 207. Judicial review of national security letter nondisclosure order.

Sec. 208. Minimization.

Sec. 209. Public reporting on National Security Letters.

TITLE III—GENERAL PROVISIONS

Sec. 301. Sense of Congress on level of classification of certain programs.

1 **TITLE I—USA PATRIOT ACT**
2 **RELATED AMENDMENTS**

3 **SEC. 101. ROVING WIRETAPS.**

4 *Section 105(c)(2)(B) of the Foreign Intelligence Sur-*
5 *veillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended*
6 *by striking “finds, based upon specific facts” and inserting*
7 *“finds—*

8 *“(i) that the target of the application*
9 *is a foreign power, as defined in paragraph*
10 *(1), (2), (3), or (6) of section 101(a), an*
11 *agent of such a foreign power, or a specific*
12 *individual; and*

13 *“(ii) based upon specific facts”.*

14 **SEC. 102. EXTENSION OF SUNSET OF SECTIONS 206 AND 215**
15 **OF USA PATRIOT ACT.**

16 *Section 102(b)(1) of the USA PATRIOT Improvement*
17 *and Reauthorization Act of 2005 (18 U.S.C. 2510 note) is*
18 *amended by striking “December 31, 2009” and inserting*
19 *“December 31, 2013”.*

20 **SEC. 103. ACCESS TO CERTAIN TANGIBLE THINGS UNDER**
21 **SECTION 501 OF THE FOREIGN INTELLIGENCE**
22 **SURVEILLANCE ACT OF 1978.**

23 *(a) FACTUAL BASIS FOR AND ISSUANCE OF ORDERS.—*

1 (1) *IN GENERAL.*—Section 501 of the Foreign In-
2 telligence Surveillance Act of 1978 (50 U.S.C. 1861)
3 is amended—

4 (A) in the section heading, by striking
5 “**CERTAIN BUSINESS RECORDS**” and insert-
6 ing “**TANGIBLE THINGS**”; and

7 (B) in subsection (b)(2)(A)—

8 (i) by striking “a statement of facts
9 showing” and inserting “a statement of the
10 facts and circumstances relied upon by the
11 applicant to justify the belief of the appli-
12 cant”; and

13 (ii) by striking “clandestine intel-
14 ligence activities” and all that follows and
15 inserting “clandestine intelligence activi-
16 ties;”.

17 (2) *TECHNICAL AND CONFORMING AMEND-*
18 *MENTS.*—

19 (A) *TITLE HEADING.*—Title V of the For-
20 eign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1861 et seq.) is amended in the title head-
22 ing by striking “**CERTAIN BUSINESS**
23 **RECORDS**” and inserting “**TANGIBLE**
24 **THINGS**”.

1 (B) *TABLE OF CONTENTS.*—*The table of*
 2 *contents in the first section of the Foreign Intel-*
 3 *ligence Surveillance Act of 1978 (50 U.S.C. 1801*
 4 *et seq.) is amended by striking the items relating*
 5 *to title V and section 501 and inserting the fol-*
 6 *lowing:*

“TITLE V—ACCESS TO TANGIBLE THINGS FOR FOREIGN
 INTELLIGENCE PURPOSES

“Sec. 501. Access to tangible things for foreign intelligence and international ter-
 rorism investigations.”.

7 (b) *JUDICIAL REVIEW OF FISA ORDERS.*—*Section*
 8 *501 of the Foreign Intelligence Surveillance Act of 1978 (50*
 9 *U.S.C. 1861) is amended—*

10 (1) *in subsection (c)(2)—*

11 (A) *in subparagraph (D) by striking*
 12 *“things; and” and inserting “things;”;*

13 (B) *in subparagraph (E), by striking “sub-*
 14 *section (a).” and inserting “subsection (a); and”;*
 15 *and*

16 (C) *by adding at the end the following new*
 17 *subparagraph:*

18 “(F) *shall direct the applicant to provide*
 19 *notice to each person receiving such order of—*

20 “(i) *the right to challenge the legality*
 21 *of a production order or nondisclosure order*
 22 *by filing a petition in accordance with sub-*
 23 *section (f); and*

1 “(ii) the procedures to follow to file
2 such petition in accordance with such sub-
3 section.”; and

4 (2) in subsection (f)(2)—

5 (A) in subparagraph (A)—

6 (i) in clause (i)—

7 (I) by striking “a production
8 order” and inserting “a production
9 order or nondisclosure order”; and

10 (II) by striking “Not less than 1
11 year” and all that follows;

12 (ii) in clause (ii), by striking “produc-
13 tion order or nondisclosure”; and

14 (B) in subparagraph (C)—

15 (i) by striking clause (ii); and

16 (ii) by redesignating clause (iii) as
17 clause (ii).

18 (c) *MINIMIZATION PROCEDURES*.—Section 501(g) of
19 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
20 1861(g)) is amended—

21 (1) by redesignating paragraph (2) as para-
22 graph (3); and

23 (2) by inserting after paragraph (1) the fol-
24 lowing new paragraph:

1 “(2) *COMPLIANCE ASSESSMENT.*—*At or before*
2 *the end of the period of time for the production of*
3 *tangible things under an order approved under this*
4 *section or at any time after the production of tangible*
5 *things under such order, a judge may assess compli-*
6 *ance with the minimization procedures required to be*
7 *followed under such order by reviewing the cir-*
8 *cumstances under which information concerning*
9 *United States persons was retained or disseminated.”.*

10 *(d) REQUIREMENTS FOR ORDERS FOR CERTAIN*
11 *RECORDS FROM LIBRARIES.*—*Section 501 of the Foreign*
12 *Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is*
13 *amended—*

14 *(1) in subsection (b)(2)—*

15 *(A) by redesignating subparagraph (B) as*
16 *subparagraph (C); and*

17 *(B) by inserting after subparagraph (A) the*
18 *following new subparagraph:*

19 *“(B) if the records sought contain bookseller*
20 *information, or are from a library (as defined in*
21 *section 213(1) of the Library Services and Tech-*
22 *nology Act (20 U.S.C. 9122(1))) and contain*
23 *personally identifiable information about a pa-*
24 *tron of such library, a statement of specific and*

1 *articulable facts showing that there are reason-*
2 *able grounds to believe that the records sought—*

3 *“(i) are relevant to an authorized in-*
4 *vestigation (other than a threat assessment)*
5 *conducted in accordance with subsection*
6 *(a)(2) to obtain foreign intelligence infor-*
7 *mation not concerning a United States per-*
8 *son or to protect against international ter-*
9 *rorism or clandestine intelligence activities;*
10 *and*

11 *“(ii)(I) pertain to a foreign power or*
12 *an agent of a foreign power;*

13 *“(II) are relevant to the activities of a*
14 *suspected agent of a foreign power who is*
15 *the subject of such authorized investigation;*
16 *or*

17 *“(III) pertain to an individual in con-*
18 *tact with, or known to, a suspected agent of*
19 *a foreign power who is the subject of such*
20 *authorized investigation; and”;* and

21 (2) *by adding at the end the following new sub-*
22 *section:*

23 *“(i) BOOKSELLER INFORMATION DEFINED.—In this*
24 *section, the term ‘bookseller information’ means personally*
25 *identifiable information concerning the purchase (including*

1 *subscription purchases) or rental of books, journals, or mag-*
 2 *azines, whether in print or digitally.”.*

3 **SEC. 104. SUNSET RELATING TO INDIVIDUAL TERRORISTS**
 4 **AS AGENTS OF FOREIGN POWERS.**

5 *Section 6001(b) of the Intelligence Reform and Ter-*
 6 *rorism Prevention Act of 2004 (50 U.S.C. 1801 note; Public*
 7 *Law 108–458) is amended—*

8 *(1) in paragraph (1)—*

9 *(A) by striking “the amendment made by*
 10 *subsection (a) shall cease to have effect” and in-*
 11 *serting “effective”; and*

12 *(B) by striking the period and inserting*
 13 *“—*

14 *“(A) subparagraph (C) of section 101(b)(1)*
 15 *of the Foreign Intelligence Surveillance Act of*
 16 *1978 (50 U.S.C. 1801(b)(1)) is repealed;*

17 *“(B) subparagraphs (D) and (E) of such*
 18 *section are redesignated as subparagraphs (C)*
 19 *and (D), respectively;*

20 *“(C) paragraph (2) of section 601(a) of such*
 21 *Act (50 U.S.C. 1871(a)) is repealed; and*

22 *“(D) paragraphs (3), (4), and (5) of such*
 23 *section are redesignated as paragraphs (2), (3),*
 24 *and (4), respectively.”; and*

25 *(2) in paragraph (2)—*

1 (A) by striking “*EXCEPTION.—With respect*
2 *to*” and inserting “*EXCEPTION.—*

3 “(A) *EXISTING INVESTIGATIONS.—With re-*
4 *spect to*”; and

5 (B) by adding at the end the following new
6 *subparagraph:*

7 “(B) *REPORTS.—Notwithstanding the re-*
8 *peals made by paragraph (1), the first report re-*
9 *quired under section 601(a) of the Foreign Intel-*
10 *ligence Surveillance Act of 1978 (50 U.S.C.*
11 *1871(a)) that is submitted after the effective date*
12 *of such repeals shall include the number of indi-*
13 *viduals covered by an order issued pursuant to*
14 *section 101(b)(1)(C) of such Act (as in effect on*
15 *the day before such effective date).”.*

16 **SEC. 105. AUDITS.**

17 (a) *TANGIBLE THINGS.—Section 106A of the USA PA-*
18 *TRIOT Improvement and Reauthorization Act of 2005*
19 *(Public Law 109–177; 120 Stat. 200) is amended—*

20 (1) *in subsection (b)—*

21 (A) *in paragraph (1), by striking “2006”*
22 *and inserting “2013”; and*

23 (B) *in paragraph (5)(C), by striking “cal-*
24 *endar year 2006” and inserting “each of cal-*
25 *endar years 2006 through 2013”;*

1 (2) *in subsection (c), by adding at the end the*
2 *following:*

3 “(3) *CALENDAR YEARS 2007 THROUGH 2009.—*
4 *Not later than December 31, 2010, the Inspector Gen-*
5 *eral of the Department of Justice shall submit to the*
6 *Committee on the Judiciary and the Permanent Se-*
7 *lect Committee on Intelligence of the House of Rep-*
8 *resentatives and the Committee on the Judiciary and*
9 *the Select Committee on Intelligence of the Senate a*
10 *report containing the results of the audit conducted*
11 *under this section for calendar years 2007 through*
12 *2009.*”

13 “(4) *CALENDAR YEARS 2010 THROUGH 2013.—*
14 *Not later than December 31, 2011, and annually*
15 *thereafter until December 31, 2014, the Inspector Gen-*
16 *eral of the Department of Justice shall submit to the*
17 *Committee on the Judiciary and the Permanent Se-*
18 *lect Committee on Intelligence of the House of Rep-*
19 *resentatives and the Committee on the Judiciary and*
20 *the Select Committee on Intelligence of the Senate a*
21 *report containing the results of the audit conducted*
22 *under this section for the preceding calendar year.”;*

23 (3) *in subsection (d)—*

1 (A) in paragraph (1), by striking “or
2 (c)(2)” and inserting “, (c)(2), (c)(3), or (c)(4)”;
3 and

4 (B) in paragraph (2), by striking “and
5 (c)(2)” and inserting “, (c)(2), (c)(3), or (c)(4)”;
6 and

7 (4) in subsection (e), by striking “and (c)(2)”
8 and inserting “, (c)(2), (c)(3), or (c)(4)”.

9 (b) NATIONAL SECURITY LETTERS.—Section 119 of
10 the USA PATRIOT Improvement and Reauthorization Act
11 of 2005 (Public Law 109–177; 120 Stat. 219) is amended—

12 (1) in subsection (b)(1), by striking “2006” and
13 inserting “2013”;

14 (2) in subsection (c), by adding at the end the
15 following:

16 “(3) CALENDAR YEARS 2007 THROUGH 2009.—
17 Not later than December 31, 2010, the Inspector Gen-
18 eral of the Department of Justice shall submit to the
19 Committee on the Judiciary and the Permanent Se-
20 lect Committee on Intelligence of the House of Rep-
21 resentatives and the Committee on the Judiciary and
22 the Select Committee on Intelligence of the Senate a
23 report containing the results of the audit conducted
24 under this section for calendar years 2007 through
25 2009.

1 “(4) *CALENDAR YEARS 2010 THROUGH 2013.*—
2 *Not later than December 31, 2011, and annually*
3 *thereafter until December 31, 2014, the Inspector Gen-*
4 *eral of the Department of Justice shall submit to the*
5 *Committee on the Judiciary and the Permanent Se-*
6 *lect Committee on Intelligence of the House of Rep-*
7 *resentatives and the Committee on the Judiciary and*
8 *the Select Committee on Intelligence of the Senate a*
9 *report containing the results of the audit conducted*
10 *under this section for the previous calendar year.”;*

11 *(3) in subsection (d)—*

12 *(A) in paragraph (1), by striking “or*
13 *(c)(2)” and inserting “, (c)(2), (c)(3), or (c)(4)”;*
14 *and*

15 *(B) in paragraph (2), by striking “or*
16 *(c)(2)” and inserting “, (c)(2), (c)(3), or (c)(4)”;*
17 *and*

18 *(4) in subsection (e), by striking “or (c)(2)” and*
19 *inserting “, (c)(2), (c)(3), or (c)(4)”.*

20 *(c) PEN REGISTERS AND TRAP AND TRACE DE-*
21 *VICES.—*

22 *(1) AUDITS.—The Inspector General of the De-*
23 *partment of Justice shall perform comprehensive au-*
24 *ditions of the effectiveness and use by the Federal Gov-*
25 *ernment, including any improper or illegal use, of*

1 *pen registers and trap and trace devices under title*
2 *IV of the Foreign Intelligence Surveillance Act of*
3 *1978 (50 U.S.C. 1841 et seq.) and section 3122 of title*
4 *18, United States Code, during the period beginning*
5 *on January 1, 2007 and ending on December 31,*
6 *2012.*

7 (2) *REQUIREMENTS.—The audits required under*
8 *paragraph (1) shall include—*

9 (A) *an examination of each instance in*
10 *which the Attorney General or any other attor-*
11 *ney for the Government submitted an applica-*
12 *tion for an order or extension of an order under*
13 *title IV of the Foreign Intelligence Surveillance*
14 *Act of 1978, including whether the court granted,*
15 *modified, or denied the application (including*
16 *an examination of the basis for any modification*
17 *or denial);*

18 (B) *an examination of each instance in*
19 *which the Attorney General authorized the in-*
20 *stallation and use of a pen register or trap and*
21 *trace device on an emergency basis under section*
22 *403 of the Foreign Intelligence Surveillance Act*
23 *of 1978 (50 U.S.C. 1843);*

24 (C) *whether the Federal Bureau of Inves-*
25 *tigation requested that the Department of Justice*

1 submit an application for an order or extension
2 of an order under title IV of the Foreign Intel-
3 ligence Surveillance Act of 1978 and the request
4 was not submitted to the court (including an ex-
5 amination of the basis for not submitting the ap-
6 plication);

7 (D) whether bureaucratic or procedural im-
8 pediments to the use of pen registers and trap
9 and trace devices under title IV of the Foreign
10 Intelligence Surveillance Act of 1978 prevent the
11 Federal Bureau of Investigation from taking full
12 advantage of the authorities provided under that
13 title;

14 (E) any noteworthy facts or circumstances
15 relating to the use of a pen register or trap and
16 trace device under title IV of the Foreign Intel-
17 ligence Surveillance Act of 1978, including any
18 improper or illegal use of the authority provided
19 under that title; and

20 (F) an examination of the effectiveness of
21 the authority under title IV of the Foreign Intel-
22 ligence Surveillance Act of 1978 as an investiga-
23 tive tool, including—

24 (i) the importance of the information
25 acquired to the intelligence activities of the

1 *Federal Bureau of Investigation or any*
2 *other department or agency of the Federal*
3 *Government;*

4 *(ii) the manner in which the informa-*
5 *tion is collected, retained, analyzed, and*
6 *disseminated by the Federal Bureau of In-*
7 *vestigation, including any direct access to*
8 *the information provided to any other de-*
9 *partment, agency, or instrumentality of*
10 *Federal, State, local, or tribal governments*
11 *or any private sector entity;*

12 *(iii) with respect to calendar years*
13 *2010 through 2012, an examination of the*
14 *minimization procedures used in relation to*
15 *pen registers and trap and trace devices*
16 *under title IV of the Foreign Intelligence*
17 *Surveillance Act of 1978 and whether the*
18 *minimization procedures protect the con-*
19 *stitutional rights of United States persons;*

20 *(iv) whether, and how often, the Fed-*
21 *eral Bureau of Investigation used informa-*
22 *tion acquired under a pen register or trap*
23 *and trace device under title IV of the For-*
24 *oreign Intelligence Surveillance Act of 1978 to*
25 *produce an analytical intelligence product*

1 *for distribution within the Federal Bureau*
2 *of Investigation, to the intelligence commu-*
3 *nity (as defined in section 3(4) of the Na-*
4 *tional Security Act of 1947 (50 U.S.C.*
5 *401a(4))), or to other Federal, State, local,*
6 *or tribal government departments, agencies,*
7 *or instrumentalities; and*

8 *(v) whether, and how often, the Federal*
9 *Bureau of Investigation provided informa-*
10 *tion acquired under a pen register or trap*
11 *and trace device under title IV of the For-*
12 *ign Intelligence Surveillance Act of 1978 to*
13 *law enforcement authorities for use in*
14 *criminal proceedings.*

15 (3) *SUBMISSION DATES.*—

16 (A) *PRIOR YEARS.*—*Not later than Decem-*
17 *ber 31, 2010, the Inspector General of the De-*
18 *partment of Justice shall submit to the Com-*
19 *mittee on the Judiciary and the Select Com-*
20 *mittee on Intelligence of the Senate and the Com-*
21 *mittee on the Judiciary and the Permanent Se-*
22 *lect Committee on Intelligence of the House of*
23 *Representatives a report containing the results of*
24 *the audit conducted under this section for cal-*
25 *endar years 2007 thorough 2009.*

1 (B) *CALENDAR YEARS 2010 THROUGH*
2 *2013.—Not later than December 31, 2011, and*
3 *annually thereafter until December 31, 2014, the*
4 *Inspector General of the Department of Justice*
5 *shall submit to the Committee on the Judiciary*
6 *and the Select Committee on Intelligence of the*
7 *Senate and the Committee on the Judiciary and*
8 *the Permanent Select Committee on Intelligence*
9 *of the House of Representatives a report con-*
10 *taining the results of the audit conducted under*
11 *this section for the previous calendar year.*

12 (4) *PRIOR NOTICE TO ATTORNEY GENERAL AND*
13 *DIRECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—*

14 (A) *NOTICE.—Not less than 30 days before*
15 *the submission of a report under subparagraph*
16 *(A) or (B) of paragraph (3), the Inspector Gen-*
17 *eral of the Department of Justice shall provide*
18 *the report to the Attorney General and the Direc-*
19 *tor of National Intelligence.*

20 (B) *COMMENTS.—The Attorney General or*
21 *the Director of National Intelligence may pro-*
22 *vide such comments to be included in a report*
23 *submitted under subparagraph (A) or (B) of*
24 *paragraph (3) as the Attorney General or the*

1 *Director of National Intelligence may consider*
2 *necessary.*

3 (5) *UNCLASSIFIED FORM.—A report submitted*
4 *under subparagraph (A) or (B) of paragraph (3) and*
5 *any comments included under paragraph (4)(B) shall*
6 *be in unclassified form, but may include a classified*
7 *annex.*

8 **SEC. 106. CRIMINAL “SNEAK AND PEEK” SEARCHES.**

9 *Section 3103a of title 18, United States Code, is*
10 *amended—*

11 (1) *in subsection (b)—*

12 (A) *in paragraph (1), by striking “may*
13 *have an adverse result (as defined in section*
14 *2705, except if the adverse results consist only of*
15 *unduly delaying a trial)” and inserting “may*
16 *endanger the life or physical safety of an indi-*
17 *vidual, result in flight from prosecution, result*
18 *in the destruction of or tampering with the evi-*
19 *dence sought under the warrant, or result in in-*
20 *timidation of potential witnesses, or is likely to*
21 *otherwise seriously jeopardize an investigation or*
22 *unduly delay a trial”;* and

23 (B) *in paragraph (3), by striking “30*
24 *days” and all that follows and inserting “7 days*
25 *after the date of its execution.”;* and

1 (2) *in subsection (c), by striking “for good cause*
2 *shown” and all that follows and inserting “upon ap-*
3 *plication of the United States Attorney for the district*
4 *seeking the delay, for additional periods of not more*
5 *than 21 days for each application, if the court finds,*
6 *for each application, reasonable cause to believe that*
7 *notice of the execution of the warrant may endanger*
8 *the life or physical safety of an individual, result in*
9 *flight from prosecution, result in the destruction of or*
10 *tampering with the evidence sought under the war-*
11 *rant, or result in intimidation of potential witnesses,*
12 *or is likely to otherwise seriously jeopardize an inves-*
13 *tigation or unduly delay a trial.”.*

14 **SEC. 107. ORDERS FOR PEN REGISTERS AND TRAP AND**
15 **TRACE DEVICES FOR FOREIGN INTEL-**
16 **LIGENCE PURPOSES.**

17 (a) *APPLICATION.*—*Section 402(c) of the Foreign In-*
18 *telligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is*
19 *amended—*

20 (1) *in paragraph (1), by striking “and” at the*
21 *end;*

22 (2) *in paragraph (2)—*

23 (A) *by striking “a certification by the ap-*
24 *plicant” and inserting “a statement of the facts*

1 *relied upon by the applicant to justify the belief*
2 *of the applicant”*; and

3 *(B) by striking the period at the end and*
4 *inserting “; and”*; and

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

6 *“(3) a statement of proposed minimization pro-*
7 *cedures.”.*

8 *(b) MINIMIZATION.—*

9 *(1) DEFINITION.—Section 401 of the Foreign In-*
10 *telligence Surveillance Act of 1978 (50 U.S.C. 1841)*
11 *is amended by adding at the end the following:*

12 *“(4) The term ‘minimization procedures’*
13 *means—*

14 *“(A) specific procedures, that are reason-*
15 *ably designed in light of the purpose and tech-*
16 *nique of an order for the installation and use of*
17 *a pen register or trap and trace device, to mini-*
18 *mize the retention, and prohibit the dissemina-*
19 *tion, of nonpublicly available information known*
20 *to concern unconsenting United States persons*
21 *consistent with the need of the United States to*
22 *obtain, produce, and disseminate foreign intel-*
23 *ligence information;*

24 *“(B) procedures that require that nonpub-*
25 *licly available information, which is not foreign*

1 intelligence information shall not be dissemi-
2 nated in a manner that identifies any United
3 States person, without such person's consent, un-
4 less such person's identity is necessary to under-
5 stand foreign intelligence information or assess
6 its importance; and

7 “(C) notwithstanding subparagraphs (A)
8 and (B), procedures that allow for the retention
9 and dissemination of information that is evi-
10 dence of a crime which has been, is being, or is
11 about to be committed and that is to be retained
12 or disseminated for law enforcement purposes.”.

13 (2) *PEN REGISTERS AND TRAP AND TRACE DE-*
14 *VICES.*—Section 402 of the *Foreign Intelligence Sur-*
15 *veillance Act of 1978 (50 U.S.C. 1842)* is amended—

16 (A) in subsection (d)(2)—

17 (i) in subparagraph (C)(i)(VII), by
18 striking “; and” and inserting “;”;

19 (ii) in subparagraph (C)(ii)(IV), by
20 striking the period at the end and inserting
21 “; and”; and

22 (iii) by adding at the end the following
23 new subparagraph:

1 “(D) shall, if the judge finds that there are
2 exceptional circumstances, direct that minimiza-
3 tion procedures be followed.”; and

4 (B) by adding at the end the following:

5 “(h) At or before the end of the period of time for which
6 the installation and use of a pen register or trap and trace
7 device is approved under an order or an extension under
8 this section, the judge may assess compliance with any ap-
9 plicable minimization procedures by reviewing the cir-
10 cumstances under which information concerning United
11 States persons was retained or disseminated.”.

12 (3) *EMERGENCIES*.—Section 403 of the *Foreign*
13 *Intelligence Surveillance Act of 1978* (50 U.S.C.
14 1843) is amended—

15 (A) by redesignating subsection (c) as sub-
16 section (d); and

17 (B) by inserting after subsection (b) the fol-
18 lowing:

19 “(c) If the Attorney General authorizes the emergency
20 installation and use of a pen register or trap and trace
21 device under this section, the Attorney General shall require
22 that minimization procedures be followed, if appropriate.”.

23 (4) *USE OF INFORMATION*.—Section 405(a)(1) of
24 the *Foreign Intelligence Surveillance Act of 1978* (50
25 U.S.C. 1845(a)(1)) is amended by inserting “and the

1 *minimization procedures under this title, if required”*
 2 *after “provisions of this section”.*

3 **SEC. 108. PUBLIC REPORTING ON THE FOREIGN INTEL-**
 4 **LIGENCE SURVEILLANCE ACT OF 1978.**

5 *Section 601 of the Foreign Intelligence Surveillance*
 6 *Act of 1978 (50 U.S.C. 1871) is amended—*

7 (1) *by redesignating subsections (b) through (e)*
 8 *as subsections (c) through (f), respectively;*

9 (2) *by inserting after subsection (a) the fol-*
 10 *lowing:*

11 “(b) *PUBLIC REPORT.—The Attorney General shall*
 12 *make publicly available the portion of each report under*
 13 *subsection (a) relating to paragraph (1) of such sub-*
 14 *section.”; and*

15 (3) *in subsection (e), as so redesignated, by strik-*
 16 *ing “subsection (c)” and inserting “subsection (d)”.*

17 **SEC. 109. CHALLENGES TO NATIONWIDE ORDERS FOR**
 18 **ELECTRONIC EVIDENCE.**

19 *Section 2703 of title 18, United States Code, is amend-*
 20 *ed by adding at the end the following:*

21 “(h) *JUDICIAL REVIEW.—A provider of electronic com-*
 22 *munication service or remote computing service may chal-*
 23 *lenge a subpoena, order, or warrant requiring disclosure of*
 24 *customer communications or records under this section*
 25 *in—*

1 “(1) the United States district court for the dis-
2 trict in which the order was issued; or

3 “(2) the United States district court for the dis-
4 trict in which the order was served.”.

5 **SEC. 110. REPORT ON CIVIL LIBERTIES AND PRIVACY PRO-**
6 **TECTIONS.**

7 *Not later than 180 days after the date of the enactment*
8 *of this Act, the President shall submit to the Committee on*
9 *the Judiciary and the Permanent Select Committee on In-*
10 *telligence of the House of Representatives and the Com-*
11 *mittee on the Judiciary and the Select Committee on Intel-*
12 *ligence of the Senate a report describing—*

13 (1) *whether operations conducted pursuant to or-*
14 *ders issued under section 501 of the Foreign Intel-*
15 *ligence Surveillance Act of 1978 (50 U.S.C. 1861)*
16 *could be modified in a manner that enhances protec-*
17 *tions for civil liberties; and*

18 (2) *the nature of any potential modifications, the*
19 *likely costs of such modifications, any technical chal-*
20 *lenges, and any potential impact on such operations.*

21 **TITLE II—NATIONAL SECURITY**
22 **LETTER REFORM**

23 **SEC. 201. SHORT TITLE.**

24 *This title may be referred to as the “National Security*
25 *Letter Reform Act of 2009”.*

1 **SEC. 202. SUNSET.**

2 (a) *IN GENERAL.*—Effective on December 31, 2013, the
3 following provisions of law are amended to read as such
4 provisions read on October 25, 2001:

5 (1) Section 2709 of title 18, United States Code.

6 (2) Section 1114(a)(5) of the Right to Financial
7 Privacy Act of 1978 (12 U.S.C. 3414(a)(5)).

8 (3) Subsections (a) and (b) of section 626 of the
9 Fair Credit Reporting Act (15 U.S.C. 1681u).

10 (4) Section 627 of the Fair Credit Reporting Act
11 (15 U.S.C. 1681v).

12 (5) Section 802 of the National Security Act of
13 1947 (50 U.S.C. 436).

14 (b) *TRANSITION PROVISION.*—Notwithstanding sub-
15 section (a), the provisions of law referred to in subsection
16 (a), as in effect on December 30, 2013, shall continue to
17 apply after December 31, 2013, with respect to any par-
18 ticular foreign intelligence investigation or with respect to
19 any particular offense or potential offense that began or oc-
20 curred before December 31, 2013.

21 **SEC. 203. NATIONAL SECURITY LETTER DEFINED.**

22 In this title, the term “national security letter” means
23 a request for information under one of the following provi-
24 sions of law:

1 (1) *Section 2709(a) of title 18, United States*
2 *Code (to access certain communication service pro-*
3 *vider records).*

4 (2) *Section 1114(a)(5)(A) of the Right to Finan-*
5 *cial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to obtain*
6 *financial institution customer records).*

7 (3) *Section 626 of the Fair Credit Reporting Act*
8 *(15 U.S.C. 1681u) (to obtain certain financial infor-*
9 *mation and consumer reports).*

10 (4) *Section 627 of the Fair Credit Reporting Act*
11 *(15 U.S.C. 1681v) (to obtain credit agency consumer*
12 *records for counterterrorism investigations).*

13 (5) *Section 802 of the National Security Act of*
14 *1947 (50 U.S.C. 436).*

15 **SEC. 204. MODIFICATION OF STANDARD.**

16 (a) *IN GENERAL.*—*A national security letter may not*
17 *be issued unless the official having authority under law to*
18 *issue that letter documents in a separate writing specific*
19 *and articulable facts showing that there are reasonable*
20 *grounds to believe that the information sought—*

21 (1) *pertains to a foreign power or an agent of*
22 *a foreign power;*

23 (2) *is relevant to the activities of a suspected*
24 *agent of a foreign power that is the subject of such au-*
25 *thorized investigation; or*

1 (3) *pertains to an individual in contact with, or*
2 *personally known to, a suspected agent of a foreign*
3 *power that is the subject of such authorized investiga-*
4 *tion.*

5 (b) *MAINTENANCE.*—*The agency under whose author-*
6 *ity a national security letter is issued shall maintain a*
7 *copy of a separate writing required under subsection (a).*

8 (c) *DEFINITIONS.*—*In this section, the terms “foreign*
9 *power” and “agent of a foreign power” have the meaning*
10 *given such terms in section 101 of the Foreign Intelligence*
11 *Surveillance Act of 1978 (50 U.S.C. 1801).*

12 **SEC. 205. NOTIFICATION OF RIGHT TO JUDICIAL REVIEW OF**
13 **NONDISCLOSURE ORDER.**

14 *If a recipient of a national security letter is subject*
15 *to a nondisclosure requirement imposed in connection with*
16 *that national security letter, the official issuing that letter*
17 *shall, simultaneously with its issuance, inform the recipient*
18 *of the right of the recipient to judicial review of that re-*
19 *quirement and that the requirement will remain in effect*
20 *during the pendency of any judicial review proceedings.*

21 **SEC. 206. DISCLOSURE FOR LAW ENFORCEMENT PURPOSES.**

22 *No information acquired by a national security letter*
23 *shall be disclosed for law enforcement purposes unless such*
24 *disclosure is accompanied by a statement that such infor-*
25 *mation may only be used in a criminal proceeding with*

1 *the advance authorization of the Attorney General, or a des-*
2 *ignee of the Attorney General at a level not lower than Sec-*
3 *tion Chief of a division of the Department of Justice.*

4 **SEC. 207. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
5 **TER NONDISCLOSURE ORDER.**

6 *Section 3511(b) of title 18, United States Code, is*
7 *amended to read as follows:*

8 *“(b) NONDISCLOSURE.—*

9 *“(1) IN GENERAL.—*

10 *“(A) NOTICE.—If a recipient of a request or*
11 *order for a report, records, or other information*
12 *under section 2709 of this title, section 626 or*
13 *627 of the Fair Credit Reporting Act (15 U.S.C.*
14 *1681u and 1681v), section 1114 of the Right to*
15 *Financial Privacy Act (12 U.S.C. 3414), or sec-*
16 *tion 802 of the National Security Act of 1947*
17 *(50 U.S.C. 436), wishes to have a court review*
18 *a nondisclosure requirement imposed in connec-*
19 *tion with the request, the recipient shall notify*
20 *the Government.*

21 *“(B) APPLICATION.—Not later than 30 days*
22 *after the date of receipt of a notification under*
23 *subparagraph (A), the Government shall apply*
24 *for an order prohibiting the disclosure of par-*
25 *ticular information about the existence or con-*

1 *tents of the relevant request or order. An appli-*
2 *cation under this subparagraph may be filed in*
3 *the district court of the United States for any*
4 *district within which the authorized investiga-*
5 *tion that is the basis for the request or order is*
6 *being conducted. The applicable nondisclosure re-*
7 *quirement shall remain in effect during the*
8 *pendency of proceedings relating to the require-*
9 *ment.*

10 “(C) *CONSIDERATION.*—*A district court of*
11 *the United States that receives an application*
12 *under subparagraph (B) should rule expedi-*
13 *tiously, and may issue a nondisclosure order for*
14 *a period of not longer than 180 days.*

15 “(D) *DENIAL.*—*If a district court of the*
16 *United States rejects an application for a non-*
17 *disclosure order or extension thereof, the non-*
18 *disclosure requirement shall no longer be in ef-*
19 *fect.*

20 “(2) *APPLICATION CONTENTS.*—*An application*
21 *for a nondisclosure order or extension thereof under*
22 *this subsection shall include a certification from the*
23 *Attorney General, Deputy Attorney General, an As-*
24 *stant Attorney General, or the Director of the Fed-*
25 *eral Bureau of Investigation, or in the case of a re-*

1 *quest by a department, agency, or instrumentality of*
2 *the Federal Government other than the Department of*
3 *Justice, the head or deputy head of the department,*
4 *agency, or instrumentality, of the existence of a result*
5 *described in subparagraphs (A) through (D) and a*
6 *statement of specific and articulable facts indicating*
7 *that, absent a prohibition of disclosure under this*
8 *subsection, there may result—*

9 *“(A) a danger to the national security of*
10 *the United States;*

11 *“(B) interference with a criminal, counter-*
12 *terrorism, or counterintelligence investigation;*

13 *“(C) interference with diplomatic relations;*
14 *or*

15 *“(D) danger to the life or physical safety of*
16 *any person.*

17 *“(3) STANDARD.—A district court of the United*
18 *States may issue a nondisclosure requirement order*
19 *or extension thereof under this subsection if the court*
20 *determines that there is reason to believe that disclo-*
21 *sure of the information subject to the nondisclosure re-*
22 *quirement during the applicable time period will have*
23 *a result described in paragraph (2).*

24 *“(4) RENEWAL.—A nondisclosure order under*
25 *this subsection may be renewed for additional periods*

1 of not longer than 180 days each, upon a determina-
2 tion by the court that a result described in paragraph
3 (2) justifies the renewal.

4 “(5) *EARLY TERMINATION OF NONDISCLOSURE*
5 *ORDER.*—A nondisclosure order the Government ap-
6 plied for under paragraph (1)(B) ceases to have effect
7 when the Government discovers that the factual basis
8 for that order has ceased to exist and the Government
9 so informs the order’s recipient. The Government
10 upon making such a discovery shall promptly so in-
11 forms the recipient.”.

12 **SEC. 208. MINIMIZATION.**

13 (a) *IN GENERAL.*—Not later than 180 days after the
14 date of enactment of this Act, the Attorney General shall—

15 (1) establish minimization procedures governing
16 the acquisition, retention, and dissemination by the
17 Federal Bureau of Investigation of any records re-
18 ceived by the Federal Bureau of Investigation in re-
19 sponse to a national security letter; and

20 (2) submit to the Committee on the Judiciary
21 and the Select Committee on Intelligence of the Senate
22 and the Committee on the Judiciary and the Perma-
23 nent Select Committee on Intelligence of the House of
24 Representatives a copy of the minimization proce-
25 dures established under paragraph (1).

1 (b) *DEFINITIONS.—In this section—*

2 (1) *the term “minimization procedures”*
3 *means—*

4 (A) *specific procedures that are reasonably*
5 *designed in light of the purpose and technique of*
6 *a national security letter, to minimize the acqui-*
7 *sition and retention, and prohibit the dissemina-*
8 *tion, of nonpublicly available information con-*
9 *cerning unconsenting United States persons (as*
10 *defined in section 101 of the Foreign Intelligence*
11 *Surveillance Act of 1978 (50 U.S.C. 1801)) con-*
12 *sistent with the need of the United States to ob-*
13 *tain, produce, and disseminate foreign intel-*
14 *ligence information;*

15 (B) *procedures that require that nonpub-*
16 *licly available information, which is not foreign*
17 *intelligence information (as defined in section*
18 *101(e)(1) of the Foreign Intelligence Surveillance*
19 *Act of 1978 (50 U.S.C. 1801(e)(1))) shall not be*
20 *disseminated in a manner that identifies any*
21 *United States person, without the consent of the*
22 *United States person, unless the identity of the*
23 *United States person is necessary to understand*
24 *foreign intelligence information or assess its im-*
25 *portance; and*

1 (C) notwithstanding subparagraphs (A) and
2 (B), procedures that allow for the retention and
3 dissemination of information that is evidence of
4 a crime which has been, is being, or is about to
5 be committed and that is to be retained or dis-
6 seminated for law enforcement purposes; and

7 (2) the term “national security letter” means a
8 request for information issued under section 2709 of
9 title 18, United States Code, section 1114(a)(5) of the
10 Right to Financial Privacy Act of 1978 (12 U.S.C.
11 3414(5)), subsection (a) or (b) of section 626 of the
12 Fair Credit Reporting Act (15 U.S.C. 1681u), or sec-
13 tion 627 of the Fair Credit Reporting Act (15 U.S.C.
14 1681v).

15 **SEC. 209. PUBLIC REPORTING ON NATIONAL SECURITY LET-**
16 **TERS.**

17 Section 118(c) of the USA PATRIOT Improvement
18 and Reauthorization Act of 2005 (18 U.S.C. 3511 note) is
19 amended—

20 (1) in paragraph (1)—

21 (A) in the matter preceding subparagraph
22 (A), by striking “concerning different United
23 States persons”; and

1 (B) in subparagraph (A), by striking “, ex-
2 cluding the number of requests for subscriber in-
3 formation”;

4 (2) by redesignating paragraph (2) as para-
5 graph (3); and

6 (3) by inserting after paragraph (1) the fol-
7 lowing:

8 “(2) *CONTENT.*—

9 “(A) *IN GENERAL.*—Except as provided in
10 subparagraph (B), each report required under
11 this subsection shall include the total number of
12 requests described in paragraph (1) requiring
13 disclosure of information concerning—

14 “(i) *United States persons;*

15 “(ii) *persons who are not United*
16 *States persons;*

17 “(iii) *persons who are the subjects of*
18 *authorized national security investigations;*
19 *or*

20 “(iv) *persons who are not the subjects*
21 *of authorized national security investiga-*
22 *tions.*

23 “(B) *EXCEPTION.*—With respect to the
24 number of requests for subscriber information
25 under section 2709 of title 18, United States

1 Code, a report required under this subsection
2 need not provide information separated into each
3 of the categories described in subparagraph
4 (A).”.

5 **TITLE III—GENERAL**
6 **PROVISIONS**

7 **SEC. 301. SENSE OF CONGRESS ON LEVEL OF CLASSIFICA-**
8 **TION OF CERTAIN PROGRAMS.**

9 It is the sense of Congress that the President should
10 periodically review the level of classification of programs
11 that make use of national security letters (as defined in sec-
12 tion 203 of this Act) or the authorities under the Foreign
13 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
14 seq.) to determine if such programs can be declassified, in
15 whole or in part, without interfering with an ongoing inves-
16 tigation or otherwise threatening national security.

Union Calendar No. 240

11TH CONGRESS
2^D Session

H. R. 3845

[Report No. 111-383, Part I]

A BILL

To extend and modify authorities needed to combat terrorism and protect civil liberties, and for other purposes.

JANUARY 29, 2010

The Permanent Select Committee on Intelligence and the Committee on Financial Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed