

111TH CONGRESS
1ST SESSION

S. 1686

To place reasonable safeguards on the use of surveillance and other authorities under the USA PATRIOT Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2009

Mr. FEINGOLD (for himself, Mr. DURBIN, Mr. TESTER, Mr. UDALL of New Mexico, Mr. BINGAMAN, Mr. SANDERS, Mr. AKAKA, Mr. WYDEN, Mr. MENENDEZ, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To place reasonable safeguards on the use of surveillance and other authorities under the USA PATRIOT Act, 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 “Judicious Use of Sur-
5 veillance Tools In Counterterrorism Efforts Act of 2009”
6 or the “JUSTICE Act”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—REASONABLE SAFEGUARDS TO PROTECT THE PRIVACY
OF AMERICANS' RECORDS

- Sec. 101. National security letter authority.
- Sec. 102. Judicial review of National Security Letters.
- Sec. 103. National Security Letter compliance program and tracking database.
- Sec. 104. Public reporting on National Security Letters.
- Sec. 105. Emergency disclosures.
- Sec. 106. Least intrusive means.
- Sec. 107. Privacy protections for section 215 business records orders.
- Sec. 108. Technical and conforming amendments.

TITLE II—REASONABLE SAFEGUARDS TO PROTECT THE PRIVACY
OF AMERICANS' HOMES

- Sec. 201. Limitation on authority to delay notice of search warrants.

TITLE III—REASONABLE SAFEGUARDS TO PROTECT THE
PRIVACY OF AMERICANS' COMMUNICATIONS

- Sec. 301. Limitations on roving wiretaps under Foreign Intelligence Surveillance Act.
- Sec. 302. Privacy protections for pen registers and trap and trace devices.
- Sec. 303. Repeal of telecommunications immunity.
- Sec. 304. Prohibition on bulk collection under FISA Amendments Act.
- Sec. 305. Prohibition on reverse targeting under FISA Amendments Act.
- Sec. 306. Limits on use of unlawfully obtained information under FISA Amendments Act.
- Sec. 307. Privacy protections for international communications of Americans collected under FISA Amendments Act.
- Sec. 308. Clarification of computer trespass authority.

TITLE IV—IMPROVEMENTS TO FURTHER CONGRESSIONAL AND
JUDICIAL OVERSIGHT

- Sec. 401. Public reporting on the Foreign Intelligence Surveillance Act.
- Sec. 402. Use of Foreign Intelligence Surveillance Act materials.
- Sec. 403. Challenges to nationwide orders for electronic evidence.

TITLE V—IMPROVEMENTS TO FURTHER EFFECTIVE, FOCUSED
INVESTIGATIONS

- Sec. 501. Modification of definition of domestic terrorism.
- Sec. 502. Clarification of intent requirement.

1 **TITLE I—REASONABLE SAFE-**
 2 **GUARDS TO PROTECT THE**
 3 **PRIVACY OF AMERICANS’**
 4 **RECORDS**

5 **SEC. 101. NATIONAL SECURITY LETTER AUTHORITY.**

6 (a) NATIONAL SECURITY LETTER AUTHORITY FOR
 7 COMMUNICATIONS SUBSCRIBER RECORDS.—

8 (1) IN GENERAL.—Section 2709 of title 18,
 9 United States Code, is amended to read as follows:

10 **“§ 2709. National Security Letter for communications**
 11 **subscriber records**

12 “(a) AUTHORIZATION.—

13 “(1) IN GENERAL.—The Director of the Fed-
 14 eral Bureau of Investigation, or a designee of the
 15 Director whose rank shall be no lower than Deputy
 16 Assistant Director at Bureau headquarters or Spe-
 17 cial Agent in Charge in a Bureau field office, may
 18 issue in writing and cause to be served on a wire or
 19 electronic communications service provider a Na-
 20 tional Security Letter requiring the production of—

21 “(A) the name of a customer or subscriber;

22 “(B) the address of a customer or sub-
 23 scriber;

24 “(C) the length of the provision of service
 25 by the provider to a customer or subscriber (in-

1 including start date) and the types of service used
2 by the customer or subscriber;

3 “(D) the telephone number or instrument
4 number, or other subscriber number or identi-
5 fier, of a customer or subscriber, including any
6 temporarily assigned network address;

7 “(E) the means and sources of payment
8 for service by the provider (including any credit
9 card or bank account number);

10 “(F) information about any service or mer-
11 chandise orders relating to the communications
12 service of a customer or subscriber, including
13 any shipping information and vendor locations;
14 and

15 “(G) the name and contact information, if
16 available, of any other wire or electronic com-
17 munications service providers facilitating the
18 communications of a customer or subscriber.

19 “(2) LIMITATION.—A National Security Letter
20 issued under this subsection may not require the
21 production of local or long distance telephone
22 records or electronic communications transactional
23 information not listed in paragraph (1).

24 “(b) REQUIREMENTS.—

1 “(1) IN GENERAL.—A National Security Letter
2 shall be issued under subsection (a) only where—

3 “(A) the records sought are relevant to an
4 ongoing and authorized national security inves-
5 tigation (other than an assessment); and

6 “(B) there are specific and articulable
7 facts providing reason to believe that the
8 records—

9 “(i) pertain to a suspected agent of a
10 foreign power or an individual who is the
11 subject of an ongoing and authorized na-
12 tional security investigation (other than an
13 assessment);

14 “(ii) pertain to an individual who has
15 been in contact with, or otherwise directly
16 linked to, a suspected agent of a foreign
17 power or an individual who is the subject
18 of an ongoing and authorized national se-
19 curity investigation (other than an assess-
20 ment); or

21 “(iii) pertain to the activities of a sus-
22 pected agent of a foreign power, where
23 those activities are the subject of an ongo-
24 ing and authorized identified national secu-
25 rity investigation (other than an assess-

1 ment), and obtaining the records is the
2 least intrusive means that could be used to
3 identify persons believed to be involved in
4 the activities.

5 “(2) INVESTIGATION.—For purposes of this
6 section, an ongoing and authorized national security
7 investigation—

8 “(A) is an investigation conducted under
9 guidelines approved by the Attorney General
10 and in accordance with Executive Order 12333
11 (or any successor order);

12 “(B) shall not be conducted with respect to
13 a United States person upon the basis of activi-
14 ties protected by the first amendment to the
15 Constitution of the United States; and

16 “(C) shall be specifically identified and re-
17 corded by an official issuing a National Security
18 Letter under subsection (a).

19 “(3) CONTENTS.—A National Security Letter
20 issued under subsection (a) shall—

21 “(A) describe the records to be produced
22 with sufficient particularity to permit the
23 records to be fairly identified;

24 “(B) include the date on which the records
25 shall be provided, which shall allow a reasonable

1 period of time within which the records can be
2 assembled and made available;

3 “(C) provide clear and conspicuous notice
4 of the principles and procedures set forth in
5 this section and section 3511 of this title, in-
6 cluding notification of any nondisclosure re-
7 quirement under subsection (c), the right to
8 contest the National Security Letter or applica-
9 ble nondisclosure requirements and procedures
10 for doing so, and a statement laying out the
11 rights and responsibilities of the recipient; and

12 “(D) not contain any requirement that
13 would be held to be unreasonable if contained
14 in a subpoena duces tecum issued by a court of
15 the United States in aid of a grand jury inves-
16 tigation or require the production of any docu-
17 mentary evidence that would be privileged from
18 disclosure if demanded by a subpoena duces
19 tecum issued by a court of the United States in
20 aid of a grand jury investigation.

21 “(4) RETENTION OF RECORDS.—The Director
22 of the Federal Bureau of Investigation shall direct
23 that a signed copy of each National Security Letter
24 issued under subsection (a) be retained in the data-

1 base required to be established under section 103 of
2 the JUSTICE Act.

3 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

4 “(1) IN GENERAL.—

5 “(A) IN GENERAL.—If a certification is
6 issued under subparagraph (B) and notice of
7 the right to judicial review under paragraph (4)
8 is provided, no wire or electronic communica-
9 tion service provider, or officer, employee, or
10 agent thereof, who receives a National Security
11 Letter issued under subsection (a), shall dis-
12 close to any person the particular information
13 specified in the certification during the time pe-
14 riod to which the certification applies, which
15 may be not longer than 1 year.

16 “(B) CERTIFICATION.—The requirements
17 of subparagraph (A) shall apply if the Director
18 of the Federal Bureau of Investigation, or a
19 designee of the Director whose rank shall be no
20 lower than Deputy Assistant Director at Bu-
21 reau headquarters or a Special Agent in Charge
22 of a Bureau field office, certifies that—

23 “(i) there is reason to believe that dis-
24 closure of particular information about the
25 existence or contents of a National Secu-

1 rity Letter issued under subsection (a)
2 during the applicable time period will re-
3 sult in—

4 “(I) endangering the life or phys-
5 ical safety of any person;

6 “(II) flight from prosecution;

7 “(III) destruction of or tam-
8 pering with evidence;

9 “(IV) intimidation of potential
10 witnesses;

11 “(V) interference with diplomatic
12 relations; or

13 “(VI) otherwise seriously endan-
14 gering the national security of the
15 United States by alerting a target, an
16 associate of a target, or the foreign
17 power of which the target is an agent,
18 of the interest of the Government in
19 the target;

20 “(ii) the harm identified under clause
21 (i) relates to the ongoing and authorized
22 national security investigation to which the
23 records sought are relevant; and

1 “(iii) the nondisclosure requirement is
2 narrowly tailored to address the specific
3 harm identified under clause (i).

4 “(2) EXCEPTION.—

5 “(A) IN GENERAL.—A wire or electronic
6 communication service provider, or officer, em-
7 ployee, or agent thereof, who receives a Na-
8 tional Security Letter issued under subsection
9 (a) may disclose information otherwise subject
10 to any applicable nondisclosure requirement
11 to—

12 “(i) those persons to whom disclosure
13 is necessary in order to comply with the
14 National Security Letter;

15 “(ii) an attorney in order to obtain
16 legal advice or assistance regarding the
17 National Security Letter; or

18 “(iii) other persons as permitted by
19 the Director of the Federal Bureau of In-
20 vestigation or the designee of the Director.

21 “(B) NONDISCLOSURE REQUIREMENT.—A
22 person to whom disclosure is made under sub-
23 paragraph (A) shall be subject to the nondisclo-
24 sure requirements applicable to a person to
25 whom a National Security Letter is issued

1 under subsection (a) in the same manner as the
2 person to whom the National Security Letter is
3 issued.

4 “(C) NOTICE.—Any recipient who discloses
5 to a person described in subparagraph (A) in-
6 formation otherwise subject to a nondisclosure
7 requirement shall inform the person of the ap-
8 plicable nondisclosure requirement.

9 “(3) EXTENSION.—The Director of the Federal
10 Bureau of Investigation, or a designee of the Direc-
11 tor whose rank shall be no lower than Deputy As-
12 sistant Director at Bureau headquarters or a Special
13 Agent in Charge in a Bureau field office, may ex-
14 tend a nondisclosure requirement for additional peri-
15 ods of not longer than 1 year if, at the time of each
16 extension, a new certification is made under para-
17 graph (1)(B) and notice is provided to the recipient
18 of the applicable National Security Letter that the
19 nondisclosure requirement has been extended and
20 the recipient has the right to judicial review of the
21 nondisclosure requirement.

22 “(4) RIGHT TO JUDICIAL REVIEW.—

23 “(A) IN GENERAL.—A wire or electronic
24 communications service provider who receives a
25 National Security Letter issued under sub-

1 section (a) shall have the right to judicial re-
2 view of any applicable nondisclosure require-
3 ment and any extension thereof.

4 “(B) TIMING.—

5 “(i) IN GENERAL.—A National Secu-
6 rity Letter issued under subsection (a)
7 shall state that if the recipient wishes to
8 have a court review a nondisclosure re-
9 quirement, the recipient shall notify the
10 Government not later than 21 days after
11 the date of receipt of the National Security
12 Letter.

13 “(ii) EXTENSION.—A notice that the
14 applicable nondisclosure requirement has
15 been extended under paragraph (3) shall
16 state that if the recipient wishes to have a
17 court review the nondisclosure require-
18 ment, the recipient shall notify the Govern-
19 ment not later than 21 days after the date
20 of receipt of the notice.

21 “(C) INITIATION OF PROCEEDINGS.—If a
22 recipient of a National Security Letter issued
23 under subsection (a) makes a notification under
24 subparagraph (B), the Government shall ini-

1 tiate judicial review under the procedures estab-
2 lished in section 3511 of this title.

3 “(5) TERMINATION.—If the facts supporting a
4 nondisclosure requirement cease to exist prior to the
5 applicable time period of the nondisclosure require-
6 ment, an appropriate official of the Federal Bureau
7 of Investigation shall promptly notify the wire or
8 electronic service provider, or officer, employee, or
9 agent thereof, subject to the nondisclosure require-
10 ment that the nondisclosure requirement is no longer
11 in effect.

12 “(d) MINIMIZATION AND DESTRUCTION.—

13 “(1) IN GENERAL.—Not later than 180 days
14 after the date of enactment of the JUSTICE Act,
15 the Attorney General shall establish minimization
16 and destruction procedures governing the acquisi-
17 tion, retention and dissemination by the Federal Bu-
18 reau of Investigation of any records received by the
19 Federal Bureau of Investigation in response to a
20 National Security Letter issued under subsection
21 (a).

22 “(2) DEFINITION.—In this subsection, the term
23 ‘minimization and destruction procedures’ means—

24 “(A) specific procedures that are reason-
25 ably designed in light of the purpose and tech-

1 nique of a National Security Letter, to mini-
2 mize the acquisition and retention, and prohibit
3 the dissemination, of nonpublicly available in-
4 formation concerning unconsenting United
5 States persons consistent with the need of the
6 United States to obtain, produce, and dissemi-
7 nate foreign intelligence information, including
8 procedures to ensure that information obtained
9 under a National Security Letter that does not
10 meet the requirements of this section or is out-
11 side the scope of the National Security Letter,
12 is returned or destroyed;

13 “(B) procedures that require that nonpub-
14 licly available information, which is not foreign
15 intelligence information (as defined in section
16 101(e)(1) of the Foreign Intelligence Surveil-
17 lance Act of 1978 (50 U.S.C. 1801(e)(1))) shall
18 not be disseminated in a manner that identifies
19 any United States person, without the consent
20 of the United States person, unless the identity
21 of the United States person is necessary to un-
22 derstand foreign intelligence information or as-
23 sess its importance; and

24 “(C) notwithstanding subparagraphs (A)
25 and (B), procedures that allow for the retention

1 and dissemination of information that is evi-
2 dence of a crime which has been, is being, or
3 is about to be committed and that is to be re-
4 tained or disseminated for law enforcement pur-
5 poses.

6 “(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL
7 BODIES BE INFORMED.—

8 “(1) IN GENERAL.—On a semiannual basis the
9 Director of the Federal Bureau of Investigation shall
10 fully inform the Permanent Select Committee on In-
11 telligence and the Committee on the Judiciary of the
12 Senate and the Select Committee on Intelligence and
13 the Committee on the Judiciary of the House of
14 Representatives concerning all National Security
15 Letters issued under subsection (a).

16 “(2) CONTENTS.—Each report under para-
17 graph (1) shall include—

18 “(A) a description of the minimization and
19 destruction procedures adopted by the Attorney
20 General under subsection (d), including any
21 changes to the minimization and destruction
22 procedures previously adopted by the Attorney
23 General;

24 “(B) a summary of any petitions or court
25 proceedings under section 3511 of this title;

1 “(C) a description of the extent to which
2 information obtained with National Security
3 Letters issued under subsection (a) has aided
4 intelligence investigations and an explanation of
5 how the information has aided the investiga-
6 tions; and

7 “(D) a description of the extent to which
8 information obtained with National Security
9 Letters issued under subsection (a) has aided
10 criminal prosecutions and an explanation of
11 how the information has aided the prosecutions.

12 “(f) USE OF INFORMATION.—

13 “(1) IN GENERAL.—

14 “(A) CONSENT.—Any information ac-
15 quired under a National Security Letter issued
16 under subsection (a) concerning any United
17 States person may be used and disclosed by
18 Federal officers and employees without the con-
19 sent of the United States person only in accord-
20 ance with the minimization and destruction pro-
21 cedures established by the Attorney General
22 under subsection (d).

23 “(B) LAWFUL PURPOSE.—No information
24 acquired under a National Security Letter
25 issued under subsection (a) may be used or dis-

1 closed by Federal officers or employees except
2 for lawful purposes.

3 “(2) DISCLOSURE FOR LAW ENFORCEMENT
4 PURPOSES.—No information acquired under a Na-
5 tional Security Letter issued under subsection (a)
6 shall be disclosed for law enforcement purposes un-
7 less the disclosure is accompanied by a statement
8 that the information, or any information derived
9 therefrom, may only be used in a criminal pro-
10 ceeding with the advance authorization of the Attor-
11 ney General.

12 “(3) NOTIFICATION OF INTENDED DISCLOSURE
13 BY THE UNITED STATES.—Whenever the United
14 States intends to enter into evidence or otherwise
15 use or disclose in any trial, hearing, or other pro-
16 ceeding in or before any court, department, officer,
17 agency, regulatory body, or other authority of the
18 United States against an aggrieved person any infor-
19 mation obtained or derived from a National Security
20 Letter issued under subsection (a), the United
21 States shall, before the trial, hearing, or other pro-
22 ceeding or at a reasonable time before an effort to
23 so disclose or so use the information or submit the
24 information in evidence, notify the aggrieved person
25 and the court or other authority in which the infor-

1 mation is to be disclosed or used that the United
2 States intends to so disclose or so use the informa-
3 tion.

4 “(4) NOTIFICATION OF INTENDED DISCLOSURE
5 BY STATE OR POLITICAL SUBDIVISION.—Whenever
6 any State or political subdivision thereof intends to
7 enter into evidence or otherwise use or disclose in
8 any trial, hearing, or other proceeding in or before
9 any court, department, officer, agency, regulatory
10 body, or other authority of the State or political sub-
11 division thereof against an aggrieved person any in-
12 formation obtained or derived from a National Secu-
13 rity Letter issued under subsection (a), the State or
14 political subdivision thereof shall notify the ag-
15 grieved person, the court or other authority in which
16 the information is to be disclosed or used, and the
17 Attorney General that the State or political subdivi-
18 sion thereof intends to so disclose or so use the in-
19 formation.

20 “(5) MOTION TO SUPPRESS.—

21 “(A) IN GENERAL.—Any aggrieved person
22 against whom evidence obtained or derived from
23 a National Security Letter issued under sub-
24 section (a) is to be, or has been, introduced or
25 otherwise used or disclosed in any trial, hear-

1 ing, or other proceeding in or before any court,
2 department, officer, agency, regulatory body, or
3 other authority of the United States, or a State
4 or political subdivision thereof, may move to
5 suppress the evidence obtained or derived from
6 the National Security Letter, as the case may
7 be, on the grounds that—

8 “(i) the information was acquired in
9 violation of the Constitution or laws of the
10 United States; or

11 “(ii) the National Security Letter was
12 not issued in accordance with the require-
13 ments of this section.

14 “(B) TIMING.—A motion under subpara-
15 graph (A) shall be made before the trial, hear-
16 ing, or other proceeding unless there was no op-
17 portunity to make such a motion or the ag-
18 grieved person concerned was not aware of the
19 grounds of the motion.

20 “(6) JUDICIAL REVIEW.—

21 “(A) IN GENERAL.—In a circumstance de-
22 scribed in subparagraph (B), a United States
23 district court or, where the motion is made be-
24 fore another authority, the United States dis-
25 trict court in the same district as the authority

1 shall, if the Attorney General files an affidavit
2 under oath that disclosure would harm the na-
3 tional security of the United States, review in
4 camera such materials as may be necessary to
5 determine whether the National Security Letter
6 was lawfully issued.

7 “(B) CIRCUMSTANCES.—A circumstance
8 described in this subparagraph is a cir-
9 cumstance in which—

10 “(i) a court or other authority is noti-
11 fied under paragraph (3) or (4);

12 “(ii) a motion is made under para-
13 graph (5); or

14 “(iii) any motion or request is made
15 by an aggrieved person under any other
16 statute or rule of the United States or any
17 State before any court or other authority
18 of the United States or any State to—

19 “(I) discover or obtain materials
20 relating to a National Security Letter
21 issued under subsection (a); or

22 “(II) discover, obtain, or sup-
23 press evidence or information obtained
24 or derived from a National Security
25 Letter issued under subsection (a).

1 “(C) DISCLOSURE.—In making a deter-
2 mination under subparagraph (A), unless the
3 court finds that disclosure would not assist in
4 determining any legal or factual issue pertinent
5 to the case, the court may disclose to the ag-
6 grievied person, the counsel for the aggrieved
7 person, or both, under the procedures and
8 standards provided in the Classified Informa-
9 tion Procedures Act (18 U.S.C. App.) or other
10 appropriate security procedures and protective
11 orders, portions of the National Security Letter,
12 or related materials.

13 “(7) EFFECT OF DETERMINATION OF LAWFUL-
14 NESS.—

15 “(A) UNLAWFUL ORDERS.—If a United
16 States district court determines under para-
17 graph (6) that a National Security Letter was
18 not issued in compliance with the Constitution
19 or laws of the United States, the court may
20 suppress the evidence that was unlawfully ob-
21 tained or derived from the National Security
22 Letter or otherwise grant the motion of the ag-
23 grievied person.

24 “(B) LAWFUL ORDERS.—If a United
25 States district court determines under para-

1 graph (6) that a National Security Letter was
2 issued in accordance with the Constitution and
3 laws of the United States, the court shall deny
4 the motion of the aggrieved person, except to
5 the extent that due process requires discovery
6 or disclosure.

7 “(8) BINDING FINAL ORDERS.—An order grant-
8 ing a motion or request under paragraph (6), a deci-
9 sion under this section that a National Security Let-
10 ter was not lawful, and an order of a United States
11 district court requiring review or granting disclosure
12 of an application, order, or other related materials
13 shall be a final order and binding upon all courts of
14 the United States and the several States, except an
15 appeal or petition to a United States court of ap-
16 peals or the Supreme Court of the United States.

17 “(g) DEFINITIONS.—In this section—

18 “(1) the terms ‘agent of a foreign power’, ‘for-
19 eign power’, and ‘United States person’ have the
20 meanings given those terms in section 101 of the
21 Foreign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1801);

23 “(2) the term ‘aggrieved person’ means a per-
24 son whose information or records were sought or ob-
25 tained under this section; and

1 “(A) the name of a customer or entity with
2 whom the financial institution has a financial
3 relationship;

4 “(B) the address of a customer or entity
5 with whom the financial institution has a finan-
6 cial relationship;

7 “(C) the length of time during which a
8 customer or entity has had an account or other
9 financial relationship with the financial institu-
10 tion (including the start date) and the type of
11 account or other financial relationship; and

12 “(D) any account number or other unique
13 identifier associated with the financial relation-
14 ship of a customer or entity to the financial in-
15 stitution.

16 “(2) LIMITATION.—A National Security Letter
17 issued under this subsection may not require the
18 production of records or information not listed in
19 paragraph (1).

20 “(b) NATIONAL SECURITY LETTER REQUIRE-
21 MENTS.—

22 “(1) IN GENERAL.—A National Security Letter
23 issued under subsection (a) shall be subject to the
24 requirements of subsections (b) through (g) of sec-
25 tion 2709 of title 18, United States Code, in the

1 same manner and to the same extent as those provi-
2 sions apply with respect to a National Security Let-
3 ter issued under section 2709(a) of title 18, United
4 States Code, to a wire or electronic communication
5 service provider.

6 “(2) REPORTING.—For any National Security
7 Letter issued under subsection (a), the semiannual
8 reports under section 2709(e) of title 18, United
9 States Code, shall also be submitted to the Com-
10 mittee on Banking, Housing, and Urban Affairs of
11 the Senate and the Committee on Financial Services
12 of the House of Representatives.

13 “(c) DEFINITION OF ‘FINANCIAL INSTITUTION’.—
14 For purposes of this section (and sections 1115 and 1117,
15 insofar as the sections relate to the operation of this sec-
16 tion), the term ‘financial institution’ has the same mean-
17 ing as in subsections (a)(2) and (c)(1) of section 5312 of
18 title 31, except that the term shall include only a financial
19 institution any part of which is located inside any State
20 or territory of the United States, the District of Columbia,
21 Puerto Rico, Guam, American Samoa, the Commonwealth
22 of the Northern Mariana Islands, or the United States
23 Virgin Islands.”.

24 (c) NATIONAL SECURITY LETTER AUTHORITY FOR
25 CERTAIN CONSUMER REPORT RECORDS.—

1 (1) IN GENERAL.—Section 626 of the Fair
2 Credit Reporting Act (15 U.S.C. 1681u) is amend-
3 ed—

4 (A) by striking the section heading and in-
5 serting the following:

6 **“§ 626. National Security Letters for certain con-**
7 **sumer report records”;**

8 (B) by striking subsections (a) through (d)
9 and inserting the following:

10 “(a) AUTHORIZATION.—

11 “(1) IN GENERAL.—The Director of the Fed-
12 eral Bureau of Investigation, or a designee of the
13 Director whose rank shall be no lower than Deputy
14 Assistant Director at Bureau headquarters or Spe-
15 cial Agent in Charge in a Bureau field office, may
16 issue in writing and cause to be served on a con-
17 sumer reporting agency a National Security Letter
18 requiring the production of—

19 “(A) the name of a consumer;

20 “(B) the current and former address of a
21 consumer;

22 “(C) the current and former places of em-
23 ployment of a consumer; and

24 “(D) the name and address of any finan-
25 cial institution (as that term is defined in sec-

1 tion 1101 of the Right to Financial Privacy Act
2 of 1978 (12 U.S.C. 3401)) at which a consumer
3 maintains or has maintained an account, to the
4 extent that the information is in the files of the
5 consumer reporting agency.

6 “(2) LIMITATION.—A National Security Letter
7 issued under this subsection may not require the
8 production of a consumer report.

9 “(b) NATIONAL SECURITY LETTER REQUIRE-
10 MENTS.—

11 “(1) IN GENERAL.—A National Security Letter
12 issued under subsection (a) shall be subject to the
13 requirements of subsections (b) through (g) of sec-
14 tion 2709 of title 18, United States Code, in the
15 same manner and to the same extent as those provi-
16 sions apply with respect to a National Security Let-
17 ter issued under section 2709(a) of title 18, United
18 States Code, to a wire or electronic communication
19 service provider.

20 “(2) REPORTING.—For any National Security
21 Letter issued under subsection (a), the semiannual
22 reports under section 2709(e) of title 18, United
23 States Code, shall also be submitted to the Com-
24 mittee on Banking, Housing, and Urban Affairs of

1 the Senate and the Committee on Financial Services
2 of the House of Representatives.”;

3 (C) by striking subsections (f) through (h);

4 and

5 (D) by redesignating subsections (e) and
6 (i) through (m) as subsections (c) through (h),
7 respectively.

8 (2) REPEAL.—Section 627 of the Fair Credit
9 Reporting Act (15 U.S.C. 1681v) is repealed.

10 (3) TECHNICAL AND CONFORMING AMEND-
11 MENT.—The table of sections for the Fair Credit
12 Reporting Act (15 U.S.C. 1681 et seq.) is amended
13 by striking the items relating to sections 626 and
14 627 and inserting the following:

“626. National Security Letters for certain consumer report records.

“627. [Repealed].”.

15 **SEC. 102. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
16 **TERS.**

17 (a) REVIEW OF NONDISCLOSURE ORDERS.—Section
18 3511(b) of title 18, United States Code, is amended to
19 read as follows:

20 “(b) NONDISCLOSURE.—

21 “(1) IN GENERAL.—

22 “(A) NOTICE.—If a recipient of a National
23 Security Letter under section 2709 of this title,
24 section 626 of the Fair Credit Reporting Act

1 (15 U.S.C. 1681u), section 1114 of the Right
2 to Financial Privacy Act (12 U.S.C. 3414), or
3 section 802(a) of the National Security Act of
4 1947 (50 U.S.C. 436(a)), wishes to have a
5 court review a nondisclosure requirement im-
6 posed in connection with the National Security
7 Letter, the recipient shall notify the Govern-
8 ment not later than 21 days after the date of
9 receipt of the National Security Letter or of no-
10 tice that an applicable nondisclosure require-
11 ment has been extended.

12 “(B) APPLICATION.—Not later than 21
13 days after the date of receipt of a notification
14 under subparagraph (A), the Government shall
15 apply for an order prohibiting the disclosure of
16 particular information about the existence or
17 contents of the relevant National Security Let-
18 ter. An application under this subparagraph
19 may be filed in the district court of the United
20 States for any district within which the author-
21 ized investigation that is the basis for the Na-
22 tional Security Letter is being conducted. The
23 applicable nondisclosure requirement shall re-
24 main in effect during the pendency of pro-
25 ceedings relating to the requirement.

1 “(C) CONSIDERATION.—A district court of
2 the United States that receives an application
3 under subparagraph (B) should rule expedi-
4 tiously, and may issue a nondisclosure order for
5 a period of not longer than 1 year, unless the
6 facts justify a longer period of nondisclosure.

7 “(D) DENIAL.—If a district court of the
8 United States rejects an application for a non-
9 disclosure order or extension thereof, the non-
10 disclosure requirement shall no longer be in ef-
11 fect.

12 “(2) APPLICATION CONTENTS.—An application
13 for a nondisclosure order or extension thereof under
14 this subsection shall include—

15 “(A) a statement of specific and articulable
16 facts giving the applicant reason to believe that
17 disclosure of particular information about the
18 existence or contents of a National Security
19 Letter described in paragraph (1)(A) during the
20 applicable time period will result in—

21 “(i) endangering the life or physical
22 safety of any person;

23 “(ii) flight from prosecution;

24 “(iii) destruction of or tampering with
25 evidence;

1 “(iv) intimidation of potential wit-
2 nesses;

3 “(v) interference with diplomatic rela-
4 tions; or

5 “(vi) otherwise seriously endangering
6 the national security of the United States
7 by alerting a target, an associate of a tar-
8 get, or the foreign power of which the tar-
9 get is an agent, of the interest of the Gov-
10 ernment in the target;

11 “(B) an explanation of how the harm iden-
12 tified under subparagraph (A) relates to the on-
13 going and authorized national security inves-
14 tigation to which the records sought are rel-
15 evant;

16 “(C) an explanation of how the nondisclo-
17 sure requirement is narrowly tailored to address
18 the specific harm identified under subparagraph
19 (A); and

20 “(D) the time period during which the
21 Government believes the nondisclosure require-
22 ment should apply.

23 “(3) STANDARD.—A district court of the
24 United States may issue a nondisclosure require-

1 ment order or extension thereof under this sub-
2 section if the court determines that—

3 “(A) there is reason to believe that dislo-
4 sure of the information subject to the nondislo-
5 sure requirement during the applicable time pe-
6 riod will result in—

7 “(i) endangering the life or physical
8 safety of any person;

9 “(ii) flight from prosecution;

10 “(iii) destruction of or tampering with
11 evidence;

12 “(iv) intimidation of potential wit-
13 nesses;

14 “(v) interference with diplomatic rela-
15 tions; or

16 “(vi) otherwise seriously endangering
17 the national security of the United States
18 by alerting a target, an associate of a tar-
19 get, or the foreign power of which the tar-
20 get is an agent, of the interest of the Gov-
21 ernment in the target;

22 “(B) the harm identified under subpara-
23 graph (A) relates to the ongoing and authorized
24 national security investigation to which the
25 records sought are relevant; and

1 “(C) the nondisclosure requirement is nar-
2 rowly tailored to address the specific harm iden-
3 tified under subparagraph (A).

4 “(4) RENEWAL.—A nondisclosure order under
5 this subsection may be renewed for additional peri-
6 ods of not longer than 1 year, unless the facts of the
7 case justify a longer period of nondisclosure, upon
8 submission of an application meeting the require-
9 ments of paragraph (2), and a determination by the
10 court that the circumstances described in paragraph
11 (3) continue to exist.”.

12 (b) DISCLOSURE.—Section 3511(d) of title 18,
13 United States Code, is amended to read as follows:

14 “(d) DISCLOSURE.—In making determinations under
15 this section, unless the district court of the United States
16 finds that disclosure would not assist in determining any
17 legal or factual issue pertinent to the case, the court may
18 disclose to the petitioner, the counsel of the petitioner, or
19 both, under the procedures and standards provided in the
20 Classified Information Procedures Act (18 U.S.C. App.)
21 or other appropriate security procedures and protective or-
22 ders, portions of the National Security Letter, or related
23 materials.”.

24 (c) CONFORMING AMENDMENTS.—Section 3511 of
25 title 18, United States Code, is amended—

1 (1) in subsection (a)—

2 (A) by inserting after “(a)” the following
3 “REQUEST.—”;

4 (B) by striking “2709(b)” and inserting
5 “2709”;

6 (C) by striking “626(a) or (b) or 627(a)”
7 and inserting “626”; and

8 (D) by striking “1114(a)(5)(A)” and in-
9 serting “1114”; and

10 (2) in subsection (c)—

11 (A) by inserting after “(c)” the following
12 “FAILURE TO COMPLY.—”;

13 (B) by striking “2709(b)” and inserting
14 “2709”;

15 (C) by striking “626(a) or (b) or 627(a)”
16 and inserting “626”; and

17 (D) by striking “1114(a)(5)(A)” and in-
18 serting “1114”.

19 (d) REPEAL.—Section 3511(e) of title 18, United
20 States Code, is repealed.

21 **SEC. 103. NATIONAL SECURITY LETTER COMPLIANCE PRO-**
22 **GRAM AND TRACKING DATABASE.**

23 (a) COMPLIANCE PROGRAM.—The Director of the
24 Federal Bureau of Investigation shall establish a program

1 to ensure compliance with the amendments made by sec-
2 tion 101.

3 (b) TRACKING DATABASE.—The compliance program
4 required under subsection (a) shall include the establish-
5 ment of a database, the purpose of which shall be to track
6 all National Security Letters.

7 (c) INFORMATION.—The database required under
8 this section shall include—

9 (1) a signed copy of each National Security
10 Letter;

11 (2) the date the National Security Letter was
12 issued and for what type of information;

13 (3) whether the National Security Letter seeks
14 information regarding a United States person;

15 (4) identification of the ongoing and authorized
16 national security investigation (other than an assess-
17 ment) to which the National Security Letter relates;

18 (5) whether the National Security Letter seeks
19 information regarding an individual who is the sub-
20 ject of the investigation described in paragraph (4);

21 (6) the date on which the information requested
22 was received and, if applicable, when the information
23 was destroyed; and

24 (7) whether the information gathered was dis-
25 closed for law enforcement purposes.

1 (d) DEFINITIONS.—In this section—

2 (1) the term “assessment” means an assess-
3 ment, as that term is used in the guidelines entitled
4 “The Attorney General’s Guidelines for Domestic
5 FBI Operations”, or any successor thereto; and

6 (2) the term “National Security Letter” means
7 a National Security Letter issued by the Federal
8 Bureau of Investigation under section 1114 of the
9 Right to Financial Privacy Act of 1978 (12 U.S.C.
10 3414), section 626 of the Fair Credit Reporting Act
11 (15 U.S.C. 1681u), or section 2709 of title 18,
12 United States Code.

13 **SEC. 104. PUBLIC REPORTING ON NATIONAL SECURITY**
14 **LETTERS.**

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

18 (1) in paragraph (1)—

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

22 (B) in subparagraph (A), by striking “, ex-
23 cluding the number of requests for subscriber
24 information”;

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

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

5 “(2) CONTENT.—

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

11 “(i) United States persons;

12 “(ii) persons who are not United
13 States persons;

14 “(iii) persons who are the subjects of
15 authorized national security investigations;

16 or

17 “(iv) persons who are not the subjects
18 of authorized national security investiga-
19 tions.

20 “(B) EXCEPTION.—With respect to the
21 number of requests for subscriber information
22 under section 2709 of title 18, United States
23 Code, a report required under this subsection
24 need not provide information separated into

1 each of the categories described in subpara-
2 graph (A).”.

3 **SEC. 105. EMERGENCY DISCLOSURES.**

4 (a) ENHANCED PROTECTIONS FOR EMERGENCY DIS-
5 CLOSURES.—

6 (1) STORED COMMUNICATIONS ACT.—Section
7 2702 of title 18, United States Code is amended—

8 (A) in subsection (b)(8)—

9 (i) by striking “, in good faith,” and
10 inserting “reasonably”;

11 (ii) by inserting “immediate” after
12 “involving”; and

13 (iii) by adding before the period: “and
14 the request is narrowly tailored to address
15 the emergency, subject to the limitations of
16 subsection (d)”;

17 (B) in subsection (c)(4)—

18 (i) by striking “, in good faith,” and
19 inserting “reasonably”;

20 (ii) by inserting “immediate” after
21 “involving”; and

22 (iii) by adding before the period: “,
23 subject to the limitations of subsection
24 (d)”;

1 (C) by redesignating subsection (d) as sub-
2 section (e);

3 (D) by inserting after subsection (c) the
4 following:

5 “(d) REQUIREMENT.—

6 “(1) REQUEST.—If a governmental entity re-
7 quests that a provider divulge information under
8 subsection (b)(8) or (c)(4), the request shall specify
9 that the disclosure is on a voluntary basis and shall
10 document the factual basis for believing that an
11 emergency involving immediate danger of death or
12 serious physical injury to a person requires disclo-
13 sure without delay of the information relating to the
14 emergency.

15 “(2) NOTICE TO COURT.—Not later than 5
16 days after the date on which a governmental entity
17 obtains access to records under subsection (b)(8) or
18 (c)(4), a governmental entity shall file with the ap-
19 propriate court a signed, sworn statement of a su-
20 pervisory official of a rank designated by the head
21 of the governmental entity setting forth the grounds
22 for the emergency access.”; and

23 (E) in subsection (e), as so redesignated,
24 in each of paragraphs (1) and (2), by striking

1 “subsection (b)(8)” and inserting “subsections
2 (b)(8) and (c)(4)”.

3 (2) RIGHT TO FINANCIAL PRIVACY ACT.—

4 (A) EMERGENCY DISCLOSURES.—The
5 Right to Financial Privacy Act of 1978 (12
6 U.S.C. 3401 et seq.) is amended by inserting
7 after section 1120 the following:

8 **“SEC. 1121. EMERGENCY DISCLOSURES.**

9 “(a) IN GENERAL.—

10 “(1) STANDARD.—A financial institution may
11 divulge a record described in section 1114(a) per-
12 taining to a customer to a Government authority, if
13 the financial institution reasonably believes that an
14 emergency involving immediate danger of death or
15 serious physical injury to a person requires disclo-
16 sure without delay of information relating to the
17 emergency and the request is narrowly tailored to
18 address the emergency.

19 “(2) NOTICE IN REQUEST.—If a Government
20 authority requests that a financial institution divulge
21 information under this section, the request shall
22 specify that the disclosure is on a voluntary basis,
23 and shall document the factual basis for believing
24 that an emergency involving immediate danger of

1 death or serious physical injury to a person requires
2 disclosure without delay of the information.

3 “(b) CERTIFICATE.—In the instances described in
4 subsection (a), the Government authority shall submit to
5 the financial institution the certificate required in section
6 1103(b), signed by a supervisory official of a rank des-
7 ignated by the head of the Government authority.

8 “(c) NOTICE TO COURT.—Not later than 5 days after
9 the date on which a Government authority obtains access
10 to financial records under this section, the Government
11 authority shall file with the appropriate court a signed,
12 sworn statement of a supervisory official of a rank des-
13 ignated by the head of the Government authority setting
14 forth the grounds for the emergency access. After filing
15 a statement under this subsection, a Government author-
16 ity shall provide notice to the customer in accordance with
17 section 1109.

18 “(d) REPORTING OF EMERGENCY DISCLOSURES.—
19 On an annual basis, the Attorney General of the United
20 States shall submit to the Committee on the Judiciary and
21 the Committee on Financial Services of the House of Rep-
22 resentatives and the Committee on the Judiciary and the
23 Committee on Banking, Housing, and Urban Affairs of
24 the Senate a report containing—

1 “(1) the number of individuals for whom the
2 Department of Justice has received voluntary disclo-
3 sures under this section; and

4 “(2) a summary of the bases for disclosure in
5 those instances where—

6 “(A) voluntary disclosures under this sec-
7 tion were made to the Department of Justice;
8 and

9 “(B) the investigation pertaining to those
10 disclosures was closed without the filing of
11 criminal charges.

12 “(e) DEFINITION.—In this section, the term ‘finan-
13 cial institution’ has the meaning given that term in section
14 1114(c).”.

15 (B) CONFORMING AMENDMENTS.—The
16 Right to Financial Privacy Act of 1978 (12
17 U.S.C. 3401 et seq.) is amended—

18 (i) in section 1102 (12 U.S.C. 3402),
19 by striking “or 1114” and inserting
20 “1114, or 1121”; and

21 (ii) in section 1109(c) (12 U.S.C.
22 3409(c)), by striking “1114(b)” and in-
23 serting “1121”.

1 (b) CLARIFICATION REGARDING DATA RETEN-
2 TION.—Subsection 2703(f) of title 18, United States
3 Code, is amended by adding at the end the following:

4 “(3) NO DISCLOSURE WITHOUT COURT
5 ORDER.—A provider of wire or electronic commu-
6 nications services or a remote computing service who
7 has received a request under this subsection shall
8 not disclose the records referred to in paragraph (1)
9 until the provider has received a court order or other
10 process.”.

11 **SEC. 106. LEAST INTRUSIVE MEANS.**

12 (a) GUIDELINES.—

13 (1) IN GENERAL.—The Attorney General shall
14 issue guidelines (consistent with Executive Order
15 12333 or any successor order) providing that, in na-
16 tional security investigations, the least intrusive col-
17 lection techniques feasible shall be used if there is a
18 choice between the use of more or less intrusive in-
19 formation collection methods.

20 (2) SPECIFIC COLLECTION TECHNIQUES.—The
21 guidelines required under this section shall provide
22 guidance with regard to specific collection tech-
23 niques, including the use of National Security Let-
24 ters, considering such factors as—

25 (A) the effect on the privacy of individuals;

1 (B) the potential damage to reputation of
2 individuals; and

3 (C) any special concerns under the first
4 amendment to the Constitution of the United
5 States relating to a potential recipient of a Na-
6 tional Security Letter or other legal process, in-
7 cluding a direction that prior to issuing a Na-
8 tional Security Letter or other legal process to
9 a library or bookseller, investigative procedures
10 aimed at obtaining the relevant information
11 from entities other than a library or bookseller
12 be used and have failed, or reasonably appear
13 to be unlikely to succeed if tried or endanger
14 lives if tried.

15 (b) DEFINITIONS.—In this section:

16 (1) BOOKSELLER.—The term “bookseller”
17 means a person or entity engaged in the sale, rental,
18 or delivery of books, journals, magazines, or other
19 similar forms of communication in print or digitally.

20 (2) LIBRARY.—The term “library” means a li-
21 brary (as that term is defined in section 213(1) of
22 the Library Services and Technology Act (20 U.S.C.
23 9122(1))) whose services include access to the Inter-
24 net, books, journals, magazines, newspapers, or
25 other similar forms of communication in print or

1 (ii) by striking subparagraph (B) and
2 inserting the following:

3 “(B) a statement of specific and
4 articulable facts providing reason to believe that
5 the tangible things sought—

6 “(i) pertain to a suspected agent of a
7 foreign power or an individual who is the
8 subject of an ongoing and authorized na-
9 tional security investigation (other than an
10 assessment (as defined in section 2709 of
11 title 18, United States Code));

12 “(ii) pertain to an individual who has
13 been in contact with, or otherwise directly
14 linked to, a suspected agent of a foreign
15 power or an individual who is the subject
16 of an ongoing and authorized national se-
17 curity investigation (other than an assess-
18 ment); or

19 “(iii) pertain to the activities of a sus-
20 pected agent of a foreign power, where
21 those activities are the subject of an ongo-
22 ing and authorized national security inves-
23 tigation (other than an assessment), and
24 obtaining the records is the least intrusive
25 means that could be used to identify per-

1 sons believed to be involved in the activi-
2 ties; and

3 “(C) a statement of proposed minimization
4 procedures; and”;

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

6 “(3) if the applicant is seeking a nondisclosure
7 requirement described in subsection (d), shall in-
8 clude—

9 “(A) a statement of specific and articulable
10 facts providing reason to believe that disclosure
11 of particular information about the existence or
12 contents of the order requiring the production
13 of tangible things under this section during the
14 applicable time period will result in—

15 “(i) endangering the life or physical
16 safety of any person;

17 “(ii) flight from prosecution;

18 “(iii) destruction of or tampering with
19 evidence;

20 “(iv) intimidation of potential wit-
21 nesses;

22 “(v) interference with diplomatic rela-
23 tions; or

24 “(vi) otherwise seriously endangering
25 the national security of the United States

1 by alerting a target, an associate of a tar-
2 get, or the foreign power of which the tar-
3 get is an agent, of the interest of the Gov-
4 ernment in the target;

5 “(B) an explanation of how the harm iden-
6 tified under subparagraph (A) is related to the
7 authorized investigation to which the tangible
8 things sought are relevant;

9 “(C) an explanation of how the nondisclo-
10 sure requirement is narrowly tailored to address
11 the specific harm identified under subparagraph
12 (A); and

13 “(D) the time period during which the
14 Government believes the nondisclosure require-
15 ment should apply.”.

16 (2) ORDER.—Section 501(e) of the Foreign In-
17 telligence Surveillance Act of 1978 (50 U.S.C.
18 1861(e)) is amended—

19 (A) in paragraph (1)—

20 (i) by striking “subsections (a) and
21 (b)” and inserting “subsection (a) and
22 paragraphs (1) and (2) of subsection (b)
23 and that the proposed minimization proce-
24 dures meet the definition of minimization
25 procedures under subsection (g)”; and

1 (ii) by striking the last sentence and
2 inserting the following: “If the judge finds
3 that the requirements of subsection (b)(3)
4 have been met, such order shall include a
5 nondisclosure requirement, which may
6 apply for not longer than 1 year, unless
7 the facts justify a longer period of non-
8 disclosure, subject to the principles and
9 procedures described in subsection (d).”;
10 and

11 (B) in paragraph (2)—

12 (i) in subparagraph (C), by inserting
13 before the semicolon “, if applicable”;

14 (ii) in subparagraph (D), by striking
15 “and” at the end;

16 (iii) in subparagraph (E), by striking
17 the period at the end and inserting “;
18 and”; and

19 (iv) by adding at the end the fol-
20 lowing:

21 “(F) shall direct that the minimization
22 procedures be followed.”.

23 (3) NONDISCLOSURE.—Section 501(d) of the
24 Foreign Intelligence Surveillance Act of 1978 (50
25 U.S.C. 1861(d)) is amended to read as follows:

1 “(d) NONDISCLOSURE.—

2 “(1) IN GENERAL.—No person who receives an
3 order under subsection (c) that contains a nondisclo-
4 sure requirement shall disclose to any person the
5 particular information specified in the nondisclosure
6 requirement during the time period to which the re-
7 quirement applies.

8 “(2) EXCEPTION.—

9 “(A) DISCLOSURE.—A person who receives
10 an order under subsection (c) that contains a
11 nondisclosure requirement may disclose infor-
12 mation otherwise subject to any applicable non-
13 disclosure requirement to—

14 “(i) those persons to whom disclosure
15 is necessary in order to comply with an
16 order under this section;

17 “(ii) an attorney in order to obtain
18 legal advice or assistance regarding the
19 order; or

20 “(iii) other persons as permitted by
21 the Director of the Federal Bureau of In-
22 vestigation or the designee of the Director.

23 “(B) APPLICATION.—A person to whom
24 disclosure is made under subparagraph (A)
25 shall be subject to the nondisclosure require-

1 ments applicable to a person to whom an order
2 is directed under this section in the same man-
3 ner as the person to whom the order is directed.

4 “(C) NOTIFICATION.—Any person who dis-
5 closes to a person described in subparagraph
6 (A) information otherwise subject to a non-
7 disclosure requirement shall notify the person of
8 the applicable nondisclosure requirement.

9 “(3) EXTENSION.—The Director of the Federal
10 Bureau of Investigation, or a designee of the Direc-
11 tor (whose rank shall be no lower than Assistant
12 Special Agent in Charge), may apply for renewals
13 for the prohibition on disclosure of particular infor-
14 mation about the existence or contents of an order
15 requiring the production of tangible things under
16 this section for additional periods of not longer than
17 1 year, unless the facts justify a longer period of
18 nondisclosure. A nondisclosure requirement shall be
19 renewed if a court having jurisdiction under para-
20 graph (4) determines that the application meets the
21 requirements of subsection (b)(3).

22 “(4) JURISDICTION.—An application for a re-
23 newal under this subsection shall be made to—

24 “(A) a judge of the court established under
25 section 103(a); or

1 “(B) a United States Magistrate Judge
2 under chapter 43 of title 28, United States
3 Code, who is publicly designated by the Chief
4 Justice of the United States to have the power
5 to hear applications and grant orders for the
6 production of tangible things under this section
7 on behalf of a judge of the court established
8 under section 103(a).”.

9 (4) MINIMIZATION.—Section 501(g) of the For-
10 eign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1861(g)) is amended—

12 (A) in paragraph (1), by striking “Not
13 later than” and all that follows and inserting
14 “‘At or before the end of the period of time for
15 the production of tangible things under an
16 order approved under this section or at any
17 time after the production of tangible things
18 under an order approved under this section, a
19 judge may assess compliance with the mini-
20 mization procedures by reviewing the cir-
21 cumstances under which information concerning
22 United States persons was acquired, retained,
23 or disseminated.”; and

24 (B) in paragraph (2)(A), by inserting “ac-
25 quisition and” after “to minimize the”.

1 (5) USE OF INFORMATION.—Section 501(h) of
2 the Foreign Intelligence Surveillance Act of 1978
3 (50 U.S.C. 1861(h)) is amended to read as follows:

4 “(h) USE OF INFORMATION.—

5 “(1) IN GENERAL.—

6 “(A) CONSENT.—Any tangible things or
7 information acquired from an order under this
8 section concerning any United States person
9 may be used and disclosed by Federal officers
10 and employees without the consent of the
11 United States person only in accordance with
12 the minimization procedures required under this
13 section.

14 “(B) USE AND DISCLOSURE.—No tangible
15 things or information acquired under an order
16 under this section may be used or disclosed by
17 Federal officers or employees except for lawful
18 purposes.

19 “(2) DISCLOSURE FOR LAW ENFORCEMENT
20 PURPOSES.—No tangible things or information ac-
21 quired from an order under this section shall be dis-
22 closed for law enforcement purposes unless the dis-
23 closure is accompanied by a statement that the tan-
24 gible things or information, or any information de-
25 rived therefrom, may only be used in a criminal pro-

1 ceeding with the advance authorization of the Attor-
2 ney General.

3 “(3) NOTIFICATION OF INTENDED DISCLOSURE
4 BY THE UNITED STATES.—Whenever the United
5 States intends to enter into evidence or otherwise
6 use or disclose in any trial, hearing, or other pro-
7 ceeding in or before any court, department, officer,
8 agency, regulatory body, or other authority of the
9 United States against an aggrieved person any tan-
10 gible things or information obtained or derived from
11 an order under this section, the United States shall,
12 before the trial, hearing, or other proceeding or at
13 a reasonable time before an effort to so disclose or
14 so use the tangible things or information or submit
15 them in evidence, notify the aggrieved person and
16 the court or other authority in which the tangible
17 things or information are to be disclosed or used
18 that the United States intends to so disclose or so
19 use the tangible things or information.

20 “(4) NOTIFICATION OF INTENDED DISCLOSURE
21 BY STATE OR POLITICAL SUBDIVISION.—Whenever
22 any State or political subdivision thereof intends to
23 enter into evidence or otherwise use or disclose in
24 any trial, hearing, or other proceeding in or before
25 any court, department, officer, agency, regulatory

1 body, or other authority of the State or political sub-
2 division thereof against an aggrieved person any tan-
3 gible things or information obtained or derived from
4 an order issued under this section, the State or po-
5 litical subdivision thereof shall notify the aggrieved
6 person, the court or other authority in which the
7 tangible things or information are to be disclosed or
8 used, and the Attorney General that the State or po-
9 litical subdivision thereof intends to so disclose or so
10 use the tangible things or information.

11 “(5) MOTION TO SUPPRESS.—

12 “(A) IN GENERAL.—Any aggrieved person
13 against whom evidence obtained or derived from
14 an order issued under this section is to be, or
15 has been, introduced or otherwise used or dis-
16 closed in any trial, hearing, or other proceeding
17 in or before any court, department, officer,
18 agency, regulatory body, or other authority of
19 the United States, or a State or political sub-
20 division thereof, may move to suppress the evi-
21 dence obtained or derived from the order, as the
22 case may be, on the grounds that—

23 “(i) the tangible things or information
24 were acquired in violation of the Constitu-
25 tion or laws of the United States; or

1 “(ii) the order was not issued in ac-
2 cordance with the requirements of this sec-
3 tion.

4 “(B) TIMING.—A motion under subpara-
5 graph (A) shall be made before the trial, hear-
6 ing, or other proceeding unless there was no op-
7 portunity to make such a motion or the ag-
8 grieved person concerned was not aware of the
9 grounds of the motion.

10 “(6) JUDICIAL REVIEW.—

11 “(A) IN GENERAL.—In a circumstance de-
12 scribed in subparagraph (B), a United States
13 district court or, where the motion is made be-
14 fore another authority, the United States dis-
15 trict court in the same district as the authority
16 shall, if the Attorney General files an affidavit
17 under oath that disclosure would harm the na-
18 tional security of the United States, review in
19 camera the application, order, and such other
20 related materials relating to the order issued
21 under this section as may be necessary to deter-
22 mine whether the order was lawfully authorized
23 and served.

1 “(B) CIRCUMSTANCES.—A circumstance
2 described in this subparagraph is a cir-
3 cumstance in which—

4 “(i) a court or other authority is noti-
5 fied under paragraph (3) or (4);

6 “(ii) a motion is made under para-
7 graph (5); or

8 “(iii) any motion or request is made
9 by an aggrieved person under any other
10 statute or rule of the United States or any
11 State before any court or other authority
12 of the United States or any State to—

13 “(I) discover or obtain applica-
14 tions, orders, or other materials relat-
15 ing to an order issued under this sec-
16 tion; or

17 “(II) discover, obtain, or sup-
18 press evidence or information obtained
19 or derived from an order issued under
20 this section.

21 “(C) DISCLOSURE.—In making a deter-
22 mination under subparagraph (A), unless the
23 United States district court finds that disclo-
24 sure would not assist in determining any legal
25 or factual issue pertinent to the case, the court

1 may disclose to the aggrieved person, the coun-
2 sel for the aggrieved person, or both, under the
3 procedures and standards provided in the Clas-
4 sified Information Procedures Act (18 U.S.C.
5 App.) or other appropriate security procedures
6 and protective orders, portions of the applica-
7 tion, order, or other related materials, or evi-
8 dence or information obtained or derived from
9 the order.

10 “(7) EFFECT OF DETERMINATION OF LAWFUL-
11 NESS.—

12 “(A) UNLAWFUL ORDERS.—If a United
13 States district court determines under para-
14 graph (6) that an order was not authorized or
15 served in compliance with the Constitution or
16 laws of the United States, the court may sup-
17 press the evidence which was unlawfully ob-
18 tained or derived from the order or otherwise
19 grant the motion of the aggrieved person.

20 “(B) LAWFUL ORDERS.—If the court de-
21 termines that an order issued under this section
22 was lawfully authorized and served, it shall
23 deny the motion of the aggrieved person except
24 to the extent that due process requires dis-
25 covery or disclosure.

1 “(8) BINDING FINAL ORDERS.—An order grant-
2 ing a motion or request under paragraph (6), a deci-
3 sion under this section that an order issued under
4 this section was not lawful, and an order of a United
5 States district court requiring review or granting
6 disclosure of an application, order, or other mate-
7 rials relating to an order issued under this section
8 shall be a final order and binding upon all courts of
9 the United States and the several States, except an
10 appeal or petition to a United States court of ap-
11 peals or the Supreme Court of the United States.”.

12 (6) DEFINITION.—

13 (A) IN GENERAL.—Title V of the Foreign
14 Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1861 et seq.) is amended by adding at
16 the end the following:

17 **“SEC. 503. DEFINITIONS.**

18 “In this title, the following definitions apply:

19 “(1) IN GENERAL.—Except as provided in this
20 section, terms used in this title that are also used
21 in title I shall have the meanings given those terms
22 by section 101.

23 “(2) AGGRIEVED PERSON.—The term ‘ag-
24 grieved person’ means any person whose tangible

1 things or information were acquired under an order
2 issued under this title.”.

3 (B) TECHNICAL AND CONFORMING AMEND-
4 MENT.—The table of contents in the first sec-
5 tion of the Foreign Intelligence Surveillance Act
6 of 1978 (50 U.S.C. 1861 et seq.) is amended
7 by inserting after the item relating to section
8 502 the following:

“Sec. 503. Definitions.”.

9 (b) JUDICIAL REVIEW OF SECTION 215 ORDERS.—
10 Section 501(f) of the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1861) is amended to read as follows:

12 “(f) JUDICIAL REVIEW.—

13 “(1) ORDER FOR PRODUCTION.—Not later than
14 the earlier of 21 days after the date of service upon
15 any person of an order issued under subsection (c)
16 and the return date specified in the order, the per-
17 son may file, in the court established under section
18 103(a) or in the United States district court for the
19 judicial district within which the person resides, is
20 found, or transacts business, a petition for the court
21 to modify or set aside the order. The period for com-
22 pliance with an order issued under subsection (c), or
23 any portion of the order, shall be tolled while a peti-
24 tion under this paragraph is pending in the court.
25 A petition under this paragraph shall specify each

1 ground upon which the petitioner relies in seeking
2 relief, and may be based upon any failure of the
3 order issued under subsection (c) to comply with this
4 section or upon any constitutional or other legal
5 right or privilege of the person.

6 “(2) NONDISCLOSURE ORDER.—

7 “(A) IN GENERAL.—A person prohibited
8 from disclosing information under subsection
9 (d) may file, in the court established under sec-
10 tion 103(a) or in the United States district
11 court for the judicial district within which the
12 person resides, is found, or transacts business,
13 a petition for the court to set aside the non-
14 disclosure requirement. A petition under this
15 subparagraph shall specify each ground upon
16 which the petitioner relies in seeking relief, and
17 may be based upon any failure of the nondisclo-
18 sure requirement to comply with this section or
19 upon any constitutional or other legal right or
20 privilege of the person.

21 “(B) STANDARD.—The court shall modify
22 or set aside a nondisclosure requirement unless
23 the court determines that—

24 “(i) there is reason to believe that dis-
25 closure of the information subject to the

1 nondisclosure requirement during the ap-
2 plicable time period will result in—

3 “(I) endangering the life or phys-
4 ical safety of any person;

5 “(II) flight from prosecution;

6 “(III) destruction of or tam-
7 pering with evidence;

8 “(IV) intimidation of potential
9 witnesses;

10 “(V) interference with diplomatic
11 relations; or

12 “(VI) otherwise seriously endan-
13 gering the national security of the
14 United States by alerting a target, an
15 associate of a target, or the foreign
16 power of which the target is an agent,
17 of the interest of the Government in
18 the target;

19 “(ii) the harm identified under clause
20 (i) relates to the authorized investigation
21 to which the tangible things sought are rel-
22 evant; and

23 “(iii) the nondisclosure requirement is
24 narrowly tailored to address the specific
25 harm identified under clause (i).

1 “(3) RULEMAKING.—

2 “(A) IN GENERAL.—Not later than 180
3 days after the date of enactment of the JUS-
4 TICE Act, the court established under section
5 103(a) shall comply with section 103(g) by es-
6 tablishing any rules and procedures and taking
7 any actions as are reasonably necessary to ad-
8 minister the responsibilities of the court under
9 this subsection.

10 “(B) REPORTING.—Not later than 30 days
11 after the date on which the court promulgates
12 rules and procedures under subparagraph (A),
13 the court established under section 103(a) shall
14 transmit a copy of the rules and procedures, in
15 an unclassified form to the greatest extent pos-
16 sible (with a classified annex, if necessary), to
17 the persons and entities listed in section
18 103(g)(2).

19 “(4) DISCLOSURES TO PETITIONERS.—In mak-
20 ing determinations under this subsection, unless the
21 court finds that disclosure would not assist in deter-
22 mining any legal or factual issue pertinent to the
23 case, the court may disclose to the petitioner, the
24 counsel for the petitioner, or both, under the proce-
25 dures and standards provided in the Classified Infor-

1 mation Procedures Act (18 U.S.C. App.) or other
2 appropriate security procedures and protective or-
3 ders, portions of the application, order, or other re-
4 lated materials.”.

5 (c) SUNSET REPEAL.—Section 102(b) of the USA
6 PATRIOT Improvement and Reauthorization Act of 2005
7 (Public Law 109–177; 50 U.S.C. 1805 note, 50 U.S.C.
8 1861 note, and 50 U.S.C. 1862 note) is repealed.

9 **SEC. 108. TECHNICAL AND CONFORMING AMENDMENTS.**

10 (a) TITLE 18.—Section 1510(e) of title 18, United
11 States Code, is amended by striking “Whoever,” and all
12 that follows through “knowingly” and inserting “Whoever,
13 having been notified of the applicable disclosure prohibi-
14 tions or confidentiality requirements of section 2709 of
15 this title, section 626 of the Fair Credit Reporting Act
16 (15 U.S.C. 1681u), section 1114 of the Right to Financial
17 Privacy Act of 1978 (12 U.S.C. 3414), or section 802 of
18 the National Security Act of 1947 (50 U.S.C. 436), know-
19 ingly”.

20 (b) OTHER LAW.—Section 507(b) of the National Se-
21 curity Act of 1947 (50 U.S.C. 415b(b)) is amended—

22 (1) by striking paragraphs (4) and (5); and

23 (2) by redesignating paragraph (6) as para-
24 graph (4).

1 **TITLE II—REASONABLE SAFE-**
2 **GUARDS TO PROTECT THE**
3 **PRIVACY OF AMERICANS’**
4 **HOMES**

5 **SEC. 201. LIMITATION ON AUTHORITY TO DELAY NOTICE**
6 **OF SEARCH WARRANTS.**

7 Section 3103a of title 18, United States Code, is
8 amended—

9 (1) in subsection (b)—

10 (A) in paragraph (1), by striking “may
11 have an adverse result (as defined in section
12 2705, except if the adverse results consist only
13 of unduly delaying a trial)” and inserting “will
14 endanger the life or physical safety of an indi-
15 vidual, result in flight from prosecution, result
16 in the destruction of or tampering with the evi-
17 dence sought under the warrant, or result in in-
18 timidation of potential witnesses”; and

19 (B) in paragraph (3), by striking “30
20 days” and all that follows and inserting “7 days
21 after the date of its execution.”;

22 (2) in subsection (c), by striking “for good
23 cause shown” and all that follows and inserting
24 “upon application of the Attorney General, the Dep-
25 uty Attorney General, or an Associate Attorney Gen-

1 eral, for additional periods of not more than 21 days
2 for each application, if the court finds, for each ap-
3 plication, reasonable cause to believe that notice of
4 the execution of the warrant will endanger the life
5 or physical safety of an individual, result in flight
6 from prosecution, result in the destruction of or
7 tampering with the evidence sought under the war-
8 rant, or result in intimidation of potential wit-
9 nesses.”;

10 (3) by redesignating subsection (d) as sub-
11 section (e); and

12 (4) by inserting after subsection (c) the fol-
13 lowing:

14 “(d) PROHIBITION ON USE AS EVIDENCE.—If any
15 property or material has been seized under subsection (b)
16 and notice has been delayed, the property or material and
17 any evidence derived therefrom may not be received in evi-
18 dence in any trial, hearing, or other proceeding in or be-
19 fore any court, grand jury, department, officer, agency,
20 regulatory body, legislative committee, or other authority
21 of the United States, a State, or a political subdivision
22 thereof if the property or material was obtained in viola-
23 tion of this section, or if notice required by this section
24 or by a warrant issued under this section was not provided
25 or was not timely provided.”.

1 **TITLE III—REASONABLE SAFE-**
2 **GUARDS TO PROTECT THE**
3 **PRIVACY OF AMERICANS’**
4 **COMMUNICATIONS**

5 **SEC. 301. LIMITATIONS ON ROVING WIRETAPS UNDER FOR-**
6 **EIGN INTELLIGENCE SURVEILLANCE ACT.**

7 Section 105(c) of the Foreign Intelligence Surveil-
8 lance Act of 1978 (50 U.S.C. 1805(c)) is amended—

9 (1) in paragraph (1), by striking subparagraphs
10 (A) and (B) and inserting the following:

11 “(A)(i) the identity of the target of the elec-
12 tronic surveillance, if known; or

13 “(ii) if the identity of the target is not known,
14 a description of the specific target and the nature
15 and location of the facilities and places at which the
16 electronic surveillance will be directed;

17 “(B)(i) the nature and location of each of the
18 facilities or places at which the electronic surveil-
19 lance will be directed, if known; or

20 “(ii) if any of the facilities or places are not
21 known, the identity of the target;” and

22 (2) in paragraph (2)—

23 (A) by redesignating subparagraphs (B)
24 through (D) as subparagraphs (C) through (E),
25 respectively; and

1 (B) by inserting after subparagraph (A)
2 the following:

3 “(B) in cases where the facility or place at
4 which the electronic surveillance will be directed
5 is not known at the time the order is issued,
6 that the electronic surveillance be conducted
7 only for such time as it is reasonable to pre-
8 sume that the target of the surveillance is or
9 was reasonably proximate to the particular fa-
10 cility or place;”.

11 **SEC. 302. PRIVACY PROTECTIONS FOR PEN REGISTERS**
12 **AND TRAP AND TRACE DEVICES.**

13 (a) CRIMINAL AUTHORITY.—

14 (1) APPLICATION FOR AN ORDER.—Section
15 3122(b) of title 18, United States Code, is amended
16 by striking paragraph (2) and inserting the fol-
17 lowing:

18 “(2) a statement by the applicant that the in-
19 formation likely to be obtained is—

20 “(A) relevant to an ongoing criminal inves-
21 tigation being conducted by that agency; and

22 “(B) there are specific and articulable
23 facts providing reason to believe that the infor-
24 mation—

1 “(i) pertains to an individual who is
2 the subject of an ongoing criminal inves-
3 tigation;

4 “(ii) pertains to an individual who has
5 been in contact with, or otherwise directly
6 linked to, an individual who is the subject
7 of an ongoing criminal investigation; or

8 “(iii) pertain to the activities of an in-
9 dividual who is the subject of an ongoing
10 criminal investigation, where those activi-
11 ties are the subject of an ongoing criminal
12 investigation, and obtaining the records is
13 the least intrusive means that could be
14 used to identify persons believed to be in-
15 volved in the activities.”.

16 (2) ISSUANCE OF AN ORDER.—Section 3123(a)
17 of title 18, United States Code, is amended—

18 (A) in paragraph (1), by striking “the at-
19 torney for the Government has certified to the
20 court that the information likely to be obtained
21 by such installation and use is relevant to an
22 ongoing criminal investigation.” and inserting
23 “the application meets the requirements of sec-
24 tion 3122.”; and

1 (B) in paragraph (2), by striking “the
2 State law enforcement or investigative officer”
3 and all that follows and inserting “the applica-
4 tion meets the requirements of section 3122.”.

5 (3) REPORTING.—Section 3126 of title 18,
6 United States Code, is amended—

7 (A) in the matter preceding paragraph (1),
8 by striking “law enforcement agencies of the
9 Department of Justice” and inserting “attor-
10 neys for the Government”;

11 (B) in paragraph (4), by striking “and” at
12 the end;

13 (C) in paragraph (5), by striking the pe-
14 riod and inserting a semicolon;

15 (D) in the matter preceding paragraph (1),
16 by striking “The Attorney General” and insert-
17 ing the following:

18 “(a) REPORT TO CONGRESS.—The Attorney Gen-
19 eral”; and

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

21 “(6) whether the application for the order and
22 the applications for any extensions were granted as
23 applied for, modified, or denied;

1 “(7) the specific types of dialing, routing, ad-
2 dressing, or signaling information sought in the ap-
3 plication and obtained with the order; and

4 “(8) a summary of any litigation to which the
5 Government is or was a party regarding the inter-
6 pretation of this chapter.

7 “(b) PUBLIC REPORT.—The Attorney General shall
8 annually make public a full and complete report con-
9 cerning the number of applications for pen register orders
10 and orders for trap and trace devices applied for under
11 this chapter and the number of the orders and extensions
12 of the orders granted or denied under this chapter during
13 the preceding calendar year. Each report under this sub-
14 section shall include a summary and analysis of the data
15 required to be reported to Congress under subsection
16 (a).”.

17 (4) NOTICE.—Section 3123 of title 18, United
18 States Code, is amended by adding at the end the
19 following:

20 “(e) NOTICE.—

21 “(1) INVENTORY.—A court that receives an ap-
22 plication for an order or extension under section
23 3122(a) shall cause to be served on the persons
24 named in the application, and any other party to
25 communications the court determines should receive

1 notice in the interest of justice, an inventory, includ-
2 ing—

3 “(A) the fact of the application for an
4 order or extension under section 3122(a) and
5 whether the court granted or denied the appli-
6 cation; and

7 “(B) if the order or extension was grant-
8 ed—

9 “(i) the date of the entry of the order
10 or extension and the period of authorized,
11 approved, or disapproved use of the pen
12 register or trap and trace device;

13 “(ii) whether a pen register or trap
14 and trace device was installed or used dur-
15 ing the period authorized; and

16 “(iii) the specific types of dialing,
17 routing, addressing, or signaling informa-
18 tion sought in the application and collected
19 by the pen register or trap and trace de-
20 vice.

21 “(2) TIMING.—The court shall serve notice
22 under paragraph (1) within a reasonable time, but
23 not later than 90 days after—

1 “(A) the date of the filing of the applica-
2 tion for an order or extension under section
3 3122(a) that is denied; or

4 “(B) the date on which an order, or exten-
5 sions thereof, that is granted terminates.

6 “(3) DELAY.—The court may issue an ex parte
7 order postponing the service of the inventory re-
8 quired under paragraph (1) upon a showing of good
9 cause by an attorney for the Government.

10 “(4) INSPECTION.—Upon the filing of a motion,
11 the court may make available for inspection by a
12 person served under paragraph (1), or counsel for
13 the person, such portions of the collected commu-
14 nications, applications, and orders as the court de-
15 termines to be in the interest of justice.”.

16 (b) FOREIGN INTELLIGENCE AUTHORITY.—

17 (1) APPLICATION.—Section 402(c) of the For-
18 eign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1842(c)) is amended—

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

22 (B) by striking paragraph (2) and insert-
23 ing the following:

24 “(2) a statement by the applicant that—

1 “(A) the records sought are relevant to an
2 ongoing and authorized national security inves-
3 tigation (other than an assessment (as defined
4 in section 2709 of title 18, United States
5 Code)); and

6 “(B) there are specific and articulable
7 facts providing reason to believe that the
8 records—

9 “(i) pertain to a suspected agent of a
10 foreign power or an individual who is the
11 subject of an ongoing and authorized na-
12 tional security investigation (other than an
13 assessment);

14 “(ii) pertain to an individual who has
15 been in contact with, or otherwise directly
16 linked to, a suspected agent of a foreign
17 power or an individual who is the subject
18 of an ongoing and authorized national se-
19 curity investigation (other than an assess-
20 ment); or

21 “(iii) pertain to the activities of a sus-
22 pected agent of a foreign power, where
23 those activities are the subject of an ongo-
24 ing and authorized national security inves-
25 tigation (other than an assessment), and

1 obtaining the records is the least intrusive
2 means that could be used to identify per-
3 sons believed to be involved in the activi-
4 ties; and

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

7 (2) MINIMIZATION.—

8 (A) DEFINITION.—Section 401 of the For-
9 eign Intelligence Surveillance Act of 1978 (50
10 U.S.C. 1841) is amended by adding at the end
11 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
17 of a pen register or trap and trace device, to
18 minimize the acquisition and retention, and pro-
19 hibit the dissemination, of nonpublicly available
20 information concerning unconsenting United
21 States persons consistent with the need of the
22 United States to obtain, produce, and dissemi-
23 nate foreign intelligence information;

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

1 intelligence information, as defined in section
2 101(e)(1), shall not be disseminated in a man-
3 ner that identifies any United States person,
4 without such person’s consent, unless such per-
5 son’s identity is necessary to understand foreign
6 intelligence information or assess its impor-
7 tance; and

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

15 (B) PEN REGISTERS AND TRAP AND TRACE
16 DEVICES.—Section 402 of the Foreign Intel-
17 ligence Surveillance Act of 1978 (50 U.S.C.
18 1842) is amended—

19 (i) in subsection (d)—

20 (I) in paragraph (1), by inserting
21 “, and that the proposed minimization
22 procedures meet the definition of
23 minimization procedures under this
24 title” before the period at the end;
25 and

1 (II) in paragraph (2)(B)—

2 (aa) in clause (ii)(II), by
3 striking “and” after the semi-
4 colon; and

5 (bb) by adding at the end
6 the following:

7 “(iv) the minimization procedures be
8 followed; and”; and

9 (ii) by adding at the end the fol-
10 lowing:

11 “(h) At or before the end of the period of time for
12 which the installation and use of a pen register or trap
13 and trace device is approved under an order or an exten-
14 sion under this section, the judge may assess compliance
15 with the minimization procedures by reviewing the cir-
16 cumstances under which information concerning United
17 States persons was acquired, retained, or disseminated.”.

18 (C) EMERGENCIES.—Section 403 of the
19 Foreign Intelligence Surveillance Act of 1978
20 (50 U.S.C. 1843) is amended—

21 (i) by redesignating subsection (c) as
22 (d); and

23 (ii) by inserting after subsection (b)
24 the following:

1 “(c) If the Attorney General authorizes the emer-
2 gency installation and use of a pen register or trap and
3 trace device under this section, the Attorney General shall
4 require that the minimization procedures required by this
5 title for the issuance of a judicial order be followed.”.

6 (D) USE OF INFORMATION.—Section
7 405(a) of the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1845(a)) is amended by
9 striking “provisions of” and inserting “mini-
10 mization procedures required under”.

11 **SEC. 303. REPEAL OF TELECOMMUNICATIONS IMMUNITY.**

12 (a) IN GENERAL.—The Foreign Intelligence Surveil-
13 lance Act of 1978 is amended by striking title VIII (50
14 U.S.C. 1885 et seq.).

15 (b) RULE OF CONSTRUCTION.—Nothing in the
16 amendments made by this section shall be construed to
17 affect any limitation on liability otherwise provided under
18 titles I through VII of the Foreign Intelligence Surveil-
19 lance Act of 1978 (50 U.S.C. 1801 et seq.), title 18,
20 United States Code, or the Protect America Act of 2007
21 (Public Law 110–55; 121 Stat. 552) or the amendments
22 made by that Act.

23 (c) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of contents in the first section of the Foreign
25 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et

1 seq.) is amended by striking the items relating to title VIII
2 and sections 801, 802, 803, and 804.

3 **SEC. 304. PROHIBITION ON BULK COLLECTION UNDER FISA**
4 **AMENDMENTS ACT.**

5 Section 702(g)(2)(A) of the Foreign Intelligence Sur-
6 veillance Act of 1978 (50 U.S.C. 1881a(g)(2)(A)) is
7 amended—

8 (1) in clause (vi), by striking “and” at the end;

9 (2) by redesignating clause (vii) as clause (viii);

10 and

11 (3) by inserting after clause (vi) the following:

12 “(vii) the acquisition of the contents
13 (as that term is defined in section 2510(8)
14 of title 18, United States Code) of any
15 communication is limited to communica-
16 tions to which any party is an individual
17 target (which shall not be limited to known
18 or named individuals) who is reasonably
19 believed to be located outside of the United
20 States, and a significant purpose of the ac-
21 quisition of the communications of the tar-
22 get is to obtain foreign intelligence infor-
23 mation; and”.

1 **SEC. 305. PROHIBITION ON REVERSE TARGETING UNDER**
2 **FISA AMENDMENTS ACT.**

3 Section 702 of the Foreign Intelligence Surveillance
4 Act of 1978 (50 U.S.C. 1881a) is amended—

5 (1) in subsection (b)(2), by striking “the pur-
6 pose” and all that follows and inserting the fol-
7 lowing: “a significant purpose of the acquisition is to
8 acquire the communications of a particular, known
9 person reasonably believed to be located in the
10 United States, except in accordance with title I;”;

11 (2) in subsection (d)(1)(A)—

12 (A) by striking “ensure that” and insert
13 the following: “ensure—

14 “(i) that”; and

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

16 “(ii) that an application is filed under
17 title I, if otherwise required, when a sig-
18 nificant purpose of an acquisition author-
19 ized under subsection (a) is to acquire the
20 communications of a particular, known
21 person reasonably believed to be located in
22 the United States; and”;

23 (3) in subsection (g)(2)(A)(i)(I)—

24 (A) by striking “ensure that” and insert
25 the following: “ensure—

26 “(aa) that”; and

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

2 “(bb) that an application is
3 filed under title I, if otherwise re-
4 quired, when a significant pur-
5 pose of an acquisition authorized
6 under subsection (a) is to acquire
7 the communications of a par-
8 ticular, known person reasonably
9 believed to be located in the
10 United States; and”;

11 (4) in subsection (i)(2)(B)(i)—

12 (A) by striking “ensure that” and insert
13 the following: “ensure—

14 “(I) that”; and

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

16 “(II) that an application is filed
17 under title I, if otherwise required,
18 when a significant purpose of an ac-
19 quisition authorized under subsection
20 (a) is to acquire the communications
21 of a particular, known person reason-
22 ably believed to be located in the
23 United States; and”.

1 **SEC. 306. LIMITS ON USE OF UNLAWFULLY OBTAINED IN-**
2 **FORMATION UNDER FISA AMENDMENTS ACT.**

3 Section 702(i)(3) of the Foreign Intelligence Surveil-
4 lance Act of 1978 (50 U.S.C. 1881a(i)(3)) is amended by
5 striking subparagraph (B) and inserting the following:

6 “(B) CORRECTION OF DEFICIENCIES.—

7 “(i) IN GENERAL.—If the Court finds
8 that a certification required by subsection
9 (g) does not contain all of the required ele-
10 ments, or that the procedures required by
11 subsections (d) and (e) are not consistent
12 with the requirements of those subsections
13 or the fourth amendment to the Constitu-
14 tion of the United States, the Court shall
15 issue an order directing the Government
16 to, at the Government’s election and to the
17 extent required by the order of the
18 Court—

19 “(I) correct any deficiency identi-
20 fied by the order of the Court not
21 later than 30 days after the date on
22 which the Court issues the order; or

23 “(II) cease the acquisition au-
24 thorized under subsection (a).

25 “(ii) LIMITATION ON USE OF INFOR-
26 MATION.—

1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), no infor-
3 mation obtained or evidence derived
4 from an acquisition under clause (i)(I)
5 concerning any United States person
6 shall be received in evidence or other-
7 wise disclosed in any trial, hearing, or
8 other proceeding in or before any
9 court, grand jury, department, office,
10 agency, regulatory body, legislative
11 committee, or other authority of the
12 United States, a State, or political
13 subdivision thereof, and no informa-
14 tion concerning any United States
15 person acquired from the acquisition
16 shall subsequently be used or dis-
17 closed in any other manner by Fed-
18 eral officers or employees without the
19 consent of the United States person,
20 except with the approval of the Attor-
21 ney General if the information indi-
22 cates a threat of death or serious bod-
23 ily harm to any person.

24 “(II) EXCEPTION.—If the Gov-
25 ernment corrects any deficiency iden-

1 tified by the order of the Court under
2 clause (i), the Court may permit the
3 use or disclosure of information ac-
4 quired before the date of the correc-
5 tion under such minimization proce-
6 dures as the Court shall establish for
7 purposes of this clause.”.

8 **SEC. 307. PRIVACY PROTECTIONS FOR INTERNATIONAL**
9 **COMMUNICATIONS OF AMERICANS COL-**
10 **LECTED UNDER FISA AMENDMENTS ACT.**

11 (a) IN GENERAL.—Title VII of the Foreign Intel-
12 ligence Surveillance Act of 1978 (50 U.S.C. 1881) is
13 amended by adding at the end the following:

14 **“SEC. 709. ADDITIONAL SAFEGUARDS FOR COMMUNICA-**
15 **TIONS OF PERSONS IN THE UNITED STATES.**

16 “(a) LIMITATIONS ON ACQUISITION OF COMMUNICA-
17 TIONS.—

18 “(1) LIMITATION.—Except as authorized under
19 title I or paragraph (2), no communication shall be
20 acquired under this title if the Government knows
21 before or at the time of acquisition that the commu-
22 nication is to or from a person reasonably believed
23 to be located in the United States.

24 “(2) EXCEPTION.—

1 “(A) IN GENERAL.—In addition to any au-
2 thority under title I to acquire communications
3 described in paragraph (1), the communications
4 may be acquired if—

5 “(i) there is reason to believe that the
6 communication concerns international ter-
7 rorist activities directed against the United
8 States, or activities in preparation there-
9 for;

10 “(ii) there is probable cause to believe
11 that the target reasonably believed to be
12 located outside the United States is an
13 agent of a foreign power and the foreign
14 power is a group engaged in international
15 terrorism or activities in preparation there-
16 for; or

17 “(iii) there is reason to believe that
18 the acquisition is necessary to prevent
19 death or serious bodily harm.

20 “(B) ACCESS TO COMMUNICATIONS.—
21 Communications acquired under this paragraph
22 shall be treated in accordance with subsection
23 (b).

24 “(3) PROCEDURES FOR DETERMINATIONS BE-
25 FORE OR AT THE TIME OF ACQUISITION.—

1 “(A) SUBMISSION.—Not later than 120
2 days after the date of enactment of the JUS-
3 TICE Act, the Attorney General, in consulta-
4 tion with the Director of National Intelligence,
5 shall submit to the Foreign Intelligence Surveil-
6 lance Court for approval procedures for deter-
7 mining before or at the time of acquisition,
8 where reasonably practicable, whether a com-
9 munication is to or from a person reasonably
10 believed to be located in the United States and
11 whether the exception under paragraph (2) ap-
12 plies to that communication.

13 “(B) REVIEW.—The Foreign Intelligence
14 Surveillance Court shall approve the procedures
15 submitted under subparagraph (A) if the proce-
16 dures are reasonably designed to determine be-
17 fore or at the time of acquisition, where reason-
18 ably practicable, whether a communication is to
19 or from a person reasonably believed to be lo-
20 cated in the United States and whether the ex-
21 ception under paragraph (2) applies to that
22 communication.

23 “(C) PROCEDURES DO NOT MEET RE-
24 QUIREMENTS.—If the Foreign Intelligence Sur-
25 veillance Court concludes that the procedures

1 submitted under subparagraph (A) do not meet
2 the requirements of subparagraph (B), the
3 Court shall enter an order so stating and pro-
4 vide a written statement for the record of the
5 reasons for the determination. The Government
6 may appeal an order under this subparagraph
7 to the Foreign Intelligence Surveillance Court
8 of Review.

9 “(D) USE OF PROCEDURES.—If the For-
10 eign Intelligence Surveillance Court approves
11 procedures under this paragraph, the Govern-
12 ment shall use the procedures in any acquisition
13 of communications under this title.

14 “(E) REVISIONS.—The Attorney General,
15 in consultation with the Director of National
16 Intelligence, may submit new or amended proce-
17 dures to the Foreign Intelligence Surveillance
18 Court for review under this paragraph.

19 “(F) RELIABILITY.—If the Government
20 obtains new information relating to the reli-
21 ability of procedures approved under this para-
22 graph or the availability of more reliable proce-
23 dures, the Attorney General shall submit to the
24 Foreign Intelligence Surveillance Court the in-
25 formation.

1 “(b) LIMITATIONS ON ACCESS TO COMMUNICA-
2 TIONS.—

3 “(1) IN GENERAL.—At such time as the Gov-
4 ernment can reasonably determine that a commu-
5 nication acquired under this title (including a com-
6 munication acquired under subsection (a)(2)) is to
7 or from a person reasonably believed to be located
8 in the United States, the communication shall be
9 segregated or specifically designated and no person
10 shall access the communication, except in accordance
11 with title I or this section.

12 “(2) EXCEPTIONS.—In addition to any author-
13 ity under title I, including the emergency provision
14 in section 105(f), a communication described in
15 paragraph (1) may be accessed and disseminated for
16 a period of not longer than 7 days if—

17 “(A)(i) there is reason to believe that the
18 communication concerns international terrorist
19 activities directed against the United States, or
20 activities in preparation therefor;

21 “(ii) there is probable cause to believe that
22 the target reasonably believed to be located out-
23 side the United States is an agent of a foreign
24 power and the foreign power is a group engaged

1 in international terrorism or activities in prepara-
2 tion therefor; or

3 “(iii) there is reason to believe that the ac-
4 cess is necessary to prevent death or serious
5 bodily harm;

6 “(B) the Attorney General notifies the
7 Foreign Intelligence Surveillance Court imme-
8 diately of the access; and

9 “(C) not later than 7 days after the date
10 the access is initiated, the Attorney General—

11 “(i) makes an application for an order
12 under title I; or

13 “(ii) submits to the Foreign Intel-
14 ligence Surveillance Court a document
15 that—

16 “(I) certifies that—

17 “(aa) there is reason to be-
18 lieve that the communication con-
19 cerns international terrorist ac-
20 tivities directed against the
21 United States, or activities in
22 preparation therefor;

23 “(bb) there is probable
24 cause to believe that the target
25 reasonably believed to be located

1 outside the United States is an
2 agent of a foreign power and the
3 foreign power is a group engaged
4 in international terrorism or ac-
5 tivities in preparation therefor; or

6 “(cc) there is reason to be-
7 lieve that the access is necessary
8 to prevent death or serious bodily
9 harm; and

10 “(II) identifies the target of the
11 collection, the party to the commu-
12 nication who is in the United States if
13 known, and the extent to which infor-
14 mation relating to the communication
15 has been disseminated.

16 “(3) DENIAL OF COURT ORDER.—If an applica-
17 tion for a court order described in paragraph
18 (2)(C)(i) is made and is not approved, the Attorney
19 General shall submit to the Foreign Intelligence Sur-
20 veillance Court, not later than 7 days after the date
21 of the denial of the application, the document de-
22 scribed in paragraph (2)(C)(ii).

23 “(4) ADDITIONAL COURT AUTHORITIES.—

24 “(A) IN GENERAL.—The Foreign Intel-
25 ligence Surveillance Court may—

1 “(i) limit access to communications
2 described in paragraph (1) relating to a
3 particular target if the Court determines
4 that any certification submitted under
5 paragraph (2)(C)(ii)(I) with respect to that
6 target is clearly erroneous; and

7 “(ii) require the Attorney General to
8 provide the factual basis for a certification
9 submitted under paragraph (2)(C)(ii)(I), if
10 the Court determines it would aid the
11 Court in conducting review under this sub-
12 section.

13 “(B) FISC ACCESS.—The Foreign Intel-
14 ligence Surveillance Court shall have access to
15 any communications that have been segregated
16 or specifically designated under paragraph (1)
17 and any information the use of which has been
18 limited under paragraph (5).

19 “(5) FAILURE TO NOTIFY.—

20 “(A) IN GENERAL.—In the circumstances
21 described in subparagraph (B), access to a com-
22 munication shall terminate, and no information
23 obtained or evidence derived from the access
24 concerning any United States person shall be
25 received in evidence or otherwise disclosed in

1 any trial, hearing, or other proceeding in or be-
2 fore any court, grand jury, department, office,
3 agency, regulatory body, legislative committee,
4 or other authority of the United States, a State,
5 or political subdivision thereof, and no informa-
6 tion concerning any United States person ac-
7 quired from the access shall subsequently be
8 used or disclosed in any manner by Federal of-
9 ficers or employees without the consent of the
10 person, except with the approval of the Attor-
11 ney General if the information indicates a
12 threat of death or serious bodily harm to any
13 person, or if a court order is obtained under
14 title I.

15 “(B) CIRCUMSTANCES.—The cir-
16 cumstances described in this subparagraph are
17 circumstances in which—

18 “(i) as of the date that is 7 days after
19 the date on which access to a communica-
20 tion is initiated under paragraph (2), a
21 court order described in paragraph
22 (2)(C)(i) has not been sought and the doc-
23 ument described in paragraph (2)(C)(ii)
24 has not been submitted; or

1 “(ii) as of the date that is 7 days
2 after an application for a court order de-
3 scribed in paragraph (2)(C)(i) is denied,
4 the document described in paragraph
5 (2)(C)(ii) is not submitted in accordance
6 with paragraph (3).

7 “(6) EVIDENCE OF A CRIME.—Information or
8 communications subject to this subsection may be
9 disseminated for law enforcement purposes if it is
10 evidence that a crime has been, is being, or is about
11 to be committed, if dissemination is made in accord-
12 ance with section 106(b).

13 “(7) PROCEDURES FOR DETERMINATIONS
14 AFTER ACQUISITION.—

15 “(A) IN GENERAL.—Not later than 120
16 days after the date of enactment of the JUS-
17 TICE Act, the Attorney General, in consulta-
18 tion with the Director of National Intelligence,
19 shall submit to the Foreign Intelligence Surveil-
20 lance Court for approval procedures for deter-
21 mining, where reasonably practicable, whether a
22 communication acquired under this title is to or
23 from a person reasonably believed to be in the
24 United States.

1 “(B) REVIEW.—The Foreign Intelligence
2 Surveillance Court shall approve the procedures
3 submitted under subparagraph (A) if the proce-
4 dures are reasonably designed to determine,
5 where reasonably practicable, whether a com-
6 munication acquired under this title is a com-
7 munication to or from a person reasonably be-
8 lieved to be located in the United States.

9 “(C) PROCEDURES DO NOT MEET RE-
10 QUIREMENTS.—If the Foreign Intelligence Sur-
11 veillance Court concludes that the procedures
12 submitted under subparagraph (A) do not meet
13 the requirements of subparagraph (B), the
14 Court shall enter an order so stating and pro-
15 vide a written statement for the record of the
16 reasons for the determination. The Government
17 may appeal an order under this subparagraph
18 to the Foreign Intelligence Surveillance Court
19 of Review.

20 “(D) USE OF PROCEDURES.—If the For-
21 eign Intelligence Surveillance Court approves
22 procedures under this paragraph, the Govern-
23 ment shall use the procedures for any commu-
24 nication acquired under this title.

1 “(E) REVISIONS.—The Attorney General,
2 in consultation with the Director of National
3 Intelligence, may submit new or amended proce-
4 dures to the Foreign Intelligence Surveillance
5 Court for review under this paragraph.

6 “(F) RELIABILITY.—If the Government
7 obtains new information relating to the reli-
8 ability of procedures approved under this para-
9 graph or the availability of more reliable proce-
10 dures, the Attorney General shall submit to the
11 Foreign Intelligence Surveillance Court the in-
12 formation.

13 “(c) TITLE I COURT ORDER.—If the Government ob-
14 tains a court order under title I relating to a target of
15 an acquisition under this title, the Government may access
16 and disseminate, under the terms of that court order and
17 any applicable minimization requirements, any commu-
18 nications of that target that have been acquired and seg-
19 regated or specifically designated under subsection (b)(1).

20 “(d) INSPECTOR GENERAL AUDIT.—

21 “(1) AUDIT.—Not less than once each year, the
22 Inspector General of the Department of Defense and
23 the Inspector General of the Department of Justice
24 shall complete an audit of the implementation of and
25 compliance with this section. For purposes of an

1 audit under this paragraph, the Inspectors General
2 shall have access to any communications that have
3 been segregated or specifically designated under sub-
4 section (b)(1) and any information the use of which
5 has been limited under subsection (b)(5). An audit
6 under this paragraph shall include an accounting of
7 any segregated or specifically designated commu-
8 nications that have been disseminated.

9 “(2) REPORT.—Not later than 30 days after
10 the completion of each audit under paragraph (1),
11 the Inspectors General shall jointly submit to the
12 Permanent Select Committee on Intelligence and the
13 Committee on the Judiciary of the House of Rep-
14 resentatives and the Select Committee on Intel-
15 ligence and the Committee on the Judiciary of the
16 Senate a report containing the results of the audit.

17 “(3) EXPEDITED SECURITY CLEARANCE.—The
18 Director of National Intelligence shall ensure that
19 the process for the investigation and adjudication of
20 an application by an Inspector General or any ap-
21 propriate staff of an Inspector General for a security
22 clearance necessary for the conduct of the audits
23 under this subsection is conducted as expeditiously
24 as possible.

1 “(e) APPLICABILITY.—Subsections (a) and (b) shall
 2 apply to any communication acquired under this title on
 3 or after the earlier of—

4 “(1) the date that the Foreign Intelligence Sur-
 5 veillance Court approves the procedures described in
 6 subsection (a)(3) and the procedures described in
 7 subsection (b)(7); and

8 “(2) 1 year after the date of enactment of the
 9 JUSTICE Act.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 11 The table of contents in the first section of the Foreign
 12 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
 13 seq.) is amended by inserting after the item relating to
 14 section 708 the following:

“Sec. 709. Additional safeguards for communications of persons in the United
 States.”.

15 **SEC. 308. CLARIFICATION OF COMPUTER TRESPASS AU-**
 16 **THORITY.**

17 (a) DEFINITIONS.—Section 2510(21)(B) of title 18,
 18 United States Code, is amended—

19 (1) by inserting “or other” after “contractual”;
 20 and

21 (2) by striking “for access” and inserting “per-
 22 mitting access”.

23 (b) INTERCEPTION AND DISCLOSURE.—Section
 24 2511(2)(i) of title 18, United States Code, is amended—

1 (1) in subclause (I), by striking “protected com-
2 puter authorizes” and inserting the following: “pro-
3 tected computer—

4 “(aa) is attempting to respond to
5 communications activity that threat-
6 ens the integrity or operation of the
7 protected computer and requests as-
8 sistance to protect the rights and
9 property of the owner or operator;
10 and

11 “(bb) authorizes”; and

12 (2) in clause (IV), by striking “interception
13 does not” and inserting the following: “intercep-
14 tion—

15 “(aa) ceases as soon as the com-
16 munications sought are obtained or
17 after 96 hours, whichever is earlier
18 (unless an order authorizing or ap-
19 proving the interception is obtained
20 under this chapter); and

21 “(bb) does not”.

22 (c) REPORT.—Not later than 60 days after the date
23 of enactment of this Act, and annually thereafter, the At-
24 torney General shall submit a report to the Committee on
25 the Judiciary of the Senate and the Committee on the Ju-

1 diciary of the House of Representatives on the use of sec-
2 tion 2511 of title 18, United States Code, relating to com-
3 puter trespass provisions, as amended by subsection (b),
4 during the year before the year of that report.

5 **TITLE IV—IMPROVEMENTS TO**
6 **FURTHER CONGRESSIONAL**
7 **AND JUDICIAL OVERSIGHT**

8 **SEC. 401. PUBLIC REPORTING ON THE FOREIGN INTEL-**
9 **LIGENCE SURVEILLANCE ACT.**

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

12 (1) by redesignating subsections (b) through (e)
13 as subsections (c) through (f), respectively;

14 (2) by inserting after subsection (a) the fol-
15 lowing:

16 “(b) PUBLIC REPORT.—The Attorney General shall
17 make publicly available the portion of each report under
18 subsection (a) relating to paragraphs (1) and (2) of sub-
19 section (a).”; and

20 (3) in subsection (e), as so redesignated, by
21 striking “subsection (c)” and inserting “subsection
22 (d)”.

1 **SEC. 402. USE OF FOREIGN INTELLIGENCE SURVEILLANCE**
2 **ACT MATERIALS.**

3 (a) **ELECTRONIC SURVEILLANCE.**—Section 106(f) of
4 the Foreign Intelligence Surveillance Act of 1978 (50
5 U.S.C. 1806(f)) is amended by striking the last sentence
6 and inserting “In making this determination, unless the
7 court finds that disclosure would not assist in determining
8 any legal or factual issue pertinent to the case, the court
9 may disclose to the aggrieved person, the counsel for the
10 aggrieved person, or both, under the procedures and
11 standards provided in the Classified Information Proce-
12 dures Act (18 U.S.C. App.) or other appropriate security
13 procedures and protective orders, portions of the applica-
14 tion, order, or other related materials, or evidence or infor-
15 mation obtained or derived from the order.”.

16 (b) **PHYSICAL SEARCHES.**—Section 305(g) of the
17 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
18 1825(g)) is amended by striking the last sentence and in-
19 serting “In making this determination, unless the court
20 finds that disclosure would not assist in determining any
21 legal or factual issue pertinent to the case, the court may
22 disclose to the aggrieved person, the counsel for the ag-
23 grieved person, or both, under the procedures and stand-
24 ards provided in the Classified Information Procedures
25 Act (18 U.S.C. App.) or other appropriate security proce-
26 dures and protective orders, portions of the application,

1 order, or other related materials, or evidence or informa-
2 tion obtained or derived from the order.”.

3 (c) PEN REGISTERS AND TRAP AND TRACE DE-
4 VICES.—Section 405(f) of the Foreign Intelligence Sur-
5 veillance Act of 1978 (50 U.S.C. 1845(f)) is amended by
6 striking paragraph (2) and inserting the following:

7 “(2) In making a determination under paragraph (1),
8 unless the court finds that disclosure would not assist in
9 determining any legal or factual issue pertinent to the
10 case, the court may disclose to the aggrieved person, the
11 counsel for the aggrieved person, or both, under the proce-
12 dures and standards provided in the Classified Informa-
13 tion Procedures Act (18 U.S.C. App.) or other appropriate
14 security procedures and protective orders, portions of the
15 application, order, or other related materials, or evidence
16 or information obtained or derived from the order.”.

17 **SEC. 403. CHALLENGES TO NATIONWIDE ORDERS FOR**
18 **ELECTRONIC EVIDENCE.**

19 Section 2703 of title 18, United States Code, is
20 amended by adding at the end the following:

21 “(h) JUDICIAL REVIEW.—A provider of electronic
22 communication service or remote computing service may
23 challenge a subpoena, order, or warrant requiring disclo-
24 sure of customer communications or records under this
25 section in—

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

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

5 **TITLE V—IMPROVEMENTS TO**
6 **FURTHER EFFECTIVE, FO-**
7 **CUSED INVESTIGATIONS**

8 **SEC. 501. MODIFICATION OF DEFINITION OF DOMESTIC**
9 **TERRORISM.**

10 Section 2331(5) of title 18, United States Code, is
11 amended—

12 (1) by striking subparagraphs (A) and (B) and
13 inserting the following:

14 “(A) involve acts dangerous to human life
15 that constitute a Federal crime of terrorism (as
16 that term is defined in section 2332b(g)(5));
17 and”;

18 (2) by redesignating subparagraph (C) as sub-
19 paragraph (B).

20 **SEC. 502. CLARIFICATION OF INTENT REQUIREMENT.**

21 Section 2339B(a)(1) of title 18, United States Code,
22 is amended by inserting “knowing or intending that the
23 material support or resources will be used in carrying out
24 terrorist activity (as defined in section 212(a)(3)(B)(iii)

1 of the Immigration and Nationality Act (8 U.S.C.
2 1182(a)(3)(B)(iii)),” before “shall be fined”.

○