

113TH CONGRESS
1ST SESSION

S. 1130

To require the Attorney General to disclose each decision, order, or opinion of a Foreign Intelligence Surveillance Court that includes significant legal interpretation of section 501 or 702 of the Foreign Intelligence Surveillance Act of 1978 unless such disclosure is not in the national security interest of the United States and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2013

Mr. MERKLEY (for himself, Mr. LEE, Mr. HELLER, Mr. LEAHY, Mr. BEGICH, Mr. FRANKEN, Mr. TESTER, Mr. WYDEN, Mr. BLUMENTHAL, and Mr. PAUL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the Attorney General to disclose each decision, order, or opinion of a Foreign Intelligence Surveillance Court that includes significant legal interpretation of section 501 or 702 of the Foreign Intelligence Surveillance Act of 1978 unless such disclosure is not in the national security interest of the United States 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ending Secret Law
3 Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Secret law is inconsistent with democratic
7 governance. In order for the rule of law to prevail,
8 the requirements of the law must be publicly discov-
9 erable.

10 (2) The United States Court of Appeals for the
11 Seventh Circuit stated in 1998 that the “idea of se-
12 cret laws is repugnant”.

13 (3) The open publication of laws and directives
14 is a defining characteristic of government of the
15 United States. The first Congress of the United
16 States mandated that every “law, order, resolution,
17 and vote [shall] be published in at least three of the
18 public newspapers printed within the United
19 States”.

20 (4) The practice of withholding decisions of the
21 Foreign Intelligence Surveillance Court is at odds
22 with the United States tradition of open publication
23 of law.

24 (5) The Foreign Intelligence Surveillance Court
25 acknowledges that such Court has issued legally sig-
26 nificant interpretations of the Foreign Intelligence

1 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
2 that are not accessible to the public.

3 (6) The exercise of surveillance authorities
4 under the Foreign Intelligence Surveillance Act of
5 1978 (50 U.S.C. 1801 et seq.), as interpreted by se-
6 cret court opinions, potentially implicates the com-
7 munications of United States persons who are nec-
8 essarily unaware of such surveillance.

9 (7) Section 501 of the Foreign Intelligence Sur-
10 veillance Act of 1978 (50 U.S.C. 1861), as amended
11 by section 215 of the USA PATRIOT Act (Public
12 Law 107–56; 115 Stat. 287), authorizes the Federal
13 Bureau of Investigation to require the production of
14 “any tangible things” and the extent of such author-
15 ity, as interpreted by secret court opinions, has been
16 concealed from the knowledge and awareness of the
17 people of the United States.

18 (8) In 2010, the Department of Justice and the
19 Office of the Director of National Intelligence estab-
20 lished a process to review and declassify opinions of
21 the Foreign Intelligence Surveillance Court, but
22 more than two years later no declassifications have
23 been made.

1 **SEC. 3. SENSE OF CONGRESS.**

2 It is the sense of Congress that each decision, order,
 3 or opinion issued by the Foreign Intelligence Surveillance
 4 Court or the Foreign Intelligence Surveillance Court of
 5 Review that includes significant construction or interpre-
 6 tation of section 501 or section 702 of the Foreign Intel-
 7 ligence Surveillance Act of 1978 (50 U.S.C. 1861 and
 8 1881a) should be declassified in a manner consistent with
 9 the protection of national security, intelligence sources and
 10 methods, and other properly classified and sensitive infor-
 11 mation.

12 **SEC. 4. REQUIREMENT FOR DISCLOSURE OF DECISIONS,**
 13 **ORDERS, AND OPINIONS OF THE FOREIGN IN-**
 14 **TELLIGENCE SURVEILLANCE COURT.**

15 (a) SECTION 501.—

16 (1) IN GENERAL.—Section 501 of the Foreign
 17 Intelligence Surveillance Act of 1978 (50 U.S.C.
 18 1861) is amended by adding at the end the fol-
 19 lowing:

20 “(i) DISCLOSURE OF DECISIONS.—

21 “(1) DECISION DEFINED.—In this subsection,
 22 the term ‘decision’ means any decision, order, or
 23 opinion issued by the Foreign Intelligence Surveil-
 24 lance Court or the Foreign Intelligence Surveillance
 25 Court of Review that includes significant construc-
 26 tion or interpretation of this section.

1 “(2) REQUIREMENT FOR DISCLOSURE.—Sub-
2 ject to paragraphs (3) and (4), the Attorney General
3 shall declassify and make available to the public—

4 “(A) each decision that is required to be
5 submitted to committees of Congress under sec-
6 tion 601(e), not later than 45 days after such
7 opinion is issued; and

8 “(B) each decision issued prior to the date
9 of the enactment of the Ending Secret Law Act
10 that was required to be submitted to commit-
11 tees of Congress under section 601(e), not later
12 than 180 days after such date of enactment.

13 “(3) UNCLASSIFIED SUMMARIES.—Notwith-
14 standing paragraph (2) and subject to paragraph
15 (4), if the Attorney General makes a determination
16 that a decision may not be declassified and made
17 available in a manner that protects the national se-
18 curity of the United States, including methods or
19 sources related to national security, the Attorney
20 General shall release an unclassified summary of
21 such decision.

22 “(4) UNCLASSIFIED REPORT.—Notwithstanding
23 paragraphs (2) and (3), if the Attorney General
24 makes a determination that any decision may not be
25 declassified under paragraph (2) and an unclassified

1 summary of such decision may not be made available
2 under paragraph (3), the Attorney General shall
3 make available to the public an unclassified report
4 on the status of the internal deliberations and proc-
5 ess regarding the declassification by personnel of
6 Executive branch of such decisions. Such report
7 shall include—

8 “(A) an estimate of the number of deci-
9 sions that will be declassified at the end of such
10 deliberations; and

11 “(B) an estimate of the number of deci-
12 sions that, through a determination by the At-
13 torney General, shall remain classified to pro-
14 tect the national security of the United
15 States.”.

16 (2) SECTION 702.—Section 702(1) of the For-
17 eign Intelligence Surveillance Act of 1978 (50
18 U.S.C. 1881a(1)) is amended by adding at the end
19 the following:

20 “(4) DISCLOSURE OF DECISIONS.—

21 “(A) DECISION DEFINED.—In this para-
22 graph, the term ‘decision’ means any decision,
23 order, or opinion issued by the Foreign Intel-
24 ligence Surveillance Court or the Foreign Intel-
25 ligence Surveillance Court of Review that in-

1 includes significant construction or interpretation
2 of this section.

3 “(B) REQUIREMENT FOR DISCLOSURE.—
4 Subject to subparagraphs (C) and (D), the At-
5 torney General shall declassify and make avail-
6 able to the public—

7 “(i) each decision that is required to
8 be submitted to committees of Congress
9 under section 601(e), not later than 45
10 days after such opinion is issued; and

11 “(ii) each decision issued prior to the
12 date of the enactment of the Ending Secret
13 Law Act that was required to be submitted
14 to committees of Congress under section
15 601(e), not later than 180 days after such
16 date of enactment.

17 “(C) UNCLASSIFIED SUMMARIES.—Not-
18 withstanding subparagraph (B) and subject to
19 subparagraph (D), if the Attorney General
20 makes a determination that a decision may not
21 be declassified and made available in a manner
22 that protects the national security of the United
23 States, including methods or sources related to
24 national security, the Attorney General shall re-
25 lease an unclassified summary of such decision.

1 “(D) UNCLASSIFIED REPORT.—Notwith-
2 standing subparagraphs (B) and (C), if the At-
3 torney General makes a determination that any
4 decision may not be declassified under subpara-
5 graph (B) and an unclassified summary of such
6 decision may not be made available under sub-
7 paragraph (C), the Attorney General shall make
8 available to the public an unclassified report on
9 the status of the internal deliberations and
10 process regarding the declassification by per-
11 sonnel of Executive branch of such decisions.
12 Such report shall include—

13 “(i) an estimate of the number of de-
14 cisions that will be declassified at the end
15 of such deliberations; and

16 “(ii) an estimate of the number of de-
17 cisions that, through a determination by
18 the Attorney General, shall remain classi-
19 fied to protect the national security of the
20 United States.”.

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