To amend the Foreign Intelligence Surveillance Act of 1978 to modify the purposes of authorized collection of business records and to prohibit the bulk collection of metadata, to require judicial review of national security letters, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 6, 2014

Mr. WALSH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to modify the purposes of authorized collection of business records and to prohibit the bulk collection of metadata, to require judicial review of national security letters, and for other purposes.

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

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Civil Liberties Protec-
5 tion Act”.

SEC. 2. AUTHORIZED PURPOSES FOR COLLECTION OF BUSINESS RECORDS FOR CERTAIN INVESTIGATIONS.

(a) In general.—Subsection (a)(1) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by striking “to obtain” and all that follows through “clandestine intelligence activities” and inserting “to protect against international terrorism, clandestine intelligence activities, or the proliferation of weapons of mass destruction, or activities in preparation therefor,”.

(b) Applications.—Subsection (b)(2)(A) of such section is amended by striking “to obtain” and all that follows through “clandestine intelligence activities” and inserting “to protect against international terrorism, clandestine intelligence activities, or the proliferation of weapons of mass destruction, or activities in preparation therefor,”.

(c) Conforming Amendment.—The heading of such section is amended by striking “FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS” and inserting “INTERNATIONAL TERRORISM AND CERTAIN OTHER INVESTIGATIONS”.

SEC. 3. PROHIBITION ON BULK COLLECTION OF METADATA.

(a) In General.—Subsection (b)(2)(A) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861), as amended by section 2(b) of this Act, is further amended—

(1) by inserting “specific and articulable” before “facts showing”; and

(2) by inserting “of a specific individual” before “(other than a threat assessment)”. 

(b) Findings Authorizing Orders.—Subsection (c)(1) of such section 501 is amended by striking “and (b),” and inserting “and (b), and is reasonable in focus, scope, and breadth in the requested production of materials pertaining to the specific individual,”.

(c) Report on Telephony Metadata Database.—

(1) In General.—Not later than 180 days after the date of the enactment of this Act, the Director of the National Security Agency shall submit to Congress a report on the plans of the Agency for the telephony metadata database of the Agency.

(2) Elements.—The report shall include the following:

(A) The plans of the Agency for complying with the requirements of section 501 of the
Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a), with respect to the telephony metadata database of the Agency, including plans for transitioning to a database containing information that, except as described in subparagraph (B), contains only information which complies with such requirements, as so amended, and is purged of information that does not so comply.

(B) The plans of the Agency for retaining information in the database relating to on-going lawsuits with respect to the database.

SEC. 4. MODIFICATION OF REQUIREMENTS AND AUTHORITIES RELATING TO NONDISCLOSURE REQUIREMENTS IN REQUESTS FOR ACCESS TO BUSINESS RECORDS FOR INTERNATIONAL TERRORISM AND CERTAIN OTHER INVESTIGATIONS.

(a) Judicial Approval Required for Original Imposition of Nondisclosure Requirements.—Subsection (d) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in paragraph (1), by striking “No person” and inserting “Subject to paragraph (2), no person”;
(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following new paragraph (2):

“(2) Nondisclosure requirements may be included in an order under this section only if the judge entering the order finds that there are reasonable grounds to believe that a violation of such nondisclosure requirements would—

“(A) significantly threaten national security;

“(B) interfere with an ongoing investigation;

“(C) endanger the life or physical safety of any person; or

“(D) impair diplomatic relations.”.

(b) EFFECTIVE PERIOD OF NONDISCLOSURE REQUIREMENTS.—Such subsection is further amended by adding at the end the following new paragraph:

“(4) Nondisclosure requirements under this subsection—

“(A) may not be effective for a period of more than 180 days; and

“(B) may be renewed for additional 180-day periods if a judge serving in the pool established by section 103(a) cannot make a finding described in subsection (f)(2)(C)(i) with respect to such non-
disclosure requirements at the time of such re-
newal.”.

(c) **Judicial Review of Nondisclosure Re-
quirements After Issuance.**—Subsection (f)(2)(C) of
such section is amended—

(1) in clause (i), by striking “may endanger”
and all that follows and inserting “may significantly
threaten national security, interfere with an ongoing
investigation, endanger the life of physical safety of
any person, or impair diplomatic relations.”;

(2) by striking clause (ii);

(3) by redesignating clause (iii) as clause (ii);

and

(4) in clause (ii), as redesignated by paragraph
(3), by striking “1 year” and inserting “180 days”.

**SEC. 5. Prohibition on Transfer or Storage of Tangible Things Derived from Access to**

**Business Records for International Terrorism and Certain Other Inves-
tigations to Private Entities.**

Section 501 of the Foreign Intelligence Surveillance
Act of 1978 (50 U.S.C. 1861), as amended by this Act,
is further amended by adding at the end the following new
subsection:
“(i) Prohibition on Transfer or Storage of Tangible Things to or With Private Entities.—No tangible thing received by the Federal Bureau of Investigation in response to an order under this section, or any database of such tangible things, may be stored by a private entity or transferred to a private entity for storage.”.

SEC. 6. LIMITATIONS ON NATIONAL SECURITY LETTERS.

(a) Definitions.—

(1) FISA Court.—The term “FISA Court” means the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(2) Minimization Procedures.—The term “minimization procedures” has the meaning given that term in section 501(g)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(g)(2)).

(3) National Security Letter.—The term “national security letter” means a request for information under—

(A) section 2709 of title 18, United States Code (to access certain communication service provider records);
(B) section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) (to obtain financial institution customer records);

(C) section 802 of the National Security Act of 1947 (50 U.S.C. 3162) (to obtain financial information, records, and consumer reports);

(D) section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports); or

(E) section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain certain consumer reports).

(4) UNITED STATES PERSON.—The term “United States person” has the meaning given that term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—Except as provided in subsection (c), no officer or employee of the United States may issue a national security letter unless the FISA Court, a United States district court, or a United States Magistrate judge issues an order approving an application for the national security letter.
(2) **Review of Application.**—The FISA Court, a United States district court, or a United States Magistrate judge may not issue an order approving an application for a national security letter unless such court or judge finds that—

(A) there are specific and articulable facts giving reason to believe that the information sought by the national security letter is relevant and material to an authorized investigation to protect against international terrorism or clandestine intelligence activities;

(B) the national security letter is reasonable in scope, focus, and breadth; and

(C) such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) **Minimization Procedures.**—An order approving an application for a national security letter issued under this subsection shall set out the minimization procedures that apply to the national security letter.

(4) **Judicial Approval Required for Original Imposition of Nondisclosure Requirements.**—A national security letter may contain non-
disclosure requirements only if the FISA Court, a
United States district court, or a United States
Magistrate judge finds that there are reasonable
grounds, relevant to the authorized investigation
concerned, to believe that a violation of the non-
disclosure requirements would—

(A) significantly threaten national security;
(B) interfere with an ongoing investigation;
(C) endanger the life or physical safety of
any person; or
(D) impair diplomatic relations.

(c) EXCEPTION FOR EMERGENCY SITUATIONS.—

(1) IN GENERAL.—Except as provided in para-
graph (2), the requirement for an order approving
an application for a national security letter under
subsection (b) shall not apply if the Attorney Gen-
eral—

(A) reasonably determines that the factual
basis for the issuance of the national security
letter exists;

(B) reasonably determines that an emer-
gency situation exists with respect to the
issuance of a national security letter before an
order approving an application for the national
security letter can with due diligence be ob-
tained;

    (C) informs, either personally or through a
designee, the FISA Court, a United States dis-

ctrict court, or a United States Magistrate judge
of the decision to issue the national security let-
ter at the time the decision is made; and

    (D) makes an application for approval of
the issuance of the national security letter to
the FISA Court, a United States district court,
or a United States Magistrate judge in accord-
ance with subsection (b) as soon as practicable,
but not later than 7 days after the Attorney
General decides to issue the national security
letter.

    (2) MINIMIZATION PROCEDURES.—Any national
security letter issued pursuant to this subsection
shall comply with and include applicable minimiza-
tion procedures.

    (3) TERMINATION.—A national security letter
issued pursuant to this subsection, and any non-
disclosure requirements included in the national se-
curity letter, shall terminate upon the earlier of the
following:
(A) When information sought by the national security letter is obtained.

(B) In the event an application for approval of the issuance of the national security letter described in paragraph (1)(D) is made, when the application is denied.

(C) The date that is seven days after the date of the decision of the Attorney General to issue the national security letter.

(4) ANNUAL REPORTS ON ISSUANCE.—The Director of the Federal Bureau of Investigation shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives each year a report on the national security letters issued pursuant to this subsection during the preceding year, including a statement of the number of national security letters so issued during such year.

(d) NONDISCLOSURE REQUIREMENTS.—

(1) DISCLOSURE FOR COMPLIANCE OR LEGAL ASSISTANCE.—

(A) Disclosure authorized.—A recipient of a national security letter containing non-disclosure requirements may disclose receipt of the national security letter to persons necessary
to comply with the national security letter or an
attorney to obtain legal advice or legal assist-
ance with respect to the national security letter.

(B) Notice during disclosure of appl-
licability of nondisclosure require-
ments.—A recipient disclosing receipt of a na-
tional security letter to persons or an attorney
pursuant to subparagraph (A) shall inform such
persons or attorney of the nondisclosure re-
quirements contained in the national security
letter.

(C) Compliance with nondisclosure
requirements.—Any person or attorney who
receives a disclosure under subparagraph (A)
shall be subject to the nondisclosure re-
quirements contained in the national security letter
concerned.

(2) Limitation on effective period.—

(A) Initial effective period.—Except
as provided in section 3511(b) of title 18,
United States Code (as amended by subpara-
graph (B)), nondisclosure requirements con-
tained in a national security letter following ju-
dicial approval in accordance with subsection
(b)(4) shall be effective for not more than 60
days from the date of the issuance of the national security letter. In the case of a national security letter issued in accordance with subsection (b) after application described in subsection (c)(1)(D), the date of the issuance of the national security letter in accordance with subsection (b) shall be treated as the date of the issuance of the national security letter for purposes of this subparagraph.

(B) EXTENSIONS.—Subsection (b) of section 3511 of title 18, United States Code, is amended to read as follows:

“(b)(1) Upon the expiration pursuant to section 6(d)(2)(A) of the Civil Liberties Protection Act of the initial period of effectiveness of nondisclosure requirements imposed in connection with a request for records, a report, or other information under section 2709(b) of this title, section 626(a) or 627(a) of the Fair Credit Reporting Act, section 1154(a)(5)(A) of the Right to Financial Privacy Act or section 802(a) of the National Security Act of 1947, the Attorney General may petition the United States district court for the district in which the recipient of the request does business or resides for an extension of the period of effectiveness of the nondisclosure requirements for not more than 180 days.
“(2) Upon petition by the Attorney General pursuant to paragraph (1), the court may grant an extension of the period of effectiveness of nondisclosure requirements described in that paragraph for not more than 180 days if the court finds that there are reasonable grounds, relevant to the authorized investigation to protect against international terrorism or clandestine intelligence activities concerned, to believe that a violation of the nondisclosure requirements would—

“(A) significantly threaten national security;

“(B) interfere with an ongoing investigation;

“(C) endanger the life or physical safety of any person; or

“(D) impair diplomatic relations.

“(3) Any extension of the period of effectiveness of nondisclosure requirements under paragraph (2) may be extended for additional periods of not more than 180 days each in accordance with the provisions of this subsection.

“(4) The Attorney General shall notify the recipient of a request described in paragraph (1) that contains nondisclosure requirements of each petition for the extension of the period of effectiveness of such nondisclosure requirements that is filed by the Attorney General under this subsection.”.

(e) USE OF INFORMATION.—
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(1) INFORMATION CONCERNING A UNITED
STATES PERSON.—No information acquired pursuant to a national security letter concerning a United
States person may be used in violation of the minimization procedures adopted pursuant to subsection
(b)(3) or required pursuant to subsection (c)(2), as applicable.

(2) CERTAIN INFORMATION OBTAINED DURING EMERGENCIES.—

(A) IN GENERAL.—In the case of a national security letter issued pursuant to subsection (c), if the application for approval of issuance described in paragraph (1)(D) of that subsection is denied or if the production of information is terminated without the issuance of an order of approval, no information obtained or evidence derived from the national security letter shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or any authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such production
shall subsequently be used or disclosed in any other manner by any officer or employee of the United States without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(B) ASSESSMENT OF COMPLIANCE.—The Attorney General shall assess and ensure compliance with the limitations in subparagraph (A).

(3) PRIVILEGED.—No otherwise privileged information acquired pursuant to a national security letter shall lose its privileged character.

(4) LAWFUL PURPOSES.—No information acquired pursuant to a national security letter may be used or disclosed by officers or employees of the United States except for lawful purposes.

SEC. 7. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.