AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

116TH CONGRESS
2D SESSION

H. R. 6172

AN ACT

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the production of certain business records, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "USA FREEDOM Reauthorization Act of 2020".

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.

TITLE I—FISA BUSINESS RECORDS

Sec. 101. Repeal of authority to access on an ongoing basis call detail records.
Sec. 102. Protection of certain information.
Sec. 103. Use of information.
Sec. 104. Limitation on retention of business record information.
Sec. 105. Effective date.

TITLE II—ACCURACY AND INTEGRITY OF FISA PROCESS

Sec. 201. Certifications regarding accuracy of FISA applications.
Sec. 202. Description of techniques carried out before targeting United States person.
Sec. 203. Investigations relating to Federal candidates and elected Federal officials.
Sec. 204. Removal or suspension of Federal officers for misconduct before Foreign Intelligence Surveillance Court.
Sec. 205. Penalties for offenses related to FISA.
Sec. 206. Contempts constituting crimes.
Sec. 207. Effective date.

TITLE III—FOREIGN INTELLIGENCE SURVEILLANCE COURT

Sec. 301. Declassification of significant decisions, orders, and opinions.
Sec. 302. Appointment of amici curiae and access to information.
Sec. 303. Effective and independent advice for Foreign Intelligence Surveillance Court.
Sec. 304. Transcripts of proceedings and communications regarding applications.
Sec. 305. Information provided in annual reports.

TITLE IV—TRANSPARENCY, SUNSETS, AND OTHER MATTERS

Sec. 401. Congressional oversight.
Sec. 402. Establishment of compliance officers.
Sec. 403. Public reports on information obtained or derived under FISA and protection of First Amendment activities.
Sec. 404. Mandatory reporting on certain orders.
Sec. 405. Report on use of FISA authorities regarding protected activities and protected classes.
Sec. 406. Improvements to Privacy and Civil Liberties Oversight Board.
Sec. 407. Sunsets.
Sec. 408. Technical amendments.

SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

TITLE I—FISA BUSINESS RECORDS

SEC. 101. REPEAL OF AUTHORITY TO ACCESS ON AN ONGOING BASIS CALL DETAIL RECORDS.

(a) CALL DETAIL RECORDS.—

(1) REPEAL.—Subsection (b)(2) of section 501 (50 U.S.C. 1861) is amended—

(A) by striking subparagraph (C);

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by striking ''in the case of'' and all that follows through ''in subparagraph (C)),''; and

(ii) in clause (iii), by striking the semicolon at the end and inserting ''; and''; and

(C) by redesignating subparagraph (D) as subparagraph (C).

(2) PROHIBITION.—Section 501(a) (50 U.S.C. 1861) is amended by adding at the end the following new paragraph:

''(4) An application under paragraph (1) may not seek an order authorizing or requiring the production on an ongoing basis of call detail records.''.

(b) CONFORMING AMENDMENTS.—

(1) ORDERS.—Subsection (c) of section 501 (50 U.S.C. 1861) is amended—

(A) in paragraph (1), by striking ''with subsection (b)(2)(D)'' and inserting ''with subsection (b)(2)(C)''; and

(B) in paragraph (2), by striking subparagraph (F) and inserting the following:

''(F) in the case of an application for call detail records, shall direct the Government—

''(i) to adopt minimization procedures that require the prompt destruction of all call detail records produced under the order that the Government determines are not foreign intelligence information; and

''(ii) to destroy all call detail records produced under the order as prescribed by such procedures.'';

(2) COMPENSATION.—Subsection (j) of section 501 (50 U.S.C. 1861) is amended to read as follows:

"(j) COMPENSATION.—The Government shall compensate a person for reasonable expenses incurred for providing technical assistance to the Government under this section.".

(3) DEFINITIONS.—Subsection (k)(4)(B) of section 501 (50 U.S.C. 1861) is amended by striking "For purposes of an application submitted under subsection (b)(2)(C)" and inserting "In the case of an application for a call detail record".

(4) OVERSIGHT.—Section 502(b) (50 U.S.C. 1862(b)) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively;

(5) ANNUAL REPORTS.—Section 603 (50 U.S.C. 1873) is amended—

(A) in subsection (b)—

(i) by transferring subparagraph (C) of paragraph (6) to the end of paragraph (5);

(ii) in paragraph (5)—

(I) in subparagraph (A), by striking "; and" and inserting a semicolon;

(II) in subparagraph (B), by striking the semicolon and inserting "; and"; and

(III) in subparagraph (C), as transferred by clause (i) of this subparagraph, by striking "any database of";

(iii) by striking paragraph (6) (as amended by clause (i) of this subparagraph); and

(iv) by redesignating paragraph (7) as paragraph (6); and

(B) in subsection (d)—

(i) in paragraph (1), by striking "any of paragraphs (3), (5), or (6)" and inserting "either of paragraph (3) or (5)"; and

(ii) in paragraph (2)(A), by striking "Paragraphs (2)(B), (2)(C), and (6)(C)" and inserting "Paragraphs (2)(B) and (2)(C)".

(6) PUBLIC REPORTING.—Section 604(a)(1)(F) (50 U.S.C. 1874(a)(1)(F)) is amended—

(A) in clause (i), by striking the semicolon and inserting "; and";

(B) in clause (ii), by striking "; and" and inserting a period; and

(C) by striking clause (iii).

SEC. 102. PROTECTION OF CERTAIN INFORMATION.

(a) PROTECTION.—Subsection (a) of section 501 (50 U.S.C. 1861), as amended by section 101, is further amended by adding at the end the following new paragraph:

"(5)(A) An application under paragraph (1) may not seek an order authorizing or requiring the production of a tangible thing under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

"(B) An application under paragraph (1) may not seek an order authorizing or requiring the production of cell site location or global positioning system information.".

(b) CLARIFICATION OF EMERGENCY AUTHORITY FOR CELL SITE LOCATION OR GLOBAL POSITIONING SYSTEM INFORMATION.—The Attorney General may treat the production of cell site location or global positioning system information as electronic surveillance rather than business records for purposes of authorizing the emergency produc-

tion of such information pursuant to section 105(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)).

(c) CONFORMING AMENDMENT.—Subsection (a) of section 501 (50 U.S.C. 1861) is further amended by striking ''Subject to paragraph (3)'' and inserting ''Subject to paragraphs (3), (4), and (5)''.

SEC. 103. USE OF INFORMATION.

Section 501(h) (50 U.S.C. 1861(h)) is amended—

(1) by striking ''Information acquired'' and inserting the following:

''(1) IN GENERAL.—Information acquired''; and

(2) by adding at the end the following new paragraphs:

''(2) USE IN TRIALS, HEARINGS, OR OTHER PROCEEDINGS.—For purposes of subsections (b) through (h) of section 106—

''(A) information obtained or derived from the production of tangible things pursuant to an investigation conducted under this section shall be deemed to be information acquired from an electronic surveillance pursuant to title I, unless the court or other authority of the United States finds, in response to a motion from the Government, that providing notice to

an aggrieved person would harm the national security of the United States; and

"(B) in carrying out subparagraph (A), a person shall be deemed to be an aggrieved person if—

"(i) the person is the target of such an investigation; and

"(ii) the activities or communications of the person are described in the tangible things that the Government intends to use or disclose in any trial, hearing, or other proceeding.".

SEC. 104. LIMITATION ON RETENTION OF BUSINESS RECORD INFORMATION.

(a) REQUIREMENT.—Section 501(g) (50 U.S.C. 1861(g)) is amended—

(1) in paragraph (2), by striking "In this section" and inserting "In accordance with paragraph (3), in this section";

(2) by redesignating paragraph (3) as paragraph (4); and

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

"(3) LIMITATION ON RETENTION.—The minimization procedures under paragraph (1) shall en-

sure that tangible things, and information therein, received under this section may not be retained in excess of 5 years, unless—

"(A) the tangible thing or information has been affirmatively determined, in whole or in part, to constitute foreign intelligence or counterintelligence or to be necessary to understand or assess foreign intelligence or counterintelligence;

"(B) the tangible thing or information is reasonably believed to constitute evidence of a crime and is retained by a law enforcement agency;

"(C) the tangible thing or information is enciphered or reasonably believed to have a secret meaning;

"(D) retention is necessary to protect against an imminent threat to human life;

"(E) retention is necessary for technical assurance or compliance purposes, including a court order or discovery obligation, in which case access to the tangible thing or information retained for technical assurance or compliance purposes shall be reported to the Permanent Select Committee on Intelligence and the Com-

mittee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate on an annual basis; or

"(F) retention for a period in excess of 5 years is approved by the Director of the Federal Bureau of Investigation, based on a determination that retention is necessary to protect the national security of the United States, in which case the Director shall provide to such committees a written certification describing—

"(i) the reasons extended retention is necessary to protect the national security of the United States;

"(ii) the duration for which the Director is authorizing retention;

"(iii) generally the tangible things or information to be retained; and

"(iv) the measures the Director is taking to protect the privacy interests of United States persons or persons located inside the United States.".

(b) OVERSIGHT.—Section 502(b) (50 U.S.C. 1862(b)) is amended—

(1) in paragraph (7), by striking "; and" and inserting a semicolon;

(2) in paragraph (8)(E), by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) a description of each time that an exception to the 5-year limitation on the retention of information was made pursuant to any of subparagraphs (C) through (E) of subsection (g)(3) of section 501, including an explanation for each such exception.".

SEC. 105. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply with respect to applications made under section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) on or after such date.

TITLE II—ACCURACY AND INTEGRITY OF FISA PROCESS

SEC. 201. CERTIFICATIONS REGARDING ACCURACY OF FISA APPLICATIONS.

(a) TITLE I.—Subsection (a) of section 104 (50 U.S.C. 1804) is amended—

(1) in paragraph (8), by striking "; and" and inserting a semicolon;

(2) in paragraph (9), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(10) a certification by the applicant that, to the best knowledge of the applicant, the attorney for the Government and the Department of Justice has been apprised of all information that might reasonably—

"(A) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

"(B) otherwise raise doubts with respect to the findings required under section 105(a).".

(b) TITLE III.—Subsection (a) of section 303 (50 U.S.C. 1823) is amended—

(1) in paragraph (7), by striking "; and" and inserting a semicolon;

(2) in paragraph (8), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) a certification by the applicant that, to the best knowledge of the applicant, the attorney for the Government and the Department of Justice has been apprised of all information that might reasonably—

"(A) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

"(B) otherwise raise doubts with respect to the findings required under section 304(a).".

(c) TITLE IV.—Subsection (c) of section 402 (50 U.S.C. 1842) is amended—

(1) in paragraph (2), by striking "; and" and inserting a semicolon;

(2) in paragraph (3), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) a certification by the applicant that, to the best knowledge of the applicant, the attorney for the Government and the Department of Justice has been apprised of all information that might reasonably—

"(A) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

"(B) otherwise raise doubts with respect to the findings required under subsection (d).".

(d) TITLE V.—Subsection (b)(2) of section 501 (50 U.S.C. 1861), as amended by section 101, is further amended—

(1) in subparagraph (B), by striking "; and" and inserting a semicolon;

(2) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) a statement by the applicant that, to the best knowledge of the applicant, the application fairly reflects all information that might reasonably—

"(i) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

"(ii) otherwise raise doubts with respect to the findings required under subsection (c).".

(e) TITLE VII.—

(1) SECTION 703.—Subsection (b)(1) of section 703 (50 U.S.C. 1881b) is amended—

(A) in subparagraph (I), by striking "; and" and inserting a semicolon;

(B) in subparagraph (J), by striking the period at the end and inserting "; and"; and

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

"(K) a certification by the applicant that, to the best knowledge of the applicant, the attorney for the Government and the Department of Justice has been apprised of all information that might reasonably—

"(i) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

"(ii) otherwise raise doubts with respect to the findings required under subsection (c).".

(2) SECTION 704.—Subsection (b) of section 704 (50 U.S.C. 1881c) is amended—

(A) in paragraph (6), by striking "; and" and inserting a semicolon;

(B) in paragraph (7), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(8) a certification by the applicant that, to the best knowledge of the applicant, the attorney for the Government and the Department of Justice has been apprised of all information that might reasonably—

"(A) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

"(B) otherwise raise doubts with respect to the findings required under subsection (c).".

(f) REVIEW OF CASE FILES TO ENSURE ACCURACY.—Not later than 180 days after the date of the enactment of this Act, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall promulgate rules governing the review of case files, as appropriate, to ensure that applications to the Foreign

Intelligence Surveillance Court under title I or III of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that target United States persons are accurate and complete.

SEC. 202. DESCRIPTION OF TECHNIQUES CARRIED OUT BEFORE TARGETING UNITED STATES PERSON.

(a) TITLE I.—Section 104(a)(6) (50 U.S.C. 1804(a)(6)) is amended—

(1) in subparagraph (D), by striking "; and" and inserting a semicolon; and

(2) by adding at the end the following new subparagraph:

"(F) with respect to a target who is a United States person, including a statement describing the investigative techniques carried out before making the application; and".

(b) TITLE III.—Section 303(a)(6) (50 U.S.C. 1823(a)(6)) is amended—

(1) in subparagraph (D), by striking "; and" and inserting a semicolon; and

(2) by adding at the end the following new subparagraph:

"(F) with respect to a target who is a United States person, includes a statement de-

scribing the investigative techniques carried out before making the application; and''.

SEC. 203. INVESTIGATIONS RELATING TO FEDERAL CANDIDATES AND ELECTED FEDERAL OFFICIALS.

(a) TITLE I.—Section 104(a)(6) (50 U.S.C. 1804(a)(6)), as amended by section 202, is further amended by adding at the end the following new subparagraph:

''(G) if the target of the electronic surveillance is an elected Federal official or a candidate in a Federal election, that the Attorney General has approved in writing of the investigation;''.

(b) TITLE III.—Section 303(a)(6) (50 U.S.C. 1823(a)(6)), as amended by section 202, is further amended by adding at the end the following new subparagraph:

''(G) if the target of the physical search is an elected Federal official or a candidate in a Federal election, that the Attorney General has approved in writing of the investigation;''.

SEC. 204. REMOVAL OR SUSPENSION OF FEDERAL OFFICERS FOR MISCONDUCT BEFORE FOREIGN INTELLIGENCE SURVEILLANCE COURT.

Section 103 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

"(l) REMOVAL OR SUSPENSION OF FEDERAL OFFICERS FOR MISCONDUCT BEFORE COURTS.—An employee, officer, or contractor of the United States Government who engages in deliberate misconduct with respect to proceedings before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review shall be subject to appropriate adverse actions, including, as appropriate, suspension without pay or removal.".

SEC. 205. PENALTIES FOR OFFENSES RELATED TO FISA.

(a) FALSE DECLARATIONS BEFORE FISC AND FISCR.—Section 1623(a) of title 18, United States Code, is amended by inserting before ", or both" the following: "or, if such proceedings are before or ancillary to the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review established by section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), imprisoned not more than eight years".

(b) INCREASED PENALTY FOR UNAUTHORIZED USE.—Section 109(c) (50 U.S.C. 1809(c)) is amended by striking "five years" and inserting "eight years".

(c) UNAUTHORIZED DISCLOSURE OF APPLICATIONS.—

(1) IN GENERAL.—Subsection (a) of section 109 (50 U.S.C. 1809) is amended—

(A) in the matter preceding paragraph (1), by striking ''intentionally'';

(B) in paragraph (1)—

(i) by inserting ''intentionally'' before ''engages in''; and

(ii) by striking ''; or'' and inserting a semicolon;

(C) in paragraph (2)—

(i) by inserting ''intentionally'' before ''disclose or uses''; and

(ii) by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following new paragraph:

''(3) is an employee, officer, or contractor of the United States Government and intentionally discloses an application, or classified information contained therein, for an order under any title of this Act to any person not entitled to receive classified information.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of such section is amended by striking ''under subsection (a)'' and inserting ''under paragraph (1) or (2) of subsection (a)''.

SEC. 206. CONTEMPTS CONSTITUTING CRIMES.

Section 402 of title 18, United States Code, is amended by inserting after ''any district court of the United States'' the following: '', the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review established by section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803),''.

SEC. 207. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply with respect to applications made under section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) on or after such date.

TITLE III—FOREIGN INTELLIGENCE SURVEILLANCE COURT

SEC. 301. DECLASSIFICATION OF SIGNIFICANT DECISIONS, ORDERS, AND OPINIONS.

(a) TIMING OF DECLASSIFICATION.—Subsection (a) of section 602 (50 U.S.C. 1872) is amended by adding at the end the following new sentence: ''The Director shall complete the declassification review and public release of each such decision, order, or opinion by not later than 180 days after the date on which the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review issues such decision, order, or opinion.''.

(b) MATTERS COVERED.—Such subsection is further amended—

(1) by striking ''Subject to subsection (b)'' and inserting ''(1) Subject to subsection (b)'';

(2) by striking ''includes a significant'' and all that follows through '', and,'' and inserting ''is described in paragraph (2) and,''; and

(3) by adding at the end the following new paragraph:

''(2) The decisions, orders, or opinions issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review described in this paragraph are such decisions, orders, or opinions that—

''(A) include a significant construction or interpretation of any provision of law, including any novel or significant construction or interpretation of—

''(i) the term 'specific selection term'; or

''(ii) section 501(a)(5); or

''(B) result from a proceeding in which an amicus curiae has been appointed pursuant to section 103(i).''.

(c) APPLICATION OF REQUIREMENT.—Section 602 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1872) shall apply with respect to each decision,

order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review before, on, or after the date of the enactment of such section. With respect to such decisions, orders, or opinions issued before or on such date, the Director of National Intelligence shall complete the declassification review and public release of each such decision, order, or opinion pursuant to such section by not later than one year after the date of the enactment of this Act.

SEC. 302. APPOINTMENT OF AMICI CURIAE AND ACCESS TO INFORMATION.

(a) EXPANSION OF APPOINTMENT AUTHORITY.—Subparagraph (A) of section 103(i)(2) (50 U.S.C. 1803(i)(2)) is amended to read as follows:

"(A) shall appoint an individual who has been designated under paragraph (1) to serve as amicus curiae to assist such court in the consideration of any application for an order or review that, in the opinion of the court—

"(i) presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate; or

"(ii) presents exceptional concerns about the protection of the rights of a

United States person under the first amendment to the Constitution, unless the court issues a finding that such appointment is not appropriate; and''.

(b) AUTHORITY TO SEEK REVIEW.—Subsection (i) of section 103 (50 U.S.C. 1803) is amended—

(1) by redesignating paragraphs (7) through (11) as paragraphs (8) through (12), respectively; and

(2) by inserting after paragraph (6) the following new paragraph:

''(7) AUTHORITY TO SEEK REVIEW OF DECISIONS.—

''(A) FISA COURT DECISIONS.—Following issuance of an order under this Act by the Foreign Intelligence Surveillance Court, an amicus curiae appointed under paragraph (2) may petition the court to certify for review to the Foreign Intelligence Surveillance Court of Review a question of law pursuant to subsection (j). If the court denies such petition, the court shall provide for the record a written statement of the reasons for such denial. Upon certification of any question of law pursuant to this subparagraph, the Court of Review shall appoint

the amicus curiae to assist the Court of Review in its consideration of the certified question, unless the Court of Review issues a finding that such appointment is not appropriate.

"(B) FISA COURT OF REVIEW DECISIONS.—An amicus curiae appointed under paragraph (2) may petition the Foreign Intelligence Surveillance Court of Review to certify for review to the Supreme Court of the United States any question of law pursuant to section 1254(2) of title 28, United States Code.".

(c) ACCESS TO INFORMATION.—

(1) APPLICATION AND MATERIALS.—Subparagraph (A) of section 103(i)(6) (50 U.S.C. 1803(i)(6)) is amended by striking clause (ii) and inserting the following new clause:

"(ii) may make a submission to the court requesting access to any particular materials or information (or category of materials or information) that the amicus curiae believes to be relevant to the duties of the amicus curiae.".

(2) CONSULTATION AMONG AMICI CURIAE.—Such section is further amended—

(A) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

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

''(B) CONSULTATION.—If the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review determines that it is relevant to the duties of an amicus curiae appointed by the court under paragraph (2), the amicus curiae may consult with one or more of the other individuals designated by the court to serve as amicus curiae pursuant to paragraph (1) regarding any of the information relevant to any assigned proceeding.''.

(d) TERM LIMITS.—

(1) REQUIREMENT.—Paragraph (1) of section 103(i) (50 U.S.C. 1803(i)) is amended by adding at the end the following new sentence: ''An individual may serve as an amicus curiae for a 5-year term, and the presiding judges may, for good cause, jointly reappoint the individual to a single additional term.''.

(2) APPLICATION.—The amendment made by paragraph (1) shall apply with respect to the service of an amicus curiae appointed under section 103(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(i)) that occurs on or after the date of the enactment of this Act, regardless of the date on which the amicus curiae is appointed.

SEC. 303. EFFECTIVE AND INDEPENDENT ADVICE FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.

Section 103 (50 U.S.C. 1803), as amended by section 204, is further amended by adding at the end the following new subsection:

''(m) INDEPENDENT LEGAL ADVISORS.—

''(1) AUTHORITY.—The Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review may jointly employ legal advisors to assist the courts in all aspects of considering any matter before the courts, including with respect to—

''(A) providing advice on issues of law or fact presented by any application for an order under this Act;

''(B) requesting information from the Government in connection with any such application;

"(C) identifying any concerns with any such application; and

"(D) proposing requirements or conditions for the approval of any such application.

"(2) DIRECTION.—The legal advisors employed under paragraph (1) shall be subject solely to the direction of the presiding judges of the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review.".

SEC. 304. TRANSCRIPTS OF PROCEEDINGS AND COMMUNICATIONS REGARDING APPLICATIONS.

(a) TRANSCRIPTS.—Subsection (c) of section 103 (50 U.S.C. 1803) is amended—

(1) by striking "Proceedings under this Act" and inserting "(1) Proceedings under this Act";

(2) by inserting ", and shall be transcribed" before the first period;

(3) by inserting ", transcriptions of proceedings," after "applications made"; and

(4) by adding at the end the following new sentence: "Transcriptions of proceedings shall be stored in a file associated with the relevant application or order.".

(b) REQUIREMENT FOR WRITTEN RECORDS OF INTERACTIONS WITH COURT.—Such subsection, as

amended by paragraph (1) of this section, is further amended by adding at the end the following new paragraph:

"(2) The Attorney General and the Foreign Intelligence Surveillance Court shall maintain all written substantive communications between the Department of Justice and the court, including the identity of the employees of the court to or from whom the communications were made, regarding an application or order made under this title in a file associated with the application or order.".

(c) CONFORMING AMENDMENT.—Subsection (i)(2) of section 103 (50 U.S.C. 1803) is amended by striking "subsection (c)" and inserting "subsection (c)(1)".

SEC. 305. INFORMATION PROVIDED IN ANNUAL REPORTS.

(a) REPORTS BY DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Subsection (a)(1) of section 603 (50 U.S.C. 1873) is amended—

(1) in subparagraph (E), by striking "; and" and inserting a semicolon;

(2) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(G) the number of times the Attorney General required the emergency production of tangible things pursuant to section 501(i)(1) and the application under subparagraph (D) of such section was denied;

"(H) the number of certifications by the Foreign Intelligence Surveillance Court of Review pursuant to section 103(j); and

"(I) the number of requests to certify a question made by an amicus curiae to the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review pursuant to section 103(i)(7).".

(b) REPORTS BY DIRECTOR OF NATIONAL INTELLIGENCE.—Subsection (b)(5)(B) of such section, as amended by section 101, is amended by inserting before the semicolon at the end the following: ", including information received electronically and through hardcopy and portable media".

TITLE IV—TRANSPARENCY, SUNSETS, AND OTHER MATTERS

SEC. 401. CONGRESSIONAL OVERSIGHT.

(a) IN GENERAL.—Section 601 (50 U.S.C. 1871) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

''(e) CONGRESSIONAL OVERSIGHT.—In a manner consistent with the protection of the national security, nothing in this Act or any other provision of law may be construed to preclude the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate from receiving in a timely manner, upon request, applications submitted under this Act to the Foreign Intelligence Surveillance Court, orders of the court, and relevant materials relating to such applications and orders.''.

(b) CONFORMING AMENDMENT.—Section 602(a) (50 U.S.C. 1872(a)) is amended by striking ''in section 601(e)'' and inserting ''in section 601(f)''.

SEC. 402. ESTABLISHMENT OF COMPLIANCE OFFICERS.

(a) IN GENERAL.—Title VI (50 U.S.C. 1871 et seq.) is amended by adding at the end the following new section:

''SEC. 605. COMPLIANCE OFFICERS.

''(a) APPOINTMENT.—The head of each covered agency shall appoint a single Federal officer to serve as the Compliance Officer for that agency.

1 "(b) COMPLIANCE.—Each Compliance Officer ap-
2 pointed under subsection (a) shall be responsible for over-
3 seeing the compliance of the relevant covered agency with
4 the requirements of this Act.

5 "(c) AUDITS.—Each Compliance Officer shall con-
6 duct routine audits of the compliance by the relevant cov-
7 ered agency with—

8 "(1) the requirements of this Act regarding
9 submitting applications to the Foreign Intelligence
10 Surveillance Court, including with respect to the ac-
11 curacy of such applications; and

12 "(2) the minimization, targeting, querying, and
13 accuracy procedures required by this Act.

14 "(d) ASSESSMENTS.—Each Compliance Officer
15 shall—

16 "(1) conduct on a routine basis assessments of
17 the efficacy of the minimization, targeting, querying,
18 and accuracy procedures adopted by the Attorney
19 General pursuant to this Act; and

20 "(2) annually submit to the Assistant Attorney
21 General designated as the Assistant Attorney Gen-
22 eral for National Security under section 507A of
23 title 28, United States Code, and the head of the
24 relevant covered agency the findings of such assess-
25 ments, including any recommendations of the Com-

pliance Officer with respect to improving such procedures.

"(e) REMEDIATION.—Each Compliance Officer shall ensure the remediation of any compliance issues of the relevant covered agency identified pursuant to this section or the rules of the Foreign Intelligence Surveillance Court.

"(f) INSPECTOR GENERALS ASSESSMENT.—On an annual basis, and consistent with the protection of sources and methods, each Inspector General of a covered agency shall submit to the Foreign Intelligence Surveillance Court and the appropriate congressional committees an assessment of the implementation of this section by the covered agency.

"(g) DEFINITIONS.—In this section:

"(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

"(A) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives; and

"(B) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

"(2) COVERED AGENCY.—The term 'covered agency' means a department or agency of the United

States Government that submits applications to the Foreign Intelligence Surveillance Court under this Act.

"(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term 'Foreign Intelligence Surveillance Court' has the meaning given that term in section 101.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the Foreign Intelligence Surveillance Act of 1978 is amended by inserting after the item relating to section 604 the following new item:

"Sec. 605. Compliance officers.".

SEC. 403. PUBLIC REPORTS ON INFORMATION OBTAINED OR DERIVED UNDER FISA AND PROTECTION OF FIRST AMENDMENT ACTIVITIES.

(a) REPORTS.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall make publicly available the following reports:

(1) A report explaining how the United States Government determines whether information is "obtained or derived" from activities authorized by the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of the notice requirements under such Act.

(2) A report explaining how the United States Government interprets the prohibition under section

501(a) of such Act (50 U.S.C. 1861(a)) on conducting an investigation of a United States person "solely upon the basis of activities protected by the first amendment to the Constitution".

(b) REQUIREMENTS.—The Attorney General shall ensure that the reports under subsection (a) are detailed and use hypothetical fact patterns to describe how the United States Government conducts the analyses covered by the reports.

(c) FORM.—The reports under subsection (a) shall be made publicly available in unclassified form.

SEC. 404. MANDATORY REPORTING ON CERTAIN ORDERS.

(a) REPORTING ON UNITED STATES PERSON QUERIES.—Subsection (b)(2) of section 603 (50 U.S.C. 1873), as amended by section 101, is amended—

(1) in subparagraph (B), by striking "the number of search terms concerning a known United States person" and inserting "the number of search terms that concern a known United States person or are reasonably likely to identify a United States person"; and

(2) in subparagraph (C), by striking "the number of queries concerning a known United States person" and inserting "the number of queries that

concern a known United States person or are reasonably likely to identify a United States person''.

(b) MODIFICATION TO EXCEPTIONS.—Subsection (d)(2) of such section, as amended by section 101, is amended by striking ''(A) FEDERAL'' and all that follows through ''(B) ELECTRONIC MAIL ADDRESS AND TELEPHONE NUMBERS.—''.

SEC. 405. REPORT ON USE OF FISA AUTHORITIES REGARDING PROTECTED ACTIVITIES AND PROTECTED CLASSES.

(a) REPORT.—Not later than one year after the date of the enactment of this Act, the Privacy and Civil Liberties Oversight Board shall make publicly available, to the extent practicable, a report on—

(1) the extent to which the activities and protected classes described in subsection (b) are used to support targeting decisions in the use of authorities pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); and

(2) the impact of the use of such authorities on such activities and protected classes.

(b) ACTIVITIES AND PROTECTED CLASSES DESCRIBED.—The activities and protected classes described in this subsection are the following:

(1) Activities and expression protected by the First Amendment to the Constitution of the United States.

(2) Race, ethnicity, national origin, religious affiliation, sex, and any other protected characteristic determined appropriate by the Board.

(c) FORM.—In addition to the report made publicly available under subsection (a), the Board may submit to the appropriate congressional committees a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means—

(1) the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives; and

(2) the Committee on the Judiciary and the Select Committee on Intelligence of the Senate.

SEC. 406. IMPROVEMENTS TO PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

Paragraph (4) of section 1061(h) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee(h)) is amended to read as follows:

''(4) TERM.—

"(A) COMMENCEMENT.—Each member of the Board shall serve a term of 6 years, commencing on the date of the appointment of the member to the Board.

"(B) REAPPOINTMENT.—A member may be reappointed to one or more additional terms.

"(C) VACANCY.—A vacancy in the Board shall be filled in the manner in which the original appointment was made.

"(D) EXTENSION.—Upon the expiration of the term of office of a member, the member may continue to serve, at the election of the member—

"(i) during the period preceding the reappointment of the member pursuant to subparagraph (B); or

"(ii) until the member's successor has been appointed and qualified.".

SEC. 407. SUNSETS.

(a) USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (50 U.S.C. 1805 note) is amended by striking "March 15, 2020" and inserting "December 1, 2023".

(b) INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—Section 6001(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 1801 note) is amended by striking ''March 15, 2020'' and inserting ''December 1, 2023''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the earlier of the date of the enactment of this Act or March 15, 2020.

SEC. 408. TECHNICAL AMENDMENTS.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended as follows:

(1) In section 103(e) (50 U.S.C. 1803(e)), by striking ''702(h)(4)'' both places it appears and inserting ''702(i)(4)''.

(2) In section 105(a)(4) (50 U.S.C. 1805(a)(4))—

(A) by striking ''section 104(a)(7)(E)'' and inserting ''section 104(a)(6)(E)''; and

(B) by striking ''section 104(d)'' and inserting ''section 104(c)''.

(3) In section 501(a) (50 U.S.C. 1861(a)), by indenting paragraph (3) 2 ems to the left.

(4) In section 603(b)(2)(C) (50 U.S.C. 1873(b)(2)(C)), by inserting ''and'' after the semicolon.

(5) In section 702 (50 U.S.C. 1881a)—

(A) in subsection (h)(3), by striking ''subsection (i)'' and inserting ''subsection (j)'';

(B) in subsection (j)(1), by striking ''subsection (g)'' each place it appears and inserting ''subsection (h)''; and

(C) in the subsection heading of subsection (m), by inserting a comma after ''ASSESSMENTS''.

(6) In section 801(8)(B)(iii) (50 U.S.C. 1885(8)(B)(iii)), by striking ''702(h)'' and inserting ''702(i)''.

(7) In section 802(a)(3) (50 U.S.C. 1885a(a)(3)), by striking ''702(h)'' and inserting ''702(i)''.

(b) REFERENCES TO FOREIGN INTELLIGENCE SURVEILLANCE COURT AND FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—

(1) DEFINITIONS.—Section 101 (50 U.S.C. 1801) is amended by adding at the end the following new subsections:

"(q) The term 'Foreign Intelligence Surveillance Court' means the court established under section 103(a).

"(r) The terms 'Foreign Intelligence Surveillance Court of Review' and 'Court of Review' mean the court established under section 103(b).".

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(A) in section 102 (50 U.S.C. 1802), by striking "the court established under section 103(a)" and inserting "the Foreign Intelligence Surveillance Court";

(B) in section 103 (50 U.S.C. 1803)—

(i) in subsection (a)—

(I) in paragraph (2)(A), by striking "The court established under this subsection" and inserting "The Foreign Intelligence Surveillance Court"; and

(II) by striking "the court established under this subsection" each place it appears and inserting "the Foreign Intelligence Surveillance Court";

(ii) in subsection (g)—

(I) by striking ''the court established pursuant to subsection (a)'' and inserting ''the Foreign Intelligence Surveillance Court'';

(II) by striking ''the court of review established pursuant to subsection (b)'' and inserting ''the Foreign Intelligence Surveillance Court of Review''; and

(III) by striking ''The courts established pursuant to subsections (a) and (b)'' and inserting ''The Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review'';

(iii) in subsection (h), by striking ''a court established under this section'' and inserting ''the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review'';

(iv) in subsection (i)—

(I) in paragraph (1), by striking ''the courts established under subsections (a) and (b)'' and inserting ''the Foreign Intelligence Surveillance

Court and the Foreign Intelligence Surveillance Court of Review'';

(II) in paragraph (3)(B), by striking ''the courts'' and inserting ''the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review'';

(III) in paragraph (5), by striking ''the court'' and inserting ''the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, as the case may be,'';

(IV) in paragraph (6), by striking ''the court'' each place it appears and inserting ''the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review'';

(V) by striking ''a court established under subsection (a) or (b)'' each place it appears and inserting ''the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review''; and

(VI) by striking ''A court established under subsection (a) or (b)'' each place it appears and inserting ''The Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review'';

(v) in subsection (j)—

(I) by striking ''a court established under subsection (a)'' and inserting ''the Foreign Intelligence Surveillance Court''; and

(II) by striking ''the court determines'' and inserting ''the Foreign Intelligence Surveillance Court determines'';

(vi) by striking ''the court established under subsection (a)'' each place it appears and inserting ''the Foreign Intelligence Surveillance Court''; and

(vii) by striking ''the court established under subsection (b)'' each place it appears and inserting ''the Foreign Intelligence Surveillance Court of Review'';

(C) in section 105(c) (50 U.S.C. 1805(c))—

(i) in paragraph (2)(B), by striking ''the Court'' and inserting ''the Foreign Intelligence Surveillance Court''; and

(ii) in paragraph (3), by striking ''the court'' each place it appears and inserting ''the Foreign Intelligence Surveillance Court'';

(D) in section 401(1) (50 U.S.C. 1841(1)), by striking '', and 'State' '' and inserting '' 'State', 'Foreign Intelligence Surveillance Court', and 'Foreign Intelligence Surveillance Court of Review' '';

(E) in section 402 (50 U.S.C. 1842)—

(i) in subsection (b)(1), by striking ''the court established by section 103(a) of this Act'' and inserting ''the Foreign Intelligence Surveillance Court''; and

(ii) in subsection (h)(2), by striking ''the court established under section 103(a)'' and inserting ''the Foreign Intelligence Surveillance Court'';

(F) in section 501 (50 U.S.C. 1861)—

(i) in subsection (b)(1), by striking ''the court established by section 103(a)''

and inserting "the Foreign Intelligence Surveillance Court";

(ii) in subsection (g)(3), by striking "the court established under section 103(a)" and inserting "the Foreign Intelligence Surveillance Court"; and

(iii) in subsection (k)(1), by striking ", and 'State' " and inserting " 'State', and 'Foreign Intelligence Surveillance Court' ";

(G) in section 502(c)(1)(E), by striking "the court established under section 103" and inserting "the Foreign Intelligence Surveillance Court (as defined by section 101)";

(H) in section 801 (50 U.S.C. 1885)—

(i) in paragraph (8)(B)(i), by striking "the court established under section 103(a)" and inserting "the Foreign Intelligence Surveillance Court"; and

(ii) by adding at the end the following new paragraph:

"(10) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term 'Foreign Intelligence Surveillance Court' means the court established under section 103(a)."; and

(I) in section 802(a)(1) (50 U.S.C. 1885a(a)(1)), by striking ''the court established under section 103(a)'' and inserting ''the Foreign Intelligence Surveillance Court''.

(c) UPDATED REFERENCES TO CERTAIN INDIVIDUALS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 102(a) (50 U.S.C. 1802(a))—

(A) in paragraph (2), by striking ''him'' and inserting ''the Attorney General''; and

(B) in paragraph (3), by striking ''his certification'' and inserting ''the Attorney General's certification'';

(2) in section 103(a)(1) (50 U.S.C. 1803(a)(1)), by striking ''his decision'' and inserting ''the decision of such judge'';

(3) in section 104(a) (50 U.S.C. 1804)(a))—

(A) in the language preceding paragraph (1), by striking ''his finding'' and inserting ''the Attorney General's finding''; and

(B) in paragraph (3), by striking ''his belief'' and inserting ''the applicant's belief'';

(4) in section 105(a) (50 U.S.C. 1805(a)), by striking ''he'' and inserting ''the judge'';

(5) in section 106 (50 U.S.C. 1806)—

(A) in subsection (e), by striking ''he'' and inserting ''the person''; and

(B) in subsection (j), by striking ''his discretion'' and inserting ''the discretion of the judge'';

(6) in section 109 (50 U.S.C. 1809)—

(A) in subsection (a), by striking ''he'' and inserting ''the person''; and

(B) in subsection (b), by striking ''his official duties'' and inserting ''the official duties of such officer'';

(7) in section 305 (50 U.S.C. 1825)—

(A) in subsection (f)(1), by striking ''he'' and inserting ''the person''; and

(B) in subsection (j)(1), by striking ''his discretion'' and inserting ''the discretion of the judge'';

(8) in section 307 (50 U.S.C. 1827)—

(A) in subsection (a), by striking ''he'' and inserting ''the person''; and

(B) in subsection (b), by striking ''his official duties'' and inserting ''the official duties of such officer''; and

(9) in section 403 (50 U.S.C. 1843), by striking ''his designee'' and inserting ''a designee of the Attorney General''.

(d) COORDINATION WITH OTHER AMENDMENTS MADE BY THIS ACT.—For purposes of applying amendments made by provisions of this Act other than this section, the amendments made by this section shall be treated as having been enacted immediately before any such amendments by other provisions of this Act.

Passed the House of Representatives March 11, 2020.

Attest:

Clerk.

116th CONGRESS
2d Session

H. R. 6172

AN ACT

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the production of certain business records, and for other purposes.