

111TH CONGRESS
1ST SESSION

H. R. 4005

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

Mr. HOLT introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Financial Services and Select Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 “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 identifier,
5 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 merchandise
11 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 communications
17 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 not be issued under subsection (a) unless—

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 pertain to a foreign power or suspected
9 agent of a foreign power.

10 “(2) INVESTIGATION.—For purposes of this
11 section, an ongoing and authorized national security
12 investigation—

13 “(A) is an investigation conducted under
14 guidelines approved by the Attorney General
15 and in accordance with Executive Order 12333
16 (or any successor order);

17 “(B) shall not be conducted with respect to
18 a United States person upon the basis of activi-
19 ties protected by the First Amendment to the
20 Constitution of the United States; and

21 “(C) shall be specifically identified and re-
22 corded by an official issuing a National Security
23 Letter under subsection (a).

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

1 “(A) describe the records to be produced
2 with sufficient particularity to permit the
3 records to be fairly identified;

4 “(B) include the date on which the records
5 shall be provided, which shall allow a reasonable
6 period of time within which the records can be
7 assembled and made available;

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

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

1 “(4) RETENTION OF RECORDS.—The Director
2 of the Federal Bureau of Investigation shall direct
3 that a signed copy of each National Security Letter
4 issued under subsection (a) be retained in the data-
5 base required to be established under section 103 of
6 the JUSTICE Act.

7 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

8 “(1) IN GENERAL.—

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

20 “(B) CERTIFICATION.—The requirements
21 of subparagraph (A) shall apply if the Director
22 of the Federal Bureau of Investigation, or a
23 designee of the Director whose rank shall be no
24 lower than Deputy Assistant Director at Bu-

reau headquarters or a Special Agent in Charge
of a Bureau field office, certifies that—

“(i) there is reason to believe that disclosure of particular information about the existence or contents of a National Security Letter issued under subsection (a) during the applicable time period will result in—

“(I) endangering the life or physical safety of any person;

“(II) flight from prosecution;

“(III) destruction of or tampering with evidence;

“(IV) intimidation of potential witnesses;

“(V) interference with diplomatic relations; or

“(VI) otherwise seriously endangering the national security of the United States by alerting a target, an associate of a target, or the foreign power of which the target is an agent, of the interest of the Government in the target;

1 “(ii) the harm identified under clause
2 (i) relates to the ongoing and authorized
3 national security investigation to which the
4 records sought are relevant; and

5 “(iii) the nondisclosure requirement is
6 narrowly tailored to address the specific
7 harm identified under clause (i).

8 “(2) EXCEPTION.—

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

16 “(i) those persons to whom disclosure
17 is necessary in order to comply with the
18 National Security Letter;

19 “(ii) an attorney in order to obtain
20 legal advice or assistance regarding the
21 National Security Letter; or

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

1 “(B) NONDISCLOSURE REQUIREMENT.—A
2 person to whom disclosure is made under sub-
3 paragraph (A) shall be subject to the nondisclo-
4 sure requirements applicable to a person to
5 whom a National Security Letter is issued
6 under subsection (a) in the same manner as the
7 person to whom the National Security Letter is
8 issued.

9 “(C) NOTICE.—Any recipient who discloses
10 to a person described in subparagraph (A) in-
11 formation otherwise subject to a nondisclosure
12 requirement shall inform the person of the ap-
13 plicable nondisclosure requirement.

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

1 the recipient has the right to judicial review of the
2 nondisclosure requirement.

3 “(4) RIGHT TO JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—A wire or electronic
5 communications service provider who receives a
6 National Security Letter issued under sub-
7 section (a) shall have the right to judicial re-
8 view of any applicable nondisclosure require-
9 ment and any extension thereof.

10 “(B) TIMING.—

11 “(i) IN GENERAL.—A National Secu-
12 rity Letter issued under subsection (a)
13 shall state that if the recipient wishes to
14 have a court review a nondisclosure re-
15 quirement, the recipient shall notify the
16 Government not later than 21 days after
17 the date of receipt of the National Security
18 Letter.

19 “(ii) EXTENSION.—A notice that the
20 applicable nondisclosure requirement has
21 been extended under paragraph (3) shall
22 state that if the recipient wishes to have a
23 court review the nondisclosure require-
24 ment, the recipient shall notify the Govern-

1 ment not later than 21 days after the date
2 of receipt of the notice.

3 “(C) INITIATION OF PROCEEDINGS.—If a
4 recipient of a National Security Letter issued
5 under subsection (a) makes a notification under
6 subparagraph (B), the Government shall ini-
7 tiate judicial review under the procedures estab-
8 lished in section 3511 of this title.

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

18 “(d) MINIMIZATION AND DESTRUCTION.—

19 “(1) IN GENERAL.—Not later than 180 days
20 after the date of enactment of the JUSTICE Act,
21 the Attorney General shall establish minimization
22 and destruction procedures governing the acquisi-
23 tion, retention and dissemination by the Federal Bu-
24 reau of Investigation of any records received by the
25 Federal Bureau of Investigation in response to a

1 National Security Letter issued under subsection
2 (a).

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

5 “(A) specific procedures that are reason-
6 ably designed in light of the purpose and tech-
7 nique of a National Security Letter, to mini-
8 mize the acquisition and retention, and prohibit
9 the dissemination, of nonpublicly available in-
10 formation concerning unconsenting United
11 States persons consistent with the need of the
12 United States to obtain, produce, and dissemi-
13 nate foreign intelligence information, including
14 procedures to ensure that information obtained
15 under a National Security Letter that does not
16 meet the requirements of this section or is out-
17 side the scope of the National Security Letter,
18 is returned or destroyed;

19 “(B) procedures that require that nonpub-
20 licly available information, which is not foreign
21 intelligence information (as defined in section
22 101(e)(1) of the Foreign Intelligence Surveil-
23 lance Act of 1978 (50 U.S.C. 1801(e)(1))) shall
24 not be disseminated in a manner that identifies
25 any United States person, without the consent

1 of the United States person, unless the identity
2 of the United States person is necessary to un-
3 derstand foreign intelligence information or as-
4 sess its importance; and

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

12 “(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL
13 BODIES BE INFORMED.—

14 “(1) IN GENERAL.—On a semiannual basis the
15 Director of the Federal Bureau of Investigation shall
16 fully inform the Permanent Select Committee on In-
17 telligence and the Committee on the Judiciary of the
18 Senate and the Select Committee on Intelligence and
19 the Committee on the Judiciary of the House of
20 Representatives concerning all National Security
21 Letters issued under subsection (a).

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

24 “(A) a description of the minimization and
25 destruction procedures adopted by the Attorney

1 General under subsection (d), including any
2 changes to the minimization and destruction
3 procedures previously adopted by the Attorney
4 General;

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

7 “(C) a description of the extent to which
8 information obtained with National Security
9 Letters issued under subsection (a) has aided
10 intelligence investigations and an explanation of
11 how the information has aided the investiga-
12 tions; and

13 “(D) a description of the extent to which
14 information obtained with National Security
15 Letters issued under subsection (a) has aided
16 criminal prosecutions and an explanation of
17 how the information has aided the prosecutions.

18 “(f) USE OF INFORMATION.—

19 “(1) IN GENERAL.—

20 “(A) CONSENT.—Any information ac-
21 quired under a National Security Letter issued
22 under subsection (a) concerning any United
23 States person may be used and disclosed by
24 Federal officers and employees without the con-
25 sent of the United States person only in accord-

1 ance with the minimization and destruction pro-
2 cedures established by the Attorney General
3 under subsection (d).

4 “(B) **LAWFUL PURPOSE.**—No information
5 acquired under a National Security Letter
6 issued under subsection (a) may be used or dis-
7 closed by Federal officers or employees except
8 for lawful purposes.

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

18 “(3) **NOTIFICATION OF INTENDED DISCLOSURE**
19 **BY THE UNITED STATES.**—Whenever the United
20 States intends to enter into evidence or otherwise
21 use or disclose in any trial, hearing, or other pro-
22 ceeding in or before any court, department, officer,
23 agency, regulatory body, or other authority of the
24 United States against an aggrieved person any infor-
25 mation obtained or derived from a National Security

1 Letter issued under subsection (a), the United
2 States shall, before the trial, hearing, or other pro-
3 ceeding or at a reasonable time before an effort to
4 so disclose or so use the information or submit the
5 information in evidence, notify the aggrieved person
6 and the court or other authority in which the infor-
7 mation is to be disclosed or used that the United
8 States intends to so disclose or so use the informa-
9 tion.

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

1 “(5) MOTION TO SUPPRESS.—

2 “(A) IN GENERAL.—Any aggrieved person
3 against whom evidence obtained or derived from
4 a National Security Letter issued under sub-
5 section (a) is to be, or has been, introduced or
6 otherwise used or disclosed in any trial, hear-
7 ing, or other proceeding in or before any court,
8 department, officer, agency, regulatory body, or
9 other authority of the United States, or a State
10 or political subdivision thereof, may move to
11 suppress the evidence obtained or derived from
12 the National Security Letter, as the case may
13 be, on the grounds that—

14 “(i) the information was acquired in
15 violation of the Constitution or laws of the
16 United States; or

17 “(ii) the National Security Letter was
18 not issued in accordance with the require-
19 ments of this section.

20 “(B) TIMING.—A motion under subpara-
21 graph (A) shall be made before the trial, hear-
22 ing, or other proceeding unless there was no op-
23 portunity to make such a motion or the ag-
24 grieved person concerned was not aware of the
25 grounds of the motion.

1 “(6) JUDICIAL REVIEW.—

2 “(A) IN GENERAL.—In a circumstance de-
3 scribed in subparagraph (B), a United States
4 district court or, where the motion is made be-
5 fore another authority, the United States dis-
6 trict court in the same district as the authority
7 shall, if the Attorney General files an affidavit
8 under oath that disclosure would harm the na-
9 tional security of the United States, review in
10 camera such materials as may be necessary to
11 determine whether the National Security Letter
12 was lawfully issued.

13 “(B) CIRCUMSTANCES.—A circumstance
14 described in this subparagraph is a cir-
15 cumstance in which—

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

18 “(ii) a motion is made under para-
19 graph (5); or

20 “(iii) any motion or request is made
21 by an aggrieved person under any other
22 statute or rule of the United States or any
23 State before any court or other authority
24 of the United States or any State to—

1 “(I) discover or obtain materials
2 relating to a National Security Letter
3 issued under subsection (a); or

4 “(II) discover, obtain, or sup-
5 press evidence or information obtained
6 or derived from a National Security
7 Letter issued under subsection (a).

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

20 “(7) EFFECT OF DETERMINATION OF LAWFUL-
21 NESS.—

22 “(A) UNLAWFUL ORDERS.—If a United
23 States district court determines under para-
24 graph (6) that a National Security Letter was
25 not issued in compliance with the Constitution

1 or laws of the United States, the court may
2 suppress the evidence that was unlawfully ob-
3 tained or derived from the National Security
4 Letter or otherwise grant the motion of the ag-
5 grievied person.

6 “(B) **LAWFUL ORDERS.**—If a United
7 States district court determines under para-
8 graph (6) that a National Security Letter was
9 issued in accordance with the Constitution and
10 laws of the United States, the court shall deny
11 the motion of the aggrieved person, except to
12 the extent that due process requires discovery
13 or disclosure.

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

24 “(g) **DEFINITIONS.**—In this section—

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

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

9 “(3) the term ‘assessment’ means an assess-
 10 ment, as that term is used in the guidelines entitled
 11 ‘The Attorney General’s Guidelines for Domestic
 12 FBI Operations’, or any successor thereto.”.

13 (2) TECHNICAL AND CONFORMING AMEND-
 14 MENT.—The table of sections for chapter 121 of
 15 title 18, United States Code, is amended by striking
 16 the item relating to section 2709 and inserting the
 17 following:

“2709. National Security Letter for communications subscriber records.”.

18 (b) NATIONAL SECURITY LETTER AUTHORITY FOR
 19 CERTAIN FINANCIAL RECORDS.—Section 1114 of the
 20 Right to Financial Privacy Act of 1978 (12 U.S.C. 3414)
 21 is amended to read as follows:

22 **“SEC. 1114. NATIONAL SECURITY LETTER FOR CERTAIN FI-**
 23 **NANCIAL RECORDS.**

24 **“(a) AUTHORIZATION.—**

1 “(1) IN GENERAL.—The Director of the Fed-
2 eral Bureau of Investigation, or a designee of the
3 Director whose rank shall be no lower than Deputy
4 Assistant Director at Bureau headquarters or Spe-
5 cial Agent in Charge in a Bureau field office, may
6 issue in writing and cause to be served on a financial
7 institution, a National Security Letter requiring the
8 production of—

9 “(A) the name of a customer or entity with
10 whom the financial institution has a financial
11 relationship;

12 “(B) the address of a customer or entity
13 with whom the financial institution has a finan-
14 cial relationship;

15 “(C) the length of time during which a
16 customer or entity has had an account or other
17 financial relationship with the financial institu-
18 tion (including the start date) and the type of
19 account or other financial relationship; and

20 “(D) any account number or other unique
21 identifier associated with the financial relation-
22 ship of a customer or entity to the financial in-
23 stitution.

24 “(2) LIMITATION.—A National Security Letter
25 issued under this subsection may not require the

1 production of records or information not listed in
2 paragraph (1).

3 “(b) NATIONAL SECURITY LETTER REQUIRE-
4 MENTS.—

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

14 “(2) REPORTING.—For any National Security
15 Letter issued under subsection (a), the semiannual
16 reports under section 2709(e) of title 18, United
17 States Code, shall also be submitted to the Com-
18 mittee on Banking, Housing, and Urban Affairs of
19 the Senate and the Committee on Financial Services
20 of the House of Representatives.

21 “(c) DEFINITION OF ‘FINANCIAL INSTITUTION’.—
22 For purposes of this section (and sections 1115 and 1117,
23 insofar as the sections relate to the operation of this sec-
24 tion), the term ‘financial institution’ has the same mean-
25 ing as in subsections (a)(2) and (c)(1) of section 5312 of

1 title 31, except that the term shall include only a financial
 2 institution any part of which is located inside any State
 3 or territory of the United States, the District of Columbia,
 4 Puerto Rico, Guam, American Samoa, the Commonwealth
 5 of the Northern Mariana Islands, or the United States
 6 Virgin Islands.”.

7 (c) NATIONAL SECURITY LETTER AUTHORITY FOR
 8 CERTAIN CONSUMER REPORT RECORDS.—

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

12 (A) by striking the section heading and in-
 13 serting the following:

14 “§ 626. National Security Letters for certain con-
 15 sumer report records”;

16 (B) by striking subsections (a) through (d)
 17 and inserting the following:

18 “(a) AUTHORIZATION.—

19 “(1) IN GENERAL.—The Director of the Fed-
 20 eral Bureau of Investigation, or a designee of the
 21 Director whose rank shall be no lower than Deputy
 22 Assistant Director at Bureau headquarters or Spe-
 23 cial Agent in Charge in a Bureau field office, may
 24 issue in writing and cause to be served on a con-

sumer reporting agency a National Security Letter
requiring the production of—

“(A) the name of a consumer;

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

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

“(D) the name and address of any finan-
cial institution (as that term is defined in sec-
tion 1101 of the Right to Financial Privacy Act
of 1978 (12 U.S.C. 3401)) at which a consumer
maintains or has maintained an account, to the
extent that the information is in the files of the
consumer reporting agency.

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

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

“(1) IN GENERAL.—A National Security Letter
issued under subsection (a) shall be subject to the
requirements of subsections (b) through (g) of sec-
tion 2709 of title 18, United States Code, in the
same manner and to the same extent as those provi-
sions apply with respect to a National Security Let-

1 ter issued under section 2709(a) of title 18, United
2 States Code, to a wire or electronic communication
3 service provider.

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

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

12 and

13 (D) by redesignating subsections (e) and
14 (i) through (m) as subsections (c) through (h),
15 respectively.

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

18 (3) TECHNICAL AND CONFORMING AMEND-
19 MENT.—The table of sections for the Fair Credit
20 Reporting Act (15 U.S.C. 1681 et seq.) is amended
21 by striking the items relating to sections 626 and
22 627 and inserting the following:

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

“627. [Repealed].”.

1 **SEC. 102. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
2 **TERS.**

3 (a) REVIEW OF NONDISCLOSURE ORDERS.—Section
4 3511(b) of title 18, United States Code, is amended to
5 read as follows:

6 “(b) NONDISCLOSURE.—

7 “(1) IN GENERAL.—

8 “(A) NOTICE.—If a recipient of a National
9 Security Letter under section 2709 of this title,
10 section 626 of the Fair Credit Reporting Act
11 (15 U.S.C. 1681u), section 1114 of the Right
12 to Financial Privacy Act (12 U.S.C. 3414), or
13 section 802(a) of the National Security Act of
14 1947 (50 U.S.C. 436(a)), wishes to have a
15 court review a nondisclosure requirement im-
16 posed in connection with the National Security
17 Letter, the recipient shall notify the Govern-
18 ment not later than 21 days after the date of
19 receipt of the National Security Letter or of no-
20 tice that an applicable nondisclosure require-
21 ment has been extended.

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

1 contents of the relevant National Security Let-
2 ter. An application under this subparagraph
3 may be filed in the district court of the United
4 States for any district within which the author-
5 ized investigation that is the basis for the Na-
6 tional Security Letter is being conducted. The
7 applicable nondisclosure requirement shall re-
8 main in effect during the pendency of pro-
9 ceedings relating to the requirement.

10 “(C) CONSIDERATION.—A district court of
11 the United States that receives an application
12 under subparagraph (B) should rule expedi-
13 tiously, and may issue a nondisclosure order for
14 a period of not longer than 1 year, unless the
15 facts justify a longer period of nondisclosure.

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

21 “(2) APPLICATION CONTENTS.—An application
22 for a nondisclosure order or extension thereof under
23 this subsection shall include—

24 “(A) a statement of specific and articulable
25 facts giving the applicant reason to believe that

1 disclosure of particular information about the
2 existence or contents of a National Security
3 Letter described in paragraph (1)(A) during the
4 applicable time period will result in—

5 “(i) endangering the life or physical
6 safety of any person;

7 “(ii) flight from prosecution;

8 “(iii) destruction of or tampering with
9 evidence;

10 “(iv) intimidation of potential wit-
11 nesses;

12 “(v) interference with diplomatic rela-
13 tions; or

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

20 “(B) an explanation of how the harm iden-
21 tified under subparagraph (A) relates to the on-
22 going and authorized national security inves-
23 tigation to which the records sought are rel-
24 evant;

1 “(C) an explanation of how the nondisclo-
2 sure requirement is narrowly tailored to address
3 the specific harm identified under subparagraph
4 (A); and

5 “(D) the time period during which the
6 Government believes the nondisclosure require-
7 ment should apply.

8 “(3) STANDARD.—A district court of the
9 United States may issue a nondisclosure require-
10 ment order or extension thereof under this sub-
11 section if the court determines that—

12 “(A) there is reason to believe that disclo-
13 sure of the information subject to the nondisclo-
14 sure requirement during the applicable time pe-
15 riod will result in—

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

18 “(ii) flight from prosecution;

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

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

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

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

7 “(B) the harm identified under subpara-
8 graph (A) relates to the ongoing and authorized
9 national security investigation to which the
10 records sought are relevant; and

11 “(C) the nondisclosure requirement is nar-
12 rowly tailored to address the specific harm iden-
13 tified under subparagraph (A).

14 “(4) RENEWAL.—A nondisclosure order under
15 this subsection may be renewed for additional peri-
16 ods of not longer than 1 year, unless the facts of the
17 case justify a longer period of nondisclosure, upon
18 submission of an application meeting the require-
19 ments of paragraph (2), and a determination by the
20 court that the circumstances described in paragraph
21 (3) continue to exist.”.

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

24 “(d) DISCLOSURE.—In making determinations under
25 this section, unless the district court of the United States

1 finds that disclosure would not assist in determining any
 2 legal or factual issue pertinent to the case, the court may
 3 disclose to the petitioner, the counsel of the petitioner, or
 4 both, under the procedures and standards provided in the
 5 Classified Information Procedures Act (18 U.S.C. App.)
 6 or other appropriate security procedures and protective or-
 7 ders, portions of the National Security Letter, or related
 8 materials.”.

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

11 (1) in subsection (a)—

12 (A) by inserting after “(a)” the following
 13 “REQUEST.—”;

14 (B) by striking “2709(b)” and inserting
 15 “2709”;

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

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

20 (2) in subsection (c)—

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

23 (B) by striking “2709(b)” and inserting
 24 “2709”;

1 (C) by striking “626(a) or (b) or 627(a)”
 2 and inserting “626”; and
 3 (D) by striking “1114(a)(5)(A)” and in-
 4 serting “1114”.

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

7 **SEC. 103. NATIONAL SECURITY LETTER COMPLIANCE PRO-**
 8 **GRAM AND TRACKING DATABASE.**

9 (a) COMPLIANCE PROGRAM.—The Director of the
 10 Federal Bureau of Investigation shall establish a program
 11 to ensure compliance with the amendments made by sec-
 12 tion 101.

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

17 (c) INFORMATION.—The database required under
 18 this section shall include—

- 19 (1) a signed copy of each National Security
 20 Letter;
- 21 (2) the date the National Security Letter was
 22 issued and for what type of information;
- 23 (3) whether the National Security Letter seeks
 24 information regarding a United States person;

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

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

7 (6) the date on which the information requested
8 was received and, if applicable, when the information
9 was destroyed; and

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

12 (d) DEFINITIONS.—In this section—

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

17 (2) the term “National Security Letter” means
18 a National Security Letter issued by the Federal
19 Bureau of Investigation under section 1114 of the
20 Right to Financial Privacy Act of 1978 (12 U.S.C.
21 3414), section 626 of the Fair Credit Reporting Act
22 (15 U.S.C. 1681u), or section 2709 of title 18,
23 United States Code.

1 **SEC. 104. PUBLIC REPORTING ON NATIONAL SECURITY**
2 **LETTERS.**

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

6 (1) in paragraph (1)—

7 (A) in the matter preceding subparagraph

8 (A), by striking “concerning different United
9 States persons”; and

10 (B) in subparagraph (A), by striking “, ex-
11 cluding the number of requests for subscriber
12 information”;

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

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

17 “(2) CONTENT.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), each report required under
20 this subsection shall include the total number of
21 requests described in paragraph (1) requiring
22 disclosure of information concerning—

23 “(i) United States persons;

24 “(ii) persons who are not United
25 States persons;

1 “(iii) persons who are the subjects of
 2 authorized national security investigations;
 3 or

4 “(iv) persons who are not the subjects
 5 of authorized national security investiga-
 6 tions.

7 “(B) EXCEPTION.—With respect to the
 8 number of requests for subscriber information
 9 under section 2709 of title 18, United States
 10 Code, a report required under this subsection
 11 need not provide information separated into
 12 each of the categories described in subpara-
 13 graph (A).”.

14 **SEC. 105. EMERGENCY DISCLOSURES.**

15 (a) ENHANCED PROTECTIONS FOR EMERGENCY DIS-
 16 CLOSURES.—

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

19 (A) in subsection (b)(8)—

20 (i) by striking “, in good faith,” and
 21 inserting “reasonably”;

22 (ii) by inserting “immediate” after
 23 “involving”; and

24 (iii) by adding before the period: “and
 25 the request is narrowly tailored to address

1 the emergency, subject to the limitations of
2 subsection (d)”;

3 (B) in subsection (c)(4)—

4 (i) by striking “, in good faith,” and
5 inserting “reasonably”;

6 (ii) by inserting “immediate” after
7 “involving”; and

8 (iii) by adding before the period: “,
9 subject to the limitations of subsection
10 (d)”;

11 (C) by redesignating subsection (d) as sub-
12 section (e);

13 (D) by inserting after subsection (c) the
14 following:

15 “(d) REQUIREMENT.—

16 “(1) REQUEST.—If a governmental entity re-
17 quests that a provider divulge information under
18 subsection (b)(8) or (c)(4), the request shall specify
19 that the disclosure is on a voluntary basis and shall
20 document the factual basis for believing that an
21 emergency involving immediate danger of death or
22 serious physical injury to a person requires disclo-
23 sure without delay of the information relating to the
24 emergency.

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

9 (E) in subsection (e), as so redesignated,
 10 in each of paragraphs (1) and (2), by striking
 11 “subsection (b)(8)” and inserting “subsections
 12 (b)(8) and (c)(4)”.

13 (2) RIGHT TO FINANCIAL PRIVACY ACT.—

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

18 **“SEC. 1121. EMERGENCY DISCLOSURES.**

19 “(a) IN GENERAL.—

20 “(1) STANDARD.—A financial institution may
 21 divulge a record described in section 1114(a) per-
 22 taining to a customer to a Government authority, if
 23 the financial institution reasonably believes that an
 24 emergency involving immediate danger of death or
 25 serious physical injury to a person requires disclo-

1 sure without delay of information relating to the
2 emergency and the request is narrowly tailored to
3 address the emergency.

4 “(2) NOTICE IN REQUEST.—If a Government
5 authority requests that a financial institution divulge
6 information under this section, the request shall
7 specify that the disclosure is on a voluntary basis,
8 and shall document the factual basis for believing
9 that an emergency involving immediate danger of
10 death or serious physical injury to a person requires
11 disclosure without delay of the information.

12 “(b) CERTIFICATE.—In the instances described in
13 subsection (a), the Government authority shall submit to
14 the financial institution the certificate required in section
15 1103(b), signed by a supervisory official of a rank des-
16 ignated by the head of the Government authority.

17 “(c) NOTICE TO COURT.—Not later than 5 days after
18 the date on which a Government authority obtains access
19 to financial records under this section, the Government
20 authority shall file with the appropriate court a signed,
21 sworn statement of a supervisory official of a rank des-
22 ignated by the head of the Government authority setting
23 forth the grounds for the emergency access. After filing
24 a statement under this subsection, a Government author-

1 ity shall provide notice to the customer in accordance with
2 section 1109.

3 “(d) REPORTING OF EMERGENCY DISCLOSURES.—

4 On an annual basis, the Attorney General of the United
5 States shall submit to the Committee on the Judiciary and
6 the Committee on Financial Services of the House of Rep-
7 resentatives and the Committee on the Judiciary and the
8 Committee on Banking, Housing, and Urban Affairs of
9 the Senate a report containing—

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

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

15 “(A) voluntary disclosures under this sec-
16 tion were made to the Department of Justice;
17 and

18 “(B) the investigation pertaining to those
19 disclosures was closed without the filing of
20 criminal charges.

21 “(e) DEFINITION.—In this section, the term ‘finan-
22 cial institution’ has the meaning given that term in section
23 1114(c).”.

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

4 (i) in section 1102 (12 U.S.C. 3402),
 5 by striking “or 1114” and inserting
 6 “1114, or 1121”; and

7 (ii) in section 1109(c) (12 U.S.C.
 8 3409(c)), by striking “1114(b)” and in-
 9 serting “1121”.

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

13 “(3) NO DISCLOSURE WITHOUT COURT
 14 ORDER.—A provider of wire or electronic commu-
 15 nications services or a remote computing service who
 16 has received a request under this subsection shall
 17 not disclose the records referred to in paragraph (1)
 18 until the provider has received a court order or other
 19 process.”.

20 **SEC. 106. LEAST INTRUSIVE MEANS.**

21 (a) GUIDELINES.—

22 (1) IN GENERAL.—The Attorney General shall
 23 issue guidelines (consistent with Executive Order
 24 12333 or any successor order) providing that, in na-
 25 tional security investigations, the least intrusive col-

lection techniques feasible shall be used if there is a choice between the use of more or less intrusive information collection methods.

(2) SPECIFIC COLLECTION TECHNIQUES.—The guidelines required under this section shall provide guidance with regard to specific collection techniques, including the use of National Security Letters, considering such factors as—

(A) the effect on the privacy of individuals;

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

(C) any special concerns under the First Amendment to the Constitution of the United States relating to a potential recipient of a National Security Letter or other legal process, including a direction that prior to issuing a National Security Letter or other legal process to a library or bookseller, investigative procedures aimed at obtaining the relevant information from entities other than a library or bookseller be used and have failed, or reasonably appear to be unlikely to succeed if tried or endanger lives if tried.

(b) DEFINITIONS.—In this section:

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

5 (2) LIBRARY.—The term “library” means a li-
 6 brary (as that term is defined in section 213(1) of
 7 the Library Services and Technology Act (20 U.S.C.
 8 9122(1))) whose services include access to the Inter-
 9 net, books, journals, magazines, newspapers, or
 10 other similar forms of communication in print or
 11 digitally to patrons for their use, review, examina-
 12 tion, or circulation.

13 (3) NATIONAL SECURITY LETTER.—The term
 14 “National Security Letter” means a National Secu-
 15 rity Letter issued by the Federal Bureau of Inves-
 16 tigation under section 1114 of the Right to Finan-
 17 cial Privacy Act of 1978 (12 U.S.C. 3414), section
 18 626 of the Fair Credit Reporting Act (15 U.S.C.
 19 1681u), or section 2709 of title 18, United States
 20 Code.

21 **SEC. 107. PRIVACY PROTECTIONS FOR SECTION 215 BUSI-**
 22 **NESS RECORDS ORDERS.**

23 (a) PRIVACY PROTECTIONS FOR SECTION 215 BUSI-
 24 NESS RECORDS ORDERS.—

1 (1) IN GENERAL.—Section 501(b) of the For-
2 eign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1861(b)(2)) is amended—

4 (A) in paragraph (1)(B), by striking “and”
5 after the semicolon;

6 (B) in paragraph (2)—

7 (i) in subparagraph (A), by striking “,
8 such things being presumptively” and all
9 that follows through the end of the sub-
10 paragraph and inserting a semicolon; and

11 (ii) by striking subparagraph (B) and
12 inserting the following:

13 “(B) a statement of specific and
14 articulable facts providing reason to believe that
15 the tangible things sought—

16 “(i) pertain to a suspected agent of a
17 foreign power or an individual who is the
18 subject of an ongoing and authorized na-
19 tional security investigation (other than an
20 assessment (as defined in section 2709 of
21 title 18, United States Code));

22 “(ii) pertain to an individual who has
23 been in contact with, or otherwise directly
24 linked to, a suspected agent of a foreign
25 power or an individual who is the subject

1 of an ongoing and authorized national se-
2 curity investigation (other than an assess-
3 ment); or

4 “(iii) pertain to the activities of a sus-
5 pected agent of a foreign power, where
6 those activities are the subject of an ongo-
7 ing and authorized national security inves-
8 tigation (other than an assessment), and
9 obtaining the records is the least intrusive
10 means that could be used to identify per-
11 sons believed to be involved in the activi-
12 ties; and

13 “(C) a statement of proposed minimization
14 procedures; and”; and

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

16 “(3) if the applicant is seeking a nondisclosure
17 requirement described in subsection (d), shall in-
18 clude—

19 “(A) a statement of specific and articulable
20 facts providing reason to believe that disclosure
21 of particular information about the existence or
22 contents of the order requiring the production
23 of tangible things under this section during the
24 applicable time period will result in—

1 “(i) endangering the life or physical
2 safety of any person;

3 “(ii) flight from prosecution;

4 “(iii) destruction of or tampering with
5 evidence;

6 “(iv) intimidation of potential wit-
7 nesses;

8 “(v) interference with diplomatic rela-
9 tions; or

10 “(vi) otherwise seriously endangering
11 the national security of the United States
12 by alerting a target, an associate of a tar-
13 get, or the foreign power of which the tar-
14 get is an agent, of the interest of the Gov-
15 ernment in the target;

16 “(B) an explanation of how the harm iden-
17 tified under subparagraph (A) is related to the
18 authorized investigation to which the tangible
19 things sought are relevant;

20 “(C) an explanation of how the nondisclo-
21 sure requirement is narrowly tailored to address
22 the specific harm identified under subparagraph
23 (A); and

1 “(D) the time period during which the
2 Government believes the nondisclosure require-
3 ment should apply.”.

4 (2) ORDER.—Section 501(c) of the Foreign In-
5 telligence Surveillance Act of 1978 (50 U.S.C.
6 1861(c)) is amended—

7 (A) in paragraph (1)—

8 (i) by striking “subsections (a) and
9 (b)” and inserting “subsection (a) and
10 paragraphs (1) and (2) of subsection (b)
11 and that the proposed minimization proce-
12 dures meet the definition of minimization
13 procedures under subsection (g)”; and

14 (ii) by striking the last sentence and
15 inserting the following: “If the judge finds
16 that the requirements of subsection (b)(3)
17 have been met, such order shall include a
18 nondisclosure requirement, which may
19 apply for not longer than 1 year, unless
20 the facts justify a longer period of non-
21 disclosure, subject to the principles and
22 procedures described in subsection (d).”;
23 and

24 (B) in paragraph (2)—

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

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

5 (iii) in subparagraph (E), by striking
6 the period at the end and inserting “;
7 and”; and

8 (iv) by adding at the end the fol-
9 lowing:

10 “(F) shall direct that the minimization
11 procedures be followed.”.

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

15 “(d) NONDISCLOSURE.—

16 “(1) IN GENERAL.—No person who receives an
17 order under subsection (c) that contains a nondisclo-
18 sure requirement shall disclose to any person the
19 particular information specified in the nondisclosure
20 requirement during the time period to which the re-
21 quirement applies.

22 “(2) EXCEPTION.—

23 “(A) DISCLOSURE.—A person who receives
24 an order under subsection (c) that contains a
25 nondisclosure requirement may disclose infor-

1 mation otherwise subject to any applicable non-
2 disclosure requirement to—

3 “(i) those persons to whom disclosure
4 is necessary in order to comply with an
5 order under this section;

6 “(ii) an attorney in order to obtain
7 legal advice or assistance regarding the
8 order; or

9 “(iii) other persons as permitted by
10 the Director of the Federal Bureau of In-
11 vestigation or the designee of the Director.

12 “(B) APPLICATION.—A person to whom
13 disclosure is made under subparagraph (A)
14 shall be subject to the nondisclosure require-
15 ments applicable to a person to whom an order
16 is directed under this section in the same man-
17 ner as the person to whom the order is directed.

18 “(C) NOTIFICATION.—Any person who dis-
19 closes to a person described in subparagraph
20 (A) information otherwise subject to a non-
21 disclosure requirement shall notify the person of
22 the applicable nondisclosure requirement.

23 “(3) EXTENSION.—The Director of the Federal
24 Bureau of Investigation, or a designee of the Direc-
25 tor (whose rank shall be no lower than Assistant

1 Special Agent in Charge), may apply for renewals
2 for the prohibition on disclosure of particular infor-
3 mation about the existence or contents of an order
4 requiring the production of tangible things under
5 this section for additional periods of not longer than
6 1 year, unless the facts justify a longer period of
7 nondisclosure. A nondisclosure requirement shall be
8 renewed if a court having jurisdiction under para-
9 graph (4) determines that the application meets the
10 requirements of subsection (b)(3).

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

13 “(A) a judge of the court established under
14 section 103(a); or

15 “(B) a United States Magistrate Judge
16 under chapter 43 of title 28, United States
17 Code, who is publicly designated by the Chief
18 Justice of the United States to have the power
19 to hear applications and grant orders for the
20 production of tangible things under this section
21 on behalf of a judge of the court established
22 under section 103(a).”.

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

1 (A) in paragraph (1), by striking “Not
2 later than” and all that follows and inserting
3 “At or before the end of the period of time for
4 the production of tangible things under an
5 order approved under this section or at any
6 time after the production of tangible things
7 under an order approved under this section, a
8 judge may assess compliance with the mini-
9 mization procedures by reviewing the cir-
10 cumstances under which information concerning
11 United States persons was acquired, retained,
12 or disseminated.”; and

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

15 (5) USE OF INFORMATION.—Section 501(h) of
16 the Foreign Intelligence Surveillance Act of 1978
17 (50 U.S.C. 1861(h)) is amended to read as follows:

18 “(h) USE OF INFORMATION.—

19 “(1) IN GENERAL.—

20 “(A) CONSENT.—Any tangible things or
21 information acquired from an order under this
22 section concerning any United States person
23 may be used and disclosed by Federal officers
24 and employees without the consent of the
25 United States person only in accordance with

1 the minimization procedures required under this
2 section.

3 “(B) USE AND DISCLOSURE.—No tangible
4 things or information acquired under an order
5 under this section may be used or disclosed by
6 Federal officers or employees except for lawful
7 purposes.

8 “(2) DISCLOSURE FOR LAW ENFORCEMENT
9 PURPOSES.—No tangible things or information ac-
10 quired from an order under this section shall be dis-
11 closed for law enforcement purposes unless the dis-
12 closure is accompanied by a statement that the tan-
13 gible things or information, or any information de-
14 rived therefrom, may only be used in a criminal pro-
15 ceeding with the advance authorization of the Attor-
16 ney General.

17 “(3) NOTIFICATION OF INTENDED DISCLOSURE
18 BY THE UNITED STATES.—Whenever the United
19 States intends to enter into evidence or otherwise
20 use or disclose in any trial, hearing, or other pro-
21 ceeding in or before any court, department, officer,
22 agency, regulatory body, or other authority of the
23 United States against an aggrieved person any tan-
24 gible things or information obtained or derived from
25 an order under this section, the United States shall,

1 before the trial, hearing, or other proceeding or at
2 a reasonable time before an effort to so disclose or
3 so use the tangible things or information or submit
4 them in evidence, notify the aggrieved person and
5 the court or other authority in which the tangible
6 things or information are to be disclosed or used
7 that the United States intends to so disclose or so
8 use the tangible things or information.

9 “(4) NOTIFICATION OF INTENDED DISCLOSURE
10 BY STATE OR POLITICAL SUBDIVISION.—Whenever
11 any State or political subdivision thereof intends to
12 enter into evidence or otherwise use or disclose in
13 any trial, hearing, or other proceeding in or before
14 any court, department, officer, agency, regulatory
15 body, or other authority of the State or political sub-
16 division thereof against an aggrieved person any tan-
17 gible things or information obtained or derived from
18 an order issued under this section, the State or po-
19 litical subdivision thereof shall notify the aggrieved
20 person, the court or other authority in which the
21 tangible things or information are to be disclosed or
22 used, and the Attorney General that the State or po-
23 litical subdivision thereof intends to so disclose or so
24 use the tangible things or information.

25 “(5) MOTION TO SUPPRESS.—

1 “(A) IN GENERAL.—Any aggrieved person
2 against whom evidence obtained or derived from
3 an order issued under this section is to be, or
4 has been, introduced or otherwise used or dis-
5 closed in any trial, hearing, or other proceeding
6 in or before any court, department, officer,
7 agency, regulatory body, or other authority of
8 the United States, or a State or political sub-
9 division thereof, may move to suppress the evi-
10 dence obtained or derived from the order, as the
11 case may be, on the grounds that—

12 “(i) the tangible things or information
13 were acquired in violation of the Constitu-
14 tion or laws of the United States; or

15 “(ii) the order was not issued in ac-
16 cordance with the requirements of this sec-
17 tion.

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

24 “(6) JUDICIAL REVIEW.—

1 “(A) IN GENERAL.—In a circumstance de-
2 scribed in subparagraph (B), a United States
3 district court or, where the motion is made be-
4 fore another authority, the United States dis-
5 trict court in the same district as the authority
6 shall, if the Attorney General files an affidavit
7 under oath that disclosure would harm the na-
8 tional security of the United States, review in
9 camera the application, order, and such other
10 related materials relating to the order issued
11 under this section as may be necessary to deter-
12 mine whether the order was lawfully authorized
13 and served.

14 “(B) CIRCUMSTANCES.—A circumstance
15 described in this subparagraph is a cir-
16 cumstance in which—

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

19 “(ii) a motion is made under para-
20 graph (5); or

21 “(iii) any motion or request is made
22 by an aggrieved person under any other
23 statute or rule of the United States or any
24 State before any court or other authority
25 of the United States or any State to—

1 “(I) discover or obtain applica-
2 tions, orders, or other materials relat-
3 ing to an order issued under this sec-
4 tion; or

5 “(II) discover, obtain, or sup-
6 press evidence or information obtained
7 or derived from an order issued under
8 this section.

9 “(C) DISCLOSURE.—In making a deter-
10 mination under subparagraph (A), unless the
11 United States district court finds that disclo-
12 sure would not assist in determining any legal
13 or factual issue pertinent to the case, the court
14 may disclose to the aggrieved person, the coun-
15 sel for the aggrieved person, or both, under the
16 procedures and standards provided in the Clas-
17 sified Information Procedures Act (18 U.S.C.
18 App.) or other appropriate security procedures
19 and protective orders, portions of the applica-
20 tion, order, or other related materials, or evi-
21 dence or information obtained or derived from
22 the order.

23 “(7) EFFECT OF DETERMINATION OF LAWFUL-
24 NESS.—

1 “(A) UNLAWFUL ORDERS.—If a United
2 States district court determines under para-
3 graph (6) that an order was not authorized or
4 served in compliance with the Constitution or
5 laws of the United States, the court may sup-
6 press the evidence which was unlawfully ob-
7 tained or derived from the order or otherwise
8 grant the motion of the aggrieved person.

9 “(B) LAWFUL ORDERS.—If the court de-
10 termines that an order issued under this section
11 was lawfully authorized and served, it shall
12 deny the motion of the aggrieved person except
13 to the extent that due process requires dis-
14 covery or disclosure.

15 “(8) BINDING FINAL ORDERS.—An order grant-
16 ing a motion or request under paragraph (6), a deci-
17 sion under this section that an order issued under
18 this section was not lawful, and an order of a United
19 States district court requiring review or granting
20 disclosure of an application, order, or other mate-
21 rials relating to an order issued under this section
22 shall be a final order and binding upon all courts of
23 the United States and the several States, except an
24 appeal or petition to a United States court of ap-
25 peals or the Supreme Court of the United States.”.

1 (6) DEFINITION.—

2 (A) IN GENERAL.—Title V of the Foreign
3 Intelligence Surveillance Act of 1978 (50
4 U.S.C. 1861 et seq.) is amended by adding at
5 the end the following:

6 **“SEC. 503. DEFINITIONS.**

7 “In this title, the following definitions apply:

8 “(1) IN GENERAL.—Except as provided in this
9 section, terms used in this title that are also used
10 in title I shall have the meanings given those terms
11 by section 101.

12 “(2) AGGRIEVED PERSON.—The term ‘ag-
13 grievd person’ means any person whose tangible
14 things or information were acquired under an order
15 issued under this title.”.

16 (B) TECHNICAL AND CONFORMING AMEND-
17 MENT.—The table of contents in the first sec-
18 tion of the Foreign Intelligence Surveillance Act
19 of 1978 (50 U.S.C. 1861 et seq.) is amended
20 by inserting after the item relating to section
21 502 the following:

“Sec. 503. Definitions.”.

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

25 “(f) JUDICIAL REVIEW.—

1 “(1) ORDER FOR PRODUCTION.—Not later than
2 the earlier of 21 days after the date of service upon
3 any person of an order issued under subsection (c)
4 and the return date specified in the order, the per-
5 son may file, in the court established under section
6 103(a) or in the United States district court for the
7 judicial district within which the person resides, is
8 found, or transacts business, a petition for the court
9 to modify or set aside the order. The period for com-
10 pliance with an order issued under subsection (c), or
11 any portion of the order, shall be tolled while a peti-
12 tion under this paragraph is pending in the court.
13 A petition under this paragraph shall specify each
14 ground upon which the petitioner relies in seeking
15 relief, and may be based upon any failure of the
16 order issued under subsection (c) to comply with this
17 section or upon any constitutional or other legal
18 right or privilege of the person.

19 “(2) NONDISCLOSURE ORDER.—

20 “(A) IN GENERAL.—A person prohibited
21 from disclosing information under subsection
22 (d) may file, in the court established under sec-
23 tion 103(a) or in the United States district
24 court for the judicial district within which the
25 person resides, is found, or transacts business,

1 a petition for the court to set aside the non-
2 disclosure requirement. A petition under this
3 subparagraph shall specify each ground upon
4 which the petitioner relies in seeking relief, and
5 may be based upon any failure of the nondisclo-
6 sure requirement to comply with this section or
7 upon any constitutional or other legal right or
8 privilege of the person.

9 “(B) STANDARD.—The court shall modify
10 or set aside a nondisclosure requirement unless
11 the court determines that—

12 “(i) there is reason to believe that dis-
13 closure of the information subject to the
14 nondisclosure requirement during the ap-
15 plicable time period will result in—

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

18 “(II) flight from prosecution;

19 “(III) destruction of or tam-
20 pering with evidence;

21 “(IV) intimidation of potential
22 witnesses;

23 “(V) interference with diplomatic
24 relations; or

1 “(VI) otherwise seriously endan-
2 gering the national security of the
3 United States by alerting a target, an
4 associate of a target, or the foreign
5 power of which the target is an agent,
6 of the interest of the Government in
7 the target;

8 “(ii) the harm identified under clause
9 (i) relates to the authorized investigation
10 to which the tangible things sought are rel-
11 evant; and

12 “(iii) the nondisclosure requirement is
13 narrowly tailored to address the specific
14 harm identified under clause (i).

15 “(3) RULEMAKING.—

16 “(A) IN GENERAL.—Not later than 180
17 days after the date of enactment of the JUS-
18 TICE Act, the court established under section
19 103(a) shall comply with section 103(g) by es-
20 tablishing any rules and procedures and taking
21 any actions as are reasonably necessary to ad-
22 minister the responsibilities of the court under
23 this subsection.

24 “(B) REPORTING.—Not later than 30 days
25 after the date on which the court promulgates

1 rules and procedures under subparagraph (A),
2 the court established under section 103(a) shall
3 transmit a copy of the rules and procedures, in
4 an unclassified for to the greatest extent pos-
5 sible (with a classified annex, if necessary), to
6 the persons and entities listed in section
7 103(g)(2).

8 “(4) DISCLOSURES TO PETITIONERS.—In mak-
9 ing determinations under this subsection, unless the
10 court finds that disclosure would not assist in deter-
11 mining any legal or factual issue pertinent to the
12 case, the court may disclose to the petitioner, the
13 counsel for the petitioner, or both, under the proce-
14 dures and standards provided in the Classified Infor-
15 mation Procedures Act (18 U.S.C. App.) or other
16 appropriate security procedures and protective or-
17 ders, portions of the application, order, or other re-
18 lated materials.”.

19 (c) SUNSET REPEAL.—Section 102(b) of the USA
20 PATRIOT Improvement and Reauthorization Act of 2005
21 (Public Law 109–177; 50 U.S.C. 1805 note, 50 U.S.C.
22 1861 note, and 50 U.S.C. 1862 note) is repealed.

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

24 (a) TITLE 18.—Section 1510(e) of title 18, United
25 States Code, is amended by striking “Whoever,” and all

1 that follows through “knowingly” and inserting “Whoever,
 2 having been notified of the applicable disclosure prohibi-
 3 tions or confidentiality requirements of section 2709 of
 4 this title, section 626 of the Fair Credit Reporting Act
 5 (15 U.S.C. 1681u), section 1114 of the Right to Financial
 6 Privacy Act of 1978 (12 U.S.C. 3414), or section 802 of
 7 the National Security Act of 1947 (50 U.S.C. 436), know-
 8 ingly”.

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

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

12 (2) by redesignating paragraph (6) as para-
 13 graph (4).

14 **TITLE II—REASONABLE SAFE-**
 15 **GUARDS TO PROTECT THE**
 16 **PRIVACY OF AMERICANS’**
 17 **HOMES**

18 **SEC. 201. LIMITATION ON AUTHORITY TO DELAY NOTICE**
 19 **OF SEARCH WARRANTS.**

20 Section 3103a of title 18, United States Code, is
 21 amended—

22 (1) in subsection (b)—

23 (A) in paragraph (1), by striking “may
 24 have an adverse result (as defined in section
 25 2705, except if the adverse results consist only

1 of unduly delaying a trial)” and inserting “will
2 endanger the life or physical safety of an indi-
3 vidual, result in flight from prosecution, result
4 in the destruction of or tampering with the evi-
5 dence sought under the warrant, or result in in-
6 timidation of potential witnesses”; and

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

10 (2) in subsection (c), by striking “for good
11 cause shown” and all that follows and inserting
12 “upon application of the Attorney General, the Dep-
13 uty Attorney General, or an Associate Attorney Gen-
14 eral, for additional periods of not more than 21 days
15 for each application, if the court finds, for each ap-
16 plication, reasonable cause to believe that notice of
17 the execution of the warrant will endanger the life
18 or physical safety of an individual, result in flight
19 from prosecution, result in the destruction of or
20 tampering with the evidence sought under the war-
21 rant, or result in intimidation of potential wit-
22 nesses.”;

23 (3) by redesignating subsection (d) as sub-
24 section (e); and

1 (4) by inserting after subsection (c) the fol-
 2 lowing:

3 “(d) PROHIBITION ON USE AS EVIDENCE.—If any
 4 property or material has been seized under subsection (b)
 5 and notice has been delayed, the property or material and
 6 any evidence derived therefrom may not be received in evi-
 7 dence in any trial, hearing, or other proceeding in or be-
 8 fore any court, grand jury, department, officer, agency,
 9 regulatory body, legislative committee, or other authority
 10 of the United States, a State, or a political subdivision
 11 thereof if the property or material was obtained in viola-
 12 tion of this section, or if notice required by this section
 13 or by a warrant issued under this section was not provided
 14 or was not timely provided.”.

15 **TITLE III—REASONABLE SAFE-**
 16 **GUARDS TO PROTECT THE**
 17 **PRIVACY OF AMERICANS’**
 18 **COMMUNICATIONS**

19 **SEC. 301. LIMITATIONS ON ROVING WIRETAPS UNDER FOR-**
 20 **EIGN INTELLIGENCE SURVEILLANCE ACT.**

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

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

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

3 “(ii) if the identity of the target is not known,
4 a description of the specific target and the nature
5 and location of the facilities and places at which the
6 electronic surveillance will be directed;

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

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

12 (2) in paragraph (2)—

13 (A) by redesignating subparagraphs (B)
14 through (D) as subparagraphs (C) through (E),
15 respectively; and

16 (B) by inserting after subparagraph (A)
17 the following:

18 “(B) in cases where the facility or place at
19 which the electronic surveillance will be directed
20 is not known at the time the order is issued,
21 that the electronic surveillance be conducted
22 only for such time as it is reasonable to pre-
23 sume that the target of the surveillance is or
24 was reasonably proximate to the particular fa-
25 cility or place;”.

1 **SEC. 302. PRIVACY PROTECTIONS FOR PEN REGISTERS**
2 **AND TRAP AND TRACE DEVICES.**

3 (a) CRIMINAL AUTHORITY.—

4 (1) APPLICATION FOR AN ORDER.—Section
5 3122(b) of title 18, United States Code, is amended
6 by striking paragraph (2) and inserting the fol-
7 lowing:

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

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

12 “(B) there are specific and articulable
13 facts providing reason to believe that the infor-
14 mation—

15 “(i) pertains to an individual who is
16 the subject of an ongoing criminal inves-
17 tigation;

18 “(ii) pertains to an individual who has
19 been in contact with, or otherwise directly
20 linked to, an individual who is the subject
21 of an ongoing criminal investigation; or

22 “(iii) pertain to the activities of an in-
23 dividual who is the subject of an ongoing
24 criminal investigation, where those activi-
25 ties are the subject of an ongoing criminal
26 investigation, and obtaining the records is

1 the least intrusive means that could be
2 used to identify persons believed to be in-
3 volved in the activities.”.

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

6 (A) in paragraph (1), by striking “the at-
7 torney for the Government has certified to the
8 court that the information likely to be obtained
9 by such installation and use is relevant to an
10 ongoing criminal investigation.” and inserting
11 “the application meets the requirements of sec-
12 tion 3122.”; and

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

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

19 (A) in the matter preceding paragraph (1),
20 by striking “law enforcement agencies of the
21 Department of Justice” and inserting “attor-
22 neys for the Government”;

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

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

3 (D) in the matter preceding paragraph (1),
4 by striking “The Attorney General” and insert-
5 ing the following:

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

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

9 “(6) whether the application for the order and
10 the applications for any extensions were granted as
11 applied for, modified, or denied;

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

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

18 “(b) PUBLIC REPORT.—The Attorney General shall
19 annually make public a full and complete report con-
20 cerning the number of applications for pen register orders
21 and orders for trap and trace devices applied for under
22 this chapter and the number of the orders and extensions
23 of the orders granted or denied under this chapter during
24 the preceding calendar year. Each report under this sub-
25 section shall include a summary and analysis of the data

1 required to be reported to Congress under subsection
2 (a).”.

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

6 “(e) NOTICE.—

7 “(1) INVENTORY.—A court that receives an ap-
8 plication for an order or extension under section
9 3122(a) shall cause to be served on the persons
10 named in the application, and any other party to
11 communications the court determines should receive
12 notice in the interest of justice, an inventory, includ-
13 ing—

14 “(A) the fact of the application for an
15 order or extension under section 3122(a) and
16 whether the court granted or denied the appli-
17 cation; and

18 “(B) if the order or extension was grant-
19 ed—

20 “(i) the date of the entry of the order
21 or extension and the period of authorized,
22 approved, or disapproved use of the pen
23 register or trap and trace device;

1 “(ii) whether a pen register or trap
2 and trace device was installed or used dur-
3 ing the period authorized; and

4 “(iii) the specific types of dialing,
5 routing, addressing, or signaling informa-
6 tion sought in the application and collected
7 by the pen register or trap and trace de-
8 vice.

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

12 “(A) the date of the filing of the applica-
13 tion for an order or extension under section
14 3122(a) that is denied; or

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

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

21 “(4) INSPECTION.—Upon the filing of a motion,
22 the court may make available for inspection by a
23 person served under paragraph (1), or counsel for
24 the person, such portions of the collected commu-

1 nications, applications, and orders as the court de-
2 termines to be in the interest of justice.”.

3 (b) FOREIGN INTELLIGENCE AUTHORITY.—

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

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

9 (B) by striking paragraph (2) and insert-
10 ing the following:

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

12 “(A) the records sought are relevant to an
13 ongoing and authorized national security inves-
14 tigation (other than an assessment (as defined
15 in section 2709 of title 18, United States
16 Code)); and

17 “(B) there are specific and articulable
18 facts providing reason to believe that the
19 records—

20 “(i) pertain to a suspected agent of a
21 foreign power or an individual who is the
22 subject of an ongoing and authorized na-
23 tional security investigation (other than an
24 assessment);

1 “(ii) pertain to an individual who has
2 been in contact with, or otherwise directly
3 linked to, a suspected agent of a foreign
4 power or an individual who is the subject
5 of an ongoing and authorized national se-
6 curity investigation (other than an assess-
7 ment); or

8 “(iii) pertain to the activities of a sus-
9 pected agent of a foreign power, where
10 those activities are the subject of an ongo-
11 ing and authorized national security inves-
12 tigation (other than an assessment), and
13 obtaining the records is the least intrusive
14 means that could be used to identify per-
15 sons believed to be involved in the activi-
16 ties; and

17 “(3) a statement of proposed minimization pro-
18 cedures.”.

19 (2) MINIMIZATION.—

20 (A) DEFINITION.—Section 401 of the For-
21 eign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1841) is amended by adding at the end
23 the following:

24 “(4) The term ‘minimization procedures’
25 means—

1 “(A) specific procedures that are reason-
2 ably designed in light of the purpose and tech-
3 nique of an order for the installation and use
4 of a pen register or trap and trace device, to
5 minimize the acquisition and retention, and pro-
6 hibit the dissemination, of nonpublicly available
7 information concerning unconsenting United
8 States persons consistent with the need of the
9 United States to obtain, produce, and dissemi-
10 nate foreign intelligence information;

11 “(B) procedures that require that nonpub-
12 licly available information, which is not foreign
13 intelligence information, as defined in section
14 101(e)(1), shall not be disseminated in a man-
15 ner that identifies any United States person,
16 without such person’s consent, unless such per-
17 son’s identity is necessary to understand foreign
18 intelligence information or assess its impor-
19 tance; and

20 “(C) notwithstanding subparagraphs (A)
21 and (B), procedures that allow for the retention
22 and dissemination of information that is evi-
23 dence of a crime which has been, is being, or
24 is about to be committed and that is to be re-

1 tained or disseminated for law enforcement pur-
2 poses.”.

3 (B) PEN REGISTERS AND TRAP AND TRACE
4 DEVICES.—Section 402 of the Foreign Intel-
5 ligence Surveillance Act of 1978 (50 U.S.C.
6 1842) is amended—

7 (i) in subsection (d)—

8 (I) in paragraph (1), by inserting
9 “, and that the proposed minimization
10 procedures meet the definition of
11 minimization procedures under this
12 title” before the period at the end;
13 and

14 (II) in paragraph (2)(B)—

15 (aa) in clause (ii)(II), by
16 striking “and” after the semi-
17 colon; and

18 (bb) by adding at the end
19 the following:

20 “(iv) the minimization procedures be
21 followed; and”; and

22 (ii) by adding at the end the fol-
23 lowing:

24 “(h) At or before the end of the period of time for
25 which the installation and use of a pen register or trap

1 and trace device is approved under an order or an exten-
2 sion under this section, the judge may assess compliance
3 with the minimization procedures by reviewing the cir-
4 cumstances under which information concerning United
5 States persons was acquired, retained, or disseminated.”.

6 (C) EMERGENCIES.—Section 403 of the
7 Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1843) is amended—

9 (i) by redesignating subsection (c) as
10 (d); and

11 (ii) by inserting after subsection (b)
12 the following:

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

18 (D) USE OF INFORMATION.—Section
19 405(a) of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1845(a)) is amended by
21 striking “provisions of” and inserting “mini-
22 mization procedures required under”.

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

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

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

13 (c) TECHNICAL AND CONFORMING AMENDMENT.—
14 The table of contents in the first section of the Foreign
15 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
16 seq.) is amended by striking the items relating to title VIII
17 and sections 801, 802, 803, and 804.

18 **SEC. 304. PROHIBITION ON BULK COLLECTION UNDER FISA**
19 **AMENDMENTS ACT.**

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

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

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

25 and

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

1 “(vii) the acquisition of the contents
 2 (as that term is defined in section 2510(8)
 3 of title 18, United States Code)) of any
 4 communication is limited to communica-
 5 tions to which any party is an individual
 6 target (which shall not be limited to known
 7 or named individuals) who is reasonably
 8 believed to be located outside of the United
 9 States, and a significant purpose of the ac-
 10 quisition of the communications of the tar-
 11 get is to obtain foreign intelligence infor-
 12 mation; and”.

13 **SEC. 305. PROHIBITION ON REVERSE TARGETING UNDER**
 14 **FISA AMENDMENTS ACT.**

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

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

23 (2) in subsection (d)(1)(A)—

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

1 “(i) that”; and

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

3 “(ii) that an application is filed under
4 title I, if otherwise required, when a sig-
5 nificant purpose of an acquisition author-
6 ized under subsection (a) is to acquire the
7 communications of a particular, known
8 person reasonably believed to be located in
9 the United States; and”;

10 (3) in subsection (g)(2)(A)(i)(I)—

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

13 “(aa) that”; and

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

15 “(bb) that an application is
16 filed under title I, if otherwise re-
17 quired, when a significant pur-
18 pose of an acquisition authorized
19 under subsection (a) is to acquire
20 the communications of a par-
21 ticular, known person reasonably
22 believed to be located in the
23 United States; and”; and

24 (4) in subsection (i)(2)(B)(i)—

1 (A) by striking “ensure that” and insert
 2 the following: “ensure—

3 “(I) that”; and

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

5 “(II) that an application is filed
 6 under title I, if otherwise required,
 7 when a significant purpose of an ac-
 8 quisition authorized under subsection
 9 (a) is to acquire the communications
 10 of a particular, known person reason-
 11 ably believed to be located in the
 12 United States; and”.

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

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

18 “(B) CORRECTION OF DEFICIENCIES.—

19 “(i) IN GENERAL.—If the Court finds
 20 that a certification required by subsection
 21 (g) does not contain all of the required ele-
 22 ments, or that the procedures required by
 23 subsections (d) and (e) are not consistent
 24 with the requirements of those subsections
 25 or the Fourth Amendment to the Constitu-

1 tion of the United States, the Court shall
2 issue an order directing the Government
3 to, at the Government’s election and to the
4 extent required by the order of the
5 Court—

6 “(I) correct any deficiency identi-
7 fied by the order of the Court not
8 later than 30 days after the date on
9 which the Court issues the order; or

10 “(II) cease the acquisition au-
11 thorized under subsection (a).

12 “(ii) LIMITATION ON USE OF INFOR-
13 MATION.—

14 “(I) IN GENERAL.—Except as
15 provided in subclause (II), no infor-
16 mation obtained or evidence derived
17 from an acquisition under clause (i)(I)
18 concerning any United States person
19 shall be received in evidence or other-
20 wise disclosed in any trial, hearing, or
21 other proceeding in or before any
22 court, grand jury, department, office,
23 agency, regulatory body, legislative
24 committee, or other authority of the
25 United States, a State, or political

1 subdivision thereof, and no informa-
2 tion concerning any United States
3 person acquired from the acquisition
4 shall subsequently be used or dis-
5 closed in any other manner by Fed-
6 eral officers or employees without the
7 consent of the United States person,
8 except with the approval of the Attor-
9 ney General if the information indi-
10 cates a threat of death or serious bod-
11 ily harm to any person.

12 “(II) EXCEPTION.—If the Gov-
13 ernment corrects any deficiency iden-
14 tified by the order of the Court under
15 clause (i), the Court may permit the
16 use or disclosure of information ac-
17 quired before the date of the correc-
18 tion under such minimization proce-
19 dures as the Court shall establish for
20 purposes of this clause.”.

1 **SEC. 307. PRIVACY PROTECTIONS FOR INTERNATIONAL**
2 **COMMUNICATIONS OF AMERICANS COL-**
3 **LECTED UNDER FISA AMENDMENTS ACT.**

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

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

9 “(a) LIMITATIONS ON ACQUISITION OF COMMUNICA-
10 TIONS.—

11 “(1) LIMITATION.—Except as authorized under
12 title I or paragraph (2), no communication shall be
13 acquired under this title if the Government knows
14 before or at the time of acquisition that the commu-
15 nication is to or from a person reasonably believed
16 to be located in the United States.

17 “(2) EXCEPTION.—

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

22 “(i) there is reason to believe that the
23 communication concerns international ter-
24 rorist activities directed against the United
25 States, or activities in preparation there-
26 for;

1 “(ii) there is probable cause to believe
2 that the target reasonably believed to be
3 located outside the United States is an
4 agent of a foreign power and the foreign
5 power is a group engaged in international
6 terrorism or activities in preparation there-
7 for; or

8 “(iii) there is reason to believe that
9 the acquisition is necessary to prevent
10 death or serious bodily harm.

11 “(B) ACCESS TO COMMUNICATIONS.—

12 Communications acquired under this paragraph
13 shall be treated in accordance with subsection
14 (b).

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

17 “(A) SUBMISSION.—Not later than 120
18 days after the date of enactment of the JUS-
19 TICE Act, the Attorney General, in consulta-
20 tion with the Director of National Intelligence,
21 shall submit to the Foreign Intelligence Surveil-
22 lance Court for approval procedures for deter-
23 mining before or at the time of acquisition,
24 where reasonably practicable, whether a com-
25 munication is to or from a person reasonably

1 believed to be located in the United States and
2 whether the exception under paragraph (2) ap-
3 plies to that communication.

4 “(B) REVIEW.—The Foreign Intelligence
5 Surveillance Court shall approve the procedures
6 submitted under subparagraph (A) if the proce-
7 dures are reasonably designed to determine be-
8 fore or at the time of acquisition, where reason-
9 ably practicable, whether a communication is to
10 or from a person reasonably believed to be lo-
11 cated in the United States and whether the ex-
12 ception under paragraph (2) applies to that
13 communication.

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

1 “(D) USE OF PROCEDURES.—If the For-
2 eign Intelligence Surveillance Court approves
3 procedures under this paragraph, the Govern-
4 ment shall use the procedures in any acquisition
5 of communications under this title.

6 “(E) REVISIONS.—The Attorney General,
7 in consultation with the Director of National
8 Intelligence, may submit new or amended proce-
9 dures to the Foreign Intelligence Surveillance
10 Court for review under this paragraph.

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

18 “(b) LIMITATIONS ON ACCESS TO COMMUNICA-
19 TIONS.—

20 “(1) IN GENERAL.—At such time as the Gov-
21 ernment can reasonably determine that a commu-
22 nication acquired under this title (including a com-
23 munication acquired under subsection (a)(2)) is to
24 or from a person reasonably believed to be located
25 in the United States, the communication shall be

1 segregated or specifically designated and no person
2 shall access the communication, except in accordance
3 with title I or this section.

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

9 “(A)(i) there is reason to believe that the
10 communication concerns international terrorist
11 activities directed against the United States, or
12 activities in preparation therefor;

13 “(ii) there is probable cause to believe that
14 the target reasonably believed to be located out-
15 side the United States is an agent of a foreign
16 power and the foreign power is a group engaged
17 in international terrorism or activities in prepa-
18 ration therefor; or

19 “(iii) there is reason to believe that the ac-
20 cess is necessary to prevent death or serious
21 bodily harm;

22 “(B) the Attorney General notifies the
23 Foreign Intelligence Surveillance Court imme-
24 diately of the access; and

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

3 “(i) makes an application for an order
4 under title I; or

5 “(ii) submits to the Foreign Intel-
6 ligence Surveillance Court a document
7 that—

8 “(I) certifies that—

9 “(aa) there is reason to be-
10 lieve that the communication con-
11 cerns international terrorist ac-
12 tivities directed against the
13 United States, or activities in
14 preparation therefor;

15 “(bb) there is probable
16 cause to believe that the target
17 reasonably believed to be located
18 outside the United States is an
19 agent of a foreign power and the
20 foreign power is a group engaged
21 in international terrorism or ac-
22 tivities in preparation therefor; or

23 “(cc) there is reason to be-
24 lieve that the access is necessary

1 to prevent death or serious bodily
2 harm; and

3 “(II) identifies the target of the
4 collection, the party to the commu-
5 nication who is in the United States if
6 known, and the extent to which infor-
7 mation relating to the communication
8 has been disseminated.

9 “(3) DENIAL OF COURT ORDER.—If an applica-
10 tion for a court order described in paragraph
11 (2)(C)(i) is made and is not approved, the Attorney
12 General shall submit to the Foreign Intelligence Sur-
13 veillance Court, not later than 7 days after the date
14 of the denial of the application, the document de-
15 scribed in paragraph (2)(C)(ii).

16 “(4) ADDITIONAL COURT AUTHORITIES.—

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

19 “(i) limit access to communications
20 described in paragraph (1) relating to a
21 particular target if the Court determines
22 that any certification submitted under
23 paragraph (2)(C)(ii)(I) with respect to that
24 target is clearly erroneous; and

1 “(ii) require the Attorney General to
2 provide the factual basis for a certification
3 submitted under paragraph (2)(C)(ii)(I), if
4 the Court determines it would aid the
5 Court in conducting review under this sub-
6 section.

7 “(B) FISC ACCESS.—The Foreign Intel-
8 ligence Surveillance Court shall have access to
9 any communications that have been segregated
10 or specifically designated under paragraph (1)
11 and any information the use of which has been
12 limited under paragraph (5).

13 “(5) FAILURE TO NOTIFY.—

14 “(A) IN GENERAL.—In the circumstances
15 described in subparagraph (B), access to a com-
16 munication shall terminate, and no information
17 obtained or evidence derived from the access
18 concerning any United States person shall be
19 received in evidence or otherwise disclosed in
20 any trial, hearing, or other proceeding in or be-
21 fore any court, grand jury, department, office,
22 agency, regulatory body, legislative committee,
23 or other authority of the United States, a State,
24 or political subdivision thereof, and no informa-
25 tion concerning any United States person ac-

1 quired from the access shall subsequently be
2 used or disclosed in any manner by Federal of-
3 ficers or employees without the consent of the
4 person, except with the approval of the Attor-
5 ney General if the information indicates a
6 threat of death or serious bodily harm to any
7 person, or if a court order is obtained under
8 title I.

9 “(B) CIRCUMSTANCES.—The cir-
10 cumstances described in this subparagraph are
11 circumstances in which—

12 “(i) as of the date that is 7 days after
13 the date on which access to a communica-
14 tion is initiated under paragraph (2), a
15 court order described in paragraph
16 (2)(C)(i) has not been sought and the doc-
17 ument described in paragraph (2)(C)(ii)
18 has not been submitted; or

19 “(ii) as of the date that is 7 days
20 after an application for a court order de-
21 scribed in paragraph (2)(C)(i) is denied,
22 the document described in paragraph
23 (2)(C)(ii) is not submitted in accordance
24 with paragraph (3).

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

7 “(7) PROCEDURES FOR DETERMINATIONS
8 AFTER ACQUISITION.—

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

19 “(B) REVIEW.—The Foreign Intelligence
20 Surveillance Court shall approve the procedures
21 submitted under subparagraph (A) if the proce-
22 dures are reasonably designed to determine,
23 where reasonably practicable, whether a com-
24 munication acquired under this title is a com-

1 munication to or from a person reasonably be-
2 lieved to be located in the United States.

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

14 “(D) USE OF PROCEDURES.—If the For-
15 eign Intelligence Surveillance Court approves
16 procedures under this paragraph, the Govern-
17 ment shall use the procedures for any commu-
18 nication acquired under this title.

19 “(E) REVISIONS.—The Attorney General,
20 in consultation with the Director of National
21 Intelligence, may submit new or amended proce-
22 dures to the Foreign Intelligence Surveillance
23 Court for review under this paragraph.

24 “(F) RELIABILITY.—If the Government
25 obtains new information relating to the reli-

1 ability of procedures approved under this para-
2 graph or the availability of more reliable proce-
3 dures, the Attorney General shall submit to the
4 Foreign Intelligence Surveillance Court the in-
5 formation.

6 “(c) TITLE I COURT ORDER.—If the Government ob-
7 tains a court order under title I relating to a target of
8 an acquisition under this title, the Government may access
9 and disseminate, under the terms of that court order and
10 any applicable minimization requirements, any commu-
11 nications of that target that have been acquired and seg-
12 regated or specifically designated under subsection (b)(1).

13 “(d) INSPECTOR GENERAL AUDIT.—

14 “(1) AUDIT.—Not less than once each year, the
15 Inspector General of the Department of Defense and
16 the Inspector General of the Department of Justice
17 shall complete an audit of the implementation of and
18 compliance with this section. For purposes of an
19 audit under this paragraph, the Inspectors General
20 shall have access to any communications that have
21 been segregated or specifically designated under sub-
22 section (b)(1) and any information the use of which
23 has been limited under subsection (b)(5). An audit
24 under this paragraph shall include an accounting of

1 any segregated or specifically designated commu-
2 nications that have been disseminated.

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

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

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

22 “(1) the date that the Foreign Intelligence Sur-
23 veillance Court approves the procedures described in
24 subsection (a)(3) and the procedures described in
25 subsection (b)(7); and

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

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

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

8 **SEC. 308. CLARIFICATION OF COMPUTER TRESPASS AU-**
9 **THORITY.**

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

12 (1) by inserting “or other” after “contractual”;
13 and

14 (2) by striking “for access” and inserting “per-
15 mitting access”.

16 (b) INTERCEPTION AND DISCLOSURE.—Section
17 2511(2)(i) of title 18, United States Code, is amended—

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

21 “(aa) is attempting to respond to
22 communications activity that threat-
23 ens the integrity or operation of the
24 protected computer and requests as-

1 sistance to protect the rights and
2 property of the owner or operator;
3 and

4 “(bb) authorizes”; and

5 (2) in clause (IV), by striking “interception
6 does not” and inserting the following: “intercep-
7 tion—

8 “(aa) ceases as soon as the com-
9 munications sought are obtained or
10 after 96 hours, whichever is earlier
11 (unless an order authorizing or ap-
12 proving the interception is obtained
13 under this chapter); and

14 “(bb) does not”.

15 (c) REPORT.—Not later than 60 days after the date
16 of enactment of this Act, and annually thereafter, the At-
17 torney General shall submit a report to the Committee on
18 the Judiciary of the Senate and the Committee on the Ju-
19 diciary of the House of Representatives on the use of sec-
20 tion 2511 of title 18, United States Code, relating to com-
21 puter trespass provisions, as amended by subsection (b),
22 during the year before the year of that report.

1 **TITLE IV—IMPROVEMENTS TO**
2 **FURTHER CONGRESSIONAL**
3 **AND JUDICIAL OVERSIGHT**

4 **SEC. 401. PUBLIC REPORTING ON THE FOREIGN INTEL-**
5 **LIGENCE SURVEILLANCE ACT.**

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

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

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

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

16 (3) in subsection (e), as so redesignated, by
17 striking “subsection (c)” and inserting “subsection
18 (d)”.

19 **SEC. 402. USE OF FOREIGN INTELLIGENCE SURVEILLANCE**
20 **ACT MATERIALS.**

21 (a) ELECTRONIC SURVEILLANCE.—Section 106(f) of
22 the Foreign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1806(f)) is amended by striking the last sentence
24 and inserting “In making this determination, unless the
25 court finds that disclosure would not assist in determining

1 any legal or factual issue pertinent to the case, the court
2 may disclose to the aggrieved person, the counsel for the
3 aggrieved person, or both, under the procedures and
4 standards provided in the Classified Information Proce-
5 dures Act (18 U.S.C. App.) or other appropriate security
6 procedures and protective orders, portions of the applica-
7 tion, order, or other related materials, or evidence or infor-
8 mation obtained or derived from the order.”.

9 (b) PHYSICAL SEARCHES.—Section 305(g) of the
10 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
11 1825(g)) is amended by striking the last sentence and in-
12 serting “In making this determination, unless the court
13 finds that disclosure would not assist in determining any
14 legal or factual issue pertinent to the case, the court may
15 disclose to the aggrieved person, the counsel for the ag-
16 grieved person, or both, under the procedures and stand-
17 ards provided in the Classified Information Procedures
18 Act (18 U.S.C. App.) or other appropriate security proce-
19 dures and protective orders, portions of the application,
20 order, or other related materials, or evidence or informa-
21 tion obtained or derived from the order.”.

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

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

11 **SEC. 403. CHALLENGES TO NATIONWIDE ORDERS FOR**
12 **ELECTRONIC EVIDENCE.**

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

15 “(h) JUDICIAL REVIEW.—A provider of electronic
16 communication service or remote computing service may
17 challenge a subpoena, order, or warrant requiring disclo-
18 sure of customer communications or records under this
19 section in—

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

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

1 **TITLE V—IMPROVEMENTS TO**
2 **FURTHER EFFECTIVE, FO-**
3 **CUSED INVESTIGATIONS**

4 **SEC. 501. MODIFICATION OF DEFINITION OF DOMESTIC**
5 **TERRORISM.**

6 Section 2331(5) of title 18, United States Code, is
7 amended—

8 (1) by striking subparagraphs (A) and (B) and
9 inserting the following:

10 “(A) involve acts dangerous to human life
11 that constitute a Federal crime of terrorism (as
12 that term is defined in section 2332b(g)(5));
13 and”; and

14 (2) by redesignating subparagraph (C) as sub-
15 paragraph (B).

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

17 Section 2339B(a)(1) of title 18, United States Code,
18 is amended by inserting “knowing or intending that the
19 material support or resources will be used in carrying out
20 terrorist activity (as defined in section 212(a)(3)(B)(iii)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1182(a)(3)(B)(iii)),” before “shall be fined”.

○