

114TH CONGRESS
2D SESSION

H. R. 5218

To amend title 18, United States Code, to provide a certification process for the issuance of nondisclosure requirements accompanying certain administrative subpoenas, to provide for judicial review of such nondisclosure requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2016

Mr. DESANTIS (for himself, Mr. RATCLIFFE, Mr. GOWDY, Mr. BISHOP of Michigan, Mrs. MIMI WALTERS of California, Mr. FRANKS of Arizona, Mr. CHAFFETZ, Mr. SMITH of Texas, Mr. CHABOT, Mr. KING of Iowa, Mr. PETERS, Mr. FORBES, and Mr. MARINO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide a certification process for the issuance of nondisclosure requirements accompanying certain administrative subpoenas, to provide for judicial review of such nondisclosure requirements, 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 “Targeting Child Preda-
5 tors Act of 2016”.

1 **SEC. 2. NONDISCLOSURE OF ADMINISTRATIVE SUBPOENAS.**

2 Section 3486(a) of title 18, United States Code, is
3 amended—

4 (1) by striking “the Secretary of the Treasury”
5 each place it appears and inserting “the Secretary of
6 Homeland Security”;

7 (2) in paragraph (5), by striking “ordered by a
8 court”; and

9 (3) by striking paragraph (6) and inserting the
10 following:

11 “(6)(A)(i) If a subpoena issued under this sec-
12 tion is accompanied by a certification under clause
13 (ii) and notice of the right to judicial review under
14 subparagraph (C), no recipient of a subpoena under
15 this section shall disclose to any person that the
16 Federal official who issued the subpoena has sought
17 or obtained access to information or records under
18 this section, for a period of 180 days.

19 “(ii) The requirements of clause (i) shall apply
20 if the Federal official who issued the subpoena cer-
21 tifies that the absence of a prohibition of disclosure
22 under this subsection may result in—

23 “(I) endangering the life or physical safety
24 of an individual;

25 “(II) flight from prosecution;

1 “(III) destruction of or tampering with evi-
2 dence;

3 “(IV) intimidation of potential witnesses;
4 or

5 “(V) otherwise seriously jeopardizing an
6 investigation or unduly delaying a trial.

7 “(B)(i) A recipient of a subpoena under this
8 section may disclose information otherwise subject to
9 any applicable nondisclosure requirement to—

10 “(I) those persons to whom disclosure is
11 necessary in order to comply with the request;

12 “(II) an attorney in order to obtain legal
13 advice or assistance regarding the request; or

14 “(III) other persons as permitted by the
15 Federal official who issued the subpoena.

16 “(ii) A person to whom disclosure is made
17 under clause (i) shall be subject to the nondisclosure
18 requirements applicable to a person to whom a sub-
19 poena is issued under this section in the same man-
20 ner as the person to whom the subpoena was issued.

21 “(iii) Any recipient that discloses to a person
22 described in clause (i) information otherwise subject
23 to a nondisclosure requirement shall notify the per-
24 son of the applicable nondisclosure requirement.

1 “(iv) At the request of the Federal official who
2 issued the subpoena, any person making or intend-
3 ing to make a disclosure under subclause (I) or (III)
4 of clause (i) shall identify to the individual making
5 the request under this clause the person to whom
6 such disclosure will be made or to whom such disclo-
7 sure was made prior to the request.

8 “(C)(i) A nondisclosure requirement imposed
9 under subparagraph (A) shall be subject to judicial
10 review under section 3486A.

11 “(ii) A subpoena issued under this section, in
12 connection with which a nondisclosure requirement
13 under subparagraph (A) is imposed, shall include
14 notice of the availability of judicial review described
15 in clause (i).

16 “(D) A nondisclosure requirement imposed
17 under subparagraph (A) may be extended in accord-
18 ance with section 3486A(a)(4).”.

19 **SEC. 3. JUDICIAL REVIEW OF NONDISCLOSURE REQUIRE-**
20 **MENTS.**

21 (a) IN GENERAL.—Chapter 223 of title 18, United
22 States Code, is amended by inserting after section 3486
23 the following:

1 **“§ 3486A. Judicial review of nondisclosure require-**
2 **ments**

3 “(a) NONDISCLOSURE.—

4 “(1) IN GENERAL.—

5 “(A) NOTICE.—If a recipient of a sub-
6 poena under section 3486 wishes to have a
7 court review a nondisclosure requirement im-
8 posed in connection with the subpoena, the re-
9 cipient may notify the Government or file a pe-
10 tition for judicial review in any court described
11 in subsection (a)(5) of section 3486.

12 “(B) APPLICATION.—Not later than 30
13 days after the date of receipt of a notification
14 under subparagraph (A), the Government shall
15 apply for an order prohibiting the disclosure of
16 the existence or contents of the relevant sub-
17 poena. An application under this subparagraph
18 may be filed in the district court of the United
19 States for the judicial district in which the re-
20 cipient of the subpoena is doing business or in
21 the district court of the United States for any
22 judicial district within which the authorized in-
23 vestigation that is the basis for the subpoena is
24 being conducted. The applicable nondisclosure
25 requirement shall remain in effect during the

pendency of proceedings relating to the requirement.

“(C) CONSIDERATION.—A district court of the United States that receives a petition under subparagraph (A) or an application under subparagraph (B) should rule expeditiously, and shall, subject to paragraph (3), issue a nondisclosure order that includes conditions appropriate to the circumstances.

“(2) APPLICATION CONTENTS.—An application for a nondisclosure order or extension thereof or a response to a petition filed under paragraph (1) shall include a certification from the Federal official who issued the subpoena indicating that the absence of a prohibition of disclosure under this subsection may result in—

“(A) endangering the life or physical safety of an individual;

“(B) flight from prosecution;

“(C) destruction of or tampering with evidence;

“(D) intimidation of potential witnesses; or

“(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

1 “(3) STANDARD.—A district court of the
2 United States shall issue a nondisclosure order or
3 extension thereof under this subsection if the court
4 determines that there is reason to believe that disclo-
5 sure of the information subject to the nondisclosure
6 requirement during the applicable time period may
7 result in—

8 “(A) endangering the life or physical safety
9 of an individual;

10 “(B) flight from prosecution;

11 “(C) destruction of or tampering with evi-
12 dence;

13 “(D) intimidation of potential witnesses; or

14 “(E) otherwise seriously jeopardizing an
15 investigation or unduly delaying a trial.

16 “(4) EXTENSION.—Upon a showing that the
17 circumstances described in subparagraphs (A)
18 through (E) of paragraph (3) continue to exist, a
19 district court of the United States may issue an ex
20 parte order extending a nondisclosure order imposed
21 under this subsection or under section
22 3486(a)(6)(A) for additional periods of 180 days, or,
23 if the court determines that the circumstances neces-
24 sitate a longer period of nondisclosure, for additional
25 periods which are longer than 180 days.

1 “(b) CLOSED HEARINGS.—In all proceedings under
2 this section, subject to any right to an open hearing in
3 a contempt proceeding, the court must close any hearing
4 to the extent necessary to prevent an unauthorized disclo-
5 sure of a request for records, a report, or other informa-
6 tion made to any person or entity under section 3486. Pe-
7 titions, filings, records, orders, certifications, and sub-
8 poenas must also be kept under seal to the extent and
9 as long as necessary to prevent the unauthorized disclo-
10 sure of a subpoena under section 3486.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 223 of title 18, United States
13 Code, is amended by inserting after the item relating to
14 section 3486 the following:

“3486A. Judicial review of nondisclosure requirements.”.

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