

115TH CONGRESS
1ST SESSION

H. R. 883

IN THE SENATE OF THE UNITED STATES

MAY 23, 2017

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Targeting Child Preda-
3 tors Act of 2017”.

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

5 Section 3486(a) of title 18, United States Code, is
6 amended—

7 (1) by striking “the Secretary of the Treasury”
8 each place it appears and inserting “the Secretary of
9 Homeland Security”;

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

12 (3) by striking paragraph (6) and inserting the
13 following:

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

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

1 “(I) endangering the life or physical safety
2 of an individual;

3 “(II) flight from prosecution;

4 “(III) destruction of or tampering with evi-
5 dence;

6 “(IV) intimidation of potential witnesses;
7 or

8 “(V) otherwise seriously jeopardizing an
9 investigation or unduly delaying a trial.

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

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

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

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

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

24 “(iii) Any recipient that discloses to a person
25 described in clause (i) information otherwise subject

1 to a nondisclosure requirement shall notify the per-
2 son of the applicable nondisclosure requirement.

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

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

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

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

21 **SEC. 3. JUDICIAL REVIEW OF NONDISCLOSURE REQUIRE-**
22 **MENTS.**

23 (a) IN GENERAL.—Chapter 223 of title 18, United
24 States Code, is amended by inserting after section 3486
25 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.”.

Passed the House of Representatives May 22, 2017.

Attest:

KAREN L. HAAS,

Clerk.