

115TH CONGRESS
1ST SESSION

S. 1709

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 SENATE OF THE UNITED STATES

AUGUST 2, 2017

Mr. KENNEDY (for himself, Mr. HATCH, and Mr. CORNYN) introduced the following bill; which was read twice and 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 2017”.

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) in paragraph (6)—

10 (A) in subparagraph (A), by striking “A
11 United States” and inserting “Except as pro-
12 vided in subparagraph (D), a United States”;
13 and

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

15 “(D)(i)(I) If a subpoena issued under this section as
16 described in paragraph (1)(A)(i)(II) is accompanied by a
17 certification under subclause (II) and notice of the right
18 to judicial review under clause (iii), no recipient of such
19 a subpoena shall disclose to any person that the Federal
20 official who issued the subpoena has sought or obtained
21 access to information or records under this section, for
22 a period of 180 days.

23 “(II) The requirements of subclause (I) shall apply
24 if the Federal official who issued the subpoena certifies
25 that the absence of a prohibition of disclosure under this
26 subsection may result in—

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

3 “(bb) flight from prosecution;

4 “(cc) destruction of or tampering with evidence;

5 “(dd) intimidation of potential witnesses; or

6 “(ee) otherwise seriously jeopardizing an inves-
7 tigation.

8 “(ii)(I) A recipient of a subpoena under this section
9 as described in paragraph (1)(A)(i)(II) may disclose infor-
10 mation otherwise subject to any applicable nondisclosure
11 requirement to—

12 “(aa) those persons to whom disclosure is nec-
13 essary in order to comply with the request;

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

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

18 “(II) A person to whom disclosure is made under sub-
19 clause (I) shall be subject to the nondisclosure require-
20 ments applicable to a person to whom a subpoena is issued
21 under this section in the same manner as the person to
22 whom the subpoena was issued.

23 “(III) Any recipient that discloses to a person de-
24 scribed in subclause (I) information otherwise subject to

1 a nondisclosure requirement shall notify the person of the
 2 applicable nondisclosure requirement.

3 “(IV) At the request of the Federal official who
 4 issued the subpoena, any person making or intending to
 5 make a disclosure under item (aa) or (cc) of subclause
 6 (I) shall identify to the individual making the request
 7 under this clause the person to whom such disclosure will
 8 be made or to whom such disclosure was made prior to
 9 the request.

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

13 “(II) A subpoena issued under this section as de-
 14 scribed in paragraph (1)(A)(i)(II), in connection with
 15 which a nondisclosure requirement under clause (i) is im-
 16 posed, shall include notice of the availability of judicial re-
 17 view described in subclause (I).

18 “(iv) A nondisclosure requirement imposed under
 19 clause (1) may be extended in accordance with section
 20 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 as described in sub-
7 section (a)(1)(A)(i)(II) of section 3486 wishes
8 to have a court review a nondisclosure require-
9 ment imposed in connection with the subpoena,
10 the recipient may notify the Government or file
11 a petition for judicial review in any court de-
12 scribed in subsection (a)(5) of section 3486.

13 “(B) APPLICATION.—Not later than 30
14 days after the date of receipt of a notification
15 under subparagraph (A), the Government shall
16 apply for an order prohibiting the disclosure of
17 the existence or contents of the relevant sub-
18 poena. An application under this subparagraph
19 may be filed in the district court of the United
20 States for the judicial district in which the re-
21 cipient of the subpoena is doing business or in
22 the district court of the United States for any
23 judicial district within which the authorized in-
24 vestigation that is the basis for the subpoena is
25 being conducted. The applicable nondisclosure
26 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.

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.

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)(D) for additional periods of 180 days,
23 or, if the court determines that the circumstances
24 necessitate a longer period of nondisclosure, for ad-
25 ditional 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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