

Calendar No. 252

115TH CONGRESS
1ST SESSION**S. 2010**

To extend the FISA Amendments Act of 2008 for 8 years, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 25, 2017

Mr. BURR, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

A BILL

To extend the FISA Amendments Act of 2008 for 8 years,
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 “FISA Amendments
5 Reauthorization Act of 2017”.

1 **SEC. 2. EIGHT-YEAR EXTENSION OF FISA AMENDMENTS**

2 **ACT OF 2008.**

3 (a) EXTENSION.—Section 403(b) of the FISA
4 Amendments Act of 2008 (Public Law 110–261; 122 Stat.
5 2474) is amended—

6 (1) in paragraph (1), by striking “December
7 31, 2017” and inserting “December 31, 2025”; and

8 (2) in paragraph (2) in the matter preceding
9 subparagraph (A), by striking “December 31, 2017”
10 and inserting “December 31, 2025”.

11 (b) CONFORMING AMENDMENT.—The heading for
12 section 404(b)(1) of the FISA Amendments Act of 2008
13 (Public Law 110–261; 122 Stat. 2476) is amended by
14 striking “DECEMBER 31, 2017” and inserting “DECEMBER
15 31, 2025”.

16 **SEC. 3. CONGRESSIONAL REVIEW AND OVERSIGHT OF**
17 **ABOUTS COLLECTION.**

18 (a) IN GENERAL.—Section 702(b) of the Foreign In-
19 telligence Surveillance Act of 1978 (50 U.S.C. 1881a(b))
20 is amended—

21 (1) in paragraph (4), by striking “and” at the
22 end;

23 (2) by redesignating paragraph (5) as para-
24 graph (6); and

25 (3) by inserting after paragraph (4) the fol-
26 lowing:

1 “(5) may not intentionally acquire communica-
 2 tions that contain a reference to, but are not to or
 3 from, a facility, place, premises, or property at
 4 which an acquisition authorized under subsection (a)
 5 is directed or conducted, except as provided under
 6 subsection (m); and”.

7 (b) CONGRESSIONAL REVIEW AND OVERSIGHT OF
 8 COMMUNICATIONS OF ABOUTS COLLECTION.—Section
 9 702 of the Foreign Intelligence Surveillance Act (50
 10 U.S.C. 1881a) is amended by adding at the end the fol-
 11 lowing:

12 “(m) CONGRESSIONAL REVIEW AND OVERSIGHT OF
 13 ABOUTS COLLECTION.—

14 “(1) DEFINITIONS.—In this subsection:

15 “(A) ABOUTS COMMUNICATION.—The term
 16 ‘abouts communication’ means a communication
 17 that contains reference to, but is not to or
 18 from, a facility, a place, premises, or property
 19 at which an acquisition authorized under sub-
 20 section (a) is directed or conducted.

21 “(B) MATERIAL BREACH.—The term ‘ma-
 22 terial breach’ means significant noncompliance
 23 with applicable law or an order of the Foreign
 24 Intelligence Surveillance Court concerning any
 25 acquisition of abouts communications.

1 “(C) QUALIFYING LEGISLATION.—The
2 term ‘qualifying legislation’ means a bill of ei-
3 ther House of Congress—

4 “(i) the title of which is as follows ‘A
5 bill to prohibit the acquisition of abouts
6 communications.’; and

7 “(ii) the matter after the enacting
8 clause of which is as follows: ‘Congress dis-
9 approves the intentional acquisition under
10 section 702 of the Foreign Intelligence
11 Surveillance Act of 1978 (50 U.S.C.
12 1881a) of abouts communications (as de-
13 fined in subsection (m) of such section
14 702).’.

15 “(2) SUBMISSION TO CONGRESS.—

16 “(A) REQUIREMENT.—Notwithstanding
17 any other provision of law, and except as pro-
18 vided in paragraph (5), if the Attorney General
19 and the Director of National Intelligence intend
20 to implement the authorization of the inten-
21 tional acquisition of abouts communications, be-
22 fore the first such implementation after the
23 date of enactment of this subsection, the Attor-
24 ney General and the Director of National Intel-
25 ligence shall submit to the Committee on the

1 Judiciary and the Select Committee on Intel-
2 ligence of the Senate and the Committee on the
3 Judiciary and the Permanent Select Committee
4 on Intelligence of the House of Representatives
5 a written notice of the intent to implement the
6 authorization of such an acquisition, and any
7 supporting materials in accordance with this
8 subsection.

9 “(B) CONGRESSIONAL REVIEW PERIOD.—
10 During the 30-day period beginning on the date
11 written notice is submitted under subparagraph
12 (A), the Committee on the Judiciary and the
13 Select Committee on Intelligence of the Senate
14 and the Committee on the Judiciary and the
15 Permanent Select Committee on Intelligence of
16 the House of Representatives shall, as appro-
17 priate, hold hearings and briefings and other-
18 wise obtain information in order to fully review
19 the written notice.

20 “(C) LIMITATION ON ACTION DURING CON-
21 GRESSIONAL REVIEW PERIOD.—Notwith-
22 standing any other provision of law, and subject
23 to paragraph (5), unless the Attorney General
24 and the Director of National Intelligence make
25 a determination pursuant to subsection (c)(2),

1 the Attorney General and the Director of Na-
2 tional Intelligence may not implement the au-
3 thorization of the intentional acquisition of
4 abouts communications before the end of the
5 period described in subparagraph (B).

6 “(D) EFFECT OF ENACTMENT OF DIS-
7 APPROVAL.—If qualifying legislation is enacted
8 during the 30-day period described in subpara-
9 graph (B), the Attorney General and the Direc-
10 tor of National Intelligence may not implement
11 the authorization of the intentional acquisition
12 of abouts communications.

13 “(E) EFFECT OF FAILURE TO ENACT DIS-
14 APPROVAL.—If qualifying legislation is not en-
15 acted during the 30-day period described in
16 subparagraph (B), after the end of such period,
17 the Attorney General and the Director of Na-
18 tional Intelligence may implement the author-
19 ization of the intentional acquisition of abouts
20 communications.

21 “(3) WRITTEN NOTICE.—Written notice under
22 paragraph (2)(A) shall include the following:

23 “(A) A copy of any certification submitted
24 to the Foreign Intelligence Surveillance Court
25 pursuant to subsection (g), or amendment

1 thereto, authorizing the intentional acquisition
2 of abouts communications, including all affida-
3 vits, procedures, exhibits, and attachments sub-
4 mitted therewith.

5 “(B) The decision, order, or opinion of the
6 Foreign Intelligence Surveillance Court approv-
7 ing such certification, and any pleadings, appli-
8 cations, or memoranda of law associated with
9 such decision, order, or opinion.

10 “(C) A summary of the protections in
11 place to detect any material breach.

12 “(D) Data or other results of modeling,
13 simulation, or auditing of sample data dem-
14 onstrating that any acquisition method involv-
15 ing the intentional acquisition of abouts com-
16 munications shall be conducted in accordance
17 with this title, if such data or other results exist
18 at the time the written notice is submitted and
19 were provided to the Foreign Intelligence Sur-
20 veillance Court.

21 “(E) Except as provided under paragraph
22 (5), a statement that no acquisition authorized
23 under subsection (a) shall include the inten-
24 tional acquisition of an abouts communication

1 until after the end of the 30-day period de-
2 scribed in paragraph (2)(B).

3 “(4) EXPEDITED CONSIDERATION OF LEGISLA-
4 TION.—

5 “(A) INTRODUCTION.—It shall be in order
6 in the Senate and the House of Representa-
7 tives, not later than 30 days after the date on
8 which written notice is submitted under para-
9 graph (2)(A), or notice of an emergency author-
10 ization is provided under paragraph (5), to in-
11 troduce qualifying legislation, which shall be en-
12 titled to expedited consideration under this
13 paragraph.

14 “(B) CONSIDERATION IN THE HOUSE OF
15 REPRESENTATIVES.—

16 “(i) REPORTING AND DISCHARGE.—
17 Any committee of the House of Represent-
18 atives to which qualifying legislation is re-
19 ferred shall report it to the House of Rep-
20 resentatives not later than 10 legislative
21 days after the date of the referral.

22 “(ii) PROCEEDING TO CONSIDER-
23 ATION.—On and after the third legislative
24 day after each committee to which quali-
25 fying legislation has been referred reports

1 it to the House of Representatives from its
 2 further consideration, it shall be in order
 3 to move to proceed to consider the quali-
 4 fying legislation. The motion to proceed to
 5 consideration of the qualifying legislation
 6 shall not be debatable.

7 “(C) CONSIDERATION IN THE SENATE.—

8 “(i) REPORTING AND DISCHARGE.—
 9 Any committee of the Senate to which
 10 qualifying legislation is referred shall re-
 11 port it to the Senate not later than 10
 12 days in which the Senate is in session after
 13 the date of the referral.

14 “(ii) PROCEEDING TO CONSIDER-
 15 ATION.—Notwithstanding rule XXII of the
 16 Standing Rules of the Senate, it is in order
 17 at any time after the committee to which
 18 qualifying legislation is referred reports it
 19 to the Senate (even though a previous mo-
 20 tion to the same effect has been disagreed
 21 to) to move to proceed to the consideration
 22 of the qualifying legislation. The motion to
 23 proceed to consideration of the qualifying
 24 legislation shall not be debatable.

25 “(iii) CONSIDERATION.—

1 “(I) IN GENERAL.—If the Senate
2 proceeds to the consideration of quali-
3 fying legislation, consideration of the
4 qualifying legislation, and all amend-
5 ments, debatable motions, and appeals
6 in connection therewith, shall be lim-
7 ited to not more than 10 hours, which
8 shall be divided equally between the
9 majority and minority leaders or their
10 designees.

11 “(II) VOTE ON PASSAGE.—The
12 vote on passage shall occur imme-
13 diately following the conclusion of the
14 consideration of the qualifying legisla-
15 tion, and a single quorum call at the
16 conclusion of the debate if requested
17 in accordance with the rules of the
18 Senate.

19 “(III) CONSIDERATION OF VETO
20 MESSAGES.—Consideration in the
21 Senate of any veto message with re-
22 spect to qualifying legislation, includ-
23 ing all debatable messages and ap-
24 peals in connection therewith, shall be
25 limited to 10 hours, to be equally di-

1 vided between, and controlled by, the
2 majority leader and the minority lead-
3 er or their designees.

4 “(5) EXCEPTION FOR EMERGENCY ACQUI-
5 TION.—

6 “(A) NOTICE OF DETERMINATION.—If the
7 Attorney General and the Director of National
8 Intelligence make a determination pursuant to
9 subsection (c)(2) with respect to the intentional
10 acquisition of abouts communications, the At-
11 torney General and the Director of National In-
12 telligence shall notify the Committee on the Ju-
13 diciary and the Select Committee on Intel-
14 ligence of the Senate and the Committee on the
15 Judiciary and the Permanent Select Committee
16 on Intelligence of the House of Representatives
17 as soon as practicable, but not later than 7
18 days after the determination is made.

19 “(B) IMPLEMENTATION OR CONTINU-
20 ATION.—

21 “(i) IN GENERAL.—If the Foreign In-
22 telligence Surveillance Court approves a
23 certification that authorizes the intentional
24 acquisition of abouts communications be-
25 fore the end of the 30-day period described

1 in paragraph (2)(B) and qualifying legisla-
2 tion has not been enacted, the Attorney
3 General and the Director of National Intel-
4 ligence may authorize the immediate imple-
5 mentation or continuation of that certifi-
6 cation if the Attorney General and the Di-
7 rector of National Intelligence jointly de-
8 termine that exigent circumstances exist
9 such that without such immediate imple-
10 mentation or continuation intelligence im-
11 portant to the national security of the
12 United States may be lost or not timely ac-
13 quired.

14 “(ii) NOTICE.—The Attorney General
15 and Director of National Intelligence shall
16 submit to the Committee on the Judiciary
17 and the Select Committee on Intelligence
18 of the Senate and the Committee on the
19 Judiciary and the Permanent Select Com-
20 mittee on Intelligence of the House of Rep-
21 resentatives notification of a determination
22 pursuant to clause (i) as soon as prac-
23 ticable, but not later than 3 days after the
24 determination is made.

1 “(6) REPORTING OF MATERIAL BREACH.—The
 2 head of any agency involved in the acquisition of
 3 abouts communications shall fully and concurrently
 4 inform the Committee on the Judiciary and the Se-
 5 lect Committee on Intelligence of the Senate and the
 6 Committee on the Judiciary and the Permanent Se-
 7 lect Committee on Intelligence of the House of Rep-
 8 resentatives of a material breach.”.

9 **SEC. 4. APPOINTMENT OF AMICI CURIAE BY FOREIGN IN-**
 10 **TELLIGENCE SURVEILLANCE COURT.**

11 (a) IN GENERAL.—Section 103(i)(2) of the Foreign
 12 Intelligence Surveillance Act of 1978 (50 U.S.C.
 13 1803(i)(2)) is amended—

14 (1) by redesignating subparagraphs (A) and
 15 (B) as clauses (i) and (ii), respectively, and adjust-
 16 ing the margin accordingly;

17 (2) in the matter before clause (i), as redesign-
 18 nated by paragraph (1), by striking “A court estab-
 19 lished” and inserting the following:

20 “(A) IN GENERAL.—A court established”;
 21 and

22 (3) by adding at the end the following:

23 “(B) PRESUMPTION IN SECTION 702 CER-
 24 TIFICATIONS.—For purposes of subparagraph
 25 (A)(i), the first certification under section

702(g) or amendment thereto that authorizes the acquisition of communications that contain a reference to, but are not to or from, a facility, place, premises, or property at which an acquisition authorized under section 702(a) is directed or conducted, presents a novel or significant interpretation of the law, unless the court determines otherwise.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

Section 103(i) of such Act (50 U.S.C. 1803(i)) is amended—

(1) in paragraph (4), in the matter preceding subparagraph (A), by striking “paragraph (2)(A)” and inserting “paragraph (2)(A)(i)”; and

(2) in paragraph (5), by striking “paragraph (2)(A)” and inserting “paragraph (2)(A)(i)”.

SEC. 5. AUTHORIZATION FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT TO COMPENSATE AMICI CURIAE AND TECHNICAL ADVISORS FOR ASSISTANCE PROVIDED.

Section 103(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(i)) is amended by adding at the end the following:

“(11) COMPENSATION.—Notwithstanding any other provision of law, a court established under

1 subsection (a) or (b) may compensate an amicus cu-
 2 riae appointed under paragraph (2) for assistance
 3 provided under such paragraph as the court con-
 4 siders appropriate and at such rate as the court con-
 5 siders appropriate.”.

6 **SEC. 6. MINIMIZATION AND DISCLOSURE PROVISIONS.**

7 (a) **END USE RESTRICTION.**—Section 706(a) of the
 8 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
 9 1881e(a)) is amended—

10 (1) by striking “Information acquired” and in-
 11 serting the following:

12 “(1) **IN GENERAL.**—Information acquired”; and

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

14 “(2) **UNITED STATES PERSONS.**—

15 “(A) **IN GENERAL.**—Any communication
 16 to, from, or which contains a reference to a
 17 United States person acquired under section
 18 702 shall not be used in evidence against that
 19 United States person in any criminal pro-
 20 ceeding unless the Attorney General determines
 21 that—

22 “(i) the criminal proceeding affects,
 23 involves, or is related to the national secu-
 24 rity of the United States; or

1 “(ii) the criminal proceeding in-
2 volves—

3 “(I) death;

4 “(II) kidnapping;

5 “(III) serious bodily injury, as
6 defined in section 1365 of title 18,
7 United States Code;

8 “(IV) conduct that constitutes a
9 criminal offense that is a specified of-
10 fense against a minor, as defined in
11 section 111 of the Adam Walsh Child
12 Protection and Safety Act of 2006
13 (34 U.S.C. 20911);

14 “(V) incapacitation or destruc-
15 tion of critical infrastructure, as de-
16 fined in section 1016(e) of the USA
17 PATRIOT Act (42 U.S.C. 5195c(e));

18 “(VI) cybersecurity, including
19 conduct described in section 1016(e)
20 of the USA PATRIOT Act (42 U.S.C.
21 5195c(e)) or section 1029, 1030, or
22 2511 of title 18, United States Code;

23 “(VII) transnational crime, in-
24 cluding transnational narcotics traf-

1 ficking and transnational organized
2 crime; or

3 “(VIII) human trafficking.

4 “(B) NO JUDICIAL REVIEW.—A determina-
5 tion by the Attorney General under subpara-
6 graph (A) is not subject to judicial review.”.

7 (b) INTELLIGENCE COMMUNITY DISCLOSURE PROVI-
8 SION.—Section 603 of the Foreign Intelligence Surveil-
9 lance Act of 1978 (50 U.S.C. 1873) is amended—

10 (1) in subsection (b)—

11 (A) in paragraph (1), by striking “good
12 faith estimate of the number of targets of such
13 orders;” and inserting the following: “good faith
14 estimate of—

15 “(A) the number of targets of such orders;

16 “(B) the number of targets of such orders
17 who are known to not be United States persons;
18 and

19 “(C) the number of targets of such orders
20 who are known to be United States persons;”;

21 (B) in paragraph (2)—

22 (i) by redesignating subparagraphs
23 (A) and (B) as subparagraphs (B) and
24 (C), respectively;

1 (ii) by inserting before subparagraph
2 (B), as so redesignated, the following:

3 “(A) the number of targets of such or-
4 ders;”;

5 (iii) in subparagraph (B), as so redes-
6 ignated, by striking “and” at the end; and

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

9 “(D) the number of instances in which the
10 Federal Bureau of Investigation has received
11 and reviewed the unminimized contents of elec-
12 tronic communications or wire communications
13 concerning a United States person obtained
14 through acquisitions authorized under such sec-
15 tion in response to a search term that was rea-
16 sonably designed to find evidence of a crime
17 that would not be considered foreign intel-
18 ligence information; and

19 “(E) the number of instances in which the
20 Federal Bureau of Investigation opened, under
21 the Criminal Investigative Division or any suc-
22 cessor division, an investigation of a United
23 States person (who is not considered a threat to
24 national security) based wholly or in part on an
25 acquisition authorized under such section;”;

1 (C) in paragraph (3)(A), by striking “or-
2 ders; and” and inserting the following: “orders,
3 including—

4 “(i) the number of targets of such or-
5 ders who are known to not be United
6 States persons; and

7 “(ii) the number of targets of such or-
8 ders who are known to be United States
9 persons; and”;

10 (D) by redesignating paragraphs (4), (5),
11 and (6) as paragraphs (5), (6), and (7), respec-
12 tively; and

13 (E) by inserting after paragraph (3) the
14 following:

15 “(4) the number of criminal proceedings in
16 which the United States or a State or political sub-
17 division thereof provided notice pursuant to sub-
18 section (c) or (d) of section 106 (including with re-
19 spect to information acquired from an acquisition
20 conducted under section 702) or subsection (d) or
21 (e) of section 305 of the intent of the government
22 to enter into evidence or otherwise use or disclose
23 any information obtained or derived from electronic
24 surveillance, physical search, or an acquisition con-
25 ducted pursuant to this Act;”;

1 (2) in subsection (d)—

2 (A) in paragraph (1), by striking “(4), or
3 (5)” and inserting “(5), or (6)”;

4 (B) in paragraph (2)(A), by striking
5 “(2)(A), (2)(B), and (5)(C)” and inserting
6 “(2)(B), (2)(C), and (6)(C)”; and

7 (C) in paragraph (3)(A), in the matter
8 preceding clause (i), by striking “subsection
9 (b)(2)(B)” and inserting “subsection
10 (b)(2)(C)”.

11 **SEC. 7. QUERYING PROCEDURES REQUIRED.**

12 (a) IN GENERAL.—Section 702 of the Foreign Intel-
13 ligence Surveillance Act of 1978 (50 U.S.C. 1881a), as
14 amended by section 3, is further amended—

15 (1) by redesignating subsections (f) through
16 (m) as subsections (g) through (n), respectively;

17 (2) by inserting after subsection (e) the fol-
18 lowing:

19 “(f) QUERYING PROCEDURES.—

20 “(1) PROCEDURES REQUIRED.—

21 “(A) IN GENERAL.—The Attorney General,
22 in consultation with the Director of National
23 Intelligence, shall adopt querying procedures for
24 queries of data collected pursuant to an author-
25 ization under subsection (a).

1 “(B) RECORD OF QUERIES.—The Attorney
 2 General, in consultation with the Director of
 3 National Intelligence, shall ensure that the pro-
 4 cedures adopted under subparagraph (A) in-
 5 clude a technical procedure whereby a record is
 6 kept of all queries using a known United States
 7 person identifier.

8 “(2) JUDICIAL REVIEW.—The querying proce-
 9 dures adopted in accordance with paragraph (1)
 10 shall be subject to judicial review pursuant to sub-
 11 section (j).

12 “(3) QUERY DEFINED.—In this subsection, the
 13 term ‘query’ means any instance in which data the
 14 Government has already acquired is searched using
 15 a specific term or terms for the purpose of discov-
 16 ering or retrieving unminimized content or
 17 metadata.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) AMENDMENTS TO SECTION 702 OF THE
 20 FOREIGN INTELLIGENCE SURVEILLANCE ACT OF
 21 1978.—Such section is further amended—

22 (A) in subsection (a), by striking “with
 23 subsection (i)(3)” and inserting “with sub-
 24 sections (j)(3)”;

25 (B) in subsection (c)—

1 (i) in paragraph (1)(B), by striking
 2 “with subsection (g)” and inserting “with
 3 subsection (h)”;

4 (ii) in paragraph (2), by striking “to
 5 subsection (i)(3)” and inserting “to sub-
 6 section (j)(3)”; and

7 (iii) in paragraph (3)—

8 (I) in subparagraph (A), by strik-
 9 ing “with subsection (g)” and insert-
 10 ing “with subsection (h)”; and

11 (II) in subparagraph (B)—

12 (aa) by striking “to sub-
 13 section (i)(1)(C)” and inserting
 14 “to subsection (j)(1)(C)”; and

15 (bb) by striking “under sub-
 16 section (i)” and inserting “under
 17 subsection (j)”;

18 (C) in subsection (d)(2), by striking “to
 19 subsection (i)” and inserting “to subsection
 20 (j)”;

21 (D) in subsection (e)(2), by striking “to
 22 subsection (i)” and inserting “to subsection
 23 (j)”;

24 (E) in subsection (h), as redesignated by
 25 subsection (a)(1)—

(i) in paragraph (2)(A)(iii), by striking “with subsection (f)” and inserting “with subsection (g)”;

(ii) in paragraph (3), by striking “with subsection (i)(1)(C)” and inserting “with subsection (j)(1)(C)”;

(iii) in paragraph (6), by striking “to subsection (i)” and inserting “to subsection (j)”;

(F) in subsection (j), as redesignated by subsection (a)(1)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)”;

(II) in subparagraph (B), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and

1 querying procedures adopted in ac-
 2 cordance with subsections (d), (e),
 3 and (f)”; and

4 (III) in subparagraph (C), by
 5 striking “targeting and minimization
 6 procedures adopted in accordance with
 7 subsections (d) and (e)” and inserting
 8 “targeting, minimization, and
 9 querying procedures adopted in ac-
 10 cordance with subsections (d), (e),
 11 and (f)”;
 12 (ii) in paragraph (2)—

13 (I) in subparagraph (A), by strik-
 14 ing “with subsection (g)” and insert-
 15 ing “with subsection (h)”; and

16 (II) by adding at the end the fol-
 17 lowing:

18 “(D) QUERYING PROCEDURES.—The
 19 querying procedures adopted in accordance with
 20 subsection (f) to assess whether such proce-
 21 dures comply with the requirements of such
 22 subsection.”;

23 (iii) in paragraph (3)—

24 (I) in subparagraph (A)—

1 (aa) by striking “with sub-
2 section (g)” and inserting “with
3 subsection (h)”; and

4 (bb) by striking “targeting
5 and minimization procedures
6 adopted in accordance with sub-
7 sections (d) and (e)” and insert-
8 ing “targeting, minimization, and
9 querying procedures adopted in
10 accordance with subsections (d),
11 (e), and (f)”; and

12 (II) in subparagraph (B), in the
13 matter before clause (i)—

14 (aa) by striking “with sub-
15 section (g)” and inserting “with
16 subsection (h)”; and

17 (bb) by striking “with sub-
18 sections (d) and (e)” and insert-
19 ing “with subsections (d), (e),
20 and (f)”; and

21 (iv) in paragraph (5)(A)—

22 (I) by striking “with subsection
23 (g)” and inserting “with subsection
24 (h)”; and

1 (II) by striking “with subsections
2 (d) and (e)” and inserting “with sub-
3 sections (d), (e), and (f)”; and

4 (G) in subsection (m), as redesignated by
5 subsection (a)(1)—

6 (i) in paragraph (1), in the matter be-
7 fore subparagraph (A)—

8 (I) by striking “targeting and
9 minimization procedures adopted in
10 accordance with subsections (d) and
11 (e)” and inserting “targeting, mini-
12 mization, and querying procedures
13 adopted in accordance with sub-
14 sections (d), (e), and (f)”; and

15 (II) by striking “with subsection
16 (f)” and inserting “with subsection
17 (g)”; and

18 (ii) in paragraph (2)(A)—

19 (I) by striking “targeting and
20 minimization procedures adopted in
21 accordance with subsections (d) and
22 (e)” and inserting “targeting, mini-
23 mization, and querying procedures
24 adopted in accordance with sub-
25 sections (d), (e), and (f)”; and

1 (II) by striking “with subsection
 2 (f)” and inserting “with subsection
 3 (g)”.

4 (2) AMENDMENTS TO FOREIGN INTELLIGENCE
 5 SURVEILLANCE ACT OF 1978 AMENDMENTS ACT OF
 6 2008.—Section 404 of the Foreign Intelligence Sur-
 7 veillance Act of 1978 Amendments Act of 2008
 8 (Public Law 110–261; 50 U.S.C. 1801 note) is
 9 amended—

10 (A) in subsection (a)(7)(B)—

11 (i) by striking “under section
 12 702(i)(3)” and inserting “under section
 13 702(j)(3)”; and

14 (ii) by striking “under section
 15 702(i)(4)” and inserting “under section
 16 702(j)(4)”;

17 (B) in subsection (b)—

18 (i) in paragraph (3)—

19 (I) in subparagraph (A), by strik-
 20 ing “in section 702(h)” and inserting
 21 “in section 702(i)”; and

22 (II) in subparagraph (B)—

23 (aa) by striking “section
 24 702(h)(3) of” and inserting “sec-
 25 tion 702(i)(3) of”; and

1 (bb) by striking “to section
 2 702(h)” and inserting “to section
 3 702(i)”; and

4 (ii) in paragraph (4)—

5 (I) in subparagraph (A), by strik-
 6 ing “and sections 702(l)” and insert-
 7 ing “and sections 702(m)”; and

8 (II) in subparagraph (B)(iv), by
 9 striking “or section 702(l)” and in-
 10 serting “or section 702(m)”.

11 **SEC. 8. REVIEW OF QUERIES CONDUCTED BY FEDERAL BU-**
 12 **REAU OF INVESTIGATION OF ACQUISITIONS**
 13 **OBTAINED UNDER SECTION 702 OF THE FOR-**
 14 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
 15 **1978.**

16 (a) IN GENERAL.—Section 702 of the Foreign Intel-
 17 ligence Surveillance Act of 1978 (50 U.S.C. 1881a), as
 18 amended by sections 3 and 7, is further amended by add-
 19 ing at the end the following:

20 “(o) REVIEW OF QUERIES CONDUCTED BY FEDERAL
 21 BUREAU OF INVESTIGATION.—

22 “(1) SUBMITTAL.—Not later than 1 business
 23 day after the Director of the Federal Bureau of In-
 24 vestigation conducts a query of acquisitions obtained
 25 under this section which the Director finds to have

1 been responsive and which returns information that
2 concerns a known United States person, the Direc-
3 tor of the Federal Bureau of Investigation shall sub-
4 mit to the Foreign Intelligence Surveillance Court
5 the query, the responsive information, and a jus-
6 tification for executing the query.

7 “(2) REVIEW.—Not later than 2 business days
8 after receiving a submittal under paragraph (1), the
9 Foreign Intelligence Surveillance Court shall review
10 the submittal for consistency with the Fourth
11 Amendment to the Constitution and submit to the
12 Director the findings of the Court with respect to
13 the review.

14 “(3) PROHIBITION ON USE OF INFORMATION
15 RESPONSIVE TO IMPROPER QUERIES.—If the For-
16 eign Intelligence Surveillance Court determines
17 under paragraph (2) that a submittal received under
18 paragraph (2) regarding information responsive to a
19 query is not consistent with the Fourth Amendment,
20 such information shall not be used in any court pro-
21 ceeding.

22 “(4) ANNUAL REPORT.—Not less frequently
23 than once each year, the Foreign Intelligence Sur-
24 veillance Court shall submit to the congressional in-
25 telligence committees (as defined in section 3 of the

1 National Security Act of 1947 (50 U.S.C. 3003)) a
 2 report on the reviews conducted by the Court under
 3 paragraph (2) in the previous year. Such report
 4 shall include the number of submittals received
 5 under such paragraph in such year and the number
 6 that the Court determined were not consistent with
 7 the Fourth Amendment to the Constitution.”.

8 (b) RULE OF CONSTRUCTION.—Subsection (o) of
 9 such section, as added by subsection (a), shall not be con-
 10 strued to require any action to determine the nationality
 11 of an individual that would not have been required to be
 12 carried out on the day before the date of the enactment
 13 of this Act.

14 (c) EFFECTIVE DATE.—Subsection (o) of such sec-
 15 tion, as added by subsection (a), shall take effect on the
 16 date that is 90 days after the date of the enactment of
 17 this Act.

18 **SEC. 9. SECTION 705 EMERGENCY PROVISION.**

19 Section 705 of the Foreign Intelligence Surveillance
 20 Act of 1978 (50 U.S.C. 1881d) is amended by adding at
 21 the end the following:

22 “(c) EMERGENCY AUTHORIZATION.—If the Attorney
 23 General authorized the emergency employment of elec-
 24 tronic surveillance or a physical search pursuant to section
 25 105 or 304, the Attorney General may authorize, for the

1 effective period of the emergency authorization and subse-
 2 quent order pursuant to section 105 or 304, without a
 3 separate order under section 703 or 704, the targeting of
 4 the United States person that is the target for the purpose
 5 of acquiring foreign intelligence information while such
 6 United States person is reasonably believed to be located
 7 outside the United States.

8 “(d) USE OF INFORMATION.—If an application sub-
 9 mitted to the Court pursuant to section 104 or 303 is de-
 10 nied, or in any other case in which the acquisition is termi-
 11 nated and no order with respect to the target of the acqui-
 12 sition is issued under section 105 or 304, all information
 13 obtained or evidence derived from such acquisition shall
 14 be handled in accordance with section 704(d)(4).”.

15 **SEC. 10. PRIVACY AND CIVIL LIBERTIES OVERSIGHT**
 16 **BOARD REFORM.**

17 Section 552b(a)(1) of title 5, United States Code, is
 18 amended—

19 (1) by striking “term ‘agency’ means” and in-
 20 serting the following: “term ‘agency’—

21 “(A) means”;

22 (2) by inserting “and” after “the agency;”; and

23 (3) by adding at the end the following:

24 “(B) does not include the Privacy and Civil
 25 Liberties Oversight Board;”.

1 **SEC. 11. FLEXIBILITY FOR PRIVACY AND CIVIL LIBERTIES**

2 **OVERSIGHT BOARD IN STAFFING MATTERS.**

3 Section 1061(j) of the Intelligence Reform and Ter-
 4 rorism Prevention Act of 2004 (42 U.S.C. 2000ee(j)) is
 5 amended—

6 (1) by redesignating paragraphs (2) and (3) as
 7 paragraphs (3) and (4), respectively; and

8 (2) by inserting after paragraph (1) the fol-
 9 lowing new paragraph:

10 “(2) APPOINTMENT IN ABSENCE OF CHAIRMAN
 11 OR ABSENCE OF A QUORUM.—If the position of
 12 chairman of the Board is vacant or a quorum is ab-
 13 sent, during the period of the vacancy or vacancies,
 14 the Board, at the direction of the unanimous vote of
 15 the remaining member or members of the Board,
 16 may exercise the authority of the chairman under
 17 paragraph (1).”.

18 **SEC. 12. INCREASED PENALTIES FOR UNAUTHORIZED RE-**

19 **MOVAL AND RETENTION OF CLASSIFIED DOC-**

20 **UMENTS OR MATERIAL.**

21 Section 1924(a) of title 18, United States Code, is
 22 amended by striking “fined” and all that follows through
 23 “both” and inserting “fined under this title, imprisoned
 24 for not more than 10 years, or both”.

Calendar No. 252

115TH CONGRESS
1ST Session

S. 2010

A BILL

To extend the FISA Amendments Act of 2008 for
8 years, and for other purposes.

OCTOBER 25, 2017

Read twice and placed on the calendar