

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4570

To require the approval of a Foreign Intelligence Surveillance Court judge or designated United States Magistrate Judge for the issuance of a national security letter, to require the Attorney General to submit semi-annual reports on national security letters, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2005

Ms. HARMAN (for herself, Mr. HASTINGS of Florida, Mr. REYES, Mr. BOSWELL, Mr. CRAMER, Ms. ESHOO, Mr. HOLT, Mr. RUPPERSBERGER, Mr. TIERNEY, and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select) and Financial Services, 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

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## A BILL

To require the approval of a Foreign Intelligence Surveillance Court judge or designated United States Magistrate Judge for the issuance of a national security letter, to require the Attorney General to submit semiannual reports on national security letters, 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 “National Security Let-  
3 ter Judicial and Congressional Oversight Act”.

4 **SEC. 2. FOREIGN INTELLIGENCE SURVEILLANCE COURT**  
5 **JUDGE OR UNITED STATES MAGISTRATE**  
6 **JUDGE APPROVAL OF NATIONAL SECURITY**  
7 **LETTERS.**

8 (a) REVIEW OF NATIONAL SECURITY LETTER RE-  
9 QUESTS.—

10 (1) IN GENERAL.—No national security letter  
11 shall issue unless a Foreign Intelligence Surveillance  
12 Court judge or a designated United States Mag-  
13 istrate Judge finds that—

14 (A) the information sought is relevant to  
15 an authorized investigation to protect against  
16 international terrorism or clandestine intel-  
17 ligence activities;

18 (B) such an investigation of a United  
19 States person is not conducted solely upon the  
20 basis of activities protected by the first amend-  
21 ment to the Constitution of the United States;  
22 and

23 (C) there are specific and articulable facts  
24 giving reason to believe that the information  
25 sought pertains to a foreign power or an agent  
26 of a foreign power (as those terms are defined

1 in section 101 of the Foreign Intelligence Sur-  
2 veillance Act of 1978 (50 U.S.C. 1801)).

3 (2) ELECTRONIC FILING.—The court estab-  
4 lished by section 103(a) of the Foreign Intelligence  
5 Surveillance Act of 1978 (50 U.S.C. 1803) shall es-  
6 tablish an electronic system for the submission of  
7 documents and other information relating to pro-  
8 ceedings under paragraph (1) and for the issuance  
9 of orders relating to national security letters under  
10 paragraph (1).

11 (b) SENSE OF CONGRESS REGARDING CHALLENGES  
12 TO NONDISCLOSURE REQUIREMENTS OF NATIONAL SE-  
13 CURITY LETTERS.—It is the sense of Congress that in the  
14 case of a challenge to a nondisclosure requirement of a  
15 national security letter, a certification by the Attorney  
16 General or other appropriate head or deputy head of a  
17 department, agency, or instrumentality of the Federal  
18 Government that disclosure of such national security letter  
19 may endanger the national security of the United States  
20 or interfere with diplomatic relations—

21 (1) should not be considered conclusive evidence  
22 that such disclosure would endanger the national se-  
23 curity of the United States or interfere with diplo-  
24 matic relations; and

1           (2) should be considered a rebuttable presump-  
2           tion that such disclosure would endanger the na-  
3           tional security of the United States or interfere with  
4           diplomatic relations.

5           (c) MINIMIZATION PROCEDURES.—The Attorney  
6           General shall establish minimization and destruction pro-  
7           cedures to ensure that information obtained pursuant to  
8           a national security letter regarding persons that are no  
9           longer of interest in an authorized investigation is de-  
10          stroyed.

11          (d) REPORT.—The Attorney General shall, semiannu-  
12          ally, submit to the Permanent Select Committee on Intel-  
13          ligence and the Committee on the Judiciary of the House  
14          of Representatives and the Select Committee on Intel-  
15          ligence and the Committee on the Judiciary of the Senate  
16          a report containing—

17                (1) the total number of national security letters  
18                issued during the preceding six months, in unclassi-  
19                fied form;

20                (2) for each of subparagraphs (A) through (E)  
21                of subsection (f)(3), the total number of national se-  
22                curity letters issued during the preceding six months  
23                under the authority of each such subparagraph;

24                (3) for each of subparagraphs (A) through (E)  
25                of subsection (f)(3), the total number of national se-

1 security letters issued during the preceding six months  
2 under the authority of each such subparagraph for  
3 United States persons;

4 (4) for each of subparagraphs (A) through (E)  
5 of subsection (f)(3), the total number of national se-  
6 curity letters issued during the preceding six months  
7 under the authority of each such subparagraph for  
8 non-United States persons;

9 (5) a description of the minimization procedures  
10 adopted by the Attorney General pursuant to sub-  
11 section (e), including any changes to minimization  
12 procedures previously adopted by the Attorney Gen-  
13 eral;

14 (6) a summary of the challenges made by re-  
15 cipients of national security letters in court;

16 (7) a description of the extent to which infor-  
17 mation obtained with national security letters has  
18 aided investigations and an explanation of how such  
19 information has aided such investigations; and

20 (8) a description of the extent to which infor-  
21 mation obtained with national security letters has  
22 aided prosecutions and an explanation of how such  
23 information has been used in or aided such prosecu-  
24 tions.

25 (e) DEFINITIONS.—In this section:

1           (1) FOREIGN INTELLIGENCE SURVEILLANCE  
2 COURT JUDGE.—The term “Foreign Intelligence  
3 Surveillance Court judge” means a judge of the  
4 court established by section 103(a) of the Foreign  
5 Intelligence Surveillance Act of 1978 (50 U.S.C.  
6 1803 (a)).

7           (2) DESIGNATED UNITED STATES MAGISTRATE  
8 JUDGE.—The term “designated United States Mag-  
9 istrate Judge” means, for each district court of the  
10 United States, a United States Magistrate Judge  
11 under chapter 43 of title 28, United States Code,  
12 who is—

13                   (A) the Chief United States Magistrate  
14 Judge of such district court; or

15                   (B) if a Chief United States Magistrate  
16 Judge has not been designated in such district  
17 court, another United States Magistrate Judge  
18 of such district court that is publicly designated  
19 by the Chief Justice of the United States to  
20 have the power to hear applications and grant  
21 orders for the issuance of national security let-  
22 ters under section 2.

23           (3) NATIONAL SECURITY LETTER.—The term  
24 “national security letter” means a request for infor-  
25 mation under—

1 (A) section 2709(b) of title 18, United  
2 States Code;

3 (B) section 1114(a)(5)(A) of the Right to  
4 Financial Privacy Act of 1978 (12 U.S.C.  
5 3414(a)(5)(A));

6 (C) subsections (a) or (b) of section 626 of  
7 the Fair Credit Reporting Act (15 U.S.C.  
8 1681u(a), 1681u(b));

9 (D) section 627(a) of the Fair Credit Re-  
10 porting Act (15 U.S.C. 1681v(a)); or

11 (E) section 802(a) of the National Security  
12 Act of 1947 (50 U.S.C. 436(a)).

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