

111TH CONGRESS  
1ST SESSION

# H. R. 3845

To extend and modify authorities needed to combat terrorism and protect civil liberties, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2009

Mr. CONYERS (for himself, Mr. NADLER of New York, Mr. SCOTT of Virginia, Mr. COHEN, Ms. HARMAN, Ms. JACKSON-LEE of Texas, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Permanent Select Committee on Intelligence and Committee on 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 extend and modify authorities needed to combat terrorism and protect civil liberties, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “USA PATRIOT Amendments Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—USA PATRIOT ACT RELATED AMENDMENTS

Sec. 101. Roving wiretaps.

Sec. 102. Extension of sunset of sections 206 and 215 of USA PATRIOT Act.

Sec. 103. Access to certain tangible things under section 501 of the Foreign Intelligence Surveillance Act of 1978.

Sec. 104. Sunset relating to individual terrorists as agents of foreign powers.

Sec. 105. Audits.

Sec. 106. Criminal “sneak and peak” searches.

Sec. 107. Use of pen registers and trap and trace devices under title 18, United States Code.

Sec. 108. Orders for pen registers and trap and trace devices for foreign intelligence purposes.

Sec. 109. Public reporting on the Foreign Intelligence Surveillance Act of 1978.

Sec. 110. Challenges to nationwide orders for electronic evidence.

TITLE II—NATIONAL SECURITY LETTER REFORM

Sec. 201. Short title.

Sec. 202. Sunset.

Sec. 203. National security letter defined.

Sec. 204. Modification of standard.

Sec. 205. Notification of right to judicial review of nondisclosure order.

Sec. 206. Disclosure for law enforcement purposes.

Sec. 207. Judicial review of national security letter nondisclosure order.

Sec. 208. Minimization Procedures.

1           **TITLE I—USA PATRIOT ACT**  
 2           **RELATED AMENDMENTS**

3   **SEC. 101. ROVING WIRETAPS.**

4           The Foreign Intelligence Surveillance Act of 1978  
 5 (50 U.S.C. 1801 et seq.) is amended—

6           (1) in section 104(a)(2), by striking “electronic  
 7 surveillance” and inserting “electronic surveillance  
 8 sufficient to allow a judge to determine that the tar-  
 9 get is a single individual”; and

10           (2) in section 105(a)—

11           (A) in paragraph (3), by striking “and”;

12           (B) in paragraph (4), by striking the pe-  
 13 riod and inserting “; and”; and

1 (C) by adding at the end the following new  
2 paragraph:

3 “(5) the identity or description of the specific  
4 target of electronic surveillance included in the ap-  
5 plication pursuant to section 104(a)(2) is sufficient  
6 to allow the judge to determine that the target is a  
7 single individual.”.

8 **SEC. 102. EXTENSION OF SUNSET OF SECTIONS 206 AND 215**  
9 **OF USA PATRIOT ACT.**

10 Section 102(b)(1) of the USA PATRIOT Improve-  
11 ment and Reauthorization Act of 2005 (18 U.S.C. 2510  
12 note) is amended by striking “December 31, 2009” and  
13 inserting “December 31, 2013”.

14 **SEC. 103. ACCESS TO CERTAIN TANGIBLE THINGS UNDER**  
15 **SECTION 501 OF THE FOREIGN INTEL-**  
16 **LIGENCE SURVEILLANCE ACT OF 1978.**

17 (a) **FACTUAL BASIS FOR AND ISSUANCE OF OR-**  
18 **DERS.—**

19 (1) **IN GENERAL.—**Section 501 of the Foreign  
20 Intelligence Surveillance Act of 1978 (50 U.S.C.  
21 1861) is amended—

22 (A) in the section heading, by striking  
23 “**CERTAIN BUSINESS RECORDS**” and insert-  
24 ing “**TANGIBLE THINGS**”; and

1 (B) in subsection (b)(2)(A), by striking “a  
2 statement of facts” and inserting “a statement  
3 of specific and articulable facts”.

4 (2) TECHNICAL AND CONFORMING AMEND-  
5 MENTS.—

6 (A) TITLE HEADING.—Title V of the For-  
7 eign Intelligence Surveillance Act of 1978 (50  
8 U.S.C. 1861 et seq.) is amended in the title  
9 heading by striking “CERTAIN BUSINESS  
10 RECORDS” and inserting “TANGIBLE  
11 THINGS”.

12 (B) TABLE OF CONTENTS.—The table of  
13 contents in the first section of the Foreign In-  
14 telligence Surveillance Act of 1978 (50 U.S.C.  
15 1801 et seq.) is amended by striking the items  
16 relating to title V and section 501 and inserting  
17 the following:

“TITLE V—ACCESS TO TANGIBLE THINGS FOR FOREIGN  
INTELLIGENCE PURPOSES

“Sec. 501. Access to tangible things for foreign intelligence purposes and inter-  
national terrorism investigations.”.

18 (b) JUDICIAL REVIEW OF FISA ORDERS.—Section  
19 501 of the Foreign Intelligence Surveillance Act of 1978  
20 (50 U.S.C. 1861) is amended—

21 (1) in subsection (c)(2)—

22 (A) in subparagraph (D) by striking  
23 “things; and” and inserting “things;”;

1 (B) in subparagraph (E), by striking “sub-  
2 section (a).” and inserting “subsection (a);  
3 and”; and

4 (C) by adding at the end the following new  
5 subparagraph:

6 “(F) shall direct the applicant to provide  
7 notice to each person receiving such order of—

8 “(i) the right to challenge the legality  
9 of a production order or nondisclosure  
10 order by filing a petition in accordance  
11 with subsection (f); and

12 “(ii) the procedures to follow to file  
13 such petition in accordance with such sub-  
14 section.”; and

15 (2) in subsection (f)(2)—

16 (A) in subparagraph (A)—

17 (i) in clause (i)—

18 (I) by striking “a production  
19 order” and inserting “a production  
20 order or nondisclosure order”; and

21 (II) by striking “Not less than 1  
22 year” and all that follows;

23 (ii) in clause (ii), by striking “produc-  
24 tion order or nondisclosure”; and

25 (B) in subparagraph (C)—

- 1 (i) by striking clause (ii); and  
2 (ii) by redesignating clause (iii) as  
3 clause (ii).

4 (c) MINIMIZATION PROCEDURES.—Section 501(g) of  
5 the Foreign Intelligence Surveillance Act of 1978 (50  
6 U.S.C. 1861(g)) is amended—

7 (1) by redesignating paragraph (2) as para-  
8 graph (3); and

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

11 “(2) COMPLIANCE ASSESSMENT.—At or before  
12 the end of the period of time for the production of  
13 tangible things under an order approved under this  
14 section or at any time after the production of tan-  
15 gible things under such order, a judge may assess  
16 compliance with the minimization procedures re-  
17 quired to be followed under such order by reviewing  
18 the circumstances under which information con-  
19 cerning United States persons was retained or dis-  
20 seminated.”.

21 (d) EXEMPTION OF BOOKSTORES AND LIBRARIES  
22 FROM ORDERS REQUIRING THE PRODUCTION OF ANY  
23 TANGIBLE THINGS FOR CERTAIN FOREIGN INTEL-  
24 LIGENCE INVESTIGATIONS.—Section 501 of the Foreign

1 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is  
2 amended—

3 (1) in subsection (a)(3)—

4 (A) by striking “library patron lists,”; and

5 (B) by striking “book customer lists,”; and

6 (2) by adding at the end the following new sub-  
7 section:

8 “(i) PROHIBITION ON APPLICATION FOR CERTAIN  
9 INFORMATION FROM BOOKSELLERS AND LIBRARIES.—

10 “(1) IN GENERAL.—No application may be  
11 made under this section with either the purpose or  
12 effect of searching for, or seizing from, a bookseller  
13 or library documentary materials that contain per-  
14 sonally identifiable information concerning a patron  
15 of a bookseller or library.

16 “(2) DEFINITIONS.—In this subsection:

17 “(A) The term ‘bookseller’ means any per-  
18 son or entity engaged in the sale, rental or de-  
19 livery of books, journals, magazines or other  
20 similar forms of communication in print or  
21 digitally.

22 “(B) The term ‘library’ has the meaning  
23 given that term under section 213(2) of the Li-  
24 brary Services and Technology Act (20 U.S.C.  
25 9122(2)) whose services include access to the

1 Internet, books, journals, magazines, news-  
2 papers, or other similar forms of communica-  
3 tion in print or digitally to patrons for their  
4 use, review, examination, or circulation.

5 “(C) The term ‘patron’ means any pur-  
6 chaser, renter, borrower, user, or subscriber of  
7 goods or services from a library or bookseller.

8 “(D) The term ‘documentary materials’  
9 means any document, tape, or other commu-  
10 nication created by a bookseller or library in  
11 connection with print or digital dissemination of  
12 a book, journal, magazine, newspaper, or other  
13 similar form of communication, including access  
14 to the Internet.

15 “(E) The term ‘personally identifiable in-  
16 formation’ includes information that identifies a  
17 person as having used, requested, or obtained  
18 specific reading materials or services from a  
19 bookseller or library.”.

20 **SEC. 104. SUNSET RELATING TO INDIVIDUAL TERRORISTS**  
21 **AS AGENTS OF FOREIGN POWERS.**

22 Section 6001(b) of the Intelligence Reform and Ter-  
23 rorism Prevention Act of 2004 (50 U.S.C. 1801 note;  
24 Public Law 108–458) is amended—

25 (1) in paragraph (1)—

1 (A) by striking “the amendment made by  
2 subsection (a) shall cease to have effect” and  
3 inserting “effective”; and

4 (B) by striking the period and inserting  
5 “—

6 “(A) subparagraph (C) of section  
7 101(b)(1) of the Foreign Intelligence Surveil-  
8 lance Act of 1978 (50 U.S.C. 1801(b)(1)) is re-  
9 pealed;

10 “(B) subparagraphs (D) and (E) of such  
11 section are redesignated as subparagraphs (C)  
12 and (D), respectively;

13 “(C) paragraph (2) of section 601(a) of  
14 such Act (50 U.S.C. 1871(a)) is repealed; and

15 “(D) paragraphs (3), (4), and (5) of such  
16 section are redesignated as paragraphs (2), (3),  
17 and (4), respectively.”; and

18 (2) in paragraph (2)—

19 (A) by striking “EXCEPTION.—With re-  
20 spect to” and inserting “EXCEPTION.—

21 “(A) EXISTING INVESTIGATIONS.—With  
22 respect to”; and

23 (B) by adding at the end the following new  
24 subparagraph:

1           “(B) REPORTS.—Notwithstanding the re-  
2           peals made by paragraph (1), the first report  
3           required under section 601(a) of the Foreign  
4           Intelligence Surveillance Act of 1978 (50  
5           U.S.C. 1871(a)) that is submitted after the ef-  
6           fective date of such repeals shall include the  
7           number of individuals covered by an order  
8           issued pursuant to section 101(b)(1)(C) of such  
9           Act (as in effect on the day before such effec-  
10          tive date).”.

11 **SEC. 105. AUDITS.**

12          (a) TANGIBLE THINGS.—Section 106A of the USA  
13 PATRIOT Improvement and Reauthorization Act of 2005  
14 (Public Law 109–177; 120 Stat. 200) is amended—

15           (1) in subsection (b)—

16                   (A) in paragraph (1), by striking “2006”  
17                   and inserting “2013”; and

18                   (B) in paragraph (5)(C), by striking “cal-  
19                   endar year 2006” and inserting “each of cal-  
20                   endar years 2006 through 2013”;

21           (2) in subsection (c), by adding at the end the  
22          following:

23                   “(3) CALENDAR YEARS 2007 THROUGH  
24                   2009.—Not later than December 31, 2010, the In-  
25                   specter General of the Department of Justice shall

1 submit to the Committee on the Judiciary and the  
2 Permanent Select Committee on Intelligence of the  
3 House of Representatives and the Committee on the  
4 Judiciary and the Select Committee on Intelligence  
5 of the Senate a report containing the results of the  
6 audit conducted under this section for calendar  
7 years 2007 through 2009.

8 “(4) CALENDAR YEARS 2010 THROUGH  
9 2013.—Not later than December 31, 2011, and an-  
10 nually thereafter until December 31, 2014, the In-  
11 spector General of the Department of Justice shall  
12 submit to the Committee on the Judiciary and the  
13 Permanent Select Committee on Intelligence of the  
14 House of Representatives and the Committee on the  
15 Judiciary and the Select Committee on Intelligence  
16 of the Senate a report containing the results of the  
17 audit conducted under this section for the preceding  
18 calendar year.”;

19 (3) in subsection (d)—

20 (A) in paragraph (1), by striking “or  
21 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;

22 and

23 (B) in paragraph (2), by striking “and  
24 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;

25 and

1           (4) in subsection (e), by striking “and (c)(2)”  
2           and inserting “(c)(2), (c)(3), or (c)(4)”.

3           (b) NATIONAL SECURITY LETTERS.—Section 119 of  
4 the USA PATRIOT Improvement and Reauthorization  
5 Act of 2005 (Public Law 109–177; 120 Stat. 219) is  
6 amended—

7           (1) in subsection (b)(1), by striking “2006”  
8           and inserting “2013”;

9           (2) in subsection (c), by adding at the end the  
10          following:

11           “(3) CALENDAR YEARS 2007 THROUGH  
12          2009.—Not later than December 31, 2010, the In-  
13          spector General of the Department of Justice shall  
14          submit to the Committee on the Judiciary and the  
15          Permanent Select Committee on Intelligence of the  
16          House of Representatives and the Committee on the  
17          Judiciary and the Select Committee on Intelligence  
18          of the Senate a report containing the results of the  
19          audit conducted under this section for calendar  
20          years 2007 through 2009.

21           “(4) CALENDAR YEARS 2010 THROUGH  
22          2013.—Not later than December 31, 2011, and an-  
23          nually thereafter until December 31, 2014, the In-  
24          spector General of the Department of Justice shall  
25          submit to the Committee on the Judiciary and the

1 Permanent Select Committee on Intelligence of the  
2 House of Representatives and the Committee on the  
3 Judiciary and the Select Committee on Intelligence  
4 of the Senate a report containing the results of the  
5 audit conducted under this section for the previous  
6 calendar year.”;

7 (3) in subsection (d)—

8 (A) in paragraph (1), by striking “or  
9 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;  
10 and

11 (B) in paragraph (2), by striking “or  
12 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;  
13 and

14 (4) in subsection (e), by striking “or (c)(2)”  
15 and inserting “(c)(2), (c)(3), or (c)(4)”.

16 (c) PEN REGISTERS AND TRAP AND TRACE DE-  
17 VICES.—

18 (1) AUDITS.—The Inspector General of the De-  
19 partment of Justice shall perform comprehensive au-  
20 dits of the effectiveness and use, including any im-  
21 proper or illegal use, of pen registers and trap and  
22 trace devices under title IV of the Foreign Intel-  
23 ligence Surveillance Act of 1978 (50 U.S.C. 1841 et  
24 seq.) during the period beginning on January 1,  
25 2007 and ending on December 31, 2012.

1           (2) REQUIREMENTS.—The audits required  
2 under paragraph (1) shall include—

3           (A) an examination of each instance in  
4 which the Attorney General or any other attor-  
5 ney for the Government submitted an applica-  
6 tion for an order or extension of an order under  
7 title IV of the Foreign Intelligence Surveillance  
8 Act of 1978, including whether the court grant-  
9 ed, modified, or denied the application (includ-  
10 ing an examination of the basis for any modi-  
11 fication or denial);

12           (B) an examination of each instance in  
13 which the Attorney General authorized the in-  
14 stallation and use of a pen register or trap and  
15 trace device on an emergency basis under sec-  
16 tion 403 of the Foreign Intelligence Surveil-  
17 lance Act of 1978 (50 U.S.C. 1843);

18           (C) whether the Federal Bureau of Inves-  
19 tigation requested that the Department of Jus-  
20 tice submit an application for an order or ex-  
21 tension of an order under title IV of the For-  
22 eign Intelligence Surveillance Act of 1978 and  
23 the request was not submitted to the court (in-  
24 cluding an examination of the basis for not sub-  
25 mitting the application);

1 (D) whether bureaucratic or procedural  
2 impediments to the use of pen registers and  
3 trap and trace devices under title IV of the  
4 Foreign Intelligence Surveillance Act of 1978  
5 prevent the Federal Bureau of Investigation  
6 from taking full advantage of the authorities  
7 provided under that title;

8 (E) any noteworthy facts or circumstances  
9 relating to the use of a pen register or trap and  
10 trace device under title IV of the Foreign Intel-  
11 ligence Surveillance Act of 1978, including any  
12 improper or illegal use of the authority provided  
13 under that title; and

14 (F) an examination of the effectiveness of  
15 the authority under title IV of the Foreign In-  
16 telligence Surveillance Act of 1978 as an inves-  
17 tigative tool, including—

18 (i) the importance of the information  
19 acquired to the intelligence activities of the  
20 Federal Bureau of Investigation or any  
21 other department or agency of the Federal  
22 Government;

23 (ii) the manner in which the informa-  
24 tion is collected, retained, analyzed, and  
25 disseminated by the Federal Bureau of In-

1 investigation, including any direct access to  
2 the information provided to any other de-  
3 partment, agency, or instrumentality of  
4 Federal, State, local, or tribal governments  
5 or any private sector entity;

6 (iii) with respect to calendar years  
7 2010 through 2012, an examination of the  
8 minimization procedures used in relation to  
9 pen registers and trap and trace devices  
10 under title IV of the Foreign Intelligence  
11 Surveillance Act of 1978 and whether the  
12 minimization procedures protect the con-  
13 stitutional rights of United States persons;

14 (iv) whether, and how often, the Fed-  
15 eral Bureau of Investigation used informa-  
16 tion acquired under a pen register or trap  
17 and trace device under title IV of the For-  
18 eign Intelligence Surveillance Act of 1978  
19 to produce an analytical intelligence prod-  
20 uct for distribution within the Federal Bu-  
21 reau of Investigation, to the intelligence  
22 community (as defined in section 3(4) of  
23 the National Security Act of 1947 (50  
24 U.S.C. 401a(4))), or to other Federal,

1 State, local, or tribal government depart-  
2 ments, agencies, or instrumentalities; and

3 (v) whether, and how often, the Fed-  
4 eral Bureau of Investigation provided in-  
5 formation acquired under a pen register or  
6 trap and trace device under title IV of the  
7 Foreign Intelligence Surveillance Act of  
8 1978 to law enforcement authorities for  
9 use in criminal proceedings.

10 (3) SUBMISSION DATES.—

11 (A) PRIOR YEARS.—Not later than Decem-  
12 ber 31, 2010, the Inspector General of the De-  
13 partment of Justice shall submit to the Com-  
14 mittee on the Judiciary and the Select Com-  
15 mittee on Intelligence of the Senate and the  
16 Committee on the Judiciary and the Permanent  
17 Select Committee on Intelligence of the House  
18 of Representatives a report containing the re-  
19 sults of the audit conducted under this section  
20 for calendar years 2007 through 2009.

21 (B) CALENDAR YEARS 2010 THROUGH  
22 2013.—Not later than December 31, 2011, and  
23 annually thereafter until December 31, 2014,  
24 the Inspector General of the Department of  
25 Justice 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 report containing the results of the audit con-  
6           ducted under this section for the previous cal-  
7           endar year.

8           (4) PRIOR NOTICE TO ATTORNEY GENERAL AND  
9           DIRECTOR OF NATIONAL INTELLIGENCE; COM-  
10          MENTS.—

11           (A) NOTICE.—Not less than 30 days be-  
12          fore the submission of a report under subpara-  
13          graph (A) or (B) of paragraph (3), the Inspec-  
14          tor General of the Department of Justice shall  
15          provide the report to the Attorney General and  
16          the Director of National Intelligence.

17           (B) COMMENTS.—The Attorney General or  
18          the Director of National Intelligence may pro-  
19          vide such comments to be included in a report  
20          submitted under subparagraph (A) or (B) of  
21          paragraph (3) as the Attorney General or the  
22          Director of National Intelligence may consider  
23          necessary.

24           (5) UNCLASSIFIED FORM.—A report submitted  
25          under subparagraph (A) or (B) of paragraph (3)

1 and any comments included under paragraph (4)(B)  
2 shall be in unclassified form, but may include a clas-  
3 sified annex.

4 **SEC. 106. CRIMINAL “SNEAK AND PEAK” SEARCHES.**

5 Section 3103a of title 18, United States Code, is  
6 amended—

7 (1) in subsection (b)—

8 (A) in paragraph (1), by striking “may  
9 have an adverse result (as defined in section  
10 2705, except if the adverse results consist only  
11 of unduly delaying a trial)” and inserting “will  
12 endanger the life or physical safety of an indi-  
13 vidual, result in flight from prosecution, result  
14 in the destruction of or tampering with the evi-  
15 dence sought under the warrant, or result in in-  
16 timidation of potential witnesses”; and

17 (B) in paragraph (3), by striking “30  
18 days” and all that follows and inserting “7 days  
19 after the date of its execution.”; and

20 (2) in subsection (c), by striking “for good  
21 cause shown” and all that follows and inserting  
22 “upon application of the United States Attorney for  
23 the district seeking the delay, for additional periods  
24 of not more than 21 days for each application, if the  
25 court finds, for each application, reasonable cause to

1 believe that notice of the execution of the warrant  
2 will endanger the life or physical safety of an indi-  
3 vidual, result in flight from prosecution, result in the  
4 destruction of or tampering with the evidence sought  
5 under the warrant, or result in intimidation of po-  
6 tential witnesses.”.

7 **SEC. 107. USE OF PEN REGISTERS AND TRAP AND TRACE**  
8 **DEVICES UNDER TITLE 18, UNITED STATES**  
9 **CODE.**

10 Section 3122(b)(2) of title 18, United States Code,  
11 is amended to read as follows:

12 “(2) a statement of specific and articulable  
13 facts by the applicant to justify the belief of the ap-  
14 plicant that the information likely to be obtained is  
15 relevant to an ongoing criminal investigation being  
16 conducted by that agency.”.

17 **SEC. 108. ORDERS FOR PEN REGISTERS AND TRAP AND**  
18 **TRACE DEVICES FOR FOREIGN INTEL-**  
19 **LIGENCE PURPOSES.**

20 (a) APPLICATION.—Section 402(c) of the Foreign In-  
21 telligence Surveillance Act of 1978 (50 U.S.C. 1842(c))  
22 is amended—

23 (1) in paragraph (1), by striking “and” at the  
24 end;

25 (2) in paragraph (2)—

1 (A) by striking “a certification by the ap-  
2 plicant” and inserting “a statement of the spe-  
3 cific and articulable facts relied upon by the ap-  
4 plicant to justify the belief of the applicant”;  
5 and

6 (B) by striking the period at the end and  
7 inserting “; and”; and

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

9 “(3) a statement of proposed minimization pro-  
10 cedures.”.

11 (b) MINIMIZATION PROCEDURES.—

12 (1) DEFINITION.—Section 401 of the Foreign  
13 Intelligence Surveillance Act of 1978 (50 U.S.C.  
14 1841) is amended by adding at the end the fol-  
15 lowing:

16 “(4) The term ‘minimization procedures’  
17 means—

18 “(A) specific procedures that are reason-  
19 ably designed in light of the purpose and tech-  
20 nique of an order for the installation and use  
21 of a pen register or trap and trace device, to  
22 minimize the retention, and prohibit the dis-  
23 semination, of nonpublicly available information  
24 concerning unconsenting United States persons  
25 consistent with the need of the United States to

1 obtain, produce, and disseminate foreign intel-  
2 ligence information;

3 “(B) procedures that require that nonpub-  
4 licly available information, which is not foreign  
5 intelligence information shall not be dissemi-  
6 nated in a manner that identifies any United  
7 States person, without such person’s consent,  
8 unless such person’s identity is necessary to un-  
9 derstand foreign intelligence information or as-  
10 sess its importance; and

11 “(C) notwithstanding subparagraphs (A)  
12 and (B), procedures that allow for the retention  
13 and dissemination of information that is evi-  
14 dence of a crime which has been, is being, or  
15 is about to be committed and that is to be re-  
16 tained or disseminated for law enforcement pur-  
17 poses.”.

18 (2) PEN REGISTERS AND TRAP AND TRACE DE-  
19 VICES.—Section 402 of the Foreign Intelligence Sur-  
20 veillance Act of 1978 (50 U.S.C. 1842) is amend-  
21 ed—

22 (A) in subsection (d)—

23 (i) in paragraph (1)—

1 (I) by striking “finds that the  
2 application” and inserting the fol-  
3 lowing: “finds that—

4 “(A) the application”;

5 (II) in subparagraph (A), as des-  
6 ignated by subclause (I) of this clause,  
7 by striking “section.” and inserting  
8 “section; and”; and

9 (III) by adding at the end the  
10 following new subparagraph:

11 “(B) the proposed minimization procedures  
12 meet the definition of minimization procedures  
13 under this title.”.

14 (ii) in paragraph (2)(B)—

15 (I) in clause (ii)(II), by striking  
16 “and” after the semicolon; and

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

19 “(iv) the minimization procedures be  
20 followed; and”; and

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

22 “(h) At or before the end of the period of time for  
23 which the installation and use of a pen register or trap  
24 and trace device is approved under an order or an exten-  
25 sion under this section, the judge may assess compliance

1 with the minimization procedures by reviewing the cir-  
2 cumstances under which information concerning United  
3 States persons was retained or disseminated.”.

4           (3) EMERGENCIES.—Section 403 of the For-  
5 eign Intelligence Surveillance Act of 1978 (50  
6 U.S.C. 1843) is amended—

7                   (A) by redesignating subsection (c) as (d);

8                   and

9                   (B) by inserting after subsection (b) the  
10 following:

11           “(c) If the Attorney General authorizes the emer-  
12 gency installation and use of a pen register or trap and  
13 trace device under this section, the Attorney General shall  
14 require that the minimization procedures required by this  
15 title for the issuance of a judicial order be followed.”.

16           (4) USE OF INFORMATION.—Section 405(a)(1)  
17 of the Foreign Intelligence Surveillance Act of 1978  
18 (50 U.S.C. 1845(a)(1)) is amended by inserting  
19 “and the minimization procedures required to be fol-  
20 lowed under the order authorizing the acquisition of  
21 such information under section 402 or under sub-  
22 section (c) of section 403 for an emergency acquisi-  
23 tion under such section” before the period.

1 **SEC. 109. PUBLIC REPORTING ON THE FOREIGN INTEL-**  
2 **LIGENCE SURVEILLANCE ACT OF 1978.**

3 Section 601 of the Foreign Intelligence Surveillance  
4 Act of 1978 (50 U.S.C. 1871) is amended—

5 (1) by redesignating subsections (b) through (e)  
6 as subsections (c) through (f), respectively;

7 (2) by inserting after subsection (a) the fol-  
8 lowing:

9 “(b) PUBLIC REPORT.—The Attorney General shall  
10 make publicly available the portion of each report under  
11 subsection (a) relating to paragraph (1) of such sub-  
12 section.”; and

13 (3) in subsection (e), as so redesignated, by  
14 striking “subsection (c)” and inserting “subsection  
15 (d)”.

16 **SEC. 110. CHALLENGES TO NATIONWIDE ORDERS FOR**  
17 **ELECTRONIC EVIDENCE.**

18 Section 2703 of title 18, United States Code, is  
19 amended by adding at the end the following:

20 “(h) JUDICIAL REVIEW.—A provider of electronic  
21 communication service or remote computing service may  
22 challenge a subpoena, order, or warrant requiring disclo-  
23 sure of customer communications or records under this  
24 section in—

25 “(1) the United States district court for the  
26 district in which the order was issued; or

1           “(2) the United States district court for the  
2           district in which the order was served.”.

3           **TITLE II—NATIONAL SECURITY**  
4           **LETTER REFORM**

5           **SEC. 201. SHORT TITLE.**

6           This title may be referred to as the “National Security Letter Reform Act of 2009”.

8           **SEC. 202. SUNSET.**

9           (a) IN GENERAL.—Effective on December 31, 2013,  
10          the following provisions of law are amended to read as  
11          such provisions read on October 25, 2001:

12                 (1) Section 2709 of title 18, United States  
13          Code.

14                 (2) Section 1114(a)(5) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)).

16                 (3) Subsections (a) and (b) of section 626 of  
17          the Fair Credit Reporting Act (15 U.S.C. 1681u).

18                 (4) Section 627 of the Fair Credit Reporting  
19          Act (15 U.S.C. 1681v).

20                 (5) Section 802 of the National Security Act of  
21          1947 (50 U.S.C. 436).

22           (b) TRANSITION PROVISION.—Notwithstanding sub-  
23          section (a), the provisions of law referred to in subsection  
24          (a), as in effect on December 30, 2013, shall continue to  
25          apply after December 31, 2013, with respect to any par-

1 ticular foreign intelligence investigation or with respect to  
2 any particular offense or potential offense that began or  
3 occurred before December 31, 2013.

4 **SEC. 203. NATIONAL SECURITY LETTER DEFINED.**

5 In this title, the term “national security letter”  
6 means a request for information under one of the following  
7 provisions of law:

8 (1) Section 2709(a) of title 18, United States  
9 Code (to access certain communication service pro-  
10 vider records).

11 (2) Section 1114(a)(5)(A) of the Right to Fi-  
12 nancial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to  
13 obtain financial institution customer records).

14 (3) Section 626 of the Fair Credit Reporting  
15 Act (15 U.S.C. 1681u) (to obtain certain financial  
16 information and consumer reports).

17 (4) Section 627 of the Fair Credit Reporting  
18 Act (15 U.S.C. 1681v) (to obtain credit agency con-  
19 sumer records for counterterrorism investigations).

20 (5) Section 802 of the National Security Act of  
21 1947 (50 U.S.C. 436).

22 **SEC. 204. MODIFICATION OF STANDARD.**

23 A national security letter may not be issued unless  
24 the official having authority under law to issue that letter  
25 documents in a separate writing specific and articulable

1 facts showing that there are reasonable grounds to believe  
2 that the information sought pertains to a foreign power  
3 or an agent of a foreign power. The agency under whose  
4 authority the letter is issued shall maintain a copy of that  
5 separate writing.

6 **SEC. 205. NOTIFICATION OF RIGHT TO JUDICIAL REVIEW**  
7 **OF NONDISCLOSURE ORDER.**

8 If a recipient of a national security letter is subject  
9 to a nondisclosure requirement imposed in connection with  
10 that national security letter, the official issuing that letter  
11 shall, simultaneously with its issuance, inform the recipi-  
12 ent of the right of the recipient to judicial review of that  
13 requirement and that the requirement will remain in effect  
14 during the pendency of any judicial review proceedings.

15 **SEC. 206. DISCLOSURE FOR LAW ENFORCEMENT PUR-**  
16 **POSES.**

17 No information acquired by a national security letter  
18 shall be disclosed for law enforcement purposes unless  
19 such disclosure is accompanied by a statement that such  
20 information, or any information derived therefrom, may  
21 only be used in a criminal proceeding with the advance  
22 authorization of the Attorney General.

1 **SEC. 207. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**  
2 **TER NONDISCLOSURE ORDER.**

3 Section 3511(b) of title 18, United States Code, is  
4 amended to read as follows:

5 “(b) NONDISCLOSURE.—

6 “(1) IN GENERAL.—

7 “(A) NOTICE.—If a recipient of a request  
8 or order for a report, records, or other informa-  
9 tion under section 2709 of this title, section  
10 626 or 627 of the Fair Credit Reporting Act  
11 (15 U.S.C. 1681u and 1681v), section 1114 of  
12 the Right to Financial Privacy Act (12 U.S.C.  
13 3414), or section 802 of the National Security  
14 Act of 1947 (50 U.S.C. 436), wishes to have a  
15 court review a nondisclosure requirement im-  
16 posed in connection with the request, the recipi-  
17 ent shall notify the Government.

18 “(B) APPLICATION.—Not later than 30  
19 days after the date of receipt of a notification  
20 under subparagraph (A), the Government shall  
21 apply for an order prohibiting the disclosure of  
22 particular information about the existence or  
23 contents of the relevant request or order. An  
24 application under this subparagraph may be  
25 filed in the district court of the United States  
26 for any district within which the authorized in-

1           vestigation that is the basis for the request or  
2           order is being conducted. The applicable non-  
3           disclosure requirement shall remain in effect  
4           during the pendency of proceedings relating to  
5           the requirement.

6           “(C) CONSIDERATION.—A district court of  
7           the United States that receives an application  
8           under subparagraph (B) should rule expedi-  
9           tiously, and may issue a nondisclosure order for  
10          a period of not longer than 180 days.

11          “(D) DENIAL.—If a district court of the  
12          United States rejects an application for a non-  
13          disclosure order or extension thereof, the non-  
14          disclosure requirement shall no longer be in ef-  
15          fect.

16          “(2) APPLICATION CONTENTS.—An application  
17          for a nondisclosure order or extension thereof under  
18          this subsection shall include a certification from the  
19          Attorney General, Deputy Attorney General, an As-  
20          sistant Attorney General, or the Director of the Fed-  
21          eral Bureau of Investigation, or in the case of a re-  
22          quest by a department, agency, or instrumentality of  
23          the Federal Government other than the Department  
24          of Justice, the head or deputy head of the depart-  
25          ment, agency, or instrumentality, of the existence of

1 a result described in subparagraphs (A) through (D)  
2 and a statement of specific and articulable facts in-  
3 dicating that, absent a prohibition of disclosure  
4 under this subsection, there may result—

5 “(A) a danger to the national security of  
6 the United States;

7 “(B) interference with a criminal, counter-  
8 terrorism, or counterintelligence investigation;

9 “(C) interference with diplomatic relations;

10 or

11 “(D) danger to the life or physical safety  
12 of any person.

13 “(3) STANDARD.—A district court of the  
14 United States may issue a nondisclosure require-  
15 ment order or extension thereof under this sub-  
16 section if the court determines that there is reason  
17 to believe that disclosure of the information subject  
18 to the nondisclosure requirement during the applica-  
19 ble time period will have a result described in para-  
20 graph (2).

21 “(4) RENEWAL.—A nondisclosure order under  
22 this subsection may be renewed for additional peri-  
23 ods of not longer than 180 days each, upon a deter-  
24 mination by the court that a result described in  
25 paragraph (2) justifies the renewal.

1           “(5) EARLY TERMINATION OF NONDISCLOSURE  
2           ORDER.—A nondisclosure order the Government ap-  
3           plied for under paragraph (1)(B) ceases to have ef-  
4           fect when the Government discovers that the factual  
5           basis for that order has ceased to exist and the Gov-  
6           ernment so informs the order’s recipient. The Gov-  
7           ernment upon making such a discovery shall prompt-  
8           ly so informs the recipient.”.

9   **SEC. 208. MINIMIZATION PROCEDURES.**

10          The Attorney General shall establish minimization  
11          and destruction procedures to ensure that information ob-  
12          tained pursuant to a national security letter regarding per-  
13          sons that are no longer of interest in an authorized inves-  
14          tigation is destroyed. Such procedures shall be transmitted  
15          to the Permanent Select Committee on Intelligence and  
16          the Committee on the Judiciary of the House of Rep-  
17          resentatives and the Select Committee on Intelligence and  
18          the Committee on the Judiciary of the Senate in unclassi-  
19          fied format within 3 months of passage, and shall in-  
20          clude—

21                 (1) specific procedures, that are reasonably de-  
22                 signed in light of the purpose and technique of the  
23                 particular surveillance, to minimize the acquisition  
24                 and retention, and prohibit the dissemination, of  
25                 nonpublicly available information concerning

1       unconsenting United States persons consistent with  
2       the need of the United States to obtain, produce,  
3       and disseminate foreign intelligence information;

4               (2) procedures that provide for the destruction  
5       of information relating to United States persons that  
6       do not reflect activity that would lead a reasonable  
7       agent or analyst to believe that the person is an  
8       agent of a foreign power as defined in section 101  
9       of the Foreign Intelligence Surveillance Act of 1978  
10      (50 U.S.C. 1801(b));

11              (3) procedures for identifying whether the infor-  
12      mation returned in response to a national security  
13      letter exceeds the scope of the original request and  
14      further procedures for returning or destroying the  
15      superfluous information as soon as possible and be-  
16      fore it is entered into any database or used in any  
17      way; and

18              (4) deadlines for destruction, minimization, or  
19      return of information described in paragraphs (1)  
20      through (3), that require such destruction, mini-  
21      mization, or return as soon as possible.

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