

111TH CONGRESS
1ST SESSION

H. R. 3846

To amend the Foreign Intelligence Surveillance Act of 1978 to provide additional civil liberties protections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2009

Mr. CONYERS (for himself, Mr. NADLER of New York, Mr. SCOTT of Virginia, Mr. COHEN, 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 Select Committee on Intelligence (Permanent Select), 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

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to provide additional civil liberties protections, 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 Act of 2009”.

1 **SEC. 2. REPEAL OF TELECOMMUNICATIONS IMMUNITY.**

2 (a) IN GENERAL.—The Foreign Intelligence Surveil-
3 lance Act of 1978 is amended by striking title VIII (50
4 U.S.C. 1885 et seq.).

5 (b) TECHNICAL AND CONFORMING AMENDMENT.—
6 The table of contents in the first section of the Foreign
7 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
8 seq.) is amended by striking the items relating to title VIII
9 and sections 801, 802, 803, and 804.

10 **SEC. 3. PROHIBITION ON BULK COLLECTION UNDER FISA**
11 **AMENDMENTS ACT.**

12 Section 702(g)(2)(A) of the Foreign Intelligence Sur-
13 veillance Act of 1978 (50 U.S.C. 1881a(g)(2)(A)) is
14 amended—

15 (1) in clause (vi), by striking “and” at the end;

16 (2) by redesignating clause (vii) as clause (viii);

17 and

18 (3) by inserting after clause (vi) the following:

19 “(vii) the acquisition of the contents
20 (as that term is defined in section 2510(8)
21 of title 18, United States Code) of any
22 communication is limited to communica-
23 tions to which any party is an individual
24 target (which shall not be limited to known
25 or named individuals) who is reasonably
26 believed to be located outside of the United

1 States, and a significant purpose of the ac-
2 quisition of the communications of the tar-
3 get is to obtain foreign intelligence infor-
4 mation; and”.

5 **SEC. 4. PROHIBITION ON REVERSE TARGETING UNDER**
6 **FISA AMENDMENTS ACT.**

7 Section 702 of the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1881a) is amended—

9 (1) in subsection (b)(2), by striking “the pur-
10 pose” and all that follows and inserting the fol-
11 lowing: “a significant purpose of the acquisition is to
12 acquire the communications of a particular, known
13 person reasonably believed to be located in the
14 United States, except in accordance with title I;”;

15 (2) in subsection (d)(1)(A)—

16 (A) by striking “ensure that” and insert
17 the following: “ensure—

18 “(i) that”; and

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

20 “(ii) that an application is filed under
21 title I, if otherwise required, when a sig-
22 nificant purpose of an acquisition author-
23 ized under subsection (a) is to acquire the
24 communications of a particular, known

1 person reasonably believed to be located in
2 the United States; and”;

3 (3) in subsection (g)(2)(A)(i)(I)—

4 (A) by striking “ensure that” and insert
5 the following: “ensure—

6 “(aa) that”; and

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

8 “(bb) that an application is
9 filed under title I, if otherwise re-
10 quired, when a significant pur-
11 pose of an acquisition authorized
12 under subsection (a) is to acquire
13 the communications of a par-
14 ticular, known person reasonably
15 believed to be located in the
16 United States; and”; and

17 (4) in subsection (i)(2)(B)(i)—

18 (A) by striking “ensure that” and insert
19 the following: “ensure—

20 “(I) that”; and

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

22 “(II) that an application is filed
23 under title I, if otherwise required,
24 when a significant purpose of an ac-
25 quisition authorized under subsection

1 (a) is to acquire the communications
2 of a particular, known person reason-
3 ably believed to be located in the
4 United States; and”.

5 **SEC. 5. LIMITS ON USE OF UNLAWFULLY OBTAINED INFOR-**
6 **MATION UNDER FISA AMENDMENTS ACT.**

7 Section 702(i)(3) of the Foreign Intelligence Surveil-
8 lance Act of 1978 (50 U.S.C. 1881a(i)(3)) is amended by
9 striking subparagraph (B) and inserting the following:

10 “(B) CORRECTION OF DEFICIENCIES.—

11 “(i) IN GENERAL.—If the Court finds
12 that a certification required by subsection
13 (g) does not contain all of the required ele-
14 ments, or that the procedures required by
15 subsections (d) and (e) are not consistent
16 with the requirements of those subsections
17 or the fourth amendment to the Constitu-
18 tion of the United States, the Court shall
19 issue an order directing the Government
20 to, at the Government’s election and to the
21 extent required by the order of the
22 Court—

23 “(I) correct any deficiency identi-
24 fied by the order of the Court not

1 later than 30 days after the date on
2 which the Court issues the order; or

3 “(II) cease or not begin the ac-
4 quisition authorized under subsection
5 (a).

6 “(ii) LIMITATION ON USE OF INFOR-
7 MATION.—

8 “(I) IN GENERAL.—Except as
9 provided in subclause (II), no infor-
10 mation obtained or evidence derived
11 from an acquisition for which a defi-
12 ciency is identified by the Court under
13 clause (i) concerning any United
14 States person shall be received in evi-
15 dence or otherwise disclosed in any
16 trial, hearing, or other proceeding in
17 or before any court, grand jury, de-
18 partment, office, agency, regulatory
19 body, legislative committee, or other
20 authority of the United States, a
21 State, or political subdivision thereof,
22 and no information concerning any
23 United States person acquired from
24 the acquisition shall subsequently be
25 used or disclosed in any other manner

1 by Federal officers or employees with-
2 out the consent of the United States
3 person, except with the approval of
4 the Attorney General if the informa-
5 tion indicates a threat of death or se-
6 rious bodily harm to any person.

7 “(II) EXCEPTION.—If the Gov-
8 ernment corrects any deficiency iden-
9 tified by the order of the Court under
10 clause (i), the Court may permit the
11 use or disclosure of information ac-
12 quired before the date of the correc-
13 tion under such minimization proce-
14 dures as the Court shall establish for
15 purposes of this clause.”.

16 **SEC. 6. PRIVACY PROTECTIONS FOR INTERNATIONAL COM-**
17 **MUNICATIONS OF AMERICANS COLLECTED**
18 **UNDER FISA AMENDMENTS ACT.**

19 (a) IN GENERAL.—Title VII of the Foreign Intel-
20 ligence Surveillance Act of 1978 (50 U.S.C. 1881) is
21 amended by adding at the end the following:

22 **“SEC. 709. ADDITIONAL SAFEGUARDS FOR COMMUNICA-**
23 **TIONS OF PERSONS IN THE UNITED STATES.**

24 “(a) LIMITATIONS ON ACQUISITION OF COMMUNICA-
25 TIONS.—

1 “(1) LIMITATION.—Except as provided in para-
2 graph (2), no communication shall be acquired
3 under this title if the Government knows before or
4 at the time of acquisition that the communication is
5 to or from a person reasonably believed to be located
6 in the United States.

7 “(2) EXCEPTION.—

8 “(A) IN GENERAL.—Notwithstanding para-
9 graph (1), a communication may be acquired in
10 accordance with this title if—

11 “(i) there is reason to believe that the
12 communication concerns international ter-
13 rorist activities directed against the United
14 States, or activities in preparation there-
15 for;

16 “(ii) there is probable cause to believe
17 that the target reasonably believed to be
18 located outside the United States is an
19 agent of a foreign power and the foreign
20 power is a group engaged in international
21 terrorism or activities in preparation there-
22 for; or

23 “(iii) there is reason to believe that
24 the acquisition is necessary to prevent
25 death or serious bodily harm.

1 “(B) ACCESS TO COMMUNICATIONS.—
2 Communications acquired under this paragraph
3 shall be treated in accordance with subsection
4 (b).

5 “(3) PROCEDURES FOR DETERMINATIONS BE-
6 FORE OR AT THE TIME OF ACQUISITION.—

7 “(A) SUBMISSION.—Not later than 120
8 days after the date of enactment of the FISA
9 Amendments Act of 2009, the Attorney Gen-
10 eral, in consultation with the Director of Na-
11 tional Intelligence, shall submit to the Foreign
12 Intelligence Surveillance Court for approval pro-
13 cedures for determining before or at the time of
14 acquisition, where reasonably practicable,
15 whether a communication is to or from a person
16 reasonably believed to be located in the United
17 States and whether the exception under para-
18 graph (2) applies to that communication.

19 “(B) REVIEW.—The Foreign Intelligence
20 Surveillance Court shall approve the procedures
21 submitted under subparagraph (A) if the proce-
22 dures are reasonably designed to determine be-
23 fore or at the time of acquisition, where reason-
24 ably practicable, whether a communication is to
25 or from a person reasonably believed to be lo-

1 cated in the United States and whether the ex-
2 ception under paragraph (2) applies to that
3 communication.

4 “(C) PROCEDURES DO NOT MEET RE-
5 QUIREMENTS.—If the Foreign Intelligence Sur-
6 veillance Court concludes that the procedures
7 submitted under subparagraph (A) do not meet
8 the requirements of subparagraph (B), the
9 Court shall enter an order so stating and pro-
10 vide a written statement for the record of the
11 reasons for the determination. The Government
12 may appeal an order under this subparagraph
13 to the Foreign Intelligence Surveillance Court
14 of Review.

15 “(D) USE OF PROCEDURES.—If the For-
16 eign Intelligence Surveillance Court approves
17 procedures under this paragraph, the Govern-
18 ment shall use the procedures in any acquisition
19 of communications under this title.

20 “(E) REVISIONS.—The Attorney General,
21 in consultation with the Director of National
22 Intelligence, may submit new or amended proce-
23 dures to the Foreign Intelligence Surveillance
24 Court for review under this paragraph.

1 “(F) RELIABILITY.—If the Government
2 obtains new information relating to the reli-
3 ability of procedures approved under this para-
4 graph or the availability of more reliable proce-
5 dures, the Attorney General shall submit to the
6 Foreign Intelligence Surveillance Court the in-
7 formation.

8 “(b) LIMITATIONS ON ACCESS TO COMMUNICA-
9 TIONS.—

10 “(1) IN GENERAL.—At such time as the Gov-
11 ernment can reasonably determine that a commu-
12 nication acquired under this title (including a com-
13 munication acquired under subsection (a)(2)) is to
14 or from a person reasonably believed to be located
15 in the United States, the communication shall be
16 segregated or specifically designated and no person
17 shall access the communication, except in accordance
18 with title I or this section.

19 “(2) EXCEPTIONS.—In addition to any author-
20 ity under title I, including the emergency provision
21 in section 105(f), a communication described in
22 paragraph (1) may be accessed and disseminated for
23 a period of not longer than 7 days if—

24 “(A)(i) there is reason to believe that the
25 communication concerns international terrorist

1 activities directed against the United States, or
2 activities in preparation therefor;

3 “(ii) there is probable cause to believe that
4 the target reasonably believed to be located out-
5 side the United States is an agent of a foreign
6 power and the foreign power is a group engaged
7 in international terrorism or activities in prepa-
8 ration therefor; or

9 “(iii) there is reason to believe that the ac-
10 cess is necessary to prevent death or serious
11 bodily harm;

12 “(B) the Attorney General notifies the
13 Foreign Intelligence Surveillance Court imme-
14 diately of the access; and

15 “(C) not later than 7 days after the date
16 the access is initiated, the Attorney General—

17 “(i) makes an application for an order
18 under title I; or

19 “(ii) submits to the Foreign Intel-
20 ligence Surveillance Court a document
21 that—

22 “(I) certifies that—

23 “(aa) there is reason to be-
24 lieve that the communication con-
25 cerns international terrorist ac-

1 activities directed against the
2 United States, or activities in
3 preparation therefor;

4 “(bb) there is probable
5 cause to believe that the target
6 reasonably believed to be located
7 outside the United States is an
8 agent of a foreign power and the
9 foreign power is a group engaged
10 in international terrorism or ac-
11 tivities in preparation therefor; or

12 “(cc) there is reason to be-
13 lieve that the access is necessary
14 to prevent death or serious bodily
15 harm; and

16 “(II) identifies the target of the
17 collection, the party to the commu-
18 nication who is in the United States if
19 known, and the extent to which infor-
20 mation relating to the communication
21 has been disseminated.

22 “(3) DENIAL OF COURT ORDER.—If an applica-
23 tion for a court order described in paragraph
24 (2)(C)(i) is made and is not approved, the Attorney
25 General shall submit to the Foreign Intelligence Sur-

1 veillance Court, not later than 7 days after the date
2 of the denial of the application, the document de-
3 scribed in paragraph (2)(C)(ii).

4 “(4) ADDITIONAL COURT AUTHORITIES.—

5 “(A) IN GENERAL.—The Foreign Intel-
6 ligence Surveillance Court may—

7 “(i) limit access to communications
8 described in paragraph (1) relating to a
9 particular target if the Court determines
10 that any certification submitted under
11 paragraph (2)(C)(ii)(I) with respect to that
12 target is clearly erroneous; and

13 “(ii) require the Attorney General to
14 provide the factual basis for a certification
15 submitted under paragraph (2)(C)(ii)(I), if
16 the Court determines it would aid the
17 Court in conducting review under this sub-
18 section.

19 “(B) FISC ACCESS.—The Foreign Intel-
20 ligence Surveillance Court shall have access to
21 any communications that have been segregated
22 or specifically designated under paragraph (1)
23 and any information the use of which has been
24 limited under paragraph (5).

25 “(5) FAILURE TO NOTIFY.—

1 “(A) IN GENERAL.—In the circumstances
2 described in subparagraph (B), access to a com-
3 munication shall terminate, and no information
4 obtained or evidence derived from the access
5 concerning any United States person shall be
6 received in evidence or otherwise disclosed in
7 any trial, hearing, or other proceeding in or be-
8 fore any court, grand jury, department, office,
9 agency, regulatory body, legislative committee,
10 or other authority of the United States, a State,
11 or political subdivision thereof, and no informa-
12 tion concerning any United States person ac-
13 quired from the access shall subsequently be
14 used or disclosed in any manner by Federal of-
15 ficers or employees without the consent of the
16 person, except with the approval of the Attor-
17 ney General if the information indicates a
18 threat of death or serious bodily harm to any
19 person, or if a court order is obtained under
20 title I.

21 “(B) CIRCUMSTANCES.—The cir-
22 cumstances described in this subparagraph are
23 circumstances in which—

24 “(i) as of the date that is 7 days after
25 the date on which access to a communica-

1 tion is initiated under paragraph (2), a
2 court order described in paragraph
3 (2)(C)(i) has not been sought and the doc-
4 ument described in paragraph (2)(C)(ii)
5 has not been submitted; or

6 “(ii) as of the date that is 7 days
7 after an application for a court order de-
8 scribed in paragraph (2)(C)(i) is denied,
9 the document described in paragraph
10 (2)(C)(ii) is not submitted in accordance
11 with paragraph (3).

12 “(6) EVIDENCE OF A CRIME.—Information or
13 communications subject to this subsection may be
14 disseminated for law enforcement purposes if it is
15 evidence that a crime has been, is being, or is about
16 to be committed, if dissemination is made in accord-
17 ance with section 106(b).

18 “(7) PROCEDURES FOR DETERMINATIONS
19 AFTER ACQUISITION.—

20 “(A) IN GENERAL.—Not later than 120
21 days after the date of enactment of the FISA
22 Amendments Act of 2009, the Attorney Gen-
23 eral, in consultation with the Director of Na-
24 tional Intelligence, shall submit to the Foreign
25 Intelligence Surveillance Court for approval pro-

1 cedures for determining, where reasonably prac-
2 ticable, whether a communication acquired
3 under this title is to or from a person reason-
4 ably believed to be in the United States.

5 “(B) REVIEW.—The Foreign Intelligence
6 Surveillance Court shall approve the procedures
7 submitted under subparagraph (A) if the proce-
8 dures are reasonably designed to determine,
9 where reasonably practicable, whether a com-
10 munication acquired under this title is a com-
11 munication to or from a person reasonably be-
12 lieved to be located in the United States.

13 “(C) PROCEDURES DO NOT MEET RE-
14 QUIREMENTS.—If the Foreign Intelligence Sur-
15 veillance Court concludes that the procedures
16 submitted under subparagraph (A) do not meet
17 the requirements of subparagraph (B), the
18 Court shall enter an order so stating and pro-
19 vide a written statement for the record of the
20 reasons for the determination. The Government
21 may appeal an order under this subparagraph
22 to the Foreign Intelligence Surveillance Court
23 of Review.

24 “(D) USE OF PROCEDURES.—If the For-
25 eign Intelligence Surveillance Court approves

1 procedures under this paragraph, the Govern-
2 ment shall use the procedures for any commu-
3 nication acquired under this title.

4 “(E) REVISIONS.—The Attorney General,
5 in consultation with the Director of National
6 Intelligence, may submit new or amended proce-
7 dures to the Foreign Intelligence Surveillance
8 Court for review under this paragraph.

9 “(F) RELIABILITY.—If the Government
10 obtains new information relating to the reli-
11 ability of procedures approved under this para-
12 graph or the availability of more reliable proce-
13 dures, the Attorney General shall submit to the
14 Foreign Intelligence Surveillance Court the in-
15 formation.

16 “(c) TITLE I COURT ORDER.—If the Government ob-
17 tains a court order under title I relating to a target of
18 an acquisition under this title, the Government may access
19 and disseminate, under the terms of that court order and
20 any applicable minimization requirements, any commu-
21 nications of that target that have been acquired and seg-
22 regated or specifically designated under subsection (b)(1).

23 “(d) INSPECTOR GENERAL AUDIT.—

24 “(1) AUDIT.—Not less than once each year, the
25 Inspector General of the Department of Defense and

1 the Inspector General of the Department of Justice
2 shall complete an audit of the implementation of and
3 compliance with this section. For purposes of an
4 audit under this paragraph, the Inspectors General
5 shall have access to any communications that have
6 been segregated or specifically designated under sub-
7 section (b)(1) and any information the use of which
8 has been limited under subsection (b)(5). An audit
9 under this paragraph shall include an accounting of
10 any segregated or specifically designated commu-
11 nications that have been disseminated.

12 “(2) REPORT.—Not later than 30 days after
13 the completion of each audit under paragraph (1),
14 the Inspector General of the Department of Defense
15 and the Inspector General of the Department of
16 Justice shall jointly submit to the Permanent Select
17 Committee on Intelligence and the Committee on the
18 Judiciary of the House of Representatives and the
19 Select Committee on Intelligence and the Committee
20 on the Judiciary of the Senate a report containing
21 the results of the audit.

22 “(3) EXPEDITED SECURITY CLEARANCE.—The
23 Director of National Intelligence shall ensure that
24 the process for the investigation and adjudication of
25 an application by an Inspector General or any ap-

1 appropriate staff of an Inspector General for a security
2 clearance necessary for the conduct of the audits
3 under this subsection is conducted as expeditiously
4 as possible.

5 “(e) APPLICABILITY.—Subsections (a) and (b) shall
6 apply to any communication acquired under this title on
7 or after the earlier of—

8 “(1) the date that the Foreign Intelligence Sur-
9 veillance Court approves the procedures described in
10 subsection (a)(3) and the procedures described in
11 subsection (b)(7); and

12 “(2) 1 year after the date of enactment of the
13 FISA Amendments Act of 2009.”.

14 (b) TECHNICAL AND CONFORMING AMENDMENT.—
15 The table of contents in the first section of the Foreign
16 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
17 seq.) is amended by inserting after the item relating to
18 section 708 the following:

 “Sec. 709. Additional safeguards for communications of persons in the United
 States.”.

○