To reform the authorities of the Federal Government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2014

Mr. LEAHY (for himself, Mr. LEE, Mr. DURBIN, Mr. HELLER, Mr. FRANKEN, Mr. CRUZ, Mr. BLUMENTHAL, Mr. UDALL of New Mexico, Mr. COONS, Mr. HEINRICH, Mr. MARKEY, Ms. HIRONO, Ms. KLOBUCHAR, Mr. WHITEHOUSE, Mr. SCHUMER, and Mr. SANDERS) introduced the following bill; which was read the first time

JULY 30, 2014

Read the second time and placed on the calendar

A BILL

To reform the authorities of the Federal Government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the
“Uniting and Strengthening America by Fulfilling Rights
and Ensuring Effective Discipline Over Monitoring Act of
2014” or the “USA FREEDOM Act of 2014”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.

TITLE I—FISA BUSINESS RECORDS REFORMS

Sec. 101. Additional requirements for call detail records.
Sec. 102. Emergency authority.
Sec. 103. Prohibition on bulk collection of tangible things.
Sec. 104. Judicial review.
Sec. 105. Liability protection.
Sec. 106. Compensation for assistance.
Sec. 107. Definitions.
Sec. 108. Inspector General reports on business records orders.
Sec. 109. Effective date.
Sec. 110. Rule of construction.

TITLE II—FISA PEN REGISTER AND TRAP AND TRACE DEVICE
REFORM

Sec. 201. Prohibition on bulk collection.

TITLE III—FISA ACQUISITIONS TARGETING PERSONS OUTSIDE
THE UNITED STATES REFORMS

Sec. 301. Limits on use of unlawfully obtained information.

TITLE IV—FOREIGN INTELLIGENCE SURVEILLANCE COURT
REFORMS

Sec. 401. Appointment of amicus curiae.
Sec. 402. Declassification of decisions, orders, and opinions.

TITLE V—NATIONAL SECURITY LETTER REFORM

Sec. 501. Prohibition on bulk collection.
Sec. 502. Limitations on disclosure of national security letters.
Sec. 503. Judicial review.
TITLE VI—FISA TRANSPARENCY AND REPORTING REQUIREMENTS

Sec. 601. Additional reporting on orders requiring production of business records; business records compliance reports to Congress.
Sec. 602. Annual reports by the Government.
Sec. 603. Public reporting by persons subject to FISA orders.
Sec. 604. Reporting requirements for decisions, orders, and opinions of the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review.
Sec. 605. Submission of reports under FISA.

TITLE VII—SUNSETS

Sec. 701. Sunsets.

1 SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

TITLE I—FISA BUSINESS RECORDS REFORMS

SEC. 101. ADDITIONAL REQUIREMENTS FOR CALL DETAIL RECORDS.

(a) Application.—Section 501(b)(2) (50 U.S.C. 1861(b)(2)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking “a statement” and inserting “in the case of an application other than an application described in subparagraph (C) (including an ap-
plication for the production of call detail
records other than in the manner described in
subparagraph (C)), a statement”; and
(B) in clause (iii), by striking “; and” and
inserting a semicolon;
(2) by redesignating subparagraphs (A) and
(B) as subparagraphs (B) and (D), respectively; and
(3) by inserting after subparagraph (B) (as so
redesignated) the following new subparagraph:
“(C) in the case of an application for the
production on a daily basis of call detail records
created before, on, or after the date of the ap-
application relating to an authorized investigation
(other than a threat assessment) conducted in
accordance with subsection (a)(2) to protect
against international terrorism, a statement of
facts showing that—
“(i) there are reasonable grounds to
believe that the call detail records sought
to be produced based on the specific selec-
tion term required under subparagraph (A)
are relevant to such investigation; and
“(ii) there is a reasonable, articulable
suspicion that such specific selection term
is associated with a foreign power engaged
in international terrorism or activities in preparation therefor, or an agent of a foreign power engaged in international terrorism or activities in preparation therefor; and”.

(b) ORDER.—Section 501(c)(2) (50 U.S.C. 1861(c)(2)) is amended—

(1) in subparagraph (D), by striking “; and” and inserting a semicolon;

(2) in subparagraph (E), by striking the period and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(F) in the case of an application described in subsection (b)(2)(C), shall—

“(i) authorize the production on a daily basis of call detail records for a period not to exceed 180 days;

“(ii) provide that an order for such production may be extended upon application under subsection (b) and the judicial finding under paragraph (1) of this subsection;
“(iii) provide that the Government may require the prompt production of call detail records—

“(I) using the specific selection term that satisfies the standard required under subsection (b)(2)(C)(ii) as the basis for production; and

“(II) using call detail records with a direct connection to such specific selection term as the basis for production of a second set of call detail records;

“(iv) provide that, when produced, such records be in a form that will be useful to the Government;

“(v) direct each person the Government directs to produce call detail records under the order to furnish the Government forthwith all information, facilities, or technical assistance necessary to accomplish the production in such a manner as will protect the secrecy of the production and produce a minimum of interference with the services that such person is pro-
viding to each subject of the production; and

“(vi) direct the Government to—

“(I) adopt minimization procedures that require the prompt destruction of all call detail records produced under the order that the Government determines are not foreign intelligence information; and

“(II) destroy all call detail records produced under the order as prescribed by such procedures.”.

SEC. 102. EMERGENCY AUTHORITY.

(a) Authority.—Section 501 (50 U.S.C. 1861) is amended by adding at the end the following new subsection:

“(i) Emergency Authority for Production of Tangible Things.—

“(1) Notwithstanding any other provision of this section, the Attorney General may require the emergency production of tangible things if the Attorney General—

“(A) reasonably determines that an emergency situation requires the production of tan-
gable things before an order authorizing such
production can with due diligence be obtained;

“(B) reasonably determines that the fac-
tual basis for the issuance of an order under
this section to approve such production of tan-
gible things exists;

“(C) informs, either personally or through
a designee, a judge having jurisdiction under
this section at the time the Attorney General
requires the emergency production of tangible
things that the decision has been made to em-
ploy the authority under this subsection; and

“(D) makes an application in accordance
with this section to a judge having jurisdiction
under this section as soon as practicable, but
not later than 7 days after the Attorney Gen-
eral requires the emergency production of tan-
gible things under this subsection.

“(2) If the Attorney General authorizes the
emergency production of tangible things under para-
graph (1), the Attorney General shall require that
the minimization procedures required by this section
for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approv-
ing the production of tangible things under this sub-
section, the production shall terminate when the in-
formation sought is obtained, when the application
for the order is denied, or after the expiration of 7
days from the time the Attorney General begins re-
quiring the emergency production of such tangible
things, whichever is earliest.

“(4) A denial of the application made under
this subsection may be reviewed as provided in sec-
tion 103.

“(5) If such application for approval is denied,
or in any other case where the production of tangible
things is terminated and no order is issued approv-
ing the production, no information obtained or evi-
dence derived from such production shall be received
in evidence or otherwise disclosed in any trial, hear-
ing, or other proceeding in or before any court,
grand jury, department, office, agency, regulatory
body, legislative committee, or other authority of the
United States, a State, or a political subdivision
thereof, and no information concerning any United
States person acquired from such production shall
subsequently be used or disclosed in any other man-
ner by Federal officers or employees without the
consent of such person, except with the approval of
the Attorney General if the information indicates a
threat of death or serious bodily harm to any per-
son.

“(6) The Attorney General shall assess compli-
ance with the requirements of paragraph (5).”.

(b) CONFORMING AMENDMENT.—Section 501(d) (50
U.S.C. 1861(d)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph
(A), by striking “pursuant to an order” and in-
serting “pursuant to an order issued or an
emergency production required”;

(B) in subparagraph (A), by striking “such
order” and inserting “such order or such emer-
gency production”; and

(C) in subparagraph (B), by striking “the
order” and inserting “the order or the emer-
gency production”; and

(2) in paragraph (2)—

(A) in subparagraph (A), by striking “an
order” and inserting “an order or emergency
production”; and

(B) in subparagraph (B), by striking “an
order” and inserting “an order or emergency
production”.

S 2685 PCS
SEC. 103. PROHIBITION ON BULK COLLECTION OF TANGIBLE THINGS.

(a) Application.—Section 501(b)(2) (50 U.S.C. 1861(b)(2)), as amended by section 101(a) of this Act, is further amended by inserting before subparagraph (B), as redesignated by such section 101(a) of this Act, the following new subparagraph:

“(A) a specific selection term to be used as the basis for the production of the tangible things sought;”.

(b) Order.—Section 501(c) (50 U.S.C. 1861(c)) is amended—

(1) in paragraph (2)(A), by striking the semi-colon and inserting “, including each specific selection term to be used as the basis for the production;”; and

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

“(3) No order issued under this subsection may authorize the collection of tangible things without the use of a specific selection term that meets the requirements of subsection (b)(2).”.

(c) Minimization Procedures.—Section 501(g)(2) (50 U.S.C. 1861(g)(2)) is amended—

(1) in subparagraph (B), by striking “and” at the end;
(2) by redesignating subparagraph (C) as sub-
paragraph (D);

(3) by inserting after subparagraph (B) the fol-
lowing:

“(C) for orders in which the specific selec-
tion term does not specifically identify an indi-
vidual, account, or personal device, procedures
that prohibit the dissemination, and require the
destruction within a reasonable time period
(which time period shall be specified in the
order), of any tangible thing or information
therein that has not been determined to relate
to a person who is—

“(i) a subject of an authorized inves-
tigation;

“(ii) a foreign power or a suspected
agent of a foreign power;

“(iii) reasonably likely to have infor-
mation about the activities of—

“(I) a subject of an authorized
investigation; or

“(II) a suspected agent of a for-
egn power who is associated with a
subject of an authorized investigation;
or
“(iv) in contact with or known to—

“(I) a subject of an authorized investigation; or

“(II) a suspected agent of a foreign power who is associated with a subject of an authorized investigation, unless the tangible thing or information therein indicates a threat of death or serious bodily harm to any person or is disseminated to another element of the intelligence community for the sole purpose of determining whether the tangible thing or information therein relates to a person who is described in clause (i), (ii), (iii), or (iv); and”;

(4) in subparagraph (D), as so redesignated, by striking “(A) and (B)” and inserting “(A), (B), and (C)”.

SEC. 104. JUDICIAL REVIEW.

(a) Minimization Procedures.—

(1) Judicial review.—Section 501(e)(1) (50 U.S.C. 1861(e)(1)) is amended by inserting after “subsections (a) and (b)” the following: “and that the minimization procedures submitted in accordance with subsection (b)(2)(D) meet the definition of minimization procedures under subsection (g)”.

S 2685 PCS
(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 501(g)(1) (50 U.S.C. 1861(g)(1)) is amended—

(A) by striking “Not later than 180 days after the date of the enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the” and inserting “The”; and

(B) by inserting after “adopt” the following: “, and update as appropriate,”.

(b) ORDERS.—Section 501(f)(2) (50 U.S.C. 1861(f)(2)) is amended—

(1) in subparagraph (A)(i)—

(A) by striking “that order” and inserting “the production order or any nondisclosure order imposed in connection with the production order”; and

(B) by striking the second sentence; and

(2) in subparagraph (C)—

(A) by striking clause (ii); and

(B) by redesignating clause (iii) as clause (ii).

SEC. 105. LIABILITY PROTECTION.

Section 501(e) (50 U.S.C. 1861(e)) is amended to read as follows:
“(e)(1) No cause of action shall lie in any court against a person who—

“(A) produces tangible things or provides information, facilities, or technical assistance in accordance with an order issued or an emergency production required under this section; or

“(B) otherwise provides technical assistance to the Government under this section or to implement the amendments made to this section by the USA FREEDOM Act of 2014.

“(2) A production or provision of information, facilities, or technical assistance described in paragraph (1) shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.”.

SEC. 106. COMPENSATION FOR ASSISTANCE.

Section 501 (50 U.S.C. 1861), as amended by section 102 of this Act, is further amended by adding at the end the following new subsection:

“(j) COMPENSATION.—The Government shall compensate a person for reasonable expenses incurred for—

“(1) producing tangible things or providing information, facilities, or assistance in accordance with an order issued with respect to an application described in subsection (b)(2)(C) or an emergency production under subsection (i) that, to comply with
subsection (i)(1)(D), requires an application de-
scribed in subsection (b)(2)(C); or

“(2) otherwise providing technical assistance to
the Government under this section or to implement
the amendments made to this section by the USA
FREEDOM Act of 2014.”.

SEC. 107. DEFINITIONS.

Section 501 (50 U.S.C. 1861), as amended by section
106 of this Act, is further amended by adding at the end
the following new subsection:

“(k) DEFINITIONS.—In this section:

“(1) ADDRESS.—The term ‘address’ means a
physical address or electronic address, such as an
electronic mail address, temporarily assigned net-
work address, or Internet protocol address.

“(2) CALL DETAIL RECORD.—The term ‘call de-
tail record’—

“(A) means session identifying information
(including an originating or terminating tele-
phone number, an International Mobile Sub-
scriber Identity number, or an International
Mobile Station Equipment Identity number), a
telephone calling card number, or the time or
duration of a call; and

“(B) does not include—
“(i) the contents (as defined in section 2510(8) of title 18, United States Code) of any communication;

“(ii) the name, address, or financial information of a subscriber or customer; or

“(iii) cell site location information.

“(3) SPECIFIC SELECTION TERM.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘specific selection term’—

“(i) means a term that specifically identifies a person, account, address, or personal device, or another specific identifier, that is used by the Government to narrowly limit the scope of tangible things sought to the greatest extent reasonably practicable, consistent with the purpose for seeking the tangible things; and

“(ii) does not include a term that does not narrowly limit the scope of the tangible things sought to the greatest extent reasonably practicable, consistent with the purpose for seeking the tangible things, such as—
“(I) a term based on a broad geographic region, including a city, State, zip code, or area code, when not used as part of a specific identifier as described in clause (i); or

“(II) a term identifying an electronic communication service provider (as that term is defined in section 701) or a provider of remote computing service (as that term is defined in section 2711 of title 18, United States Code), when not used as part of a specific identifier as described in clause (i), unless the provider is itself a subject of an authorized investigation for which the specific selection term is used as the basis of production.

“(B) CALL DETAIL RECORD APPLICATIONS.—For purposes of an application submitted under subsection (b)(2)(C), the term ‘specific selection term’ means a term that specifically identifies an individual, account, or personal device.”
SEC. 108. INSPECTOR GENERAL REPORTS ON BUSINESS RECORDS ORDERS.

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

(1) in subsection (b)—

(A) in paragraph (1), by inserting “and calendar years 2012 through 2014” after “2006”;

(B) by striking paragraphs (2) and (3);

(C) by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively; and

(D) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (C) and inserting the following new subparagraph:

“(C) with respect to calendar years 2012 through 2014, an examination of the minimization procedures used in relation to orders under section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) and whether the minimization procedures adequately protect the constitutional rights of United States persons;”; and

(ii) in subparagraph (D), by striking “(as such term is defined in section 3(4) of
the National Security Act of 1947 (50 U.S.C. 401a(4)))’’;

(2) in subsection (c), by adding at the end the following new paragraph:

“(3) Calendar years 2012 through 2014.—Not later than December 31, 2015, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under subsection (a) for calendar years 2012 through 2014.’’;

(3) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(4) by inserting after subsection (c) the following new subsection:

“(d) Intelligence Assessment.—

“(1) In General.—For the period beginning on January 1, 2012, and ending on December 31, 2014, the Inspector General of the Intelligence Community shall assess—

“(A) the importance of the information acquired under title V of the Foreign Intelligence
Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) to the activities of the intelligence community;

“(B) the manner in which that information was collected, retained, analyzed, and disseminated by the intelligence community;

“(C) the minimization procedures used by elements of the intelligence community under such title and whether the minimization procedures adequately protect the constitutional rights of United States persons; and

“(D) any minimization procedures proposed by an element of the intelligence community under such title that were modified or denied by the court established under section 103(a) of such Act (50 U.S.C. 1803(a)).

“(2) Submission date for assessment.—Not later than 180 days after the date on which the Inspector General of the Department of Justice submits the report required under subsection (c)(3), the Inspector General of the Intelligence Community shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House
of Representatives a report containing the results of
the assessment for calendar years 2012 through
2014.”;

(5) in subsection (e), as redesignated by para-
graph (3)—

(A) in paragraph (1)—

(i) by striking “a report under sub-
section (c)(1) or (c)(2)” and inserting “any
report under subsection (c) or (d)”; and

(ii) by striking “Inspector General of
the Department of Justice” and inserting
“Inspector General of the Department of
Justice, the Inspector General of the Intel-
ligence Community, and any Inspector
General of an element of the intelligence
community that prepares a report to assist
the Inspector General of the Department
of Justice or the Inspector General of the
Intelligence Community in complying with
the requirements of this section”; and

(B) in paragraph (2), by striking “the re-
ports submitted under subsections (c)(1) and
(c)(2)” and inserting “any report submitted
under subsection (c) or (d)”;
(6) in subsection (f), as redesignated by paragraph (3)—

(A) by striking “The reports submitted under subsections (c)(1) and (c)(2)” and inserting “Each report submitted under subsection (c)”;

(B) by striking “subsection (d)(2)” and inserting “subsection (e)(2)”; and

(7) by adding at the end the following new subsection:

“(g) DEFINITIONS.—In this section:

“(1) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

“(2) UNITED STATES PERSON.—The term ‘United States person’ has the meaning given that term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).”.

SEC. 109. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by sections 101 through 103 shall take effect on the date that is 180 days after the date of the enactment of this Act.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to alter or eliminate the authority of
the Government to obtain an order under title V of the
Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
1861 et seq.) as in effect prior to the effective date de-
scribed in subsection (a) during the period ending on such
effective date.

SEC. 110. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to authorize
the production of the contents (as such term is defined
in section 2510(8) of title 18, United States Code) of any
electronic communication from an electronic communica-
tion service provider (as such term is defined in section
701(b)(4) of the Foreign Intelligence Surveillance Act of
1978 (50 U.S.C. 1881(b)(4)) under title V of the Foreign
Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et
seq.).

TITLE II—FISA PEN REGISTER
AND TRAP AND TRACE DE-
VICE REFORM

SEC. 201. PROHIBITION ON BULK COLLECTION.

(a) Prohibition.—Section 402(c) (50 U.S.C.
1842(c)) is amended—

(1) in paragraph (1), by striking “; and” and
inserting a semicolon;

(2) in paragraph (2)—
(A) by striking “a certification by the applicant” and inserting “a statement of the facts and circumstances relied upon by the applicant to justify the belief of the applicant”; and

(B) by striking the period and inserting “; and”;

(3) by adding at the end the following new paragraph:

“(3) a specific selection term to be used as the basis for the installation or use of the pen register or trap and trace device.”.

(b) DEFINITION.—Section 401 (50 U.S.C. 1841) is amended by adding at the end the following new paragraph:

“(4)(A) The term ‘specific selection term’—

“(i) means a term that specifically identifies a person, account, address, or personal device, or another specific identifier, that is used by the Government to narrowly limit the scope of information sought to the greatest extent reasonably practicable, consistent with the purpose for the installation or use of the pen register or trap and trace device; and

“(ii) does not include a term that does not narrowly limit the scope of information sought
to the greatest extent reasonably practicable,
consistent with the purpose for the installation
or use of the pen register or trap and trace de-
vice, such as—

“(I) a term based on a broad geo-
graphic region, including a city, State, zip
code, or area code, when not used as part
of a specific identifier as described in
clause (i); or

“(II) a term identifying an electronic
communication service provider (as defined
in section 701) or a provider of remote
computing service (as that term is defined
in section 2711 of title 18, United States
Code), when not used as part of a specific
identifier as described in clause (i), unless
the provider is itself a subject of an au-
thorized investigation for which the specific
selection term is used as the basis for the
installation or use of the pen register or
trap and trace device.

“(B) For purposes of subparagraph (A), the
term ‘address’ means a physical address or elec-
tronic address, such as an electronic mail address,
temporarily assigned network address, or Internet protocol address.”.

**SEC. 202. PRIVACY PROCEDURES.**

(a) **IN GENERAL.**—Section 402 (50 U.S.C. 1842) is amended by adding at the end the following new subsection:

“(h) PRIVACY PROCEDURES.—

“(1) **IN GENERAL.**—The Attorney General shall ensure that appropriate policies and procedures are in place to safeguard nonpublicly available information concerning United States persons that is collected through the use of a pen register or trap and trace device installed under this section. Such policies and procedures shall, to the maximum extent practicable and consistent with the need to protect national security, include privacy protections that apply to the collection, retention, and use of information concerning United States persons.

“(2) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to limit the authority of the court established under section 103(a) or of the Attorney General to impose additional privacy or minimization procedures with regard to the installation or use of a pen register or trap and trace device.
“(3) COMPLIANCE ASSESSMENT.—At or before the end of the period of time for which the installation and use of a pen register or trap and trace device is approved under an order or an extension under this section, the judge may assess compliance with the privacy procedures required by this subsection by reviewing the circumstances under which information concerning United States persons was collected, retained, or disseminated.”.

(b) EMERGENCY AUTHORITY.—Section 403 (50 U.S.C. 1843) is amended by adding at the end the following new subsection:

“(d) PRIVACY PROCEDURES.—Information collected through the use of a pen register or trap and trace device installed under this section shall be subject to the policies and procedures required under section 402(h).”.

TITLE III—FISA ACQUISITIONS

TARGETING PERSONS OUTSIDE THE UNITED STATES REFORMS

SEC. 301. LIMITS ON USE OF UNLAWFULLY OBTAINED INFORMATION.

Section 702(i)(3) (50 U.S.C. 1881a(i)(3)) is amended by adding at the end the following new subparagraph:
“(D) Limitation on use of information.—

“(i) In general.—Except as provided in clause (ii), if the Court orders a correction of a deficiency in a certification or procedures under subparagraph (B), no information obtained or evidence derived pursuant to the part of the certification or procedures that has been identified by the Court as deficient concerning any United States person shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired pursuant to such part of such certification or procedures shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of the United States person, except with the approval of the Attorney General if the infor-
information indicates a threat of death or serious bodily harm to any person.

“(ii) Exception.—If the Government corrects any deficiency identified by the order of the Court under subparagraph (B), the Court may permit the use or disclosure of information obtained before the date of the correction under such minimization procedures as the Court shall establish for purposes of this clause.”.

TITLE IV—FOREIGN INTELLIGENCE SURVEILLANCE COURT REFORMS

SEC. 401. APPOINTMENT OF AMICUS CURIAE.

Section 103 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

“(i) Amicus Curiae.—

“(1) Appointment of special advocates.—In consultation with the Privacy and Civil Liberties Oversight Board, the presiding judges of the courts established under subsections (a) and (b) shall, not later than 180 days after the enactment of this subsection, jointly appoint not fewer than 5 attorneys to serve as special advocates, who shall serve pursuant to rules the presiding judges may establish. Such in-
individually shall be persons who possess expertise in privacy and civil liberties, intelligence collection, telecommunications, or any other relevant area of expertise and who are determined to be eligible for access to classified information necessary to participate in matters before the courts.

“(2) AUTHORIZATION.—A court established under subsection (a) or (b), consistent with the requirement of subsection (c) and any other statutory requirement that the court act expeditiously or within a stated time—

“(A) shall designate a special advocate to serve as amicus curiae to assist such court in the consideration of any certification pursuant to subsection (j) or any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a written finding that such appointment is not appropriate; and

“(B) may designate or allow an individual or organization to serve as amicus curiae or to provide technical expertise in any other instance as such court deems appropriate.

“(3) RULE OF CONSTRUCTION.—An application for an order or review shall be considered to present
a novel or significant interpretation of the law if such application involves application of settled law to novel technologies or circumstances, or any other novel or significant construction or interpretation of any provision of law or of the Constitution of the United States, including any novel and significant interpretation of the term ‘specific selection term’.

“(4) Duties.—

“(A) In General.—If a court established under subsection (a) or (b) designates a special advocate to participate as an amicus curiae in a proceeding, the special advocate—

“(i) shall advocate, as appropriate, in support of legal interpretations that advance individual privacy and civil liberties;

“(ii) shall have access to all relevant legal precedent, and any application, certification, petition, motion, or such other materials as are relevant to the duties of the special advocate;

“(iii) may consult with any other special advocates regarding information relevant to any assigned case, including sharing relevant materials; and
“(iv) may request that the court appoint technical and subject matter experts, not employed by the Government, to be available to assist the special advocate in performing the duties of the special advocate.

“(B) BRIEFINGS OR ACCESS TO MATERIALS.—The Attorney General shall periodically brief or provide relevant materials to special advocates regarding constructions and interpretations of this Act and legal, technological and other issues related to actions authorized by this Act.

“(C) ACCESS TO CLASSIFIED INFORMATION.—

“(i) IN GENERAL.—A special advocate, experts appointed to assist a special advocate, or any other amicus or technical expert appointed by the court may have access to classified documents, information, and other materials or proceedings only if that individual is eligible for access to classified information and to the extent consistent with the national security of the United States.
“(ii) Rule of Construction.—

Nothing in this section shall be construed to require the Government to provide information to a special advocate, other amicus, or technical expert that is privileged from disclosure.

“(5) Notification.—The presiding judges of the courts established under subsections (a) and (b) shall notify the Attorney General of each exercise of the authority to appoint an individual to serve as amicus curiae under paragraph (1).

“(6) Assistance.—A court established under subsection (a) or (b) may request and receive (including on a non-reimbursable basis) the assistance of the executive branch in the implementation of this subsection.

“(7) Administration.—A court established under subsection (a) or (b) may provide for the designation, appointment, removal, training, or other support for an individual appointed to serve as a special advocate under paragraph (1) in a manner that is not inconsistent with this subsection.

“(j) Review of FISA Court Decisions.—After issuing an order, a court established under subsection (a) shall certify for review to the court established under sub-
section (b) any question of law that the court determines warrants such review because of a need for uniformity or because consideration by the court established under subsection (b) would serve the interests of justice. Upon certification of a question of law under this paragraph, the court established under subsection (b) may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

“(k) Review of FISA Court of Review Decisions.—

“(1) Certification.—For any decision issued by the court of review established under subsection (b) approving, in whole or in part, an application by the Government under this Act, such court may certify at any time, including after a decision, a question of law to be reviewed by the Supreme Court of the United States.

“(2) Special Advocate Briefing.—Upon certification of an application under paragraph (1), the court of review established under subsection (b) may designate a special advocate to provide briefing as prescribed by the Supreme Court.

“(3) Review.—The Supreme Court may review any question of law certified under paragraph (1) by the court of review established under subsection (b)
in the same manner as the Supreme Court reviews questions certified under section 1254(2) of title 28, United States Code.

“(l) Payment for Service as Special Advocate.—A special advocate designated in a proceeding pursuant to subsection (i)(2)(A) of this section may seek, at the conclusion of the proceeding in which the special advocate was designated, compensation for services provided pursuant to the designation. A special advocate seeking compensation shall be compensated in an amount reflecting fair compensation for the services provided, as determined by the court designating the special advocate and approved by the presiding judges of the courts established under subsections (a) and (b).

“(m) Appropriations.—There are authorized to be appropriated to the United States courts such sums as may be necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.”.
SEC. 402. DECLASSIFICATION OF DECISIONS, ORDERS, AND OPINIONS.

(a) DECLASSIFICATION.—Title VI (50 U.S.C. 1871 et seq.) is amended—

(1) in the heading, by striking “REPORTING REQUIREMENT” and inserting “OVERSIGHT”; and

(2) by adding at the end the following new section:

“SEC. 602. DECLASSIFICATION OF SIGNIFICANT DECISIONS, ORDERS, AND OPINIONS.

“(a) DECLASSIFICATION REQUIRED.—Subject to subsection (b), the Director of National Intelligence, in consultation with the Attorney General, shall conduct a declassification review of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review (as defined in section 601(e)) that includes a significant construction or interpretation of law, including any novel or significant construction or interpretation of the term ‘specific selection term’, and, consistent with that review, make publicly available to the greatest extent practicable each such decision, order, or opinion.

“(b) REDACTED FORM.—The Director of National Intelligence, in consultation with the Attorney General, may satisfy the requirement under subsection (a) to make
a decision, order, or opinion described in such subsection
publicly available to the greatest extent practicable by
making such decision, order, or opinion publicly available
in redacted form.

“(c) NATIONAL SECURITY WAIVER.—The Director of
National Intelligence, in consultation with the Attorney
General, may waive the requirement to declassify and
make publicly available a particular decision, order, or
opinion under subsection (a) if—

“(1) the Director of National Intelligence, in
consultation with the Attorney General, determines
that a waiver of such requirement is necessary to
protect the national security of the United States or
properly classified intelligence sources or methods;
and

“(2) the Director of National Intelligence
makes publicly available an unclassified statement
prepared by the Attorney General, in consultation
with the Director of National Intelligence—

“(A) summarizing the significant construc-
tion or interpretation of law, which shall in-
clude, to the extent consistent with national se-
curity, each legal question addressed by the de-
cision and how such question was resolved, in
general terms the context in which the matter
arises, and a description of the construction or interpretation of any statute, constitutional provision, or other legal authority relied on by the decision; and

“(B) that specifies that the statement has been prepared by the Attorney General and constitutes no part of the opinion of the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review.”.

(b) TABLE OF CONTENTS AMENDMENTS.—The table of contents in the first section is amended—

(1) by striking the item relating to title VI and inserting the following new item:

“TITLE VI—OVERSIGHT”;

and

(2) by inserting after the item relating to section 601 the following new item:

“Sec. 602. Declassification of significant decisions, orders, and opinions.”.

TITLE V—NATIONAL SECURITY LETTER REFORM

SEC. 501. PROHIBITION ON BULK COLLECTION.

(a) COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709(b) of title 18, United States Code, is amended in the matter preceding paragraph (1) by striking “may” and inserting
“may, using a term that specifically identifies a person, entity, telephone number, or account as the basis for a request”.

(b) ACCESS TO FINANCIAL RECORDS FOR CERTAIN INTELLIGENCE AND PROTECTIVE PURPOSES.—Section 1114(a)(2) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(2)) is amended by striking the period and inserting “and a term that specifically identifies a customer, entity, or account to be used as the basis for the production and disclosure of financial records.”.

(c) DISCLOSURES TO FBI OF CERTAIN CONSUMER RECORDS FOR COUNTERINTELLIGENCE PURPOSES.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended—

(1) in subsection (a), by striking “that information,” and inserting “that information that includes a term that specifically identifies a consumer or account to be used as the basis for the production of that information,”;

(2) in subsection (b), by striking “written request,” and inserting “written request that includes a term that specifically identifies a consumer or account to be used as the basis for the production of that information,”; and
(3) in subsection (c), by inserting “,” which shall include a term that specifically identifies a consumer or account to be used as the basis for the production of the information,” after “issue an order ex parte”.

(d) Disclosures to Governmental Agencies for Counterterrorism Purposes of Consumer Reports.—Section 627(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) is amended by striking “analysis.” and inserting “analysis and that includes a term that specifically identifies a consumer or account to be used as the basis for the production of such information.”.

SEC. 502. LIMITATIONS ON DISCLOSURE OF NATIONAL SECURITY LETTERS.

(a) Counterintelligence Access to Telephone Toll and Transactional Records.—Section 2709 of title 18, United States Code, is amended by striking subsection (c) and inserting the following new subsection:

“(c) Prohibition of Certain Disclosure.—

“(1) Prohibition.—

“(A) In general.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (d) is provided, no wire or electronic communication service provider that receives a request under subsection (b), or officer, employee, or
agent thereof, shall disclose to any person that
the Federal Bureau of Investigation has sought
or obtained access to information or records
under this section.

“(B) CERTIFICATION.—The requirements
of subparagraph (A) shall apply if the Director
of the Federal Bureau of Investigation, or a
designee of the Director whose rank shall be no
lower than Deputy Assistant Director at Bu-
reau headquarters or a Special Agent in Charge
of a Bureau field office, certifies that the ab-
sence of a prohibition of disclosure under this
subsection may result in—

“(i) a danger to the national security
of the United States;

“(ii) interference with a criminal,
counterterrorism, or counterintelligence in-
vestigation;

“(iii) interference with diplomatic re-
lations; or

“(iv) danger to the life or physical
safety of any person.

“(2) EXCEPTION.—

“(A) IN GENERAL.—A wire or electronic
communication service provider that receives a
request under subsection (b), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

“(i) those persons to whom disclosure is necessary in order to comply with the request;

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

“(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

“(B) APPLICATION.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (b) in the same manner as the person to whom the request is issued.

“(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall notify the person of the applicable nondisclosure requirement.
“(D) Identification of disclosure recipients.—At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

“(3) Termination.—

“(A) In general.—In the case of any request under subsection (b) for which a recipient has submitted a notification to the Government under section 3511(b)(1)(A) or filed a petition for judicial review under subsection (d)—

“(i) an appropriate official of the Federal Bureau of Investigation shall, until termination of the nondisclosure requirement, review the facts supporting a nondisclosure requirement annually and upon closure of the investigation; and

“(ii) if, upon a review under clause (i), the facts no longer support the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation
shall promptly notify the wire or electronic
service provider, or officer, employee, or
agent thereof, subject to the nondisclosure
requirement, and the court as appropriate,
that the nondisclosure requirement is no
longer in effect.

“(B) CLOSURE OF INVESTIGATION.—Upon
closure of the investigation—

“(i) the Federal Bureau of Investiga-
tion may petition the court before which a
notification or petition for judicial review
under subsection (d) has been filed for a
determination that disclosure may result in
the harm described in clause (i), (ii), (iii),
or (iv) of paragraph (1)(B), if it notifies
the recipient of such petition;

“(ii) the court shall review such a pe-
tition pursuant to the procedures under
section 3511; and

“(iii) if the court determines that
there is reason to believe that disclosure
may result in the harm described in clause
(i), (ii), (iii), or (iv) of paragraph (1)(B),
the Federal Bureau of Investigation shall
no longer be required to conduct the an-
annual review of the facts supporting the
nondisclosure requirement under subpara-
graph (A)).

(b) ACCESS TO FINANCIAL RECORDS FOR CERTAIN
INTELLIGENCE AND PROTECTIVE PURPOSES.—Section
1114 of the Right to Financial Privacy Act of 1978 (12
U.S.C. 3414) is amended—

(1) in subsection (a)(5), by striking subpara-
graph (D); and

(2) by inserting after subsection (b) the fol-
lowing new subsection:

“(c) PROHIBITION OF CERTAIN DISCLOSURE.—

“(1) PROHIBITION.—

“(A) IN GENERAL.—If a certification is
issued under subparagraph (B) and notice of
the right to judicial review under subsection (d)
is provided, no financial institution that receives
a request under subsection (a), or officer, em-
ployee, or agent thereof, shall disclose to any
person that the Federal Bureau of Investigation
has sought or obtained access to information or
records under subsection (a).

“(B) CERTIFICATION.—The requirements
of subparagraph (A) shall apply if the Director
of the Federal Bureau of Investigation, or a
designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that the absence of a prohibition of disclosure under this subsection may result in—

“(i) a danger to the national security of the United States;

“(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

“(iii) interference with diplomatic relations; or

“(iv) danger to the life or physical safety of any person.

“(2) EXCEPTION.—

“(A) IN GENERAL.—A financial institution that receives a request under subsection (a), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

“(i) those persons to whom disclosure is necessary in order to comply with the request;
“(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

“(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

“(B) Application.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

“(C) Notice.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(D) Identification of disclosure recipients.—At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the Director or such designee the person to whom
such disclosure will be made or to whom such
disclosure was made prior to the request.

“(3) TERMINATION.—

“(A) IN GENERAL.—In the case of any re-
quest under subsection (a) for which a recipient
has submitted a notification to the Government
under section 3511(b)(1)(A) of title 18, United
States Code, or filed a petition for judicial re-
view under subsection (d)—

“(i) an appropriate official of the Fed-
eral Bureau of Investigation shall, until
termination of the nondisclosure require-
ment, review the facts supporting a non-
disclosure requirement annually and upon
closure of the investigation; and

“(ii) if, upon a review under clause
(i), the facts no longer support the non-
disclosure requirement, an appropriate offi-
cial of the Federal Bureau of Investigation
shall promptly notify the financial institu-
tion, or officer, employee, or agent thereof,
subject to the nondisclosure requirement,
and the court as appropriate, that the non-
disclosure requirement is no longer in ef-
fect.
“(B) Closure of Investigation.—Upon closure of the investigation—

“(i) the Federal Bureau of Investigation may petition the court before which a notification or petition for judicial review under subsection (d) has been filed for a determination that disclosure may result in the harm described in clause (i), (ii), (iii), or (iv) of paragraph (1)(B), if it notifies the recipient of such petition;

“(ii) the court shall review such a petition pursuant to the procedures under section 3511 of title 18, United States Code; and

“(iii) if the court determines that there is reason to believe that disclosure may result in the harm described in clause (i), (ii), (iii), or (iv) of paragraph (1)(B), the Federal Bureau of Investigation shall no longer be required to conduct the annual review of the facts supporting the nondisclosure requirement under subparagraph (A).”.

(c) Identity of Financial Institutions and Credit Reports.—Section 626 of the Fair Credit Re-
porting Act (15 U.S.C. 1681u) is amended by striking subsection (d) and inserting the following new subsection:

“(d) Prohibition of Certain Disclosure.—

“(1) Prohibition.—

“(A) In general.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (e) is provided, no consumer reporting agency that receives a request under subsection (a) or (b) or an order under subsection (c), or officer, employee, or agent thereof, shall disclose or specify in any consumer report, that the Federal Bureau of Investigation has sought or obtained access to information or records under subsection (a), (b), or (c).

“(B) Certification.—The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that the absence of a prohibition of disclosure under this subsection may result in—
“(i) a danger to the national security of the United States;

“(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

“(iii) interference with diplomatic relations; or

“(iv) danger to the life or physical safety of any person.

“(2) EXCEPTION.—

“(A) IN GENERAL.—A consumer reporting agency that receives a request under subsection (a) or (b) or an order under subsection (c), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

“(i) those persons to whom disclosure is necessary in order to comply with the request;

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

“(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.
“(B) APPLICATION.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request under subsection (a) or (b) or an order under subsection (c) is issued in the same manner as the person to whom the request is issued.

“(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(D) IDENTIFICATION OF DISCLOSURE RECIPIENTS.—At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

“(3) TERMINATION.—

“(A) IN GENERAL.—In the case of any request under subsection (a) or (b) or order under subsection (c) for which a recipient has
submitted a notification to the Government under section 3511(b)(1)(A) of title 18, United States Code, or filed a petition for judicial review under subsection (e)—

“(i) an appropriate official of the Federal Bureau of Investigation shall, until termination of the nondisclosure requirement, review the facts supporting a nondisclosure requirement annually and upon closure of the investigation; and

“(ii) if, upon a review under clause (i), the facts no longer support the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement, and the court as appropriate, that the nondisclosure requirement is no longer in effect.

“(B) CLOSURE OF INVESTIGATION.—Upon closure of the investigation—

“(i) the Federal Bureau of Investigation may petition the court before which a notification or petition for judicial review
under subsection (e) has been filed for a
determination that disclosure may result in
the harm described in clause (i), (ii), (iii),
or (iv) of paragraph (1)(B), if it notifies
the recipient of such petition;

“(ii) the court shall review such a pe-
tition pursuant to the procedures under
section 3511 of title 18, United States
Code; and

“(iii) if the court determines that
there is reason to believe that disclosure
may result in the harm described in clause
(i), (ii), (iii), or (iv) of paragraph (1)(B),
the Federal Bureau of Investigation shall
no longer be required to conduct the an-
nual review of the facts supporting the
nondisclosure requirement under subpara-
graph (A).”.

(d) CONSUMER REPORTS.—Section 627 of the Fair
Credit Reporting Act (15 U.S.C. 1681v) is amended by
striking subsection (c) and inserting the following new
subsection:

“(c) PROHIBITION OF CERTAIN DISCLOSURE.—

“(1) Prohibition.—
“(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (d) is provided, no consumer reporting agency that receives a request under subsection (a), or officer, employee, or agent thereof, shall disclose or specify in any consumer report, that a government agency described in subsection (a) has sought or obtained access to information or records under subsection (a).

“(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of the government agency described in subsection (a), or a designee, certifies that the absence of a prohibition of disclosure under this subsection may result in—

“(i) a danger to the national security of the United States;

“(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

“(iii) interference with diplomatic relations; or

“(iv) danger to the life or physical safety of any person.
“(2) Exception.—

“(A) In general.—A consumer reporting agency that receives a request under subsection (a), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

“(i) those persons to whom disclosure is necessary in order to comply with the request;

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

“(iii) other persons as permitted by the head of the government agency described in subsection (a) or a designee.

“(B) Application.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request under subsection (a) is issued in the same manner as the person to whom the request is issued.

“(C) Notice.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a non-
disclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(D) IDENTIFICATION OF DISCLOSURE RECIPIENTS.—At the request of the head of the government agency described in subsection (a) or a designee, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the head or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

“(3) TERMINATION.—

“(A) IN GENERAL.—In the case of any request under subsection (a) for which a recipient has submitted a notification to the Government under section 3511(b)(1)(A) of title 18, United States Code, or filed a petition for judicial review under subsection (d)—

“(i) an appropriate official of the agency described in subsection (a) shall, until termination of the nondisclosure requirement, review the facts supporting a nondisclosure requirement annually and upon closure of the investigation; and
“(ii) if, upon a review under clause (i), the facts no longer support the nondisclosure requirement, an appropriate official of the agency described in subsection (a) shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement, and the court as appropriate, that the nondisclosure requirement is no longer in effect.

“(B) CLOSURE OF INVESTIGATION.—Upon closure of the investigation—

“(i) the agency described in subsection (a) may petition the court before which a notification or petition for judicial review under subsection (d) has been filed for a determination that disclosure may result in the harm described in clause (i), (ii), (iii), or (iv) of paragraph (1)(B), if it notifies the recipient of such petition;

“(ii) the court shall review such a petition pursuant to the procedures under section 3511 of title 18, United States Code; and
“(iii) if the court determines that there is reason to believe that disclosure may result in the harm described in clause (i), (ii), (iii), or (iv) of paragraph (1)(B), the agency described in subsection (1) shall no longer be required to conduct the annual review of the facts supporting the nondisclosure requirement under subparagraph (A).”.

(c) Investigations of Persons With Access to Classified Information.—Section 802 of the National Security Act of 1947 (50 U.S.C. 3162) is amended by striking subsection (b) and inserting the following new subsection:

“(b) Prohibition of Certain Disclosure.—

“(1) Prohibition.—

“(A) In general.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (c) is provided, no governmental or private entity that receives a request under subsection (a), or officer, employee, or agent thereof, shall disclose to any person that an authorized investigative agency described in subsection (a) has
sought or obtained access to information under subsection (a).

“(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of an authorized investigative agency described in subsection (a), or a designee, certifies that the absence of a prohibition of disclosure under this subsection may result in—

“(i) a danger to the national security of the United States;

“(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

“(iii) interference with diplomatic relations; or

“(iv) danger to the life or physical safety of any person.

“(2) EXCEPTION.—

“(A) IN GENERAL.—A governmental or private entity that receives a request under subsection (a), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—
“(i) those persons to whom disclosure is necessary in order to comply with the request;

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

“(iii) other persons as permitted by the head of the authorized investigative agency described in subsection (a) or a designee.

“(B) APPLICATION.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

“(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(D) IDENTIFICATION OF DISCLOSURE RECIPIENTS.—At the request of the head of an authorized investigative agency described in
subsection (a), or a designee, any person mak-
ing or intending to make a disclosure under
clause (i) or (iii) of subparagraph (A) shall
identify to the head of the authorized investiga-
tive agency or such designee the person to
whom such disclosure will be made or to whom
such disclosure was made prior to the request.

“(3) Termination.—

“(A) In general.—In the case of any re-
quest for which a recipient has submitted a no-
tification to the Government under section
3511(b)(1)(A) of title 18, United States Code,
or filed a petition for judicial review under sub-
section (c)—

“(i) an appropriate official of the au-
 thorized investigative agency making the
request under subsection (a) shall, until
termination of the nondisclosure require-
ment, review the facts supporting a non-
disclosure requirement annually and upon
closure of the investigation; and

“(ii) if, upon a review under clause
(i), the facts no longer support the non-
disclosure requirement, an appropriate offi-
cial of the authorized investigative agency
making the request under subsection (a)
shall promptly notify the recipient of the
request, or officer, employee, or agent
thereof, subject to the nondisclosure re-
quirement, and the court as appropriate,
that the nondisclosure requirement is no
longer in effect.

“(B) CLOSURE OF INVESTIGATION.—Upon
closure of the investigation—

“(i) the authorized investigative agen-
cy making the request under subsection (a)
may petition the court before which a noti-
ification or petition for judicial review
under subsection (e) has been filed for a
determination that disclosure may result in
the harm described in clause (i), (ii), (iii),
or (iv) of paragraph (1)(B), if it notifies
the recipient of such petition;

“(ii) the court shall review such a pe-
tition pursuant to the procedures under
section 3511 of title 18, United States
Code; and

“(iii) if the court determines that
there is reason to believe that disclosure
may result in the harm described in clause
(i), (ii), (iii), or (iv) of paragraph (1)(B), the authorized investigative agency shall no longer be required to conduct the annual review of the facts supporting the non-disclosure requirement under subparagraph (A).”.

(f) JUDICIAL REVIEW.—Section 3511 of title 18, United States Code, is amended by striking subsection (b) and inserting the following new subsection:

“(b) NONDISCLOSURE.—

“(1) IN GENERAL.—

“(A) NOTICE.—If a recipient of a request or order for a report, records, or other information under section 2709 of this title, section 626 or 627 of the Fair Credit Reporting Act (15 U.S.C. 1681u and 1681v), section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414), or section 802 of the National Security Act of 1947 (50 U.S.C. 3162), wishes to have a court review a nondisclosure requirement imposed in connection with the request or order, the recipient may notify the Government or file a petition for judicial review in any court described in subsection (a).
“(B) Application.—Not later than 30 days after the date of receipt of a notification under subparagraph (A), the Government shall apply for an order prohibiting the disclosure of the existence or contents of the relevant request or order. An application under this subparagraph may be filed in the district court of the United States for the judicial district in which the recipient of the order is doing business or in the district court of the United States for any judicial district within which the authorized investigation that is the basis for the request is being conducted. The applicable nondisclosure requirement shall remain in effect during the pendency of proceedings relating to the requirement.

“(C) Consideration.—A district court of the United States that receives a petition under subparagraph (A) or an application under subparagraph (B) should rule expeditiously, and shall, subject to paragraph (3), issue a nondisclosure order that includes conditions appropriate to the circumstances.

“(2) Application contents.—An application for a nondisclosure order or extension thereof or a
response to a petition filed under paragraph (1) shall include a certification from the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or a designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, or in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Department of Justice, the head or deputy head of the department, agency, or instrumentality, containing a statement of specific facts indicating that the absence of a prohibition of disclosure under this subsection may result in—

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

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

“(C) interference with diplomatic relations;

or

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

“(3) STANDARD.—A district court of the United States shall issue a nondisclosure order or
extension thereof under this subsection if the court determines that there is reason to believe that disclosure of the information subject to the nondisclosure requirement during the applicable time period may result in—

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

“(B) interference with a criminal, counterterrorism, or counterintelligence investigation;

“(C) interference with diplomatic relations;

or

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

SEC. 503. JUDICIAL REVIEW.

(a) COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709 of title 18, United States Code, is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (c) the following new subsection:

“(d) JUDICIAL REVIEW.—

“(1) IN GENERAL.—A request under subsection (b) or a nondisclosure requirement imposed in con-
nection with such request under subsection (c) shall be subject to judicial review under section 3511.

“(2) NOTICE.—A request under subsection (b) shall include notice of the availability of judicial review described in paragraph (1).”.

(b) ACCESS TO FINANCIAL RECORDS FOR CERTAIN INTELLIGENCE AND PROTECTIVE PURPOSES.—Section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (e) the following new subsection:

“(d) JUDICIAL REVIEW.—

“(1) IN GENERAL.—A request under subsection (a) or a nondisclosure requirement imposed in connection with such request under subsection (c) shall be subject to judicial review under section 3511 of title 18, United States Code.

“(2) NOTICE.—A request under subsection (a) shall include notice of the availability of judicial review described in paragraph (1).”.

(e) IDENTITY OF FINANCIAL INSTITUTIONS AND CREDIT REPORTS.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended—
(1) by redesignating subsections (e) through (m) as subsections (f) through (n), respectively; and

(2) by inserting after subsection (d) the following new subsection:

“(e) JUDICIAL REVIEW.—

“(1) IN GENERAL.—A request under subsection (a) or (b) or an order under subsection (c) or a non-disclosure requirement imposed in connection with such request under subsection (d) shall be subject to judicial review under section 3511 of title 18, United States Code.

“(2) NOTICE.—A request under subsection (a) or (b) or an order under subsection (c) shall include notice of the availability of judicial review described in paragraph (1).”.

(d) IDENTITY OF FINANCIAL INSTITUTIONS AND CREDIT REPORTS.—Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (e) the following new subsection:

“(d) JUDICIAL REVIEW.—

“(1) IN GENERAL.—A request under subsection (a) or a non-disclosure requirement imposed in con-
nection with such request under subsection (e) shall be subject to judicial review under section 3511 of title 18, United States Code.

“(2) Notice.—A request under subsection (a) shall include notice of the availability of judicial review described in paragraph (1).”.

(e) Investigations of Persons With Access to Classified Information.—Section 802 of the National Security Act of 1947 (50 U.S.C. 3162) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following new subsection:

“(c) Judicial Review.—

“(1) In General.—A request under subsection (a) or a nondisclosure requirement imposed in connection with such request under subsection (b) shall be subject to judicial review under section 3511 of title 18, United States Code.

“(2) Notice.—A request under subsection (a) shall include notice of the availability of judicial review described in paragraph (1).”.
TITLE VI—FISA TRANSPARENCY AND REPORTING REQUIREMENTS

SEC. 601. ADDITIONAL REPORTING ON ORDERS REQUIRING PRODUCTION OF BUSINESS RECORDS; BUSINESS RECORDS COMPLIANCE REPORTS TO CONGRESS.

Section 502(b) (50 U.S.C. 1862(b)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as paragraphs (6), (7), and (8), respectively; and

(2) by inserting before paragraph (6) (as so redesignated) the following new paragraphs:

“(1) a summary of all compliance reviews conducted by the Government for the production of tangible things under section 501;

“(2) the total number of applications described in section 501(b)(2)(B) made for orders approving requests for the production of tangible things;

“(3) the total number of such orders either granted, modified, or denied;

“(4) the total number of applications described in section 501(b)(2)(C) made for orders approving requests for the production of call detail records;

“(5) the total number of such orders either granted, modified, or denied;”.

S 2685 PCS
SEC. 602. ANNUAL REPORTS BY THE GOVERNMENT.

(a) In General.—Title VI (50 U.S.C. 1871 et seq.), as amended by section 402 of this Act, is further amended by adding at the end the following new section:

“SEC. 603. ANNUAL REPORTS.

“(a) Report by Director of the Administrative Office of the United States Courts.—The Director of the Administrative Office of the United States Courts shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate, subject to a declassification review by the Attorney General and the Director of National Intelligence, a report, made publicly available on an Internet Web site, that includes—

“(1) the number of applications or certifications for orders submitted under each of sections 105, 304, 402, 501, 702, 703, and 704;

“(2) the number of orders entered under each of those sections;

“(3) the number of orders modified under each of those sections;

“(4) the number of orders denied under each of those sections;
“(5) the number of appointments of an individual to serve as amicus curiae under section 103, including the name of each individual appointed to serve as amicus curiae; and

“(6) the number of written findings issued under section 103(i) that such appointment is not appropriate and the text of any such written findings.

“(b) Mandatory Reporting by Director of National Intelligence.—

“(1) In general.—Except as provided in subsection (e), the Director of National Intelligence shall annually make publicly available on an Internet Web site a report that identifies, for the preceding 12-month period—

“(A) the total number of orders issued pursuant to titles I and III and sections 703 and 704 and a good faith estimate of the number of targets of such orders;

“(B) the total number of orders issued pursuant to section 702 and a good faith estimate of—

“(i) the number of targets of such orders;
“(ii) the number of individuals whose communications were collected pursuant to such orders;

“(iii) the number of individuals whose communications were collected pursuant to such orders who are reasonably believed to have been located in the United States at the time of collection;

“(iv) the number of search terms that included information concerning a United States person that were used to query any database of the contents of electronic communications or wire communications obtained through the use of an order issued pursuant to section 702; and

“(v) the number of search queries initiated by an officer, employee, or agent of the United States whose search terms included information concerning a United States person in any database of noncontents information relating to electronic communications or wire communications that were obtained through the use of an order issued pursuant to section 702;
“(C) the total number of orders issued pursuant to title IV and a good faith estimate of—

“(i) the number of targets of such orders;

“(ii) the number of individuals whose communications were collected pursuant to such orders; and

“(iii) the number of individuals whose communications were collected pursuant to such orders who are reasonably believed to have been located in the United States at the time of collection;

“(D) the total number of orders issued pursuant to applications made under section 501(b)(2)(B) and a good faith estimate of—

“(i) the number of targets of such orders;

“(ii) the number of individuals whose communications were collected pursuant to such orders; and

“(iii) the number of individuals whose communications were collected pursuant to such orders who are reasonably believed to
have been located in the United States at
the time of collection;

“(E) the total number of orders issued
pursuant to applications made under section
501(b)(2)(C) and a good faith estimate of—

“(i) the number of targets of such or-
ders;

“(ii) the number of individuals whose
communications were collected pursuant to
such orders;

“(iii) the number of individuals whose
communications were collected pursuant to
such orders who are reasonably believed to
have been located in the United States at
the time of collection; and

“(iv) the number of search terms that
included information concerning a United
States person that were used to query any
database of call detail records obtained
through the use of such orders; and

“(F) the total number of national security
letters issued and the number of requests for
information contained within such national se-
curity letters.
“(2) Basis for reasonable belief individual is located in United States.—A phone number registered in the United States may provide the basis for a reasonable belief that the individual using the phone number is located in the United States at the time of collection.

“(c) Discretionary Reporting by Director of National Intelligence.—The Director of National Intelligence may annually make publicly available on an Internet Web site a report that identifies, for the preceding 12-month period—

“(1) a good faith estimate of the number of individuals whose communications were collected pursuant to orders issued pursuant to titles I and III and sections 703 and 704 reasonably believed to have been located in the United States at the time of collection whose information was reviewed or accessed by an officer, employee, or agent of the United States;

“(2) a good faith estimate of the number of individuals whose communications were collected pursuant to orders issued pursuant to section 702 reasonably believed to have been located in the United States at the time of collection whose information
was reviewed or accessed by an officer, employee, or
agent of the United States;

“(3) a good faith estimate of the number of in-
dividuals whose communications were collected pur-
suant to orders issued pursuant to title IV reason-
ably believed to have been located in the United
States at the time of collection whose information
was reviewed or accessed by an officer, employee, or
agent of the United States;

“(4) a good faith estimate of the number of in-
dividuals whose communications were collected pur-
suant to orders issued pursuant to applications
made under section 501(b)(2)(B) reasonably believed
to have been located in the United States at the
time of collection whose information was reviewed or
accessed by an officer, employee, or agent of the
United States; and

“(5) a good faith estimate of the number of in-
dividuals whose communications were collected pur-
suant to orders issued pursuant to applications
made under section 501(b)(2)(C) reasonably believed
to have been located in the United States at the
time of collection whose information was reviewed or
accessed by an officer, employee, or agent of the
United States.
“(d) Timing.—The annual reports required by subsections (a) and (b) and permitted by subsection (c) shall be made publicly available during April of each year and include information relating to the previous year.

“(e) Exceptions.—

“(1) Reporting by Unique Identifier.—If it is not practicable to report the good faith estimates required by subsection (b) and permitted by subsection (c) in terms of individuals, the good faith estimates may be counted in terms of unique identifiers, including names, account names or numbers, addresses, or telephone or instrument numbers.

“(2) Statement of Numerical Range.—If a good faith estimate required to be reported under clauses (ii) or (iii) of each of subparagraphs (B), (C), (D), and (E) of paragraph (1) of subsection (b) or permitted to be reported in subsection (c), is fewer than 500, it shall exclusively be expressed as a numerical range of ‘fewer than 500’ and shall not be expressed as an individual number.

“(3) Federal Bureau of Investigation.—Subparagraphs (B)(iv), (B)(v), (D)(iii), (E)(iii), and (E)(iv) of paragraph (1) of subsection (b) shall not apply to information or records held by, or queries conducted by, the Federal Bureau of Investigation.
“(4) Certification.—

“(A) In general.—If the Director of National Intelligence concludes that a good faith estimate required to be reported under subparagraph (B)(iii) or (C)(iii) of paragraph (1) of subsection (b) cannot be determined accurately, including through the use of statistical sampling, the Director shall—

“(i) certify that conclusion in writing to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

“(ii) make such certification publicly available on an Internet Web site.

“(B) Content.—

“(i) In general.—The certification described in subparagraph (A) shall state with specificity any operational, national security, or other reasons why the Director of National Intelligence has reached the conclusion described in subparagraph (A).
“(ii) Good faith estimates of certain individuals whose communications were collected under orders issued under section 702.—A certification described in subparagraph (A) relating to a good faith estimate required to be reported under subsection (b)(1)(B)(iii) may include the information annually reported pursuant to section 702(l)(3)(A).

“(iii) Good faith estimates of certain individuals whose communications were collected under orders issued under title IV.—If the Director of National Intelligence determines that a good faith estimate required to be reported under subsection (b)(1)(C)(iii) cannot be determined accurately as that estimate pertains to electronic communications, but can be determined accurately for wire communications, the Director shall make the certification described in subparagraph (A) with respect to electronic communications and shall also report the good faith estimate with respect to wire communications.
“(C) Form.—A certification described in subparagraph (A) shall be prepared in unclassified form, but may contain a classified annex.

“(D) Timing.—If the Director of National Intelligence continues to conclude that the good faith estimates described in this paragraph cannot be determined accurately, the Director shall annually submit a certification in accordance with this paragraph.

“(f) Construction.—Nothing in this section affects the lawfulness or unlawfulness of any government surveillance activities described herein.

“(g) Definitions.—In this section:

“(1) Contents.—The term ‘contents’ has the meaning given that term under section 2510 of title 18, United States Code.

“(2) Electronic Communication.—The term ‘electronic communication’ has the meaning given that term under section 2510 of title 18, United States Code.

“(3) Individual whose communications were collected.—The term ‘individual whose communications were collected’ means any individual—
“(A) who was a party to an electronic communication or a wire communication the contents or noncontents of which was collected; or

“(B)(i) who was a subscriber or customer of an electronic communication service or remote computing service; and

“(ii) whose records, as described in subparagraph (A), (B), (D), (E), or (F) of section 2703(c)(2) of title 18, United States Code, were collected.

“(4) NATIONAL SECURITY LETTER.—The term ‘national security letter’ means a request for a report, records, or other information under—

“(A) section 2709 of title 18, United States Code;


“(C) subsection (a) or (b) of section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u(a), 1681u(b)); or

“(D) section 627(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)).

“(5) UNITED STATES PERSON.—The term ‘United States person’ means a citizen of the United States.
States or an alien lawfully admitted for permanent residence (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))).

“(6) Wire communication.—The term ‘wire communication’ has the meaning given that term under section 2510 of title 18, United States Code.”.

(b) Table of Contents Amendment.—The table of contents, as amended by section 402 of this Act, is further amended by inserting after the item relating to section 602, as added by section 402 of this Act, the following new item:

“Sec. 603. Annual reports.”.

(e) Public Reporting on National Security Letters.—Section 118(e) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (18 U.S.C. 3511 note) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “concerning different United States persons”; and

(B) in subparagraph (A), by striking “, excluding the number of requests for subscriber information”; 

(2) by redesignating paragraph (2) as paragraph (3); and
(3) by inserting after paragraph (1) the following:

“(2) CONTENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), each report required under this subsection shall include a good faith estimate of the total number of requests described in paragraph (1) requiring disclosure of information concerning—

“(i) United States persons; and

“(ii) persons who are not United States persons.

“(B) EXCEPTION.—With respect to the number of requests for subscriber information under section 2709 of title 18, United States Code, a report required under this subsection need not separate the number of requests into each of the categories described in subparagraph (A).”.

(d) STORED COMMUNICATIONS.—Section 2702(d) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “; and” and inserting a semicolon;

(2) in paragraph (2)(B), by striking the period and inserting “; and”; and
(3) by adding at the end the following new paragraph:

“(3) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (c)(4).”.

SEC. 603. PUBLIC REPORTING BY PERSONS SUBJECT TO FISA ORDERS.

(a) In General.—Title VI (50 U.S.C. 1871 et seq.), as amended by sections 402 and 602 of this Act, is further amended by adding at the end the following new section:

“SEC. 604. PUBLIC REPORTING BY PERSONS SUBJECT TO ORDERS.

“(a) Reporting.—A person subject to a nondisclosure requirement accompanying an order or directive under this Act or a national security letter may, with respect to such order, directive, or national security letter, publicly report the following information using 1 of the following structures:

“(1) A semiannual report that aggregates the number of orders or national security letters with which the person was required to comply in the following separate categories:

“(A) The number of national security letters received, reported in bands of 1000 starting with 0–999.
“(B) The number of customer accounts affected by national security letters, reported in bands of 1000 starting with 0–999.

“(C) The number of orders under this Act for contents, reported in bands of 1000 starting with 0–999.

“(D) With respect to contents orders under this Act, in bands of 1000 starting with 0–999, the number of customer selectors targeted under such orders.

“(E) The number of orders under this Act for noncontents, reported in bands of 1000 starting with 0–999.

“(F) With respect to noncontents orders under this Act, in bands of 1000 starting with 0–999, the number of customer selectors targeted under orders under—

“(i) title IV;

“(ii) title V with respect to applications described in section 501(b)(2)(B);

and

“(iii) title V with respect to applications described in section 501(b)(2)(C).

“(2) A semianual report that aggregates the number of orders, directives, or national security let-
ters with which the person was required to comply in the following separate categories:

“(A) The total number of all national security process received, including all national security letters and orders or directives under this Act, combined, reported in bands of 0–249 and thereafter in bands of 250.

“(B) The total number of customer selectors targeted under all national security process received, including all national security letters and orders or directives under this Act, combined, reported in bands of 0–249 and thereafter in bands of 250.

“(3) A semiannual report that aggregates the number of orders or national security letters with which the person was required to comply in the following separate categories:

“(A) The number of national security letters received, reported in bands of 500 starting with 0–499.

“(B) The number of customer accounts affected by national security letters, reported in bands of 500 starting with 0–499.
“(C) The number of orders under this Act for contents, reported in bands of 500 starting with 0–499.

“(D) The number of customer selectors targeted under such orders, reported in bands of 500 starting with 0–499.

“(E) The number of orders under this Act for noncontents, reported in bands of 500 starting with 0–499.

“(F) The number of customer selectors targeted under such orders, reported in bands of 500 starting with 0–499.

“(4) An annual report that aggregates the number of orders, directives, and national security letters the person was required to comply with in the following separate categories:

“(A) The total number of all national security process received, including all national security letters and orders or directives under this Act, combined, reported in bands of 0–100 and thereafter in bands of 100.

“(B) The total number of customer selectors targeted under all national security process received, including all national security letters and orders or directives under this Act, com-
bined, reported in bands of 0–100 and thereafter in bands of 100.

“(b) Period of Time Covered by Reports.—

“(1) A report described in paragraph (1) or (3) of subsection (a)—

“(A) may be published every 180 days;

“(B) subject to subparagraph (C), shall include—

“(i) with respect to information relating to national security letters, information relating to the previous 180 days; and

“(ii) with respect to information relating to authorities under this Act, except as provided in subparagraph (C), information relating to the time period—

“(I) ending on the date that is not less than 180 days before the date on which the information is publicly reported; and

“(II) beginning on the date that is 180 days before the date described in subclause (I); and

“(C) for a person that has received an order or directive under this Act with respect to a platform, product, or service for which a per-
son did not previously receive such an order or
directive (not including an enhancement to or
iteration of an existing publicly available plat-
form, product, or service)—

“(i) shall not include any information
relating to such new order or directive
until 540 days after the date on which
such new order or directive is received; and

“(ii) for a report published on or after
the date on which the 540-day waiting pe-
period expires, shall include information re-
lying to such new order or directive re-
ported pursuant to subparagraph (B)(ii).

“(2) A report described in paragraph (2) of
subsection (a) may be published every 180 days and
shall include information relating to the previous
180 days.

“(3) A report described in paragraph (4) of
subsection (a) may be published annually and shall
include information relating to the time period—

“(A) ending on the date that is not less
than 1 year before the date on which the infor-
mation is publicly reported; and

“(B) beginning on the date that is 1 year
before the date described in subparagraph (A).
“(c) Other Forms of Agreed to Publication.—Nothing in this section prohibits the Government and any person from jointly agreeing to the publication of information referred to in this subsection in a time, form, or manner other than as described in this section.

“(d) Definitions.—In this section:

“(1) Contents.—The term ‘contents’ has the meaning given that term under section 2510 of title 18, United States Code.

“(2) National security letter.—The term ‘national security letter’ has the meaning given that term under section 603.”.

(b) Table of Contents Amendment.—The table of contents, as amended by sections 402 and 602 of this Act, is further amended by inserting after the item relating to section 603, as added by section 602 of this Act, the following new item:

“Sec. 604. Public reporting by persons subject to orders.”.

SEC. 604. Reporting Requirements for Decisions, Orders, and Opinions of the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review.

Section 601(e)(1) (50 U.S.C. 1871(e)(1)) is amended to read as follows:
“(1) not later than 45 days after the date on which the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review issues a decision, order, or opinion, including any denial or modification of an application under this Act, that includes significant construction or interpretation of any provision of law or results in a change of application of any provision of this Act or a novel application of any provision of this Act, a copy of such decision, order, or opinion and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion; and”.

SEC. 605. SUBMISSION OF REPORTS UNDER FISA.

(a) ELECTRONIC SURVEILLANCE.—Section 108(a)(1) (50 U.S.C. 1808(a)(1)) is amended by striking “the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, and the Committee on the Judiciary of the Senate,” and inserting “the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate”.

(b) PHYSICAL SEARCHES.—The matter preceding paragraph (1) of section 306 (50 U.S.C. 1826) is amended—
(1) in the first sentence, by striking “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the Senate,” and inserting “Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate”; and

(2) in the second sentence, by striking “and the Committee on the Judiciary of the House of Representatives”.

(c) Pen Registers and Trap and Trace Devices.—Section 406(b) (50 U.S.C. 1846(b)) is amended—

(1) in paragraph (2), by striking “; and” and inserting a semicolon;

(2) in paragraph (3), by striking the period and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

“(4) each department or agency on behalf of which the Attorney General or a designated attorney for the Government has made an application for an order authorizing or approving the installation and
use of a pen register or trap and trace device under this title; and

“(5) for each department or agency described in paragraph (4), each number described in paragraphs (1), (2), and (3).”.

(d) ACCESS TO CERTAIN BUSINESS RECORDS AND OTHER TANGIBLE THINGS.—Section 502(a) (50 U.S.C. 1862(a)) is amended by striking “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate” and inserting “Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate”.

TITLE VII—SUNSETS

SEC. 701. SUNSETS.

(a) USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (50 U.S.C. 1805 note) is amended by striking “June 1, 2015” and inserting “December 31, 2017”.

(b) INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—Section 6001(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50
1 U.S.C. 1801 note) is amended by striking “June 1, 2015”
2 and inserting “December 31, 2017”.
To reform the authorities of the Federal Government to require the production of certain business records and to conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes.

Read the second time and placed on the calendar.

July 30, 2014