

Union Calendar No. 90

115TH CONGRESS
1ST SESSION

H. R. 883

[Report No. 115-141]

To amend title 18, United States Code, to provide a certification process for the issuance of nondisclosure requirements accompanying certain administrative subpoenas, to provide for judicial review of such nondisclosure requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2017

Mr. DESANTIS introduced the following bill; which was referred to the
Committee on the Judiciary

MAY 22, 2017

Additional sponsors: Mr. RATCLIFFE, Mr. MARINO, Mr. FRANKS of Arizona,
Mr. SMITH of Texas, Mr. SENSENBRENNER, Mr. MESSER, Ms. TENNEY,
and Mr. YOUNG of Iowa

MAY 22, 2017

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend title 18, United States Code, to provide a certification process for the issuance of nondisclosure requirements accompanying certain administrative subpoenas, to provide for judicial review of such nondisclosure requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Targeting Child Preda-
5 tors Act of 2017”.

6 **SEC. 2. NONDISCLOSURE OF ADMINISTRATIVE SUBPOENAS.**

7 Section 3486(a) of title 18, United States Code, is
8 amended—

9 (1) by striking “the Secretary of the Treasury”
10 each place it appears and inserting “the Secretary of
11 Homeland Security”;

12 (2) in paragraph (5), by striking “ordered by a
13 court”; and

14 (3) by striking paragraph (6) and inserting the
15 following:

16 “(6)(A)(i) If a subpoena issued under this sec-
17 tion is accompanied by a certification under clause
18 (ii) and notice of the right to judicial review under
19 subparagraph (C), no recipient of a subpoena under
20 this section shall disclose to any person that the
21 Federal official who issued the subpoena has sought
22 or obtained access to information or records under
23 this section, for a period of 180 days.

24 “(ii) The requirements of clause (i) shall apply
25 if the Federal official who issued the subpoena cer-

1 tifies that the absence of a prohibition of disclosure
2 under this subsection may result in—

3 “(I) endangering the life or physical safety
4 of an individual;

5 “(II) flight from prosecution;

6 “(III) destruction of or tampering with evi-
7 dence;

8 “(IV) intimidation of potential witnesses;

9 or

10 “(V) otherwise seriously jeopardizing an
11 investigation or unduly delaying a trial.

12 “(B)(i) A recipient of a subpoena under this
13 section may disclose information otherwise subject to
14 any applicable nondisclosure requirement to—

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

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

19 “(III) other persons as permitted by the
20 Federal official who issued the subpoena.

21 “(ii) A person to whom disclosure is made
22 under clause (i) shall be subject to the nondisclosure
23 requirements applicable to a person to whom a sub-
24 poena is issued under this section in the same man-
25 ner as the person to whom the subpoena was issued.

1 “(iii) Any recipient that discloses to a person
2 described in clause (i) information otherwise subject
3 to a nondisclosure requirement shall notify the per-
4 son of the applicable nondisclosure requirement.

5 “(iv) At the request of the Federal official who
6 issued the subpoena, any person making or intend-
7 ing to make a disclosure under subclause (I) or (III)
8 of clause (i) shall identify to the individual making
9 the request under this clause the person to whom
10 such disclosure will be made or to whom such disclo-
11 sure was made prior to the request.

12 “(C)(i) A nondisclosure requirement imposed
13 under subparagraph (A) shall be subject to judicial
14 review under section 3486A.

15 “(ii) A subpoena issued under this section, in
16 connection with which a nondisclosure requirement
17 under subparagraph (A) is imposed, shall include
18 notice of the availability of judicial review described
19 in clause (i).

20 “(D) A nondisclosure requirement imposed
21 under subparagraph (A) may be extended in accord-
22 ance with section 3486A(a)(4).”.

1 **SEC. 3. JUDICIAL REVIEW OF NONDISCLOSURE REQUIRE-**
2 **MENTS.**

3 (a) IN GENERAL.—Chapter 223 of title 18, United
4 States Code, is amended by inserting after section 3486
5 the following:

6 **“§ 3486A. Judicial review of nondisclosure require-**
7 **ments**

8 “(a) NONDISCLOSURE.—

9 “(1) IN GENERAL.—

10 “(A) NOTICE.—If a recipient of a sub-
11 poena under section 3486 wishes to have a
12 court review a nondisclosure requirement im-
13 posed in connection with the subpoena, the re-
14 cipient may notify the Government or file a pe-
15 tition for judicial review in any court described
16 in subsection (a)(5) of section 3486.

17 “(B) APPLICATION.—Not later than 30
18 days after the date of receipt of a notification
19 under subparagraph (A), the Government shall
20 apply for an order prohibiting the disclosure of
21 the existence or contents of the relevant sub-
22 poena. An application under this subparagraph
23 may be filed in the district court of the United
24 States for the judicial district in which the re-
25 cipient of the subpoena is doing business or in
26 the district court of the United States for any

1 judicial district within which the authorized in-
2 vestigation that is the basis for the subpoena is
3 being conducted. The applicable nondisclosure
4 requirement shall remain in effect during the
5 pendency of proceedings relating to the require-
6 ment.

7 “(C) CONSIDERATION.—A district court of
8 the United States that receives a petition under
9 subparagraph (A) or an application under sub-
10 paragraph (B) should rule expeditiously, and
11 shall, subject to paragraph (3), issue a non-
12 disclosure order that includes conditions appro-
13 priate to the circumstances.

14 “(2) APPLICATION CONTENTS.—An application
15 for a nondisclosure order or extension thereof or a
16 response to a petition filed under paragraph (1)
17 shall include a certification from the Federal official
18 who issued the subpoena indicating that the absence
19 of a prohibition of disclosure under this subsection
20 may result in—

21 “(A) endangering the life or physical safety
22 of an individual;

23 “(B) flight from prosecution;

24 “(C) destruction of or tampering with evi-
25 dence;

1 “(D) intimidation of potential witnesses; or

2 “(E) otherwise seriously jeopardizing an
3 investigation or unduly delaying a trial.

4 “(3) STANDARD.—A district court of the
5 United States shall issue a nondisclosure order or
6 extension thereof under this subsection if the court
7 determines that there is reason to believe that disclo-
8 sure of the information subject to the nondisclosure
9 requirement during the applicable time period may
10 result in—

11 “(A) endangering the life or physical safety
12 of an individual;

13 “(B) flight from prosecution;

14 “(C) destruction of or tampering with evi-
15 dence;

16 “(D) intimidation of potential witnesses; or

17 “(E) otherwise seriously jeopardizing an
18 investigation or unduly delaying a trial.

19 “(4) EXTENSION.—Upon a showing that the
20 circumstances described in subparagraphs (A)
21 through (E) of paragraph (3) continue to exist, a
22 district court of the United States may issue an ex
23 parte order extending a nondisclosure order imposed
24 under this subsection or under section
25 3486(a)(6)(A) for additional periods of 180 days, or,

1 if the court determines that the circumstances neces-
2 sitate a longer period of nondisclosure, for additional
3 periods which are longer than 180 days.

4 “(b) CLOSED HEARINGS.—In all proceedings under
5 this section, subject to any right to an open hearing in
6 a contempt proceeding, the court must close any hearing
7 to the extent necessary to prevent an unauthorized dislo-
8 sure of a request for records, a report, or other informa-
9 tion made to any person or entity under section 3486. Pe-
10 titions, filings, records, orders, certifications, and sub-
11 poenas must also be kept under seal to the extent and
12 as long as necessary to prevent the unauthorized dislo-
13 sure of a subpoena under section 3486.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 223 of title 18, United States
16 Code, is amended by inserting after the item relating to
17 section 3486 the following:

“3486A. Judicial review of nondisclosure requirements.”.

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