

# ***In the House of Representatives, U. S.,***

*January 11, 2018.*

*Resolved*, That the bill from the Senate (S. 139) entitled “An Act to implement the use of Rapid DNA instruments to inform decisions about pretrial release or detention and their conditions, to solve and prevent violent crimes and other crimes, to exonerate the innocent, to prevent DNA analysis backlogs, and for other purposes.”, do pass with the following

## **AMENDMENT:**

Strike out all after the enacting clause and insert:

**1    *SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

**2            (a) *SHORT TITLE.*—*This Act may be cited as the***  
**3    *“FISA Amendments Reauthorization Act of 2017”.***

**4            (b) *TABLE OF CONTENTS.*—*The table of contents for***  
**5    *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—ENHANCEMENTS TO FOREIGN INTELLIGENCE COLLECTION AND SAFEGUARDS, ACCOUNTABILITY, AND OVERSIGHT***

*Sec. 101. Querying procedures required.*

*Sec. 102. Use and disclosure provisions.*

*Sec. 103. Congressional review and oversight of abouts collection.*

*Sec. 104. Publication of minimization procedures under section 702.*

*Sec. 105. Section 705 emergency provision.*

*Sec. 106. Compensation of amici curiae and technical experts.*

*Sec. 107. Additional reporting requirements.*

*Sec. 108. Improvements to Privacy and Civil Liberties Oversight Board.*

*Sec. 109. Privacy and civil liberties officers.*

*Sec. 110. Whistleblower protections for contractors of the intelligence community.*

*Sec. 111. Briefing on notification requirements.*

*Sec. 112. Inspector General report on queries conducted by Federal Bureau of Investigation.*

*TITLE II—EXTENSION OF AUTHORITIES, INCREASED PENALTIES,  
REPORTS, AND OTHER MATTERS*

*Sec. 201. Extension of title VII of FISA; effective dates.*

*Sec. 202. Increased penalty for unauthorized removal and retention of classified documents or material.*

*Sec. 203. Report on challenges to the effectiveness of foreign intelligence surveillance.*

*Sec. 204. Comptroller General study on the classification system and protection of classified information.*

*Sec. 205. Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review.*

*Sec. 206. Severability.*

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

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

**9 TITLE I—ENHANCEMENTS TO  
10 FOREIGN INTELLIGENCE COL-  
11 LECTION AND SAFEGUARDS,  
12 ACCOUNTABILITY, AND OVER-  
13 SIGHT**

**14 SEC. 101. QUERYING PROCEDURES REQUIRED.**

**15 (a) QUERYING PROCEDURES.—**

**16 (1) IN GENERAL.—***Section 702 (50 U.S.C.  
17 1881a) is amended—*

1           (A) by redesignating subsections (f) through  
 2           (l) as subsections (g) through (m), respectively;  
 3           and

4           (B) by inserting after subsection (e) the fol-  
 5           lowing new subsection:

6           “(f) *QUERIES*.—

7           “(1) *PROCEDURES REQUIRED*.—

8           “(A) *REQUIREMENT TO ADOPT*.—*The Attor-*  
 9           *ney General, in consultation with the Director of*  
 10           *National Intelligence, shall adopt querying pro-*  
 11           *cedures consistent with the requirements of the*  
 12           *fourth amendment to the Constitution of the*  
 13           *United States for information collected pursuant*  
 14           *to an authorization under subsection (a).*

15           “(B) *RECORD OF UNITED STATES PERSON*  
 16           *QUERY TERMS*.—*The Attorney General, in con-*  
 17           *sultation with the Director of National Intel-*  
 18           *ligence, shall ensure that the procedures adopted*  
 19           *under subparagraph (A) include a technical pro-*  
 20           *cedure whereby a record is kept of each United*  
 21           *States person query term used for a query.*

22           “(C) *JUDICIAL REVIEW*.—*The procedures*  
 23           *adopted in accordance with subparagraph (A)*  
 24           *shall be subject to judicial review pursuant to*  
 25           *subsection (j).*

1           “(2) *ACCESS TO RESULTS OF CERTAIN QUERIES*  
2       *CONDUCTED BY FBI.*—

3           “(A) *COURT ORDER REQUIRED FOR FBI RE-*  
4       *VIEW OF CERTAIN QUERY RESULTS IN CRIMINAL*  
5       *INVESTIGATIONS UNRELATED TO NATIONAL SE-*  
6       *CURITY.*—*Except as provided by subparagraph*  
7       *(E), in connection with a predicated criminal*  
8       *investigation opened by the Federal Bureau of*  
9       *Investigation that does not relate to the national*  
10       *security of the United States, the Federal Bureau*  
11       *of Investigation may not access the contents of*  
12       *communications acquired under subsection (a)*  
13       *that were retrieved pursuant to a query made*  
14       *using a United States person query term that*  
15       *was not designed to find and extract foreign in-*  
16       *telligence information unless—*

17           “(i) *the Federal Bureau of Investiga-*  
18       *tion applies for an order of the Court under*  
19       *subparagraph (C); and*

20           “(ii) *the Court enters an order under*  
21       *subparagraph (D) approving such applica-*  
22       *tion.*

23           “(B) *JURISDICTION.*—*The Court shall have*  
24       *jurisdiction to review an application and to*

1        *enter an order approving the access described in*  
2        *subparagraph (A).*

3                “(C) *APPLICATION.—Each application for*  
4        *an order under this paragraph shall be made by*  
5        *a Federal officer in writing upon oath or affir-*  
6        *mation to a judge having jurisdiction under sub-*  
7        *paragraph (B). Each application shall require*  
8        *the approval of the Attorney General based upon*  
9        *the finding of the Attorney General that the ap-*  
10       *plication satisfies the criteria and requirements*  
11       *of such application, as set forth in this para-*  
12       *graph, and shall include—*

13                “(i) *the identity of the Federal officer*  
14                *making the application; and*

15                “(ii) *an affidavit or other information*  
16                *containing a statement of the facts and cir-*  
17                *cumstances relied upon by the applicant to*  
18                *justify the belief of the applicant that the*  
19                *contents of communications described in*  
20                *subparagraph (A) covered by the applica-*  
21                *tion would provide evidence of—*

22                “(I) *criminal activity;*

23                “(II) *contraband, fruits of a*  
24                *crime, or other items illegally possessed*  
25                *by a third party; or*

1                   “(III) property designed for use,  
2                   intended for use, or used in commit-  
3                   ting a crime.

4                   “(D) ORDER.—Upon an application made  
5                   pursuant to subparagraph (C), the Court shall  
6                   enter an order approving the accessing of the  
7                   contents of communications described in sub-  
8                   paragraph (A) covered by the application if the  
9                   Court finds probable cause to believe that such  
10                  contents would provide any of the evidence de-  
11                  scribed in subparagraph (C)(ii).

12                  “(E) EXCEPTION.—The requirement for an  
13                  order of the Court under subparagraph (A) to ac-  
14                  cess the contents of communications described in  
15                  such subparagraph shall not apply with respect  
16                  to a query if the Federal Bureau of Investigation  
17                  determines there is a reasonable belief that such  
18                  contents could assist in mitigating or elimi-  
19                  nating a threat to life or serious bodily harm.

20                  “(F) RULE OF CONSTRUCTION.—Nothing in  
21                  this paragraph may be construed as—

22                         “(i) limiting the authority of the Fed-  
23                         eral Bureau of Investigation to conduct  
24                         lawful queries of information acquired  
25                         under subsection (a);

1           “(ii) *limiting the authority of the Fed-*  
 2           *eral Bureau of Investigation to review,*  
 3           *without a court order, the results of any*  
 4           *query of information acquired under sub-*  
 5           *section (a) that was reasonably designed to*  
 6           *find and extract foreign intelligence infor-*  
 7           *mation, regardless of whether such foreign*  
 8           *intelligence information could also be con-*  
 9           *sidered evidence of a crime; or*

10           “(iii) *prohibiting or otherwise limiting*  
 11           *the ability of the Federal Bureau of Inves-*  
 12           *tigation to access the results of queries con-*  
 13           *ducted when evaluating whether to open an*  
 14           *assessment or predicated investigation relat-*  
 15           *ing to the national security of the United*  
 16           *States.*

17           “(3) *DEFINITIONS.—In this subsection:*

18           “(A) *The term ‘contents’ has the meaning*  
 19           *given that term in section 2510(8) of title 18,*  
 20           *United States Code.*

21           “(B) *The term ‘query’ means the use of one*  
 22           *or more terms to retrieve the unminimized con-*  
 23           *tents or noncontents located in electronic and*  
 24           *data storage systems of communications of or*  
 25           *concerning United States persons obtained*

1           *through acquisitions authorized under subsection*  
 2           *(a).”.*

3           (2) *APPLICATION.—Subsection (f) of section 702*  
 4           *of the Foreign Intelligence Surveillance Act of 1978*  
 5           *(50 U.S.C. 1881a), as added by paragraph (1), shall*  
 6           *apply with respect to certifications submitted under*  
 7           *subsection (h) of such section to the Foreign Intel-*  
 8           *ligence Surveillance Court after January 1, 2018.*

9           (b) *CONFORMING AMENDMENTS.—*

10           (1) *AMENDMENTS TO SECTION 702 OF FISA.—*  
 11           *Such section 702 is further amended—*

12                   (A) *in subsection (a), by striking “with sub-*  
 13                   *section (i)(3)” and inserting “with subsection*  
 14                   *(j)(3)”;*

15                   (B) *in subsection (c)—*

16                           (i) *in paragraph (1)(B), by striking*  
 17                           *“with subsection (g)” and inserting “with*  
 18                           *subsection (h)”;*

19                           (ii) *in paragraph (2), by striking “to*  
 20                           *subsection (i)(3)” and inserting “to sub-*  
 21                           *section (j)(3)”;* and

22                           (iii) *in paragraph (3)—*

23                                   (I) *in subparagraph (A), by strik-*  
 24                                   *ing “with subsection (g)” and inserting*  
 25                                   *“with subsection (h)”;* and



1 *(II) in subparagraph (B)—*

2 *(aa) by striking “to sub-*  
 3 *section (i)(1)(C)” and inserting*  
 4 *“to subsection (j)(1)(C)”;* and

5 *(bb) by striking “under sub-*  
 6 *section (i)” and inserting “under*  
 7 *subsection (j)”;*

8 *(C) in subsection (d)(2), by striking “to*  
 9 *subsection (i)” and inserting “to subsection (j)”;*

10 *(D) in subsection (e)(2), by striking “to sub-*  
 11 *section (i)” and inserting “to subsection (j)”;*

12 *(E) in subsection (h), as redesignated by*  
 13 *subsection (a)(1)—*

14 *(i) in paragraph (2)(A)(iii), by strik-*  
 15 *ing “with subsection (f)” and inserting*  
 16 *“with subsection (g)”;*

17 *(ii) in paragraph (3), by striking*  
 18 *“with subsection (i)(1)(C)” and inserting*  
 19 *“with subsection (j)(1)(C)”;* and

20 *(iii) in paragraph (6), by striking “to*  
 21 *subsection (i)” and inserting “to subsection*  
 22 *(j)”;*

23 *(F) in subsection (j), as redesignated by*  
 24 *subsection (a)(1)—*

25 *(i) in paragraph (1)—*

(I) in subparagraph (A), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(II) in subparagraph (B), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”; and

(III) in subparagraph (C), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(ii) in paragraph (2)—

1                   (I) in subparagraph (A), by strik-  
 2                   ing “with subsection (g)” and inserting  
 3                   “with subsection (h)”; and

4                   (II) by adding at the end the fol-  
 5                   lowing:

6                   “(D)     *QUERYING     PROCEDURES.*—The  
 7                   *querying procedures adopted in accordance with*  
 8                   *subsection (f)(1) to assess whether such proce-*  
 9                   *dures comply with the requirements of such sub-*  
 10                   *section.”;*

11                   (iii) in paragraph (3)—

12                   (I) in subparagraph (A)—

13                   (aa) by striking “with sub-  
 14                   section (g)” and inserting “with  
 15                   subsection (h)”; and

16                   (bb) by striking “targeting  
 17                   and minimization procedures  
 18                   adopted in accordance with sub-  
 19                   sections (d) and (e)” and insert-  
 20                   ing “targeting, minimization, and  
 21                   querying procedures adopted in  
 22                   accordance with subsections (d),  
 23                   (e), and (f)(1)”; and

24                   (II) in subparagraph (B), in the  
 25                   matter before clause (i)—

1                   (aa) by striking “with sub-  
2                   section (g)” and inserting “with  
3                   subsection (h)”;

4                   (bb) by striking “with sub-  
5                   sections (d) and (e)” and insert-  
6                   ing “with subsections (d), (e), and  
7                   (f)(1)”;

8                   (iv) in paragraph (5)(A)—

9                   (I) by striking “with subsection  
10                  (g)” and inserting “with subsection  
11                  (h)”;

12                  (II) by striking “with subsections  
13                  (d) and (e)” and inserting “with sub-  
14                  sections (d), (e), and (f)(1)”;

15                  (G) in subsection (m), as redesignated by  
16                  subsection (a)(1)—

17                  (i) in paragraph (1), in the matter be-  
18                  fore subparagraph (A)—

19                  (I) by striking “targeting and  
20                  minimization procedures adopted in  
21                  accordance with subsections (d) and  
22                  (e)” and inserting “targeting, mini-  
23                  mization, and querying procedures  
24                  adopted in accordance with subsections  
25                  (d), (e), and (f)(1)”;

1 (II) by striking “with subsection  
 2 (f)” and inserting “with subsection  
 3 (g)”; and

4 (ii) in paragraph (2)(A)—

5 (I) by striking “targeting and  
 6 minimization procedures adopted in  
 7 accordance with subsections (d) and  
 8 (e)” and inserting “targeting, mini-  
 9 mization, and querying procedures  
 10 adopted in accordance with subsections  
 11 (d), (e), and (f)(1)”; and

12 (II) by striking “with subsection  
 13 (f)” and inserting “with subsection  
 14 (g)”.

15 (2) *AMENDMENTS TO FISA.*—*The Foreign Intel-*  
 16 *ligence Surveillance Act of 1978 (50 U.S.C. 1801 et*  
 17 *seq.) is further amended—*

18 (A) by striking “section 702(h)” each place  
 19 it appears and inserting “section 702(i)”;

20 (B) by striking “section 702(g)” each place  
 21 it appears and inserting “section 702(h)”; and

22 (C) in section 707(b)(1)(G)(ii), by striking  
 23 “subsections (d), (e), and (f)” and inserting  
 24 “subsections (d), (e), (f)(1), and (g)”.

1           (3) *AMENDMENTS TO FISA AMENDMENTS ACT OF*  
 2           *2008.—Section 404 of the Foreign Intelligence Surveil-*  
 3           *lance Act of 1978 Amendments Act of 2008 (Public*  
 4           *Law 110–261; 50 U.S.C. 1801 note) is amended—*

5                   *(A) in subsection (a)(7)(B)—*

6                           *(i) by striking “under section*  
 7                           *702(i)(3)” and inserting “under section*  
 8                           *702(j)(3)”;* *and*

9                           *(ii) by striking “of section 702(i)(4)”*  
 10                           *and inserting “of section 702(j)(4)”;*

11                   *(B) in subsection (b)—*

12                           *(i) in paragraph (3)—*

13                                   *(I) in subparagraph (A), by strik-*  
 14                                   *ing “to section 702(h)” and inserting*  
 15                                   *“to section 702(i)”;* *and*

16                           *(II) in subparagraph (B)—*

17                                   *(aa) by striking “section*  
 18                                   *702(h)(3) of” and inserting “sec-*  
 19                                   *tion 702(i)(3) of”;* *and*

20                                   *(bb) by striking “to section*  
 21                                   *702(h)” and inserting “to section*  
 22                                   *702(i)”;* *and*

23                           *(ii) in paragraph (4)—*

1                   (I) in subparagraph (A), by strik-  
 2                   ing “and sections 702(l)” and insert-  
 3                   ing “and sections 702(m)”; and  
 4                   (II) in subparagraph (B)(iv), by  
 5                   striking “or section 702(l)” and insert-  
 6                   ing “or section 702(m)”.

7 **SEC. 102. USE AND DISCLOSURE PROVISIONS.**

8           (a) *END USE RESTRICTION.*—Section 706(a) (50  
 9 U.S.C. 1881e(a)) is amended—

10                   (1) by striking “Information acquired” and in-  
 11                   serting the following:

12                   “(1) *IN GENERAL.*—Information acquired”; and  
 13                   (2) by adding at the end the following:

14                   “(2) *UNITED STATES PERSONS.*—

15                   “(A) *IN GENERAL.*—Any information con-  
 16                   cerning a United States person acquired under  
 17                   section 702 shall not be used in evidence against  
 18                   that United States person pursuant to para-  
 19                   graph (1) in any criminal proceeding unless—

20                   “(i) the Federal Bureau of Investiga-  
 21                   tion obtained an order of the Foreign Intel-  
 22                   ligence Surveillance Court to access such in-  
 23                   formation pursuant to section 702(f)(2); or

24                   “(ii) the Attorney General determines  
 25                   that—

1           “(I) the criminal proceeding af-  
2 fects, involves, or is related to the na-  
3 tional security of the United States; or

4           “(II) the criminal proceeding in-  
5 volves—

6                   “(aa) death;

7                   “(bb) kidnapping;

8                   “(cc) serious bodily injury,  
9 as defined in section 1365 of title  
10 18, United States Code;

11                   “(dd) conduct that con-  
12 stitutes a criminal offense that is  
13 a specified offense against a  
14 minor, as defined in section 111  
15 of the Adam Walsh Child Protec-  
16 tion and Safety Act of 2006 (34  
17 U.S.C. 20911);

18                   “(ee) incapacitation or de-  
19 struction of critical infrastruc-  
20 ture, as defined in section 1016(e)  
21 of the USA PATRIOT Act (42  
22 U.S.C. 5195c(e));

23                   “(ff) cybersecurity, including  
24 conduct described in section  
25 1016(e) of the USA PATRIOT



1                   Act (42 U.S.C. 5195c(e)) or sec-  
 2                   tion 1029, 1030, or 2511 of title  
 3                   18, United States Code;

4                   “(gg) transnational crime,  
 5                   including transnational narcotics  
 6                   trafficking and transnational or-  
 7                   ganized crime; or

8                   “(hh) human trafficking.

9                   “(B) NO JUDICIAL REVIEW.—A determina-  
 10                  tion by the Attorney General under subpara-  
 11                  graph (A)(ii) is not subject to judicial review.”.

12               (b) INTELLIGENCE COMMUNITY DISCLOSURE PROVI-  
 13               SION.—Section 603 (50 U.S.C. 1873) is amended—

14               (1) in subsection (b)—

15               (A) in paragraph (1), by striking “good  
 16               faith estimate of the number of targets of such  
 17               orders;” and inserting the following: “good faith  
 18               estimate of—

19               “(A) the number of targets of such orders;

20               “(B) the number of targets of such orders  
 21               who are known to not be United States persons;  
 22               and

23               “(C) the number of targets of such orders  
 24               who are known to be United States persons;”;

25               (B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting “, including pursuant to subsection (f)(2) of such section,” after “section 702”;

(ii) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(iii) by inserting before subparagraph (B), as so redesignated, the following:

“(A) the number of targets of such orders;”;

(iv) in subparagraph (B), as so redesignated, by striking “and” at the end; and

(v) by adding at the end the following:

“(D) the number of instances in which the Federal Bureau of Investigation opened, under the Criminal Investigative Division or any successor division, an investigation of a United States person (who is not considered a threat to national security) based wholly or in part on an acquisition authorized under such section;”;

(C) in paragraph (3)(A), by striking “orders; and” and inserting the following: “orders, including—

1                   “(i) the number of targets of such or-  
 2                   ders who are known to not be United States  
 3                   persons; and

4                   “(ii) the number of targets of such or-  
 5                   ders who are known to be United States  
 6                   persons; and”;

7                   (D) by redesignating paragraphs (4), (5),  
 8                   and (6) as paragraphs (5), (6), and (7), respec-  
 9                   tively; and

10                  (E) by inserting after paragraph (3) the fol-  
 11                  lowing:

12                  “(4) the number of criminal proceedings in  
 13                  which the United States or a State or political sub-  
 14                  division thereof provided notice pursuant to sub-  
 15                  section (c) or (d) of section 106 (including with re-  
 16                  spect to information acquired from an acquisition  
 17                  conducted under section 702) or subsection (d) or (e)  
 18                  of section 305 of the intent of the government to enter  
 19                  into evidence or otherwise use or disclose any infor-  
 20                  mation obtained or derived from electronic surveil-  
 21                  lance, physical search, or an acquisition conducted  
 22                  pursuant to this Act;”;

23                  (2) in subsection (d)—

24                         (A) in paragraph (1), by striking “(4), or  
 25                         (5)” and inserting “(5), or (6)”;

1                   (B) in paragraph (2)(A)—

2                   (i) by striking “Paragraphs (2)(A),  
3                   (2)(B), and (5)(C)” and inserting “Para-  
4                   graphs (2)(B), (2)(C), and (6)(C)”; and

5                   (ii) by inserting before the period at  
6                   the end the following: “, except with respect  
7                   to information required under paragraph  
8                   (2) relating to orders issued under section  
9                   702(f)(2)”; and

10                  (C) in paragraph (3)(A), in the matter pre-  
11                  ceding clause (i), by striking “subsection  
12                  (b)(2)(B)” and inserting “subsection (b)(2)(C)”.

13 **SEC. 103. CONGRESSIONAL REVIEW AND OVERSIGHT OF**  
14 **ABOUTS COLLECTION.**

15                  (a) *IN GENERAL.*—Section 702(b) (50 U.S.C.  
16 1881a(b)) is amended—

17                  (1) in paragraph (4), by striking “and” at the  
18                  end;

19                  (2) by redesignating paragraph (5) as para-  
20                  graph (6); and

21                  (3) by inserting after paragraph (4) the fol-  
22                  lowing:

23                  “(5) may not intentionally acquire communica-  
24                  tions that contain a reference to, but are not to or  
25                  from, a target of an acquisition authorized under sub-

1        *section (a), except as provided under section 103(b) of*  
 2        *the FISA Amendments Reauthorization Act of 2017;*  
 3        *and”.*

4        *(b) CONGRESSIONAL REVIEW AND OVERSIGHT OF*  
 5        *ABOUTS COLLECTION.—*

6                *(1) DEFINITIONS.—In this subsection:*

7                        *(A) The term “abouts communication”*  
 8                        *means a communication that contains a ref-*  
 9                        *erence to, but is not to or from, a target of an*  
 10                        *acquisition authorized under section 702(a) of*  
 11                        *the Foreign Intelligence Surveillance Act of 1978*  
 12                        *(50 U.S.C. 1881a(a)).*

13                        *(B) The term “material breach” means sig-*  
 14                        *nificant noncompliance with applicable law or*  
 15                        *an order of the Foreign Intelligence Surveillance*  
 16                        *Court concerning any acquisition of abouts com-*  
 17                        *munications.*

18                *(2) SUBMISSION TO CONGRESS.—*

19                        *(A) REQUIREMENT.—Notwithstanding any*  
 20                        *other provision of law, and except as provided in*  
 21                        *paragraph (4), if the Attorney General and the*  
 22                        *Director of National Intelligence intend to im-*  
 23                        *plement the authorization of the intentional ac-*  
 24                        *quisition of abouts communications, before the*  
 25                        *first such implementation after the date of enact-*

1        *ment of this Act, the Attorney General and the*  
2        *Director of National Intelligence shall submit to*  
3        *the Committee on the Judiciary and the Select*  
4        *Committee on Intelligence of the Senate and the*  
5        *Committee on the Judiciary and the Permanent*  
6        *Select Committee on Intelligence of the House of*  
7        *Representatives a written notice of the intent to*  
8        *implement the authorization of such an acquisi-*  
9        *tion, and any supporting materials in accord-*  
10       *ance with this subsection.*

11            (B) CONGRESSIONAL REVIEW PERIOD.—  
12        *During the 30-day period beginning on the date*  
13        *written notice is submitted under subparagraph*  
14        *(A), the Committee on the Judiciary and the Se-*  
15        *lect Committee on Intelligence of the Senate and*  
16        *the Committee on the Judiciary and the Perma-*  
17        *nent Select Committee on Intelligence of the*  
18        *House of Representatives shall, as appropriate,*  
19        *hold hearings and briefings and otherwise obtain*  
20        *information in order to fully review the written*  
21        *notice.*

22            (C) LIMITATION ON ACTION DURING CON-  
23        *GRESSIONAL REVIEW PERIOD.—Notwithstanding*  
24        *any other provision of law, and subject to para-*  
25        *graph (4), unless the Attorney General and the*

1        *Director of National Intelligence make a deter-*  
2        *mination pursuant to section 702(c)(2) of the*  
3        *Foreign Intelligence Surveillance Act of 1978 (50*  
4        *U.S.C. 1881a(c)(2)), the Attorney General and*  
5        *the Director of National Intelligence may not*  
6        *implement the authorization of the intentional*  
7        *acquisition of abouts communications before the*  
8        *end of the period described in subparagraph (B).*

9        (3) *WRITTEN NOTICE.*—Written notice under  
10       *paragraph (2)(A) shall include the following:*

11            (A) *A copy of any certification submitted to*  
12            *the Foreign Intelligence Surveillance Court pur-*  
13            *suant to section 702 of the Foreign Intelligence*  
14            *Surveillance Act of 1978 (50 U.S.C. 1881a), or*  
15            *amendment thereto, authorizing the intentional*  
16            *acquisition of abouts communications, including*  
17            *all affidavits, procedures, exhibits, and attach-*  
18            *ments submitted therewith.*

19            (B) *The decision, order, or opinion of the*  
20            *Foreign Intelligence Surveillance Court approv-*  
21            *ing such certification, and any pleadings, appli-*  
22            *cations, or memoranda of law associated with*  
23            *such decision, order, or opinion.*

24            (C) *A summary of the protections in place*  
25            *to detect any material breach.*

1           (D) *Data or other results of modeling, sim-*  
 2           *ulation, or auditing of sample data dem-*  
 3           *onstrating that any acquisition method involving*  
 4           *the intentional acquisition of abouts communica-*  
 5           *tions shall be conducted in accordance with title*  
 6           *VII of the Foreign Intelligence Surveillance Act*  
 7           *of 1978 (50 U.S.C. 1881 et seq.), if such data or*  
 8           *other results exist at the time the written notice*  
 9           *is submitted and were provided to the Foreign*  
 10          *Intelligence Surveillance Court.*

11          (E) *Except as provided under paragraph*  
 12          *(4), a statement that no acquisition authorized*  
 13          *under subsection (a) of such section 702 shall in-*  
 14          *clude the intentional acquisition of an abouts*  
 15          *communication until after the end of the 30-day*  
 16          *period described in paragraph (2)(B).*

17          (4) *EXCEPTION FOR EMERGENCY ACQUISITION.—*

18          (A) *NOTICE OF DETERMINATION.—If the At-*  
 19          *torney General and the Director of National In-*  
 20          *telligence make a determination pursuant to sec-*  
 21          *tion 702(c)(2) of the Foreign Intelligence Sur-*  
 22          *veillance Act of 1978 (50 U.S.C. 1881a(c)(2))*  
 23          *with respect to the intentional acquisition of*  
 24          *abouts communications, the Attorney General*  
 25          *and the Director of National Intelligence shall*



1       *notify the Committee on the Judiciary and the*  
2       *Select Committee on Intelligence of the Senate*  
3       *and the Committee on the Judiciary and the*  
4       *Permanent Select Committee on Intelligence of*  
5       *the House of Representatives as soon as prac-*  
6       *ticable, but not later than 7 days after the deter-*  
7       *mination is made.*

8               *(B) IMPLEMENTATION OR CONTINUATION.—*

9               *(i) IN GENERAL.—If the Foreign Intel-*  
10       *ligence Surveillance Court approves a cer-*  
11       *tification that authorizes the intentional ac-*  
12       *quisition of abouts communications before*  
13       *the end of the 30-day period described in*  
14       *paragraph (2)(B), the Attorney General and*  
15       *the Director of National Intelligence may*  
16       *authorize the immediate implementation or*  
17       *continuation of that certification if the At-*  
18       *torney General and the Director of National*  
19       *Intelligence jointly determine that exigent*  
20       *circumstances exist such that without such*  
21       *immediate implementation or continuation*  
22       *intelligence important to the national secu-*  
23       *rity of the United States may be lost or not*  
24       *timely acquired.*

1                   (ii) NOTICE.—*The Attorney General*  
 2                   *and the Director of National Intelligence*  
 3                   *shall submit to the Committee on the Judi-*  
 4                   *ciary and the Select Committee on Intel-*  
 5                   *ligence of the Senate and the Committee on*  
 6                   *the Judiciary and the Permanent Select*  
 7                   *Committee on Intelligence of the House of*  
 8                   *Representatives notification of a determina-*  
 9                   *tion pursuant to clause (i) as soon as prac-*  
 10                   *ticable, but not later than 3 days after the*  
 11                   *determination is made.*

12                   (5) REPORTING OF MATERIAL BREACH.—*Sub-*  
 13                   *section (m) of section 702 (50 U.S.C. 1881a), as re-*  
 14                   *designated by section 101, is amended—*

15                   (A) *in the heading by striking “AND RE-*  
 16                   *VIEWS” and inserting “REVIEWS, AND REPORT-*  
 17                   *ING”;* and

18                   (B) *by adding at the end the following new*  
 19                   *paragraph:*

20                   “(4) REPORTING OF MATERIAL BREACH.—

21                   “(A) IN GENERAL.—*The head of each ele-*  
 22                   *ment of the intelligence community involved in*  
 23                   *the acquisition of abouts communications shall*  
 24                   *fully and currently inform the Committees on*  
 25                   *the Judiciary of the House of Representatives*

1           *and the Senate and the congressional intelligence*  
 2           *committees of a material breach.*

3           “(B) *DEFINITIONS.—In this paragraph:*

4                   “(i) *The term ‘abouts communication’*  
 5                   *means a communication that contains a*  
 6                   *reference to, but is not to or from, a target*  
 7                   *of an acquisition authorized under sub-*  
 8                   *section (a).*

9                   “(ii) *The term ‘material breach’ means*  
 10                   *significant noncompliance with applicable*  
 11                   *law or an order of the Foreign Intelligence*  
 12                   *Surveillance Court concerning any acquisi-*  
 13                   *tion of abouts communications.’.*

14           (6) *APPOINTMENT OF AMICI CURIAE BY FOREIGN*  
 15           *INTELLIGENCE SURVEILLANCE COURT.—For purposes*  
 16           *of section 103(i)(2)(A) of the Foreign Intelligence*  
 17           *Surveillance Act of 1978 (50 U.S.C. 1803(i)(2)(A)),*  
 18           *the Foreign Intelligence Surveillance Court shall treat*  
 19           *the first certification under section 702(h) of such Act*  
 20           *(50 U.S.C. 1881a(h)) or amendment thereto that au-*  
 21           *thorizes the acquisition of abouts communications as*  
 22           *presenting a novel or significant interpretation of the*  
 23           *law, unless the court determines otherwise.*

1 **SEC. 104. PUBLICATION OF MINIMIZATION PROCEDURES**  
 2 **UNDER SECTION 702.**

3 *Section 702(e) (50 U.S.C. 1881a(e)) is amended by*  
 4 *adding at the end the following new paragraph:*

5 “(3) *PUBLICATION.*—*The Director of National*  
 6 *Intelligence, in consultation with the Attorney Gen-*  
 7 *eral, shall—*

8 *“(A) conduct a declassification review of*  
 9 *any minimization procedures adopted or amend-*  
 10 *ed in accordance with paragraph (1); and*

11 *“(B) consistent with such review, and not*  
 12 *later than 180 days after conducting such re-*  
 13 *view, make such minimization procedures pub-*  
 14 *licly available to the greatest extent practicable,*  
 15 *which may be in redacted form.”.*

16 **SEC. 105. SECTION 705 EMERGENCY PROVISION.**

17 *Section 705 (50 U.S.C. 1881d) is amended by adding*  
 18 *at the end the following:*

19 “(c) *EMERGENCY AUTHORIZATION.*—

20 *“(1) CONCURRENT AUTHORIZATION.*—*If the At-*  
 21 *torney General authorized the emergency employment*  
 22 *of electronic surveillance or a physical search pursu-*  
 23 *ant to section 105 or 304, the Attorney General may*  
 24 *authorize, for the effective period of the emergency au-*  
 25 *thorization and subsequent order pursuant to section*  
 26 *105 or 304, without a separate order under section*

1       703 or 704, the targeting of a United States person  
 2       subject to such emergency employment for the purpose  
 3       of acquiring foreign intelligence information while  
 4       such United States person is reasonably believed to be  
 5       located outside the United States.

6               “(2) *USE OF INFORMATION.*—If an application  
 7       submitted to the Court pursuant to section 104 or 303  
 8       is denied, or in any other case in which the acquisi-  
 9       tion pursuant to paragraph (1) is terminated and no  
 10      order with respect to the target of the acquisition is  
 11      issued under section 105 or 304, all information ob-  
 12      tained or evidence derived from such acquisition shall  
 13      be handled in accordance with section 704(d)(4).”.

14 **SEC. 106. COMPENSATION OF AMICI CURIAE AND TECH-**  
 15 **NICAL EXPERTS.**

16       Subsection (i) of section 103 (50 U.S.C. 1803) is  
 17       amended by adding at the end the following:

18               “(11) *COMPENSATION.*—Notwithstanding any  
 19      other provision of law, a court established under sub-  
 20      section (a) or (b) may compensate an amicus curiae  
 21      appointed under paragraph (2) for assistance pro-  
 22      vided under such paragraph as the court considers  
 23      appropriate and at such rate as the court considers  
 24      appropriate.”.

1 **SEC. 107. ADDITIONAL REPORTING REQUIREMENTS.**

2 (a) *ELECTRONIC SURVEILLANCE.*—Section 107 (50  
3 *U.S.C. 1807*) is amended to read as follows:

4 **“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.**

5 “(a) *ANNUAL REPORT.*—In April of each year, the At-  
6 torney General shall transmit to the Administrative Office  
7 of the United States Courts and to the congressional intel-  
8 ligence committees and the Committees on the Judiciary of  
9 the House of Representatives and the Senate a report setting  
10 forth with respect to the preceding calendar year—

11 “(1) the total number of applications made for  
12 orders and extensions of orders approving electronic  
13 surveillance under this title;

14 “(2) the total number of such orders and exten-  
15 sions either granted, modified, or denied; and

16 “(3) the total number of subjects targeted by elec-  
17 tronic surveillance conducted under an order or emer-  
18 gency authorization under this title, rounded to the  
19 nearest 500, including the number of such individuals  
20 who are United States persons, reported to the nearest  
21 band of 500, starting with 0–499.

22 “(b) *FORM.*—Each report under subsection (a) shall  
23 be submitted in unclassified form, to the extent consistent  
24 with national security. Not later than 7 days after the date  
25 on which the Attorney General submits each such report,  
26 the Attorney General shall make the report publicly avail-

1 *able, or, if the Attorney General determines that the report*  
 2 *cannot be made publicly available consistent with national*  
 3 *security, the Attorney General may make publicly available*  
 4 *an unclassified summary of the report or a redacted version*  
 5 *of the report.”.*

6 *(b) PEN REGISTERS AND TRAP AND TRACE DE-*  
 7 *VICES.—Section 406 (50 U.S.C. 1846) is amended—*

8 *(1) in subsection (b)—*

9 *(A) in paragraph (4), by striking “; and”*  
 10 *and inserting a semicolon;*

11 *(B) in paragraph (5), by striking the period*  
 12 *at the end and inserting “; and”; and*

13 *(C) by adding at the end the following new*  
 14 *paragraph:*

15 *“(6) a good faith estimate of the total number of*  
 16 *subjects who were targeted by the installation and use*  
 17 *of a pen register or trap and trace device under an*  
 18 *order or emergency authorization issued under this*  
 19 *title, rounded to the nearest 500, including—*

20 *“(A) the number of such subjects who are*  
 21 *United States persons, reported to the nearest*  
 22 *band of 500, starting with 0–499; and*

23 *“(B) of the number of United States persons*  
 24 *described in subparagraph (A), the number of*  
 25 *persons whose information acquired pursuant to*

1           *such order was reviewed or accessed by a Federal*  
 2           *officer, employee, or agent, reported to the near-*  
 3           *est band of 500, starting with 0–499.”; and*  
 4           *(2) by adding at the end the following new sub-*  
 5           *section:*

6           “(c) *Each report under subsection (b) shall be sub-*  
 7           *mitted in unclassified form, to the extent consistent with*  
 8           *national security. Not later than 7 days after the date on*  
 9           *which the Attorney General submits such a report, the At-*  
 10           *torney General shall make the report publicly available, or,*  
 11           *if the Attorney General determines that the report cannot*  
 12           *be made publicly available consistent with national secu-*  
 13           *rity, the Attorney General may make publicly available an*  
 14           *unclassified summary of the report or a redacted version*  
 15           *of the report.”.*

16   **SEC. 108. IMPROVEMENTS TO PRIVACY AND CIVIL LIB-**  
 17           **ERTIES OVERSIGHT BOARD.**

18           *(a) APPOINTMENT OF STAFF.—Subsection (j) of sec-*  
 19           *tion 1061 of the Intelligence Reform and Terrorism Preven-*  
 20           *tion Act of 2004 (42 U.S.C. 2000ee(j)) is amended—*

21                   *(1) by redesignating paragraphs (2) and (3) as*  
 22                   *paragraphs (3) and (4), respectively; and*

23                   *(2) by inserting after paragraph (1) the fol-*  
 24                   *lowing new paragraph:*



1           “(2) *APPOINTMENT IN ABSENCE OF CHAIRMAN.*—  
 2       *If the position of chairman of the Board is vacant,*  
 3       *during the period of the vacancy, the Board, at the*  
 4       *direction of the unanimous vote of the serving mem-*  
 5       *bers of the Board, may exercise the authority of the*  
 6       *chairman under paragraph (1).’*”.

7       (b) *MEETINGS.*—Subsection (f) of such section (42  
 8 *U.S.C. 2000ee(f)) is amended—*

9           (1) *by striking “The Board shall” and inserting*  
 10       *“The Board”;*

11           (2) *in paragraph (1) by striking “make its” and*  
 12       *inserting “shall make its”; and*

13           (3) *in paragraph (2)—*

14           (A) *by striking “hold public” and inserting*  
 15       *“shall hold public”; and*

16           (B) *by inserting before the period at the end*  
 17       *the following: “, but may, notwithstanding sec-*  
 18       *tion 552b of title 5, United States Code, meet or*  
 19       *otherwise communicate in any number to confer*  
 20       *or deliberate in a manner that is closed to the*  
 21       *public”.*

22   **SEC. 109. PRIVACY AND CIVIL LIBERTIES OFFICERS.**

23       *Section 1062(a) of the Intelligence Reform and Ter-*  
 24       *rorism Prevention Act of 2004 (42 U.S.C. 2000ee–1(a)) is*  
 25       *amended by inserting “, the Director of the National Secu-*

1 rity Agency, the Director of the Federal Bureau of Inves-  
 2 tigation” after “the Director of the Central Intelligence  
 3 Agency”.

4 **SEC. 110. WHISTLEBLOWER PROTECTIONS FOR CONTRAC-**  
 5 **TORS OF THE INTELLIGENCE COMMUNITY.**

6 (a) *PROHIBITED PERSONNEL PRACTICES IN THE IN-*  
 7 *TELLIGENCE COMMUNITY.*—Section 1104 of the National  
 8 Security Act of 1947 (50 U.S.C. 3234) is amended—

9 (1) in subsection (a)—

10 (A) in paragraph (3), by inserting “or a  
 11 contractor employee” after “character”); and

12 (B) by adding at the end the following new  
 13 paragraph:

14 “(4) *CONTRACTOR EMPLOYEE.*—The term ‘con-  
 15 tractor employee’ means an employee of a contractor,  
 16 subcontractor, grantee, subgrantee, or personal serv-  
 17 ices contractor, of a covered intelligence community  
 18 element.”;

19 (2) by redesignating subsections (c) and (d) as  
 20 subsections (d) and (e), respectively;

21 (3) by inserting after subsection (b) the following  
 22 new subsection (c):

23 “(c) *CONTRACTOR EMPLOYEES.*—(1) Any employee of  
 24 a contractor, subcontractor, grantee, subgrantee, or personal  
 25 services contractor, of a covered intelligence community ele-

1 *ment who has authority to take, direct others to take, rec-*  
 2 *ommend, or approve any personnel action, shall not, with*  
 3 *respect to such authority, take or fail to take a personnel*  
 4 *action with respect to any contractor employee as a reprisal*  
 5 *for a lawful disclosure of information by the contractor em-*  
 6 *ployee to the Director of National Intelligence (or an em-*  
 7 *ployee designated by the Director of National Intelligence*  
 8 *for such purpose), the Inspector General of the Intelligence*  
 9 *Community, the head of the contracting agency (or an em-*  
 10 *ployee designated by the head of that agency for such pur-*  
 11 *pose), the appropriate inspector general of the contracting*  
 12 *agency, a congressional intelligence committee, or a member*  
 13 *of a congressional intelligence committee, which the con-*  
 14 *tractor employee reasonably believes evidences—*

15           “(A) *a violation of any Federal law, rule, or reg-*  
 16           *ulation (including with respect to evidence of another*  
 17           *employee or contractor employee accessing or sharing*  
 18           *classified information without authorization); or*

19           “(B) *gross mismanagement, a gross waste of*  
 20           *funds, an abuse of authority, or a substantial and*  
 21           *specific danger to public health or safety.*

22           “(2) *A personnel action under paragraph (1) is pro-*  
 23 *hibited even if the action is undertaken at the request of*  
 24 *an agency official, unless the request takes the form of a*

1 *nondiscretionary directive and is within the authority of*  
 2 *the agency official making the request.”;*

3 *(4) in subsection (b), by striking the heading and*  
 4 *inserting “AGENCY EMPLOYEES.—”; and*

5 *(5) in subsection (e), as redesignated by para-*  
 6 *graph (2), by inserting “contractor employee,” after*  
 7 *“any employee,”.*

8 *(b) FEDERAL BUREAU OF INVESTIGATION.—*

9 *(1) IN GENERAL.—Any employee of a contractor,*  
 10 *subcontractor, grantee, subgrantee, or personal serv-*  
 11 *ices contractor, of the Federal Bureau of Investigation*  
 12 *who has authority to take, direct others to take, rec-*  
 13 *ommend, or approve any personnel action, shall not,*  
 14 *with respect to such authority, take or fail to take a*  
 15 *personnel action with respect to a contractor employee*  
 16 *as a reprisal for a disclosure of information—*

17 *(A) made—*

18 *(i) to a supervisor in the direct chain*  
 19 *of command of the contractor employee;*

20 *(ii) to the Inspector General;*

21 *(iii) to the Office of Professional Re-*  
 22 *sponsibility of the Department of Justice;*

23 *(iv) to the Office of Professional Re-*  
 24 *sponsibility of the Federal Bureau of Inves-*  
 25 *tigation;*

(v) to the Inspection Division of the  
Federal Bureau of Investigation;

(vi) to the Office of Special Counsel; or

(vii) to an employee designated by any  
officer, employee, office, or division de-  
scribed in clauses (i) through (vii) for the  
purpose of receiving such disclosures; and

(B) which the contractor employee reason-  
ably believes evidences—

(i) any violation of any law, rule, or  
regulation (including with respect to evi-  
dence of another employee or contractor em-  
ployee accessing or sharing classified infor-  
mation without authorization); or

(ii) gross mismanagement, a gross  
waste of funds, an abuse of authority, or a  
substantial and specific danger to public  
health or safety.

(2) *ACTIONS BY REQUEST.*—A personnel action  
under paragraph (1) is prohibited even if the action  
is undertaken at the request of an official of the Fed-  
eral Bureau of Investigation, unless the request takes  
the form of a nondiscretionary directive and is within  
the authority of the official making the request.

1           (3) *REGULATIONS.*—*The Attorney General shall*  
 2           *prescribe regulations to ensure that a personnel action*  
 3           *described in paragraph (1) shall not be taken against*  
 4           *a contractor employee of the Federal Bureau of Inves-*  
 5           *tigation as a reprisal for any disclosure of informa-*  
 6           *tion described in subparagraph (A) of such para-*  
 7           *graph.*

8           (4) *ENFORCEMENT.*—*The President shall provide*  
 9           *for the enforcement of this subsection.*

10          (5) *DEFINITIONS.*—*In this subsection:*

11               (A) *The term “contractor employee” means*  
 12               *an employee of a contractor, subcontractor,*  
 13               *grantee, subgrantee, or personal services con-*  
 14               *tractor, of the Federal Bureau of Investigation.*

15               (B) *The term “personnel action” means any*  
 16               *action described in clauses (i) through (x) of sec-*  
 17               *tion 2302(a)(2)(A) of title 5, United States Code,*  
 18               *with respect to a contractor employee.*

19          (c) *RETALIATORY REVOCATION OF SECURITY CLEAR-*  
 20          *ANCES AND ACCESS DETERMINATIONS.*—*Section 3001(j) of*  
 21          *the Intelligence Reform and Terrorism Prevention Act of*  
 22          *2004 (50 U.S.C. 3341(j)) is amended by adding at the end*  
 23          *the following new paragraph:*

24               “(8) *INCLUSION OF CONTRACTOR EMPLOYEES.*—  
 25          *In this subsection, the term ‘employee’ includes an*

1        *employee of a contractor, subcontractor, grantee, sub-*  
 2        *grantee, or personal services contractor, of an agency.*  
 3        *With respect to such employees, the term ‘employing*  
 4        *agency’ shall be deemed to be the contracting agen-*  
 5        *cy.’”.*

6        **SEC. 111. BRIEFING ON NOTIFICATION REQUIREMENTS.**

7        *Not later than 180 days after the date of the enactment*  
 8        *of this Act, the Attorney General, in consultation with the*  
 9        *Director of National Intelligence, shall provide to the Com-*  
 10       *mittee on the Judiciary and the Permanent Select Com-*  
 11       *mittee on Intelligence of the House of Representatives and*  
 12       *the Committee on the Judiciary and the Select Committee*  
 13       *on Intelligence of the Senate a briefing with respect to how*  
 14       *the Department of Justice interprets the requirements under*  
 15       *sections 106(c), 305(d), and 405(c) of the Foreign Intel-*  
 16       *ligence Surveillance Act of 1978 (50 U.S.C. 1806(c),*  
 17       *1825(d), and 1845(c)) to notify an aggrieved person under*  
 18       *such sections of the use of information obtained or derived*  
 19       *from electronic surveillance, physical search, or the use of*  
 20       *a pen register or trap and trace device. The briefing shall*  
 21       *focus on how the Department interprets the phrase “ob-*  
 22       *tained or derived from” in such sections.*

1 **SEC. 112. INSPECTOR GENERAL REPORT ON QUERIES CON-**  
2 **DUCTED BY FEDERAL BUREAU OF INVESTIGA-**  
3 **TION.**

4       (a) *REPORT.*—Not later than 1 year after the date on  
5 which the Foreign Intelligence Surveillance Court first ap-  
6 proves the querying procedures adopted pursuant to section  
7 702(f) of the Foreign Intelligence Surveillance Act of 1978  
8 (50 U.S.C. 1881a(f)), as added by section 101, the Inspector  
9 General of the Department of Justice shall submit to the  
10 Committee on the Judiciary and the Select Committee on  
11 Intelligence of the Senate and the Committee on the Judici-  
12 ary and the Permanent Select Committee on Intelligence  
13 of the House of Representatives a report containing a re-  
14 view by the Inspector General of the interpretation of, and  
15 compliance with, such procedures by the Federal Bureau  
16 of Investigation.

17       (b) *MATTERS INCLUDED.*—The report under subsection  
18 (a) shall include, at a minimum, an assessment of the fol-  
19 lowing:

20               (1) *The interpretations by the Federal Bureau of*  
21 *Investigation and the National Security Division of*  
22 *the Department of Justice, respectively, relating to the*  
23 *querying procedures adopted under subsection (f) of*  
24 *section 702 of the Foreign Intelligence Surveillance*  
25 *Act of 1978 (50 U.S.C. 1881a(f)), as added by section*  
26 *101.*



1           (2) *The handling by the Federal Bureau of In-*  
2           *vestigation of individuals whose citizenship status is*  
3           *unknown at the time of a query conducted under such*  
4           *section 702.*

5           (3) *The practice of the Federal Bureau of Inves-*  
6           *tigation with respect to retaining records of queries*  
7           *conducted under such section 702 for auditing pur-*  
8           *poses.*

9           (4) *The training or other processes of the Federal*  
10          *Bureau of Investigation to ensure compliance with*  
11          *such querying procedures.*

12          (5) *The implementation of such querying proce-*  
13          *dures with respect to queries conducted when evalu-*  
14          *ating whether to open an assessment or predicated in-*  
15          *vestigation relating to the national security of the*  
16          *United States.*

17          (6) *The scope of access by the criminal division*  
18          *of the Federal Bureau of Investigation to information*  
19          *obtained pursuant to the Foreign Intelligence Surveil-*  
20          *lance Act of 1978 (50 U.S.C. 1801 et seq.), including*  
21          *with respect to information acquired under subsection*  
22          *(a) of such section 702 based on queries conducted by*  
23          *the criminal division.*

24          (7) *The frequency and nature of the reviews con-*  
25          *ducted by the National Security Division of the De-*

1        *partment of Justice and the Office of the Director of*  
2        *National Intelligence relating to the compliance by*  
3        *the Federal Bureau of Investigation with such*  
4        *querying procedures.*

5            *(8) Any impediments, including operational,*  
6        *technical, or policy impediments, for the Federal Bu-*  
7        *reau of Investigation to count—*

8            *(A) the total number of queries where the*  
9        *Federal Bureau of Investigation subsequently*  
10       *accessed information acquired under subsection*  
11       *(a) of such section 702;*

12           *(B) the total number of such queries that*  
13       *used known United States person identifiers; and*

14           *(C) the total number of queries for which*  
15       *the Federal Bureau of Investigation received an*  
16       *order of the Foreign Intelligence Surveillance*  
17       *Court pursuant to subsection (f)(2) of such sec-*  
18       *tion 702.*

19        *(c) FORM.—The report under subsection (a) shall be*  
20       *submitted in unclassified form to the extent consistent with*  
21       *national security, but may include a classified annex.*

1 **TITLE II—EXTENSION OF AU-**  
 2 **THORITIES, INCREASED PEN-**  
 3 **ALTIES, REPORTS, AND**  
 4 **OTHER MATTERS**

5 **SEC. 201. EXTENSION OF TITLE VII OF FISA; EFFECTIVE**  
 6 **DATES.**

7 (a) *EXTENSION.*—Section 403(b) of the *FISA Amend-*  
 8 *ments Act of 2008* (Public Law 110–261; 122 Stat. 2474)  
 9 *is amended—*

10 (1) *in paragraph (1)—*

11 (A) *by striking “December 31, 2017” and*  
 12 *inserting “December 31, 2023”; and*

13 (B) *by inserting “and by the FISA Amend-*  
 14 *ments Reauthorization Act of 2017” after “sec-*  
 15 *tion 101(a)”;* and

16 (2) *in paragraph (2) in the matter preceding*  
 17 *subparagraph (A), by striking “December 31, 2017”*  
 18 *and inserting “December 31, 2023”.*

19 (b) *CONFORMING AMENDMENTS.*—Section 404(b) of the  
 20 *FISA Amendments Act of 2008* (Public Law 110–261; 122  
 21 *Stat. 2476), as amended by section 101, is further amend-*  
 22 *ed—*

23 (1) *in paragraph (1)—*

1           (A) in the heading, by striking “DECEMBER  
2           31, 2017” and inserting “DECEMBER 31, 2023”;  
3           and

4           (B) by inserting “and by the FISA Amend-  
5           ments Reauthorization Act of 2017” after “sec-  
6           tion 101(a)”;

7           (2) in paragraph (2), by inserting “and by the  
8           FISA Amendments Reauthorization Act of 2017”  
9           after “section 101(a)”; and  
10          (3) in paragraph (4)—

11           (A) by inserting “and amended by the  
12           FISA Amendments Reauthorization Act of 2017”  
13           after “as added by section 101(a)” both places it  
14           appears; and

15           (B) by inserting “and by the FISA Amend-  
16           ments Reauthorization Act of 2017” after “as  
17           amended by section 101(a)” both places it ap-  
18           pears.

19          (c) *EFFECTIVE DATE OF AMENDMENTS TO FAA.*—The  
20          amendments made to the FISA Amendments Act of 2008  
21          (Public Law 110–261) by this section shall take effect on  
22          December 31, 2017.

1 **SEC. 202. INCREASED PENALTY FOR UNAUTHORIZED RE-**  
 2 **MOVAL AND RETENTION OF CLASSIFIED DOC-**  
 3 **UMENTS OR MATERIAL.**

4 *Section 1924(a) of title 18, United States Code, is*  
 5 *amended by striking “one year” and inserting “five years”.*

6 **SEC. 203. REPORT ON CHALLENGES TO THE EFFECTIVE-**  
 7 **NESS OF FOREIGN INTELLIGENCE SURVEIL-**  
 8 **LANCE.**

9 *(a) REPORT.—Not later than 270 days after the date*  
 10 *of the enactment of this Act, the Attorney General, in co-*  
 11 *ordination with the Director of National Intelligence, shall*  
 12 *submit to the Committee on the Judiciary and the Perma-*  
 13 *nent Select Committee on Intelligence of the House of Rep-*  
 14 *resentatives and the Committee on the Judiciary and the*  
 15 *Select Committee on Intelligence of the Senate a report on*  
 16 *current and future challenges to the effectiveness of the for-*  
 17 *eign intelligence surveillance activities of the United States*  
 18 *authorized under the Foreign Intelligence Surveillance Act*  
 19 *of 1978 (50 U.S.C. 1801 et seq.).*

20 *(b) MATTERS INCLUDED.—The report under subsection*  
 21 *(a) shall include, at a minimum, the following:*

22 *(1) A discussion of any trends that currently*  
 23 *challenge the effectiveness of the foreign intelligence*  
 24 *surveillance activities of the United States, or could*  
 25 *foreseeably challenge such activities during the decade*

1 following the date of the report, including with respect  
2 to—

3 (A) the extraordinary and surging volume  
4 of data occurring worldwide;

5 (B) the use of encryption;

6 (C) changes to worldwide telecommuni-  
7 cations patterns or infrastructure;

8 (D) technical obstacles in determining the  
9 location of data or persons;

10 (E) the increasing complexity of the legal  
11 regime, including regarding requests for data in  
12 the custody of foreign governments;

13 (F) the current and future ability of the  
14 United States to obtain, on a compulsory or vol-  
15 untary basis, assistance from telecommuni-  
16 cations providers or other entities; and

17 (G) any other matters the Attorney General  
18 and the Director of National Intelligence deter-  
19 mine appropriate.

20 (2) Recommendations for changes, including, as  
21 appropriate, fundamental changes, to the foreign in-  
22 telligence surveillance activities of the United States  
23 to address the challenges identified under paragraph  
24 (1) and to ensure the long-term effectiveness of such  
25 activities.

1           (3) *Recommendations for any changes to the*  
 2           *Foreign Intelligence Surveillance Act of 1978 (50*  
 3           *U.S.C. 1801 et seq.) that the Attorney General and*  
 4           *the Director of National Intelligence determine nec-*  
 5           *essary to address the challenges identified under para-*  
 6           *graph (1).*

7           (c) *FORM.—The report under subsection (a) may be*  
 8           *submitted in classified or unclassified form.*

9   **SEC. 204. COMPTROLLER GENERAL STUDY ON THE CLASSI-**  
 10                   **FICATION SYSTEM AND PROTECTION OF**  
 11                   **CLASSIFIED INFORMATION.**

12          (a) *STUDY.—The Comptroller General of the United*  
 13          *States shall conduct a study of the classification system of*  
 14          *the United States and the methods by which the intelligence*  
 15          *community (as defined in section 3(4) of the National Secu-*  
 16          *rity Act of 1947 (50 U.S.C. 3003(4))) protects classified in-*  
 17          *formation.*

18          (b) *MATTERS INCLUDED.—The study under subsection*  
 19          (i) *shall address the following:*

20               (1) *Whether sensitive information is properly*  
 21               *classified.*

22               (2) *The effect of modern technology on the stor-*  
 23               *age and protection of classified information, includ-*  
 24               *ing with respect to—*

1                   (A) *using cloud storage for classified infor-*  
 2                   *mation; and*

3                   (B) *any technological means to prevent or*  
 4                   *detect unauthorized access to such information.*

5                   (3) *Any ways to improve the classification sys-*  
 6                   *tem of the United States, including with respect to*  
 7                   *changing the levels of classification used in such sys-*  
 8                   *tem and to reduce overclassification.*

9                   (4) *How to improve the authorized sharing of*  
 10                   *classified information, including with respect to sen-*  
 11                   *sitive compartmented information.*

12                   (5) *The value of polygraph tests in determining*  
 13                   *who is authorized to access classified information and*  
 14                   *in investigating unauthorized disclosures of classified*  
 15                   *information.*

16                   (6) *Whether each element of the intelligence com-*  
 17                   *munity—*

18                   (A) *applies uniform standards in deter-*  
 19                   *mining who is authorized to access classified in-*  
 20                   *formation; and*

21                   (B) *provides proper training with respect to*  
 22                   *the handling of classified information and the*  
 23                   *avoidance of overclassification.*

24                   (c) *REPORT.—Not later than 180 days after the date*  
 25                   *of the enactment of this Act, the Comptroller General shall*



1 *submit to the Committee on the Judiciary and the Perma-*  
 2 *nent Select Committee on Intelligence of the House of Rep-*  
 3 *resentatives and the Committee on the Judiciary and the*  
 4 *Select Committee on Intelligence of the Senate a report con-*  
 5 *taining the study under subsection (a).*

6 (d) *FORM.—The report under subsection (c) shall be*  
 7 *submitted in unclassified form, but may include a classified*  
 8 *annex.*

9 **SEC. 205. TECHNICAL AMENDMENTS AND AMENDMENTS TO**  
 10 **IMPROVE PROCEDURES OF THE FOREIGN IN-**  
 11 **TELLIGENCE SURVEILLANCE COURT OF RE-**  
 12 **VIEW.**

13 (a) *TECHNICAL AMENDMENTS.—The Foreign Intel-*  
 14 *ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)*  
 15 *is amended as follows:*

16 (1) *In section 103(b) (50 U.S.C. 1803(b)), by*  
 17 *striking “designate as the” and inserting “designated*  
 18 *as the”.*

19 (2) *In section 302(a)(1)(A)(iii) (50 U.S.C.*  
 20 *1822(a)(1)(A)(iii)), by striking “paragraphs (1)*  
 21 *through (4)” and inserting “subparagraphs (A)*  
 22 *through (D)”.*

23 (3) *In section 406(b) (50 U.S.C. 1846(b)), by*  
 24 *striking “and to the Committees on the Judiciary of*  
 25 *the House of Representatives and the Senate”.*

1           (4) *In section 604(a) (50 U.S.C. 1874(a))—*

2                   (A) *in paragraph (1)(D), by striking “con-*  
3                   *tents” and inserting “contents,”; and*

4                   (B) *in paragraph (3), by striking “comply*  
5                   *in the into” and inserting “comply into”.*

6           (5) *In section 701 (50 U.S.C. 1881)—*

7                   (A) *in subsection (a), by striking “The*  
8                   *terms” and inserting “In this title, the terms”;*  
9                   *and*

10                  (B) *in subsection (b)—*

11                          (i) *by inserting “In this title:” after*  
12                          *the subsection heading; and*

13                          (ii) *in paragraph (5), by striking “(50*  
14                          *U.S.C. 401a(4))” and inserting “(50 U.S.C.*  
15                          *3003(4))”.*

16           (6) *In section 702(h)(2)(A)(i) (50 U.S.C.*  
17           *1881a(h)(2)(A)(i)), as redesignated by section 101, by*  
18           *inserting “targeting” before “procedures in place”.*

19           (7) *In section 801(7) (50 U.S.C. 1885(7)), by*  
20           *striking “(50 U.S.C. 401a(4))” and inserting “(50*  
21           *U.S.C. 3003(4))”.*

22           (b) *COURT-RELATED AMENDMENTS.—The Foreign In-*  
23           *telligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)*  
24           *is further amended as follows:*

25                   (1) *In section 103 (50 U.S.C. 1803)—*

1           (A) in subsection (b), by striking “imme-  
2           diately”; and

3           (B) in subsection (h), by striking “the court  
4           established under subsection (a)” and inserting  
5           “a court established under this section”.

6           (2) In section 105(d) (50 U.S.C. 1805(d)), by  
7           adding at the end the following new paragraph:

8           “(4) A denial of the application made under section  
9           104 may be reviewed as provided in section 103.”.

10          (3) In section 302(d) (50 U.S.C. 1822(d)), by  
11          striking “immediately”.

12          (4) In section 402(d) (50 U.S.C. 1842(d)), by  
13          adding at the end the following new paragraph:

14          “(3) A denial of the application made under this sub-  
15          section may be reviewed as provided in section 103.”.

16          (5) In section 403(c) (50 U.S.C. 1843(c)), by  
17          adding at the end the following new paragraph:

18          “(3) A denial of the application made under subsection  
19          (a)(2) may be reviewed as provided in section 103.”.

20          (6) In section 501(c) (50 U.S.C. 1861(c)), by  
21          adding at the end the following new paragraph:

22          “(4) A denial of the application made under this  
23          subsection may be reviewed as provided in section  
24          103.”.

1 **SEC. 206. SEVERABILITY.**

2       *If any provision of this Act, any amendment made by*  
3 *this Act, or the application thereof to any person or cir-*  
4 *cumstances is held invalid, the validity of the remainder*  
5 *of the Act, of any such amendments, and of the application*  
6 *of such provisions to other persons and circumstances shall*  
7 *not be affected thereby.*

Attest:

*Clerk.*



115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 139

---

## AMENDMENT