

In the Senate of the United States,

May 14, 2020.

Resolved, That the bill from the House of Representatives (H.R. 6172) entitled “An Act to amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the production of certain business records, and for other purposes.”, do pass with the following

AMENDMENTS:

- 1 **(1)** In subsection (a)(2)(B) of section 602 of the Foreign
2 Intelligence Surveillance Act of 1978 (50 U.S.C. 1872),
3 as added by section 301(b)(3), insert after “section
4 103(i)” the following: *, a proceeding in the Foreign Intel-*
5 *ligence Court of Review resulting from the petition of an*
6 *amicus curiae under section 103(i)(7), or a proceeding in*
7 *which an amicus curiae could have been appointed pursu-*
8 *ant to section 103(i)(2)(A).*
- 9 **(2)** In section 302, strike subsections (a) and (b) and in-
10 sert the following:

1 (a) *EXPANSION OF APPOINTMENT AUTHORITY.*—

2 (1) *IN GENERAL.*—Section 103(i)(2) (50 U.S.C.
3 1803(i)(2)) is amended—

4 (A) by striking subparagraph (A) and in-
5 serting the following:

6 “(A) shall appoint one or more individuals
7 who have been designated under paragraph (1),
8 not less than one of whom possesses privacy and
9 civil liberties expertise, unless the court finds
10 that such a qualification is inappropriate, to
11 serve as *amicus curiae* to assist the court in the
12 consideration of any application or motion for
13 an order or review that, in the opinion of the
14 court—

15 “(i) presents a novel or significant in-
16 terpretation of the law, unless the court
17 issues a finding that such appointment is
18 not appropriate;

19 “(ii) presents significant concerns with
20 respect to the activities of a United States
21 person that are protected by the first
22 amendment to the Constitution of the
23 United States, unless the court issues a
24 finding that such appointment is not ap-
25 propriate;

1 “(iii) presents or involves a sensitive
2 investigative matter, unless the court issues
3 a finding that such appointment is not ap-
4 propriate;

5 “(iv) presents a request for approval of
6 a new program, a new technology, or a new
7 use of existing technology, unless the court
8 issues a finding that such appointment is
9 not appropriate;

10 “(v) presents a request for reauthoriza-
11 tion of programmatic surveillance, unless
12 the court issues a finding that such ap-
13 pointment is not appropriate; or

14 “(vi) otherwise presents novel or sig-
15 nificant civil liberties issues, unless the
16 court issues a finding that such appoint-
17 ment is not appropriate; and”;

18 (B) in subparagraph (B), by striking “an
19 individual or organization” each place the term
20 appears and inserting “one or more individuals
21 or organizations”.

22 (2) *DEFINITION OF SENSITIVE INVESTIGATIVE*
23 *MATTER.*—Subsection (i) of section 103 (50 U.S.C.
24 1803) is amended by adding at the end the following:

1 “(12) *DEFINITION.*—*In this subsection, the term*
2 *‘sensitive investigative matter’ means—*

3 “(A) *an investigative matter involving the*
4 *activities of—*

5 “(i) *a domestic public official or polit-*
6 *ical candidate, or an individual serving on*
7 *the staff of such an official or candidate;*

8 “(ii) *a domestic religious or political*
9 *organization, or a known or suspected*
10 *United States person prominent in such an*
11 *organization; or*

12 “(iii) *the domestic news media; or*

13 “(B) *any other investigative matter involv-*
14 *ing a domestic entity or a known or suspected*
15 *United States person that, in the judgment of the*
16 *applicable court established under subsection (a)*
17 *or (b), is as sensitive as an investigative matter*
18 *described in subparagraph (A).”.*

19 (b) *AUTHORITY TO SEEK REVIEW.*—*Subsection (i) of*
20 *section 103 (50 U.S.C. 1803), as amended by subsection (a)*
21 *of this section, is amended—*

22 (1) *in paragraph (4)—*

23 (A) *in the paragraph heading, by inserting*
24 *“; AUTHORITY” after “DUTIES”;*

1 (B) by redesignating subparagraphs (A),
2 (B), and (C) as clauses (i), (ii), and (iii), respec-
3 tively, and adjusting the margins accordingly;

4 (C) in the matter preceding clause (i), as so
5 designated, by striking “the amicus curiae shall”
6 and inserting the following: “the amicus cu-
7 riae—

8 “(A) shall”;

9 (D) in subparagraph (A)(i), as so des-
10 ignated, by inserting before the semicolon at the
11 end the following: “, including legal arguments
12 regarding any privacy or civil liberties interest
13 of any United States person that would be sig-
14 nificantly impacted by the application or mo-
15 tion”; and

16 (E) by striking the period at the end and
17 inserting the following: “; and

18 “(B) may seek leave to raise any novel or
19 significant privacy or civil liberties issue rel-
20 evant to the application or motion or other issue
21 directly impacting the legality of the proposed
22 electronic surveillance with the court, regardless
23 of whether the court has requested assistance on
24 that issue.”;

1 (2) by redesignating paragraphs (7) through (12)
2 as paragraphs (8) through (13), respectively; and

3 (3) by inserting after paragraph (6) the fol-
4 lowing:

5 “(7) *AUTHORITY TO SEEK REVIEW OF DECI-*
6 *SIONS.*—

7 “(A) *FISA COURT DECISIONS.*—*Following*
8 *issuance of an order under this Act by the For-*
9 *oreign Intelligence Surveillance Court, an amicus*
10 *curiae appointed under paragraph (2) may peti-*
11 *tion the Foreign Intelligence Surveillance Court*
12 *to certify for review to the Foreign Intelligence*
13 *Surveillance Court of Review a question of law*
14 *pursuant to subsection (j). If the court denies*
15 *such petition, the court shall provide for the*
16 *record a written statement of the reasons for such*
17 *denial. Upon certification of any question of law*
18 *pursuant to this subparagraph, the Court of Re-*
19 *view shall appoint the amicus curiae to assist*
20 *the Court of Review in its consideration of the*
21 *certified question, unless the Court of Review*
22 *issues a finding that such appointment is not*
23 *appropriate.*

24 “(B) *FISA COURT OF REVIEW DECISIONS.*—

25 *An amicus curiae appointed under paragraph*

1 (2) may petition the Foreign Intelligence Sur-
 2 veillance Court of Review to certify for review to
 3 the Supreme Court of the United States any
 4 question of law pursuant to section 1254(2) of
 5 title 28, United States Code.

6 “(C) *DECLASSIFICATION OF REFERRALS.*—
 7 For purposes of section 602, a petition filed
 8 under subparagraph (A) or (B) of this para-
 9 graph and all of its content shall be considered
 10 a decision, order, or opinion issued by the For-
 11 eign Intelligence Surveillance Court or the For-
 12 eign Intelligence Surveillance Court of Review
 13 described in paragraph (2) of section 602(a).”.

14 **(3)** In section 302(c), redesignate paragraph (2) as para-
 15 graph (3).

16 **(4)** In section 302(c), strike paragraph (1) and insert the
 17 following:

18 (1) *APPLICATION AND MATERIALS.*—Subpara-
 19 graph (A) of section 103(i)(6) (50 U.S.C. 1803(i)(6))
 20 is amended to read as follows:

21 “(A) *IN GENERAL.*—

22 “(i) *RIGHT OF AMICUS.*—If a court es-
 23 tablished under subsection (a) or (b) ap-

1 *points an amicus curiae under paragraph*
2 *(2), the amicus curiae—*

3 *“(I) shall have access to, to the ex-*
4 *tent such information is available to*
5 *the Government—*

6 *“(aa) the application, certifi-*
7 *cation, petition, motion, and other*
8 *information and supporting mate-*
9 *rials, including any information*
10 *described in section 901, sub-*
11 *mitted to the Foreign Intelligence*
12 *Surveillance Court in connection*
13 *with the matter in which the ami-*
14 *cus curiae has been appointed, in-*
15 *cluding access to any relevant*
16 *legal precedent (including any*
17 *such precedent that is cited by the*
18 *Government, including in such an*
19 *application);*

20 *“(bb) an unredacted copy of*
21 *each relevant decision made by*
22 *the Foreign Intelligence Surveil-*
23 *lance Court or the Foreign Intel-*
24 *ligence Surveillance Court of Re-*
25 *view in which the court decides a*

1 question of law, without regard to
2 whether the decision is classified;
3 and

4 “(cc) any other information
5 or materials that the court deter-
6 mines are relevant to the duties of
7 the amicus curiae; and

8 “(II) may make a submission to
9 the court requesting access to any other
10 particular materials or information
11 (or category of materials or informa-
12 tion) that the amicus curiae believes to
13 be relevant to the duties of the amicus
14 curiae.

15 “(ii) *SUPPORTING DOCUMENTATION*
16 *REGARDING ACCURACY.—The Foreign Intel-*
17 *ligence Surveillance Court, upon the motion*
18 *of an amicus curiae appointed under para-*
19 *graph (2) or upon its own motion, may re-*
20 *quire the Government to make available the*
21 *supporting documentation described in sec-*
22 *tion 902.”.*

23 (2) *CLARIFICATION OF ACCESS TO CERTAIN IN-*
24 *FORMATION.—Such section is further amended—*

1 (A) in subparagraph (B), by striking
2 “may” and inserting “shall”; and

3 (B) by striking subparagraph (C) and in-
4 sserting the following:

5 “(C) *CLASSIFIED INFORMATION*.—An *ami-*
6 *cus curiae* appointed by the court shall have ac-
7 cess to, to the extent such information is avail-
8 able to the Government, unredacted copies of
9 each opinion, order, transcript, pleading, or
10 other document of the Foreign Intelligence Sur-
11 veillance Court and the Foreign Intelligence Sur-
12 veillance Court of Review, including, if the indi-
13 vidual is eligible for access to classified informa-
14 tion, any classified documents, information, and
15 other materials or proceedings.”.

16 **(5)** Redesignate section 207 as section 208.

17 **(6)** Insert after section 206 the following:

18 **SEC. 207. DISCLOSURE OF RELEVANT INFORMATION; CER-**
19 **TIFICATION REGARDING ACCURACY PROCE-**
20 **DURES.**

21 *(a) DISCLOSURE OF RELEVANT INFORMATION*.—

22 (1) *IN GENERAL*.—The Foreign Intelligence Sur-
23 veillance Act of 1978 (50 U.S.C. 1801 et seq.) is
24 amended by adding at the end the following:

1 **“TITLE IX—DISCLOSURE OF**
2 **RELEVANT INFORMATION**

3 **“SEC. 901. DISCLOSURE OF RELEVANT INFORMATION.**

4 *“The Attorney General or any other Federal officer*
5 *making an application for a court order under this Act*
6 *shall provide the court with—*

7 *“(1) all information in the possession of the Gov-*
8 *ernment that is material to determining whether the*
9 *application satisfies the applicable requirements*
10 *under this Act, including any exculpatory informa-*
11 *tion; and*

12 *“(2) all information in the possession of the Gov-*
13 *ernment that might reasonably—*

14 *“(A) call into question the accuracy of the*
15 *application or the reasonableness of any assess-*
16 *ment in the application conducted by the depart-*
17 *ment or agency on whose behalf the application*
18 *is made; or*

19 *“(B) otherwise raise doubts with respect to*
20 *the findings that are required to be made under*
21 *the applicable provision of this Act in order for*
22 *the court order to be issued.”.*

23 (2) *TECHNICAL AMENDMENT.—The table of con-*
24 *tents of the Foreign Intelligence Surveillance Act of*
25 *1978 is amended by adding at the end the following:*

*“TITLE IX—DISCLOSURE OF RELEVANT INFORMATION**“Sec. 901. Disclosure of relevant information.”.*

1 **(b) CERTIFICATION REGARDING ACCURACY PROCE-**
2 *DURES.—*

3 **(1) IN GENERAL.—***Title IX of the Foreign Intel-*
4 *ligence Surveillance Act of 1978, as added by sub-*
5 *section (a), is amended by adding at the end the fol-*
6 *lowing:*

7 **“SEC. 902. CERTIFICATION REGARDING ACCURACY PROCE-**
8 **DURES.**

9 **“(a) DEFINITION.—***In this section, the term ‘accuracy*
10 *procedures’ means specific procedures, adopted by the Attor-*
11 *ney General, to ensure that an application for a court order*
12 *under this Act, including any application for renewal of*
13 *an existing order, is accurate and complete, including pro-*
14 *cedures that ensure, at a minimum, that—*

15 **“(1) the application reflects all information that**
16 *might reasonably call into question the accuracy of*
17 *the information or the reasonableness of any assess-*
18 *ment in the application, or otherwise raises doubts*
19 *about the requested findings;*

20 **“(2) the application reflects all material infor-**
21 *mation that might reasonably call into question the*
22 *reliability and reporting of any information from a*
23 *confidential human source that is used in the appli-*
24 *cation;*

1 “(3) a complete file documenting each factual as-
2 sertion in an application is maintained;

3 “(4) the applicant coordinates with the appro-
4 priate elements of the intelligence community (as de-
5 fined in section 3 of the National Security Act of
6 1947 (50 U.S.C. 3003)), concerning any prior or ex-
7 isting relationship with the target of any surveillance,
8 search, or other means of investigation, and discloses
9 any such relationship in the application;

10 “(5) before any application targeting a United
11 States person is made, the applicant Federal officer
12 shall document that the officer has collected and re-
13 viewed for accuracy and completeness supporting doc-
14 umentation for each factual assertion in the applica-
15 tion; and

16 “(6) the applicant Federal agency establish com-
17 pliance and auditing mechanisms on an annual basis
18 to assess the efficacy of the accuracy procedures that
19 have been adopted and report such findings to the At-
20 torney General.

21 “(b) *STATEMENT AND CERTIFICATION OF ACCURACY*
22 *PROCEDURES.*—Any Federal officer making an application
23 for a court order under this Act shall include with the ap-
24 plication—

1 “(1) a description of the accuracy procedures
2 employed by the officer or the officer’s designee; and

3 “(2) a certification that the officer or the officer’s
4 designee has collected and reviewed for accuracy and
5 completeness—

6 “(A) supporting documentation for each
7 factual assertion contained in the application;

8 “(B) all information that might reasonably
9 call into question the accuracy of the informa-
10 tion or the reasonableness of any assessment in
11 the application, or otherwise raises doubts about
12 the requested findings; and

13 “(C) all material information that might
14 reasonably call into question the reliability and
15 reporting of any information from any confiden-
16 tial human source that is used in the applica-
17 tion.

18 “(c) *NECESSARY FINDING FOR COURT ORDERS.*—A
19 judge may not enter an order under this Act unless the
20 judge finds, in addition to any other findings required
21 under this Act, that the accuracy procedures described in
22 the application for the order, as required under subsection
23 (b)(1), are actually accuracy procedures as defined in this
24 section.”.

1 (2) *TECHNICAL AMENDMENT.*—*The table of con-*
 2 *tents of the Foreign Intelligence Surveillance Act of*
 3 *1978, as amended by subsection (a), is amended by*
 4 *inserting after the item relating to section 901 the fol-*
 5 *lowing:*

“*Sec. 902. Certification regarding accuracy procedures.*”.

6 **(7)** In section 208, as so redesignated, strike [section
 7 501 of the Foreign Intelligence Surveillance Act of 1978
 8 (50 U.S.C. 1861)] and insert: *the Foreign Intelligence*
 9 *Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) (if appli-*
 10 *cable)*

11 **(8)** At the end, add the following:

12 **SEC. 409. ANNUAL REPORTING ON ACCURACY AND COM-**
 13 **PLETENESS OF APPLICATIONS.**

14 *Section 603 (50 U.S.C. 1873) is amended—*

15 (1) *by redesignating subsection (e) as subsection*
 16 *(f); and*

17 (2) *by inserting after subsection (d) the fol-*
 18 *lowing:*

19 “(e) *ANNUAL REPORT BY DOJ INSPECTOR GENERAL*
 20 *ON ACCURACY AND COMPLETENESS OF APPLICATIONS.—*

21 “(1) *DEFINITION OF APPROPRIATE COMMITTEES*
 22 *OF CONGRESS.—In this subsection, the term ‘appro-*
 23 *propriate committees of Congress’ means—*

1 “(A) *the Committee on the Judiciary and*
2 *the Select Committee on Intelligence of the Sen-*
3 *ate; and*

4 “(B) *the Committee on the Judiciary and*
5 *the Permanent Select Committee on Intelligence*
6 *of the House of Representatives.*

7 “(2) *REPORT.—In April of each year, the In-*
8 *pector General of the Department of Justice shall*
9 *submit to the appropriate committees of Congress and*
10 *make public, subject to a declassification review, a re-*
11 *port setting forth, with respect to the preceding cal-*
12 *endar year, the following:*

13 “(A) *A summary of all accuracy or com-*
14 *pleteness reviews of applications submitted to the*
15 *Foreign Intelligence Surveillance Court by the*
16 *Federal Bureau of Investigation.*

17 “(B) *The total number of applications re-*
18 *viewed for accuracy or completeness.*

19 “(C) *The total number of material errors or*
20 *omissions identified during such reviews.*

21 “(D) *The total number of nonmaterial er-*
22 *rors or omissions identified during such reviews.*

23 “(E) *The total number of instances in*
24 *which facts contained in an application were not*
25 *supported by documentation that existed in the*

- 1 *applicable file being reviewed at the time of the*
- 2 *accuracy review.”.*

Attest:

Secretary.

116TH CONGRESS
2^D SESSION

H.R. 6172

AMENDMENTS