

“(II) may make a submission to the court requesting access to any other particular materials or information (or category of materials or information) that the amicus curiae believes to be relevant to the duties of the amicus curiae.

“(ii) SUPPORTING DOCUMENTATION REGARDING ACCURACY.—The Foreign Intelligence Surveillance Court, upon the motion of an amicus curiae appointed under paragraph (2) or upon its own motion, may require the Government to make available the supporting documentation described in section 902.”.

(B) CLARIFICATION OF ACCESS TO CERTAIN INFORMATION.—Section 103(i)(6) is amended—

(i) in subparagraph (B), by striking “may” and inserting “shall”; and

(ii) by striking subparagraph (C) and inserting the following:

“(C) CLASSIFIED INFORMATION.—An amicus curiae designated or appointed by the court shall have access, to the extent such information is available to the Government, to unredacted copies of each opinion, order, transcript, pleading, or other document of the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review, including, if the individual is eligible for access to classified information, any classified documents, information, and other materials or proceedings.”.

(4) DEFINITIONS.—Section 101 is amended by adding at the end the following:

“(q) The term ‘Foreign Intelligence Surveillance Court’ means the court established under section 103(a).

“(r) The term ‘Foreign Intelligence Surveillance Court of Review’ means the court established under section 103(b).”.

(5) TECHNICAL AMENDMENTS RELATING TO STRIKING SECTION 5(C) OF THE BILL.—

(A) Subsection (e) of section 603, as added by section 12(a) of this Act, is amended by striking “section 103(m)” and inserting “section 103(l)”.

(B) Section 110(a), as added by section 15(b) of this Act, is amended by striking “section 103(m)” and inserting “section 103(l)”.

(C) Section 103 is amended by redesignating subsection (m), as added by section 17 of this Act, as subsection (l).

(6) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of enactment of this Act and shall apply with respect to proceedings under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that take place on or after, or are pending on, that date.

(c) REQUIRED DISCLOSURE OF RELEVANT INFORMATION IN FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 APPLICATIONS.—

(1) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following:

“TITLE IX—REQUIRED DISCLOSURE OF RELEVANT INFORMATION

“SEC. 901. DISCLOSURE OF RELEVANT INFORMATION.

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

“(1) all information in the possession of the applicant or agency by which the applicant is employed that is material to determining whether the application satisfies the applicable requirements under this Act, including any exculpatory information; and

“(2) all information in the possession of the applicant or agency by which the applicant is employed that might reasonably—

“(A) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

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

“SEC. 902. CERTIFICATION REGARDING ACCURACY PROCEDURES.

“(a) DEFINITION OF ACCURACY PROCEDURES.—In this section, the term ‘accuracy procedures’ means specific procedures, adopted by the Attorney General, to ensure that an application for a court order under this Act, including any application for renewal of an existing order, is accurate and complete, including procedures that ensure, at a minimum, that—

“(1) the application reflects all information that might reasonably call into question the accuracy of the information or the reasonableness of any assessment in the application, or otherwise raises doubts about the requested findings;

“(2) the application reflects all material information that might reasonably call into question the reliability and reporting of any information from a confidential human source that is used in the application;

“(3) a complete file documenting each factual assertion in an application is maintained;

“(4) the applicant coordinates with the appropriate elements of the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)), concerning any prior or existing relationship with the target of any surveillance, search, or other means of investigation, and discloses any such relationship in the application;

“(5) before any application targeting a United States person (as defined in section 101) is made, the applicant Federal officer shall document that the officer has collected and reviewed for accuracy and completeness supporting documentation for each factual assertion in the application; and

“(6) the applicant Federal agency establish compliance and auditing mechanisms on an annual basis to assess the efficacy of the accuracy procedures that have been adopted and report such findings to the Attorney General.

“(b) STATEMENT AND CERTIFICATION OF ACCURACY PROCEDURES.—Any Federal officer making an application for a court order under this Act shall include with the application—

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

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

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

“(B) all information that might reasonably call into question the accuracy of the information or the reasonableness of any assessment in the application, or otherwise raises doubts about the requested findings; and

“(C) all material information that might reasonably call into question the reliability and reporting of any information from any confidential human source that is used in the application.

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

(2) TECHNICAL AMENDMENTS TO ELIMINATE AMENDMENTS MADE BY SECTION 10 OF THE BILL.—

(A) Subsection (a) of section 104 is amended—

(i) in paragraph (9), as amended by section 6(d)(1)(B) of this Act, by striking “and” at the end;

(ii) in paragraph (10), as added by section 6(d)(1)(C) of this Act, by adding “and” at the end;

(iii) in paragraph (11), as added by section 6(e)(1) of this Act, by striking “; and” and inserting a period;

(iv) by striking paragraph (12), as added by section 10(a)(1) of this Act; and

(v) by striking paragraph (13), as added by section 10(b)(1) of this Act.

(B) Subsection (a) of section 303 is amended—

(i) in paragraph (8), as amended by section 6(e)(2)(B) of this Act, by adding “and” at the end;

(ii) in paragraph (9), as added by section 6(e)(2)(C) of this Act, by striking “; and” and inserting a period;

(iii) by striking paragraph (10), as added by section 10(a)(2) of this Act; and

(iv) by striking paragraph (11), as added by section 10(b)(2) of this Act.

(C) Subsection (c) of section 402, as amended by subsections (a)(3) and (b)(3) of section 10 of this Act, is amended—

(i) in paragraph (2), by adding “and” at the end;

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

(iii) by striking paragraph (4), as added by section 10(a)(3)(C) of this Act; and

(iv) by striking paragraph (5), as added by section 10(b)(3)(C) of this Act.

(D) Subsection (b)(2) of section 502, as amended by subsections (a)(4) and (b)(4) of section 10 of this Act, is amended—

(i) in subparagraph (A), by adding “and” at the end;

(ii) in subparagraph (B), by striking the semicolon and inserting a period;

(iii) by striking subparagraph (E), as added by section 10(a)(4)(C) of this Act; and

(iv) by striking subparagraph (F), as added by section 10(b)(4)(C) of this Act.

(E) Subsection (b)(1) of section 703, as amended by subsections (a)(5)(A) and (b)(5)(A) of section 10 of this Act, is amended—

(i) in subparagraph (I), by adding “and” at the end;

(ii) in subparagraph (J), by striking the semicolon and inserting a period;

(iii) by striking subparagraph (K), as added by section 10(a)(5)(A)(iii) of this Act; and

(iv) by striking subparagraph (L), as added by section 10(b)(5)(A)(iii) of this Act.

(F) Subsection (b) of section 704, as amended by subsections (a)(5)(B) and (b)(5)(B) of section 10 of this Act, is amended—

(i) in paragraph (6), by adding “and” at the end;

(ii) in paragraph (7), by striking the semicolon and inserting a period;

(iii) by striking paragraph (8), as added by section 10(a)(5)(B)(iii) of this Act; and

(iv) by striking paragraph (9), as added by section 10(b)(5)(B)(iii) of this Act.

(G)(i) The Attorney General shall not be required to issue procedures under paragraph (7) of section 10(a) of this Act.

(ii) Nothing in clause (i) shall be construed to modify the requirement for the Attorney General to issue accuracy procedures under section 902(a) of the Foreign Intelligence Surveillance Act of 1978, as added by paragraph (2) of this subsection.

SA 1841. Mr. DURBIN (for himself, Mr. CRAMER, and Ms. HIRONO) submitted an amendment intended to be proposed by him to the bill H.R. 7888, to reform the Foreign Intelligence Surveillance Act of 1978; as follows:

At the appropriate place, insert the following:

SEC. ____ PROHIBITION ON WARRANTLESS ACCESS TO THE COMMUNICATIONS AND OTHER INFORMATION OF UNITED STATES PERSONS.

(a) **DEFINITION.**—Section 702(f) is amended in paragraph (5), as so redesignated by section 2(a)(2) of this Act—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following:

“(B) The term ‘covered query’ means a query conducted—

“(i) using a term associated with a United States person; or

“(ii) for the purpose of finding the information of a United States person.”.

(b) **PROHIBITION.**—Section 702(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(f)) is amended—

(1) by redesignating paragraph (5), as redesignated by section 2(a)(1) of this Act, as paragraph (8);

(2) in paragraph (1)(A) by inserting “and the limitations and requirements in paragraph (5)” after “Constitution of the United States”; and

(3) by inserting after paragraph (4), as added by section 16(a)(1) of this Act, the following:

“(5) **PROHIBITION ON WARRANTLESS ACCESS TO THE COMMUNICATIONS AND OTHER INFORMATION OF UNITED STATES PERSONS.**—

“(A) **IN GENERAL.**—Except as provided in subparagraphs (B) and (C), no officer or employee of the Federal Bureau of Investigation may access communications content, or information the compelled disclosure of which would require a probable cause warrant if sought for law enforcement purposes inside the United States, acquired under subsection (a) and returned in response to a covered query.

“(B) **EXCEPTIONS FOR CONCURRENT AUTHORIZATION, CONSENT, EMERGENCY SITUATIONS, AND CERTAIN DEFENSIVE CYBERSECURITY QUERIES.**—Subparagraph (A) shall not apply if—

“(i) the person to whom the query relates is the subject of an order or emergency authorization authorizing electronic surveillance, a physical search, or an acquisition under this section or section 105, section 304, section 703, or section 704 of this Act or a warrant issued pursuant to the Federal Rules of Criminal Procedure by a court of competent jurisdiction;

“(ii)(I) the officer or employee accessing the communications content or information has a reasonable belief that—

“(aa) an emergency exists involving an imminent threat of death or serious bodily harm; and

“(bb) in order to prevent or mitigate the threat described in item (aa), the communications content or information must be accessed before authorization described in clause (i) can, with due diligence, be obtained; and

“(II) not later than 14 days after the communications content or information is accessed, a description of the circumstances justifying the accessing of the query results is provided to the Foreign Intelligence Surveillance Court, the congressional intelligence committees, the Committee on the Judiciary of the House of Representatives, and the Committee on the Judiciary of the Senate;

“(iii) such person or, if such person is incapable of providing consent, a third party legally authorized to consent on behalf of such person, has provided consent for the access on a case-by-case basis; or

“(iv)(I) the communications content or information is accessed and used for defensive cybersecurity purposes, including the protection of a United States person from cyber-related harms;

“(II) other than for such defensive cybersecurity purposes, no communications content or other information described in subparagraph (A) are accessed or reviewed; and

“(III) the accessing of query results is reported to the Foreign Intelligence Surveillance Court.

“(C) **MATTERS RELATING TO EMERGENCY QUERIES.**—

“(i) **TREATMENT OF DENIALS.**—In the event that communications content or information returned in response to a covered query are accessed pursuant to an emergency authorization described in subparagraph (B)(i) and the subsequent application to authorize electronic surveillance, a physical search, or an acquisition pursuant to section 105(e), section 304(e), section 703(d), or section 704(d) of this Act is denied, or in any other case in which communications content or information returned in response to a covered query are accessed in violation of this paragraph—

“(I) no communications content or information acquired or evidence derived from such access may be used, received in evidence, or otherwise disseminated in any investigation by or in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof; and

“(II) no communications content or information acquired or derived from such access may subsequently be used or disclosed in any other manner without the consent of the person to whom the covered query relates, except in the case that the Attorney General approves the use or disclosure of such information in order to prevent the death of or serious bodily harm to any person.

“(ii) **ASSESSMENT OF COMPLIANCE.**—Not less frequently than annually, the Attorney General shall assess compliance with the requirements under clause (i).

“(D) **FOREIGN INTELLIGENCE PURPOSE.**—

“(i) **IN GENERAL.**—Except as provided in clause (ii) of this subparagraph, no officer or employee of the Federal Bureau of Investigation may conduct a covered query of information acquired under subsection (a) unless the query is reasonably likely to retrieve foreign intelligence information.

“(ii) **EXCEPTIONS.**—An officer or employee of the Federal Bureau of Investigation may conduct a covered query of information acquired under this section if—

“(I)(aa) the officer or employee conducting the query has a reasonable belief that an emergency exists involving an imminent threat of death or serious bodily harm; and

“(bb) not later than 14 days after the query is conducted, a description of the query is provided to the Foreign Intelligence Surveillance Court, the congressional intelligence committees, the Committee on the Judiciary of the House of Representatives, and the Committee on the Judiciary of the Senate;

“(II) the person to whom the query relates or, if such person is incapable of providing consent, a third party legally authorized to consent on behalf of such person, has provided consent for the query on a case-by-case basis;

“(III)(aa) the query is conducted, and the results of the query are used, for defensive cybersecurity purposes, including the protection of a United States person from cyber-related harms;

“(bb) other than for such defensive cybersecurity purposes, no communications content or other information described in subparagraph (A) are accessed or reviewed; and

“(cc) the query is reported to the Foreign Intelligence Surveillance Court; or

“(IV) the query is necessary to identify information that must be produced or preserved in connection with a litigation matter or to fulfill discovery obligations in a criminal matter under the laws of the United States or any State thereof.

“(6) **DOCUMENTATION.**—No officer or employee of the Federal Bureau of Investigation may access communications content, or information the compelled disclosure of which would require a probable cause warrant if sought for law enforcement purposes inside the United States, returned in response to a covered query unless an electronic record is created that includes a statement of facts showing that the access is authorized pursuant to an exception specified in paragraph (5)(B).

“(7) **QUERY RECORD SYSTEM.**—The Director of the Federal Bureau of Investigation shall ensure that a system, mechanism, or business practice is in place to maintain the records described in paragraph (6). Not later than 90 days after the date of enactment of the Reforming Intelligence and Securing America Act, the Director of the Federal Bureau of Investigation shall report to Congress on its compliance with this procedure.”.

(c) **CONFORMING AMENDMENTS.**—

(1) Section 603(b)(2) is amended, in the matter preceding subparagraph (A), by striking “, including pursuant to subsection (f)(2) of such section,”.

(2) Section 706(a)(2)(A)(i) is amended by striking “obtained an order of the Foreign Intelligence Surveillance Court to access such information pursuant to section 702(f)(2)” and inserting “accessed such information in accordance with section 702(f)(5)”.

ORDERS FOR SATURDAY, APRIL 20, 2024

Mr. SCHUMER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9 a.m. on Saturday, April 20; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; and that upon the conclusion of morning business, the Senate resume consideration of the motion to proceed to Calendar No. 211, H.R. 3935.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. SCHUMER. Mr. President, if there is no further business to come before the Senate, I ask that it stand adjourned under the previous order.

There being no objection, the Senate, at 1:29 a.m., adjourned until Saturday, April 20, 2024, at 9 a.m.