To promote the security of the United States and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

A BILL

To promote the security of the United States and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “FISA Improvements Act of 2015”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

Sec. 101. Access to certain business records for foreign intelligence purposes. Sec. 102. Permanent authority for access to business records, roving surveil-

ance, and individual terrorists as agents of foreign powers under the Foreign Intelligence Surveillance Act of 1978.
TITLE II—ENHANCED NATIONAL SECURITY PROVISIONS

Sec. 201. Temporary collection of information relating to persons other than United States persons traveling into the United States.
Sec. 203. Improvement to investigations of international proliferation of weapons of mass destruction.
Sec. 204. Increase in penalties for material support of foreign terrorist organizations and terrorists and other terrorism crimes.
Sec. 205. Counterintelligence access to telephone toll and transactional records.

TITLE III—OTHER MATTERS

Sec. 301. Unauthorized disclosure or removal of certain classified information.
Sec. 302. Appointment of amicus curiae.
Sec. 303. Public reporting by persons subject to orders.

TITLE I—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 101. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES.

(a) IN GENERAL.—Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended to read as follows:

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 501. DEFINITIONS.

“In this title:

‘United States person’, ‘United States’, ‘person’
‘State’ have the meanings provided those terms in
section 101.

“(2) APPROPRIATE COMMITTEES OF CON-
geress.—The term ‘appropriate committees of Con-
gress’ means—

“(A) the Committee on the Judiciary and
the Select Committee on Intelligence of the
Senate; and

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

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

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

“(B) does not include—

“(i) the content of any communica-
tion;
“(ii) the name, address, or financial
information of a subscriber or customer; or
“(iii) cell site information or global
positioning system information.
“(4) CONTENT.—The term ‘content’, with re-
spect to a communication—
“(A) means any information concerning
the substance, purport, or meaning of that com-
munication; and
“(B) does not include any dialing, routing,
addressing, signaling information.
“(5) ELECTRONIC COMMUNICATION SERVICE
PROVIDER.—The term ‘electronic communication
service’ has the meaning given that term in section
701(b)(4).
“(6) MINIMIZATION PROCEDURES.—The term
‘minimization procedures’ means—
“(A) specific procedures that are reason-
ably designed in light of the purpose and tech-
nique of an order for the production of tangible
things, to minimize the retention, and prohibit
the dissemination, of nonpublicly available in-
formation concerning unconsenting United
States persons consistent with the need of the
United States to obtain, produce, and dissemi-
nate foreign intelligence information;

“(B) procedures that require that nonpub-
licly available information, which is not foreign
intelligence information, as defined in section
101(e)(1), shall not be disseminated in a man-
ner that identifies any United States person,
without such person’s consent, unless such per-
son’s identity is necessary to understand foreign
intelligence information or assess its impor-
tance; and

“(C) notwithstanding subparagraphs (A)
and (B), procedures that allow for the retention
and dissemination of information that is evi-
dence of a crime which has been, is being, or
is about to be committed and that is to be re-
tained or disseminated for law enforcement pur-
poses.

“(7) SPECIFIC SELECTION TERM.—The term
’specific selection term’—

“(A) means a term or set of terms that
identifies or describes a person, account, ad-
dress, or personal device, or another specific
term, that is used by the Government to limit
the scope of tangible things sought to the great-
est extent reasonably practicable, consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information; and

“(B) does not include a term that solely identifies—

“(i) a broad domestic geographic region, including the United States, a State, county, city, zip code, or area code, when not used as part of a specific term as described in subparagraph (A); or

“(ii) an electronic communication service provider, when not used as part of a specific term as described in subparagraph (A), unless the provider is itself a subject of an authorized investigation for which the specific selection term is used as the basis of production.

“(8) SYSTEM.—The term ‘System’ means the call detail record system developed under section 503(b).

“SEC. 502. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

“(a) AUTHORITY.—
“(1) IN GENERAL.—Subject to paragraph (3), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

“(2) INVESTIGATION REQUIREMENTS.—An investigation conducted under this section shall—

“(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

“(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution.

“(3) SENSITIVE RECORDS.—In the case of an application for an order requiring the production of
library circulation records, library patron lists, book
sales records, book customer lists, firearms sales
records, tax return records, educational records, or
medical records containing information that would
identify a person, the Director of the Federal Bu-
reau of Investigation may delegate the authority to
make such application to either the Deputy Director
of the Federal Bureau of Investigation or the Execu-
tive Assistant Director for National Security (or any
successor position). The Deputy Director or the Ex-
ecutive Assistant Director may not further delegate
such authority.

“(b) APPLICATION REQUIREMENTS.—Each applica-
tion under this section—

“(1) shall be made to—

“(A) a judge of the court established by
section 103(a); or

“(B) a United States Magistrate Judge
under chapter 43 of title 28, United States
Code, who is publicly designated by the Chief
Justice of the United States to have the power
to hear applications and grant orders for the
production of tangible things under this section
on behalf of a judge of that court; and

“(2) shall include—
“(A) a specific selection term to be used as the basis for the production of the tangible things sought; and

“(B) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to—

“(i) a foreign power or an agent of a foreign power;

“(ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

“(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation.

“(c) EX PARTE JUDICIAL ORDER OF APPROVAL.—
“(1) IN GENERAL.—Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things.

“(2) CONTENTS OF ORDER.—An order under this subsection—

“(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified and include each specific selection term to be used as the basis for production;

“(B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;

“(C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);

“(D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury in-
vestigation or with any other order issued by a
court of the United States directing the produc-
tion of records or tangible things; and

“(E) shall not disclose that such order is
issued for purposes of an investigation de-
scribed in subsection (a).

“(d) NONDISCLOSURE.—

“(1) PROHIBITION ON DISCLOSURE.—No per-
son shall disclose to any other person that the Fed-
eral Bureau of Investigation has sought or obtained
tangible things pursuant to an order under this sec-
tion or a directive under section 505, other than
to—

“(A) those persons to whom disclosure is
necessary to comply with such order or direc-
tive;

“(B) an attorney to obtain legal advice or
assistance with respect to the production of
things in response to the order or directive; or

“(C) other persons as permitted by the Di-
rector of the Federal Bureau of Investigation or
the designee of the Director.

“(2) OTHER NONDISCLOSURE REQUIRE-
MENTS.—
“(A) APPLICABILITY OF REQUIREMENTS.—A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

“(B) NOTIFICATION TO PERSON.—Any person who discloses to a person described in subparagraph (A), (B), or (C) of paragraph (1) that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

“(C) NOTIFICATION OF THE DIRECTOR.—At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

“(e) JUDICIAL REVIEW OF FISA ORDERS.—

“(1) DEFINITIONS.—In this subsection—
“(A) the term ‘production order’ means an order to produce any tangible thing under this section; and

“(B) the term ‘nondisclosure order’ means an order imposed under subsection (d).

“(2) Judicial review.—

“(A) In general.—

“(i) Filing of petition.—A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 103(e)(1).

“(ii) Assignment; consideration.—

The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by
section 103(e)(1). Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 103(e)(2).

“(iii) Written order; stay.—The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

“(B) Standard for consideration.—A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does
not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

“(C) Denial of petition.—

“(i) Permissible denials.—A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

“(ii) Certification.—If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall
be treated as conclusive, unless the judge finds that the certification was made in bad faith.

“(iii) Limitation on reconsideration.—If the judge denies a petition to modify or set aside a nondisclosure order, the recipient of such order shall be precluded for a period of 1 year from filing another such petition with respect to such nondisclosure order.

“(D) Order in effect.—Any production or nondisclosure order not explicitly modified or set aside consistent with this subsection shall remain in full effect.

“(3) Review of decision.—A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Su-
preme Court of the United States, which shall have
jurisdiction to review such decision.

“(4) EXPEDITIOUS PROCEEDINGS; RECORD OF
PROCEEDINGS.—Judicial proceedings under this sub-
section shall be concluded as expeditiously as pos-
sible. The record of proceedings, including petitions
filed, orders granted, and statements of reasons for
decision, shall be maintained under security meas-
ures established by the Chief Justice of the United
States, in consultation with the Attorney General
and the Director of National Intelligence.

“(5) FILING UNDER SEAL; EX PARTE AND IN
CAMERA REVIEW.—All petitions under this sub-
section shall be filed under seal. In any proceedings
under this subsection, the court shall, upon request
of the Government, review ex parte and in camera
any Government submission, or portions thereof,
which may include classified information.

“(f) USE OF INFORMATION.—Information acquired
from tangible things received by the Federal Bureau of
Investigation in response to an order under this title con-
cerning any United States person may be used and dis-
closed by Federal officers and employees in accordance
with the guidelines approved by the Attorney General
under Executive Order 12333 (or a successor order). No
otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this title shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this title may be used or disclosed by Federal officers or employees except for lawful purposes.

“SEC. 503. ACCESS TO CERTAIN CALL DETAIL RECORDS.

“(a) Authority.—

“(1) In general.—The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring queries to the System required by subsection (b) for call detail records that are relevant to an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first Amendment to the Constitution.

“(2) Investigation requirements.—An investigation conducted under this section shall—
“(A) be conducted under guidelines ap-
proved by the Attorney General under Execu-
tive Order 12333 (or a successor order); and

“(B) not be conducted of a United States
person solely upon the basis of activities pro-
tected by the first amendment to the Constitu-
tion of the United States.

“(b) DEVELOPMENT OF SYSTEM.—

“(1) IN GENERAL.—An electronic communica-
tion service provider shall cooperate with the Direc-
tor to develop a System that will permit such service
provider to query its call detail records in compli-
ance with a court order issued in accordance with
this section and provide the results of such queries
to the Government.

“(2) FORMAT.—The query results provided to
the Government shall be in a format that will be
useful to the Government.

“(3) TECHNICAL ASSISTANCE.—An electronic
communications service provider producing call de-
tail records in compliance with an order issued in ac-
cordance with this section shall furnish the Govern-
ment forthwith all information, facilities, or tech-
nical assistance necessary to accomplish the produc-
tion in such a manner as will protect the secrecy of
the production and produce a minimum of interference with the services that such service provider is providing to each subject of the production.

“(4) SCHEDULE.—The System required by subsection (a) shall be completed not later than June 30, 2017.

“(c) APPLICATION REQUIREMENTS.—Each application under this section—

“(1) shall be made to—

“(A) a judge of the court established by section 103(a); or

“(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

“(2) shall include—

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

“(B) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an au-
authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to—

“(i) a foreign power or an agent of a foreign power;

“(ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

“(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation.

“(d) EX PARTE JUDICIAL ORDER OF APPROVAL.—

“(1) IN GENERAL.—Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things.
“(2) CONTENTS OF ORDER.—An order under this subsection—

“(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified;

“(B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available and include each specific selection term to be used as the basis for production;

“(C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);

“(D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and

“(E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).

“(e) NONDISCLOSURE.—
“(1) Prohibition on disclosure.—No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section or a directive under section 505, other than to—

“(A) those persons to whom disclosure is necessary to comply with such order or directive;

“(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or

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

“(2) Other nondisclosure requirements.—

“(A) Applicability of requirements.—A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

“(B) Notification to person.—Any person who discloses to a person described in
paragraph (A), (B), or (C) of paragraph (1) that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

“(C) NOTIFICATION OF THE DIRECTOR.—
At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

“(f) JUDICIAL REVIEW OF FISA ORDERS.—
“(1) DEFINITIONS.—In this subsection—
“(A) the term ‘production order’ means an order to produce any tangible thing under this section; and
“(B) the term ‘nondisclosure order’ means an order imposed under subsection (e).
“(2) JUDICIAL REVIEW.—
“(A) IN GENERAL.—
“(i) FILING OF PETITION.—A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 103(e)(1).

“(ii) ASSIGNMENT; CONSIDERATION.—

The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section 103(e)(1). Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production
order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 103(e)(2).

“(iii) Written order; stay.—The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

“(B) Standard for consideration.—A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

“(C) Denial of petition.—
“(i) PERMISSIBLE DENIALS.—A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

“(ii) CERTIFICATION.—If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.

“(iii) LIMITATION ON RECONSIDERATION.—If the judge denies a petition to modify or set aside a nondisclosure order,
the recipient of such order shall be pre-
cluded for a period of 1 year from filing
another such petition with respect to such
nondisclosure order.

“(D) ORDER IN EFFECT.—Any production
or nondisclosure order not explicitly modified or
set aside consistent with this subsection shall
remain in full effect.

“(3) REVIEW OF DECISION.—A petition for re-
view of a decision under paragraph (2) to affirm,
modify, or set aside an order by the Government or
any person receiving such order shall be made to the
court of review established under section 103(b),
which shall have jurisdiction to consider such peti-
tions. The court of review shall provide for the
record a written statement of the reasons for its de-
cision and, on petition by the Government or any
person receiving such order for writ of certiorari, the
record shall be transmitted under seal to the Su-
preme Court of the United States, which shall have
jurisdiction to review such decision.

“(4) EXPEDITIOUS PROCEEDINGS; RECORD OF
PROCEEDINGS.—Judicial proceedings under this sub-
section shall be concluded as expeditiously as pos-
sible. The record of proceedings, including petitions
filed, orders granted, and statements of reasons for
decision, shall be maintained under security meas-
ures established by the Chief Justice of the United
States, in consultation with the Attorney General
and the Director of National Intelligence.

“(5) FILING UNDER SEAL; EX PARTE AND IN
CAMERA REVIEW.—All petitions under this sub-
section shall be filed under seal. In any proceedings
under this subsection, the court shall, upon request
of the Government, review ex parte and in camera
any Government submission, or portions thereof,
which may include classified information.

“(g) USE OF INFORMATION.—Information acquired
from tangible things received by the Federal Bureau of
Investigation in response to an order under this title con-
cerning any United States person may be used and dis-
closed by Federal officers and employees in accordance
with guidelines approved by the Attorney General under
Executive Order 12333 (or a successor order). No other-
wise privileged information acquired from tangible things
received by the Federal Bureau of Investigation in accord-
ance with the provisions of this title shall lose its privileged
character. No information acquired from tangible things
received by the Federal Bureau of Investigation in re-
response to an order under this title may be used or dis-
closed by Federal officers or employees except for lawful purposes.

“(h) Authorization for Queries of Call Detail Records.—

“(1) Supplemental Procedures.—An order issued pursuant to an application made under subsection (a) shall require an electronic communications service provider to query its call detail records through the System using the specific selection term authorized by a court order issued in accordance with this section and provide the results of such queries to the Government in compliance with such court order. Such queries shall be subject to supplemental procedures, which are in addition to any other requirements or procedures imposed by this Act, as follows:

“(A) Content Prohibition.—Such an order shall not authorize the query of the content of any communication.

“(B) Authorization and Renewal Periods.—Such an order—

“(i) shall be effective for a period of not more than 180 days; and

“(ii) may be extended by the court on the same basis as an original order upon
an application under this title for an extension and new findings by the court in accordance with subsection (c).

“(C) AUTHORIZED QUERIES.—Any order referred to in paragraph (1) or a directive under section 505 may permit access to the System—

“(i) to perform a query using a specific selection term for which a recorded determination has been made that the specific selection term is relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism, clandestine intelligence activities, or activities in preparation therefor;

“(ii) to return information as authorized under paragraph (2); or

“(iii) as may be necessary for technical assurance, data management or compliance purposes, or for the purpose of narrowing the results of queries, in which
case no information produced pursuant to
the order may be accessed, used, or dis-
closed for any other purpose, unless the in-
formation is responsive to a query author-
ized under paragraph (2).

“(2) **Scope of permissible query return**
information.—For any query performed pursuant
to paragraph (1)(C)(i), the query only may return
information concerning—

“(A) a first set of call detail records using
the specific selection term that satisfies the
standard required under paragraph (1)(C)(i); or

“(B) a second set of call detail records
using session-identifying information or a tele-
phone calling card number identified by the
specific selection term used to produce call de-
tail records under subparagraph (A).

“(i) **Prospective changes to existing prac-
tices related to call detail records.**—

“(1) **Requirement to notify.**—

“(A) **In general.**—An electronic commu-
nication service provider shall notify the Attor-
ney General if that service provider intends to
retain its call detail records for a period less
than 36 months.
“(B) TIMING OF NOTICE.—A notification under paragraph (1) shall be made not less than 180 days prior to the date such electronic communications service provider intends to implement a policy to retain such records for a period less than 36 months.

“(2) APPLICATION FOR AN ORDER TO RETAIN.—The Director of the Federal Bureau of Investigation may make an application to a judge of the court established by section 103(a) for an order requiring that such electronic communication service provider shall retain its call detail records for a period of at least 36 months.

“(3) ORDERS.—Upon an application made pursuant to paragraph (2), if the judge finds that the failure to retain such call detail records for a period of at least 36 months is resulting in, or is reasonably likely to result in, the loss of foreign intelligence information relevant to an investigation conducted under this title, the judge may enter an ex parte order requiring the retention of such records for a period of at least 36 months.

“SEC. 504. TRANSITIONAL AGGREGATE COLLECTION OF CERTAIN BUSINESS RECORDS.

“(a) AUTHORITY.—
“(1) IN GENERAL.—The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

“(2) INVESTIGATION REQUIREMENTS.—An investigation conducted under this section shall—

“(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

“(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

“(b) APPLICATION REQUIREMENTS.—Each application under this section—
“(1) shall be made to—

“(A) a judge of the court established by section 103(a); or

“(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

“(2) shall include—

“(A) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

“(B) an enumeration of the minimization procedures adopted by the Attorney General under subsection (f) that are applicable to the retention and dissemination by the Federal Bureau of Investigation of any tangible things to
be made available to the Federal Bureau of Investigation based on the order requested in such application.

“(c) Ex Parte Judicial Order of Approval.—

“(1) In General.—Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (f) be followed.

“(2) Contents of Order.—An order under this subsection—

“(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified;

“(B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;

“(C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);
“(D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and
“(E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).
“(d) NONDISCLOSURE.—
“(1) PROHIBITION ON DISCLOSURE.—No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section, other than to—
“(A) those persons to whom disclosure is necessary to comply with such order;
“(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or
“(C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.
“(2) **Other Nondisclosure Requirements.**—

“(A) **Applicability of Requirements.**—A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

“(B) **Notification to Person.**—Any person who discloses to a person described in subparagraph (A), (B), or (C) of paragraph (1) that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

“(C) **Notification of the Director.**—At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.
“(e) JUDICIAL REVIEW OF FISA ORDERS.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘production order’ means an order to produce any tangible thing under this section; and

“(B) the term ‘nondisclosure order’ means an order imposed under subsection (d).

“(2) JUDICIAL REVIEW.—

“(A) IN GENERAL.—

“(i) FILING OF PETITION.—A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 103(e)(1).

“(ii) ASSIGNMENT; CONSIDERATION.—

The presiding judge shall immediately as-
sign a petition under clause (i) to 1 of the judges serving in the pool established by section 103(e)(1). Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 103(e)(2).

“(iii) Written order; stay.—The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

“(B) Standard for consideration.—A judge considering a petition to modify or set
aside a production order may grant such petition only if the judge finds that such order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

“(C) DENIAL OF PETITION.—

“(i) PERMISSIBLE DENIALS.—A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

“(ii) CERTIFICATION.—If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national secu-
rity of the United States or interfere with
diplomatic relations, such certification shall
be treated as conclusive, unless the judge
finds that the certification was made in
bad faith.

“(iii) LIMITATION ON RECONSIDER-
ATION.—If the judge denies a petition to
modify or set aside a nondisclosure order,
the recipient of such order shall be pre-
cluded for a period of 1 year from filing
another such petition with respect to such
nondisclosure order.

“(D) ORDER IN EFFECT.—Any production
or nondisclosure order not explicitly modified or
set aside consistent with this subsection shall
remain in full effect.

“(3) REVIEW OF DECISION.—A petition for re-
view of a decision under paragraph (2) to affirm,
modify, or set aside an order by the Government or
any person receiving such order shall be made to the
court of review established under section 103(b),
which shall have jurisdiction to consider such peti-
tions. The court of review shall provide for the
record a written statement of the reasons for its de-
cision and, on petition by the Government or any
person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(4) **EXPEDITIOUS PROCEEDINGS; RECORD OF PROCEEDINGS.**—Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

“(5) **FILING UNDER SEAL; EX PARTE AND IN CAMERA REVIEW.**—All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

“(f) **MINIMIZATION PROCEDURES.**—Not later than 180 days after the date of the enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Attorney General shall adopt specific minimization procedures governing the retention and dissemination by
the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this section. Such minimization procedures shall include a procedure for using a reasonable articulable suspicion standard to make emergency queries of the tangible things acquired in response to an order under this section.

“(g) USE OF INFORMATION.—Information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures adopted pursuant to subsection (f). No otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this title shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this title may be used or disclosed by Federal officers or employees except for lawful purposes.

“(h) CLARIFICATION.—Notwithstanding any other provision of law, the Government is authorized to obtain orders in accordance with this section for the purpose of
obtaining tangible things produced in bulk, in the same
manner as previously authorized by the court established
by section 103(a) in orders issued by that court under this
title prior to June 1, 2015. The Government is further
authorized to continue to retain and use tangible things
produced under such orders issued by that court prior to
June 1, 2015, subject to any procedures prescribed by
that court.

“SEC. 505. EMERGENCY AUTHORITY FOR PRODUCTION OF
TANGIBLE THINGS.

“(a) EMERGENCY AUTHORITY.—Notwithstanding
any other provision of this title, the Attorney General may
direct the emergency production of tangible things under
section 502 or 503 if the Attorney General—

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

“(2) reasonably determines that the factual
basis for the issuance of an order under this section
to approve such production of tangible things exists;

“(3) informs, either personally or through a
designee, a judge having jurisdiction under this sec-
ton at the time the Attorney General requires the
emergency production of tangible things that the de-
cision has been made to employ the authority under this section; and

“(4) makes an application in accordance with this title to a judge having jurisdiction under this section as soon as practicable, but not later than 7 days after the Attorney General requires the emergency production of tangible things under this section.

“(b) NONDISCLOSURE.—

“(1) PROHIBITION ON DISCLOSURE.—No person shall disclose to any other person that the Attorney General has authorized the emergency production of tangible things pursuant to a directive under this section, other than to—

“(A) those persons to whom disclosure is necessary to comply with such emergency production;

“(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to such emergency production; or

“(C) other persons as permitted by the Attorney General.

“(2) OTHER NONDISCLOSURE REQUIREMENTS.—
“(A) **Applicability of Requirements.**—A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom the directive under this section is directed in the same manner as such person.

“(B) **Notification to Person.**—Any person who discloses to a person described in subparagraph (A), (B), or (C) of paragraph (1) that the Attorney General has authorized the emergency production of tangible things pursuant to this section shall notify such person of the nondisclosure requirements of this subsection.

“(C) **Notification of the Attorney General.**—At the request of the Attorney General, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Attorney General the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

“(c) **Judicial Review.**—

“(1) **Definitions.**—In this subsection—
“(A) the term ‘production order’ means a directive to produce any tangible thing under this section; and

“(B) the term ‘nondisclosure order’ means an order imposed under subsection (c).

“(2) JUDICIAL REVIEW.—

“(A) IN GENERAL.—

“(i) FILING OF PETITION.—A person receiving a production order under this section may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 103(e)(1).

“(ii) ASSIGNMENT; CONSIDERATION.—The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by
section 103(e)(1). Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 103(e)(2).

“(iii) Written order; stay.—The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

“(B) Standard for consideration.—A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does
not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

“(C) Denial of petition.—

“(i) Permissible denials.—A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

“(ii) Certification.—If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall
be treated as conclusive, unless the judge finds that the certification was made in bad faith.

“(iii) LIMITATION ON RECONSIDERATION.—If the judge denies a petition to modify or set aside a nondisclosure order, the recipient of such order shall be precluded for a period of 1 year from filing another such petition with respect to such nondisclosure order.

“(D) ORDER IN EFFECT.—Any production or nondisclosure order not explicitly modified or set aside consistent with this subsection shall remain in full effect.

“(3) REVIEW OF DECISION.—A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Su-
preme Court of the United States, which shall have jurisdiction to review such decision.

“(4) **Expeditious Proceedings; Record of Proceedings.**—Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

“(5) **Filing Under Seal; Ex Parte and In Camera Review.**—All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

“(d) **Termination of Authority.**—In the absence of a judicial order approving the production of tangible things under this subsection, the production shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time the Attorney General directs the
emergency production of such tangible things, whichever
is earliest.

“(e) Review of Denial.—A denial of the applica-
tion made under this subsection may be reviewed as pro-
vided in section 103.

“(f) Limitation on Use of Tangible Things.—

“(1) Limitation.—If such application for ap-
proval is denied, or in any other case where the pro-
duction of tangible things is terminated and no
order is issued approving the production, no infor-
mation obtained or evidence derived from such pro-
duction shall be received in evidence or otherwise
disclosed in any trial, hearing, or other proceeding
in or before any court, grand jury, department, of-

cie, agency, regulatory body, legislative committee,
or other authority of the United States, a State, or
a political subdivision thereof, and no information

concerning any United States person acquired from
such production shall subsequently be used or dis-
closed in any other manner by Federal officers or
employees without the consent of such person, ex-
cept with the approval of the Attorney General if the
information indicates a threat of death or serious
bodily harm to any person.
“(2) COMPLIANCE.—The Attorney General shall assess compliance with the requirements of paragraph (1).

“SEC. 506. LIABILITY PROTECTION.

“(a) IN GENERAL.—No cause of action shall lie in any court against a person who—

“(1) produces tangible things or provides information, facilities, or technical assistance pursuant to an order issued or an emergency directive required under this title;

“(2) in good faith, retains call detail records under an order pursuant to this title; or

“(3) otherwise provides technical assistance to the Government under this section or to implement this title.

“(b) NO WAIVER OF PRIVILEGE.—A production or provision of information, facilities, or technical assistance or the retention of call detail records pursuant to this title shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

“SEC. 507. COMPENSATION.

“The Government shall compensate a person for reasonable expenses incurred for—

“(1) producing tangible things or providing information, facilities, or assistance in accordance with
an order issued with under this title or an emer-

gency directive under section 505; or

“(2) otherwise providing technical assistance to
the Government under this title or to implement this
title.

“SEC. 508. CONGRESSIONAL OVERSIGHT.

“(a) Annual Information.—On an annual basis,
the Attorney General shall fully inform the Select Com-
mittee on Intelligence and the Committee on the Judiciary
of the Senate and the Permanent Select Committee on In-
telligence of the House of Representatives concerning all
requests for the production of tangible things under this
title.

“(b) Annual Report to the Appropriate Com-
mittees of Congress.—In April of each year, the Attor-
ney General shall submit to the appropriate committees
of Congress a report setting forth with respect to the pre-
ceding calendar year—

“(1) the total number of applications made for
orders approving requests for the production of tan-
gible things under this title;

“(2) the total number of such orders either
granted, modified, or denied; and
“(3) the number of such orders either granted, modified, or denied for the production of each of the following:


“(B) Firearms sales records.

“(C) Tax return records.

“(D) Educational records.

“(E) Medical records containing information that would identify a person.

“(c) ANNUAL REPORT TO CONGRESS.—

“(1) REQUIREMENT FOR REPORT.—In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—

“(A) the total number of applications made for orders approving requests for the production of tangible things under this title; and

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

“(2) FORM OF REPORT.—Each report under this subsection shall be submitted in unclassified form.
“SEC. 509. EFFECTIVE DATE AND TRANSITIONS.

“(a) Effective Dates.—

“(1) In General.—Sections 501, 502, 504, 505, 506, 507, 508, and this section shall take effect of the date of the enactment of the FISA Improvements Act of 2015.

“(2) Aggregate Collection of Certain Business Records.—

“(A) Sunset.—This title is amended by striking section 504 on June 30, 2017.

“(B) Table of Contents Amendment.—The table of contents in the first section is amended by striking the item relating to section 504 on June 30, 2017.


“(b) Operational Readiness and Cost Assessment.—

“(1) Requirement for Assessment.—No later than June 1, 2016, the Director of National Intelligence, in coordination with the Attorney General, the Director of the National Security Agency, and the Director of the Federal Bureau of Investigation, shall submit to the President and the appropriate committees of Congress an operational readi-
ness and cost assessment of the systems, processes, and resources necessary to facilitate the transition from the National Security Agency bulk telephony metadata collection program to the program described in section 503.

“(2) CONTENTS.—The operational readiness and cost assessment required under paragraph (1) shall include—

“(A) a comprehensive evaluation of the current functioning and operational mechanisms of the National Security Agency bulk telephony metadata program, as in effect on the date of the enactment of the FISA Improvements Act of 2015, to include the annualized costs to such program for—

“(i) data management;

“(ii) data security;

“(iii) data storage; and

“(iv) personnel training costs;

“(B) a comprehensive evaluation of the technology system required to access, secure, correlate and analyze data retained by electronic communication service providers, to include an estimate of the system’s initial devel-
opment costs and the annualized recurring costs
to such system for—

“(i) data management;
“(ii) data security;
“(iii) data storage;
“(iv) personnel training costs; and
“(v) additional special security re-
quirements needed to safeguard the system
against unauthorized access;
“(C) a cost-benefit analysis of
transitioning from the National Security Agen-
cy bulk telephony metadata program to the Sys-
tem;
“(D) an analysis of the optimal length of
time that call detail records must be retained by
the commercial telecommunications carriers to
maintain a level of operational effectiveness
comparable to the National Security Agency
bulk telephony metadata collection program;
and
“(E) an assessment of any legislative or
regulatory authorities needed to maintain a
level of operational effectiveness comparable to
the National Security Agency bulk data teleph-
ony metadata collection program.”.
(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 is amended by striking the heading for title V and the items relating to sections 501 and 502 and inserting the following:

"TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

"Sec. 501. Definitions.
"Sec. 502. Access to certain business records for foreign intelligence and international terrorism investigations.
"Sec. 503. Access to certain call detail records.
"Sec. 504. Transitional aggregate collection of certain business records.
"Sec. 505. Emergency authority for production of tangible things.
"Sec. 506. Liability protection.
"Sec. 507. Compensation.
"Sec. 508. Congressional oversight.
"Sec. 509. Effective date and transitions."

SEC. 102. PERMANENT AUTHORITY FOR ACCESS TO BUSINESS RECORDS, ROVING SURVEILLANCE, AND INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.


(b) Permanent Authority for Individual Terrorist as Agents of Foreign Powers.—Section 6001 of the Intelligence Reform and Terrorism Prevention Act
of 2004 (50 U.S.C. 1801 note) is amended by striking subsection (b).

TITLE II—ENHANCED NATIONAL SECURITY PROVISIONS

SEC. 201. TEMPORARY COLLECTION OF INFORMATION RELATING TO PERSONS OTHER THAN UNITED STATES PERSONS TRAVELING INTO THE UNITED STATES.

(a) IN GENERAL.—Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) by redesignating subsections (f), (g), (h), and (i) as subsections (g), (h), (i), and (j), respectively; and

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

“(f)(1) Notwithstanding any other provision of this Act, the lawfully authorized targeting of a non-United States person previously believed to be located outside the United States for the acquisition of foreign intelligence information may continue for a period not to exceed 72 hours from the time that the non-United States person is reasonably believed to be located inside the United States and the acquisition is subject to this title or to title
III of this Act, provided that the head of an element of
the intelligence community—

“(A) determines—

“(i) that there exists an exigent cir-
cumstance; and

“(ii) there is reason to believe that the tar-
get of the acquisition has communicated or re-
ceived or will communicate or receive foreign in-
telligence information relevant to the exigent
circumstance;

“(B) promptly notifies the Attorney General of
a determination under subparagraph (A); and

“(C) requests, as soon as practicable, the em-
ployment of emergency electronic surveillance under
subsection (e) or the employment of an emergency
physical search pursuant to section 304(e), as war-
ranted.

“(2) The authority under this subsection to continue
the acquisition of foreign intelligence information is lim-
ited to a period not to exceed 72 hours and shall cease
upon the earlier of the following:

“(A) The employment of emergency electronic
surveillance under subsection (e) or the employment
of an emergency physical search pursuant to section
304(e).
“(B) An issuance of a court order under this title or title III of this Act.

“(C) The Attorney General provides direction that the acquisition be terminated.

“(D) The head of the element of the intelligence community conducting the acquisition determines that a request under paragraph (1)(C) is not warranted.

“(E) When the threat of death or serious bodily harm to any person or to the ongoing collection of critical foreign intelligence information is no longer reasonably believed to exist.

“(3) Nonpublicly available information concerning unconsenting United States persons acquired under this subsection shall not be disseminated during the 72 hour time period under paragraph (1) unless necessary to investigate, reduce, or eliminate the threat of death or serious bodily harm to any person.

“(4) If the Attorney General declines to authorize the employment of emergency electronic surveillance under subsection (e) or the employment of an emergency physical search pursuant to section 304(e), or a court order is not obtained under this title or title III of this Act, information obtained during the 72 hour acquisition time period under paragraph (1) shall not be retained, except with the
approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(5) Paragraphs (5) and (6) of subsection (e) shall apply to this subsection.”.

(b) Notification of Emergency Employment of Electronic Surveillance.—Section 106(j) (50 U.S.C. 1806(j)) is amended by striking “section 105(e)” and inserting “subsection (e) or (f) of section 105”.

SEC. 202. PRESERVATION OF TREATMENT OF NON-UNITED STATES PERSONS TRAVELING OUTSIDE THE UNITED STATES AS AGENTS OF FOREIGN POWERS.

Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended—

(1) in subparagraph (A), by inserting before the semicolon at the end the following: “, irrespective of whether the person is inside the United States”; and

(2) in subparagraph (B)—

(A) by striking “of such person’s presence in the United States”; and

(B) by striking “such activities in the United States,” and inserting “such activities,.”.
SEC. 203. IMPROVEMENT TO INVESTIGATIONS OF INTERNATIONAL PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.

Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)), as amended by section 202, is further amended by striking subparagraph (E) and inserting the following:

“(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power, or knowingly aids or abets any person in the conduct of such proliferation or activities in preparation therefor, or knowingly conspires with any person to engage in such proliferation or activities in preparation therefor; or”.

SEC. 204. INCREASE IN PENALTIES FOR MATERIAL SUPPORT OF FOREIGN TERRORIST ORGANIZATIONS AND TERRORISTS AND OTHER TERRORISM CRIMES.

(a) Acts of Terrorism Transcending National Boundaries.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by inserting “924(c)(relating to use, carrying, or possession of firearms),” after “844(i) (relating to arson and bombing of property used in interstate commerce),”.

(b) Providing Material Support to Terrorists.—Section 2339A(a) of title 18, United States Code, is amended by striking “15 years” and inserting “20 years”.

c) Providing Material Support or Resources to Designated Foreign Terrorist Organizations.—Section 2339B(a)(1) of title 18, United States Code, is amended by striking “15 years” and inserting “20 years”.

d) Receiving Military-type Training From a Foreign Terrorist Organization.—Section 2339D(a) of title 18, United States Code, is amended by striking “for ten years” and inserting “up to ten years”.

SEC. 205. COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.

Subsection (b) of section 2709 of title 18, United States Code, is amended to read as follows:

“(b) Required Certification.—The Director of the Federal Bureau of Investigation, or the designee of the Director in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may request the name, address, length of service, local and long distance toll billing records, and electronic communications transactional records of a person or entity if the
Director (or the designee) certifies in writing to the wire
or electronic communication service provider to which the
request is made that such information is relevant to an
authorized investigation to protect against international
terrorism or clandestine intelligence activities, provided
that such an investigation of a United States person is
not conducted solely on the basis of activities protected
by the first amendment to the Constitution of the United
States.”.

**TITLE III—OTHER MATTERS**

**SEC. 301. UNAUTHORIZED DISCLOSURE OR REMOVAL OF**

**CERTAIN CLASSIFIED INFORMATION.**

(a) Prohibition on Unauthorized Disclosure.—An officer, employee, contractor, or consultant of
the United States, or an officer, employee, contractor, or
consultant of a recipient of an order issued pursuant to
title V of the Foreign Intelligence Surveillance Act of 1978
(50 U.S.C. 1861 et seq.) who—

(1) knowingly comes into possession of classified information or documents or materials con-
taining classified information of the United States
that—

(A) was submitted in connection with an
application to the court established under sec-
tion 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a));

(B) was submitted in connection with an order approved by such court; or

(C) was acquired pursuant to an order or directive of such court; and

(2)(A) knowingly and willfully communicates, transmits, or otherwise makes available to an unauthorized person, such classified information or documents or materials; or

(B) knowingly removes such classified information or documents or materials without authority and with the intent to retain such classified information or documents or materials at an unauthorized location,

shall be punished according to subsection (b).

(b) Term of Imprisonment.—A person who violates this section shall be fined under title 18, United States Code, or—

(1) for a violation of paragraph (2)(A) of subsection (a), imprisoned for not more than 10 years; or

(2) for a violation of paragraph (2)(B) of such subsection, imprisoned for not more than 1 year,
SEC. 302. APPOINTMENT OF AMICUS CURIAE.

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following:

“(i) AMICUS CURIAE.—

“(1) AUTHORIZATION.—Notwithstanding any other provision of law, a court established under subsection (a) or (b) is authorized, consistent with the requirement of subsection (c) and any other statutory requirement that the court act expeditiously or within a stated time, to appoint amicus curiae to assist the court in the consideration of a covered matter.

“(2) DEFINITIONS.—In this subsection:

“(A) APPROPRIATE COMMITTEES OF CONGRESS.—The term ‘appropriate committees of Congress’ means—

“(i) the Committee on the Judiciary and the Select Committee on Intelligence of the Senate; and

“(ii) the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives.
“(B) COVERED MATTER.—The term ‘covered matter’ means a matter before a court established under subsection (a) or (b)—

“(i) that, in the opinion of such a court, presents a legal or technical issue regarding which the court’s deliberations would benefit from participation by an amicus curiae; and

“(ii) that pertains to—

“(I) an application for an order under this title, title III, IV, or V of this Act, or section 703 or 704 of this Act;

“(II) a review of a certification or procedures under section 702 of this Act; or

“(III) a notice of non-compliance with any such order, certification, or procedures.

“(3) DESIGNATION.—The courts established by subsection (a) and (b) shall each designate 1 or more individuals who have been determined by appropriate executive branch officials to be eligible for access to classified national security information, including sensitive compartmented information, who
may be appointed to serve as amicus curiae. In appointing an amicus curiae pursuant to paragraph (1), the court may choose from among those so designated.

“(4) EXPERTISE.—An individual appointed as an amicus curiae under paragraph (1) may be a special counsel or an expert on privacy and civil liberties, intelligence collection, telecommunications, or any other area that may lend legal or technical expertise to the court.

“(5) DUTIES.—An amicus curiae appointed under paragraph (1) to assist with the consideration of a covered matter shall carry out the duties assigned by the appointing court. That court may authorize, to the extent consistent with the case or controversy requirements of Article III of the Constitution of the United States and the national security of the United States, the amicus curiae to review any application, certification, petition, motion, or other submission that the court determines is relevant to the duties assigned by the court.

“(6) NOTIFICATION.—A court established under subsection (a) or (b) shall notify the Attorney General of each exercise of the authority to appoint an amicus curiae under paragraph (1).
“(7) ASSISTANCE.—A court established under subsection (a) or (b) may request and receive (including on a non-reimbursable basis) the assistance of the executive branch in the implementation of this subsection.

“(8) ADMINISTRATION.—A court established under subsection (a) or (b) may provide for the designation, appointment, removal, training, support, ethical rules, or other administration of an amicus curiae appointed under paragraph (1) in a manner that is not inconsistent with this subsection.

“(9) CONGRESSIONAL OVERSIGHT.—The Attorney General shall submit to the appropriate committees of Congress an annual report on the number of notices described in paragraph (6) received by Attorney General for the preceding 12-month period.

“(j) REVIEW OF FISA COURT DECISIONS.—Following issuance of an order under this Act, a court established under subsection (a) shall certify for review to the court established under subsection (b) any question of law that may affect resolution of the matter in controversy that the court determines warrants such review because of a need for uniformity or because consideration by the court established under subsection (b) would serve the interests of justice. Upon certification of a question of law
under this subsection, the court established under subsection (b) may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

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

“(1) **Certification.**—For purposes of section 1254(2) of title 28, United States Code, the court of review established under subsection (b) shall be considered to be a court of appeals.

“(2) **Amicus Curiae Briefing.**—Upon certification of an application under paragraph (1), the Supreme Court of the United States may appoint an amicus curiae designated under subsection (i)(3), or any other person, to provide briefing or other assistance.”.

**SEC. 303. PUBLIC REPORTING BY PERSONS SUBJECT TO ORDERS.**

(a) **In General.**—Title VI of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by adding at the end the following:

**“SEC. 602. PUBLIC REPORTING BY PERSONS SUBJECT TO ORDERS.**

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

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

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

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

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

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

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

“(i) title IV;

“(ii) title V with respect to applications described in section 502; and

“(iii) title V with respect to applications described in section 503.

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

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

“(B) The total number of customer selectors targeted under all national security process received, including all national security letters and orders or directives under this Act, combined, reported in bands of 0–249 and thereafter in bands of 250.
“(3) A semiannual report that aggregates the number of orders or national security letters with which the person was required to comply in the following separate categories:

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

“(B) The number of customer accounts affected by national security letters, reported in bands of 500 starting with 0–499.

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

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

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

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

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

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

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

“(b) PERIOD OF TIME COVERED BY REPORTS.—

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

“(A) may be published every 180 days;

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

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

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

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

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

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

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

“(ii) for a report published on or after
the date on which the 540-day waiting pe-
period expires, shall include information re-
lating to such new order or directive re-
ported pursuant to subparagraph (B)(ii).
“(2) A report described in paragraph (2) of subsection (a) may be published every 180 days and shall include information relating to the previous 180 days.

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

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

“(B) beginning on the date that is 1 year before the date described in subparagraph (A).

“(c) OTHER FORMS OF AGREED TO PUBLICATION.—Nothing in this section prohibits the Government and any person from jointly agreeing to the publication of information referred to in this subsection in a time, form, or manner other than as described in this section.

“(d) DEFINITIONS.—In this section:

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

“(2) NATIONAL SECURITY LETTER.—The term ‘national security letter’ means a request for a report, records, or other information under—
“(A) section 2709 of title 18, United States Code;


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

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

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 is amended by inserting after the item relating to section 601 the following new item:

“Sec. 602. Public reporting by persons subject to orders.”.