

114TH CONGRESS
1ST SESSION

S. _____

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.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “FISA Improvements Act of 2015”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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-
lance, 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. 202. Preservation of treatment of non-United States persons traveling outside the United States as agents of foreign powers.
- 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.

1 **TITLE I—ACCESS TO CERTAIN**
 2 **BUSINESS RECORDS FOR**
 3 **FOREIGN INTELLIGENCE**
 4 **PURPOSES**

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

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

10 **“TITLE V—ACCESS TO CERTAIN**
 11 **BUSINESS RECORDS FOR**
 12 **FOREIGN INTELLIGENCE**
 13 **PURPOSES**

14 **“SEC. 501. DEFINITIONS.**

15 “In this title:

16 “(1) IN GENERAL.—The terms ‘foreign power’,
 17 ‘agent of a foreign power’, ‘international terrorism’,
 18 ‘foreign intelligence information’, ‘Attorney General’,

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

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

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

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

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

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

23 “(B) does not include—

24 “(i) the content of any communica-
25 tion;

1 “(ii) the name, address, or financial
2 information of a subscriber or customer; or

3 “(iii) cell site information or global
4 positioning system information.

5 “(4) CONTENT.—The term ‘content’, with re-
6 spect to a communication—

7 “(A) means any information concerning
8 the substance, purport, or meaning of that com-
9 munication; and

10 “(B) does not include any dialing, routing,
11 addressing, signaling information.

12 “(5) ELECTRONIC COMMUNICATION SERVICE
13 PROVIDER.—The term ‘electronic communication
14 service’ has the meaning given that term in section
15 701(b)(4).

16 “(6) MINIMIZATION PROCEDURES.—The term
17 ‘minimization procedures’ means—

18 “(A) specific procedures that are reason-
19 ably designed in light of the purpose and tech-
20 nique of an order for the production of tangible
21 things, to minimize the retention, and prohibit
22 the dissemination, of nonpublicly available in-
23 formation concerning unconsenting United
24 States persons consistent with the need of the

1 United States to obtain, produce, and dissemi-
2 nate foreign intelligence information;

3 “(B) procedures that require that nonpub-
4 licly available information, which is not foreign
5 intelligence information, as defined in section
6 101(e)(1), shall not be disseminated in a man-
7 ner that identifies any United States person,
8 without such person’s consent, unless such per-
9 son’s identity is necessary to understand foreign
10 intelligence information or assess its impor-
11 tance; and

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

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

21 “(A) means a term or set of terms that
22 identifies or describes a person, account, ad-
23 dress, or personal device, or another specific
24 term, that is used by the Government to limit
25 the scope of tangible things sought to the great-

1 est extent reasonably practicable, consistent
2 with the need of the United States to obtain,
3 produce, and disseminate foreign intelligence in-
4 formation; and

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

7 “(i) a broad domestic geographic re-
8 gion, including the United States, a State,
9 county, city, zip code, or area code, when
10 not used as part of a specific term as de-
11 scribed in subparagraph (A); or

12 “(ii) an electronic communication
13 service provider, when not used as part of
14 a specific term as described in subpara-
15 graph (A), unless the provider is itself a
16 subject of an authorized investigation for
17 which the specific selection term is used as
18 the basis of production.

19 “(8) SYSTEM.—The term ‘System’ means the
20 call detail record system developed under section
21 503(b).

22 **“SEC. 502. ACCESS TO CERTAIN BUSINESS RECORDS FOR**
23 **FOREIGN INTELLIGENCE AND INTER-**
24 **NATIONAL TERRORISM INVESTIGATIONS.**

25 “(a) AUTHORITY.—

1 “(1) IN GENERAL.—Subject to paragraph (3),
2 the Director of the Federal Bureau of Investigation
3 or a designee of the Director (whose rank shall be
4 no lower than Assistant Special Agent in Charge)
5 may make an application for an order requiring the
6 production of any tangible things (including books,
7 records, papers, documents, and other items) for an
8 investigation to obtain foreign intelligence informa-
9 tion not concerning a United States person or to
10 protect against international terrorism or clandestine
11 intelligence activities, provided that such investiga-
12 tion of a United States person is not conducted sole-
13 ly upon the basis of activities protected by the first
14 amendment to the Constitution.

15 “(2) INVESTIGATION REQUIREMENTS.—An in-
16 vestigation conducted under this section shall—

17 “(A) be conducted under guidelines ap-
18 proved by the Attorney General under Execu-
19 tive Order 12333 (or a successor order); and

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

24 “(3) SENSITIVE RECORDS.—In the case of an
25 application for an order requiring the production of

1 library circulation records, library patron lists, book
2 sales records, book customer lists, firearms sales
3 records, tax return records, educational records, or
4 medical records containing information that would
5 identify a person, the Director of the Federal Bu-
6 reau of Investigation may delegate the authority to
7 make such application to either the Deputy Director
8 of the Federal Bureau of Investigation or the Execu-
9 tive Assistant Director for National Security (or any
10 successor position). The Deputy Director or the Ex-
11 ecutive Assistant Director may not further delegate
12 such authority.

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

15 “(1) shall be made to—

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

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

25 “(2) shall include—

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

4 “(B) a statement of facts showing that
5 there are reasonable grounds to believe that the
6 tangible things sought are relevant to an au-
7 thorized investigation (other than a threat as-
8 sessment) conducted in accordance with sub-
9 section (a)(2) to obtain foreign intelligence in-
10 formation not concerning a United States per-
11 son or to protect against international terrorism
12 or clandestine intelligence activities, such things
13 being presumptively relevant to an authorized
14 investigation if the applicant shows in the state-
15 ment of the facts that they pertain to—

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

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

21 “(iii) an individual in contact with, or
22 known to, a suspected agent of a foreign
23 power who is the subject of such author-
24 ized investigation.

25 “(c) EX PARTE JUDICIAL ORDER OF APPROVAL.—

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

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

9 “(A) shall describe the tangible things that
10 are ordered to be produced with sufficient par-
11 ticularity to permit them to be fairly identified
12 and include each specific selection term to be
13 used as the basis for production;

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

19 “(C) shall provide clear and conspicuous
20 notice of the principles and procedures de-
21 scribed in subsection (d);

22 “(D) may only require the production of a
23 tangible thing if such thing can be obtained
24 with a subpoena duces tecum issued by a court
25 of the United States in aid of a grand jury in-

1 vestigation or with any other order issued by a
2 court of the United States directing the produc-
3 tion of records or tangible things; and

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

7 “(d) NONDISCLOSURE.—

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

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

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

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

23 “(2) OTHER NONDISCLOSURE REQUIRE-
24 MENTS.—

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

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

15 “(C) NOTIFICATION OF THE DIRECTOR.—
16 At the request of the Director of the Federal
17 Bureau of Investigation or the designee of the
18 Director, any person making or intending to
19 make a disclosure under subparagraph (A) or
20 (C) of paragraph (1) shall identify to the Direc-
21 tor or such designee the person to whom such
22 disclosure will be made or to whom such disclo-
23 sure was made prior to the request.

24 “(e) JUDICIAL REVIEW OF FISA ORDERS.—

25 “(1) DEFINITIONS.—In this subsection—

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

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

6 “(2) JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—

8 “(i) FILING OF PETITION.—A person
9 receiving a production order may challenge
10 the legality of that order by filing a peti-
11 tion with the pool established by section
12 103(e)(1). Not less than 1 year after the
13 date of the issuance of the production
14 order, the recipient of a production order
15 may challenge the nondisclosure order im-
16 posed in connection with such production
17 order by filing a petition to modify or set
18 aside such nondisclosure order, consistent
19 with the requirements of subparagraph
20 (C), with the pool established by section
21 103(e)(1).

22 “(ii) ASSIGNMENT; CONSIDERATION.—

23 The presiding judge shall immediately as-
24 sign a petition under clause (i) to 1 of the
25 judges serving in the pool established by

1 section 103(e)(1). Not later than 72 hours
2 after the assignment of such petition, the
3 assigned judge shall conduct an initial re-
4 view of the petition. If the assigned judge
5 determines that the petition is frivolous,
6 the assigned judge shall immediately deny
7 the petition and affirm the production
8 order or nondisclosure order. If the as-
9 signed judge determines the petition is not
10 frivolous, the assigned judge shall promptly
11 consider the petition in accordance with
12 the procedures established under section
13 103(e)(2).

14 “(iii) WRITTEN ORDER; STAY.—The
15 assigned judge shall promptly provide a
16 written statement for the record of the rea-
17 sons for any determination under this sub-
18 section. Upon the request of the Govern-
19 ment, any order setting aside a nondisclo-
20 sure order shall be stayed pending review
21 pursuant to paragraph (3).

22 “(B) STANDARD FOR CONSIDERATION.—A
23 judge considering a petition to modify or set
24 aside a production order may grant such peti-
25 tion only if the judge finds that such order does

1 not meet the requirements of this section or is
2 otherwise unlawful. If the judge does not mod-
3 ify or set aside the production order, the judge
4 shall immediately affirm such order, and order
5 the recipient to comply therewith.

6 “(C) DENIAL OF PETITION.—

7 “(i) PERMISSIBLE DENIALS.—A judge
8 considering a petition to modify or set
9 aside a nondisclosure order may grant such
10 petition only if the judge finds that there
11 is no reason to believe that disclosure may
12 endanger the national security of the
13 United States, interfere with a criminal,
14 counterterrorism, or counterintelligence in-
15 vestigation, interfere with diplomatic rela-
16 tions, or endanger the life or physical safe-
17 ty of any person.

18 “(ii) CERTIFICATION.—If, upon filing
19 of such a petition, the Attorney General,
20 Deputy Attorney General, an Assistant At-
21 torney General, or the Director of the Fed-
22 eral Bureau of Investigation certifies that
23 disclosure may endanger the national secu-
24 rity of the United States or interfere with
25 diplomatic relations, such certification shall

1 be treated as conclusive, unless the judge
2 finds that the certification was made in
3 bad faith.

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

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

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

1 preme Court of the United States, which shall have
2 jurisdiction to review such decision.

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

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

19 “(f) USE OF INFORMATION.—Information acquired
20 from tangible things received by the Federal Bureau of
21 Investigation in response to an order under this title con-
22 cerning any United States person may be used and dis-
23 closed by Federal officers and employees in accordance
24 with the guidelines approved by the Attorney General
25 under Executive Order 12333 (or a successor order). No

1 otherwise privileged information acquired from tangible
2 things received by the Federal Bureau of Investigation in
3 accordance with the provisions of this title shall lose its
4 privileged character. No information acquired from tan-
5 gible things received by the Federal Bureau of Investiga-
6 tion in response to an order under this title may be used
7 or disclosed by Federal officers or employees except for
8 lawful purposes.

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

10 “(a) AUTHORITY.—

11 “(1) IN GENERAL.—The Director of the Fed-
12 eral Bureau of Investigation or a designee of the Di-
13 rector (whose rank shall be no lower than Assistant
14 Special Agent in Charge) may make an application
15 for an order requiring queries to the System re-
16 quired by subsection (b) for call detail records that
17 are relevant to an investigation to obtain foreign in-
18 telligence information not concerning a United
19 States person or to protect against international ter-
20 rorism or clandestine intelligence activities, provided
21 that such investigation of a United States person is
22 not conducted solely upon the basis of activities pro-
23 tected by the first Amendment to the Constitution.

24 “(2) INVESTIGATION REQUIREMENTS.—An in-
25 vestigation conducted under this section shall—

1 “(A) be conducted under guidelines ap-
2 proved by the Attorney General under Execu-
3 tive Order 12333 (or a successor order); and

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

8 “(b) DEVELOPMENT OF SYSTEM.—

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

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

19 “(3) TECHNICAL ASSISTANCE.—An electronic
20 communications service provider producing call de-
21 tail records in compliance with an order issued in ac-
22 cordance with this section shall furnish the Govern-
23 ment forthwith all information, facilities, or tech-
24 nical assistance necessary to accomplish the produc-
25 tion in such a manner as will protect the secrecy of

1 the production and produce a minimum of inter-
2 ference with the services that such service provider
3 is providing to each subject of the production.

4 “(4) SCHEDULE.—The System required by sub-
5 section (a) shall be completed not later than June
6 30, 2017.

7 “(c) APPLICATION REQUIREMENTS.—Each applica-
8 tion under this section—

9 “(1) shall be made to—

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

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

19 “(2) shall include—

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

23 “(B) a statement of facts showing that
24 there are reasonable grounds to believe that the
25 tangible things sought are relevant to an au-

1 thorized investigation (other than a threat as-
2 sessment) conducted in accordance with sub-
3 section (a)(2) to obtain foreign intelligence in-
4 formation not concerning a United States per-
5 son or to protect against international terrorism
6 or clandestine intelligence activities, such things
7 being presumptively relevant to an authorized
8 investigation if the applicant shows in the state-
9 ment of the facts that they pertain to—

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

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

15 “(iii) an individual in contact with, or
16 known to, a suspected agent of a foreign
17 power who is the subject of such author-
18 ized investigation.

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

20 “(1) IN GENERAL.—Upon an application made
21 pursuant to this section, if the judge finds that the
22 application meets the requirements of subsections
23 (a) and (b), the judge shall enter an ex parte order
24 as requested, or as modified, approving the release
25 of tangible things.

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

3 “(A) shall describe the tangible things that
4 are ordered to be produced with sufficient par-
5 ticularity to permit them to be fairly identified;

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

12 “(C) shall provide clear and conspicuous
13 notice of the principles and procedures de-
14 scribed in subsection (d);

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

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

25 “(e) NONDISCLOSURE.—

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

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

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

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

16 “(2) OTHER NONDISCLOSURE REQUIRE-
17 MENTS.—

18 “(A) APPLICABILITY OF REQUIRE-
19 MENTS.—A person to whom disclosure is made
20 pursuant to paragraph (1) shall be subject to
21 the nondisclosure requirements applicable to a
22 person to whom an order is directed under this
23 section in the same manner as such person.

24 “(B) NOTIFICATION TO PERSON.—Any
25 person who discloses to a person described in

1 subparagraph (A), (B), or (C) of paragraph (1)
2 that the Federal Bureau of Investigation has
3 sought or obtained tangible things pursuant to
4 an order under this section shall notify such
5 person of the nondisclosure requirements of this
6 subsection.

7 “(C) NOTIFICATION OF THE DIRECTOR.—
8 At the request of the Director of the Federal
9 Bureau of Investigation or the designee of the
10 Director, any person making or intending to
11 make a disclosure under subparagraph (A) or
12 (C) of paragraph (1) shall identify to the Direc-
13 tor or such designee the person to whom such
14 disclosure will be made or to whom such disclo-
15 sure was made prior to the request.

16 “(f) JUDICIAL REVIEW OF FISA ORDERS.—

17 “(1) DEFINITIONS.—In this subsection—

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

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

23 “(2) JUDICIAL REVIEW.—

24 “(A) IN GENERAL.—

1 “(i) FILING OF PETITION.—A person
2 receiving a production order may challenge
3 the legality of that order by filing a peti-
4 tion with the pool established by section
5 103(e)(1). Not less than 1 year after the
6 date of the issuance of the production
7 order, the recipient of a production order
8 may challenge the nondisclosure order im-
9 posed in connection with such production
10 order by filing a petition to modify or set
11 aside such nondisclosure order, consistent
12 with the requirements of subparagraph
13 (C), with the pool established by section
14 103(e)(1).

15 “(ii) ASSIGNMENT; CONSIDERATION.—
16 The presiding judge shall immediately as-
17 sign a petition under clause (i) to 1 of the
18 judges serving in the pool established by
19 section 103(e)(1). Not later than 72 hours
20 after the assignment of such petition, the
21 assigned judge shall conduct an initial re-
22 view of the petition. If the assigned judge
23 determines that the petition is frivolous,
24 the assigned judge shall immediately deny
25 the petition and affirm the production

1 order or nondisclosure order. If the as-
2 signed judge determines the petition is not
3 frivolous, the assigned judge shall promptly
4 consider the petition in accordance with
5 the procedures established under section
6 103(e)(2).

7 “(iii) WRITTEN ORDER; STAY.—The
8 assigned judge shall promptly provide a
9 written statement for the record of the rea-
10 sons for any determination under this sub-
11 section. Upon the request of the Govern-
12 ment, any order setting aside a nondisclo-
13 sure order shall be stayed pending review
14 pursuant to paragraph (3).

15 “(B) STANDARD FOR CONSIDERATION.—A
16 judge considering a petition to modify or set
17 aside a production order may grant such peti-
18 tion only if the judge finds that such order does
19 not meet the requirements of this section or is
20 otherwise unlawful. If the judge does not mod-
21 ify or set aside the production order, the judge
22 shall immediately affirm such order, and order
23 the recipient to comply therewith.

24 “(C) DENIAL OF PETITION.—

1 “(i) PERMISSIBLE DENIALS.—A judge
2 considering a petition to modify or set
3 aside a nondisclosure order may grant such
4 petition only if the judge finds that there
5 is no reason to believe that disclosure may
6 endanger the national security of the
7 United States, interfere with a criminal,
8 counterterrorism, or counterintelligence in-
9 vestigation, interfere with diplomatic rela-
10 tions, or endanger the life or physical safe-
11 ty of any person.

12 “(ii) CERTIFICATION.—If, upon filing
13 of such a petition, the Attorney General,
14 Deputy Attorney General, an Assistant At-
15 torney General, or the Director of the Fed-
16 eral Bureau of Investigation certifies that
17 disclosure may endanger the national secu-
18 rity of the United States or interfere with
19 diplomatic relations, such certification shall
20 be treated as conclusive, unless the judge
21 finds that the certification was made in
22 bad faith.

23 “(iii) LIMITATION ON RECONSIDER-
24 ATION.—If the judge denies a petition to
25 modify or set aside a nondisclosure order,

1 the recipient of such order shall be pre-
2 cluded for a period of 1 year from filing
3 another such petition with respect to such
4 nondisclosure order.

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

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

22 “(4) EXPEDITIOUS PROCEEDINGS; RECORD OF
23 PROCEEDINGS.—Judicial proceedings under this sub-
24 section shall be concluded as expeditiously as pos-
25 sible. The record of proceedings, including petitions

1 filed, orders granted, and statements of reasons for
2 decision, shall be maintained under security meas-
3 ures established by the Chief Justice of the United
4 States, in consultation with the Attorney General
5 and the Director of National Intelligence.

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

13 “(g) USE OF INFORMATION.—Information acquired
14 from tangible things received by the Federal Bureau of
15 Investigation in response to an order under this title con-
16 cerning any United States person may be used and dis-
17 closed by Federal officers and employees in accordance
18 with guidelines approved by the Attorney General under
19 Executive Order 12333 (or a successor order). No other-
20 wise privileged information acquired from tangible things
21 received by the Federal Bureau of Investigation in accord-
22 ance with the provisions of this title shall lose its privileged
23 character. No information acquired from tangible things
24 received by the Federal Bureau of Investigation in re-
25 sponse to an order under this title may be used or dis-

1 closed by Federal officers or employees except for lawful
2 purposes.

3 “(h) AUTHORIZATION FOR QUERIES OF CALL DE-
4 TAIL RECORDS.—

5 “(1) SUPPLEMENTAL PROCEDURES.—An order
6 issued pursuant to an application made under sub-
7 section (a) shall require an electronic communica-
8 tions service provider to query its call detail records
9 through the System using the specific selection term
10 authorized by a court order issued in accordance
11 with this section and provide the results of such que-
12 ries to the Government in compliance with such
13 court order. Such queries shall be subject to supple-
14 mental procedures, which are in addition to any
15 other requirements or procedures imposed by this
16 Act, as follows:

17 “(A) CONTENT PROHIBITION.—Such an
18 order shall not authorize the query of the con-
19 tent of any communication.

20 “(B) AUTHORIZATION AND RENEWAL PE-
21 RIODS.—Such an order—

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

24 “(ii) may be extended by the court on
25 the same basis as an original order upon

1 an application under this title for an exten-
2 sion and new findings by the court in ac-
3 cordance with subsection (c).

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

8 “(i) to perform a query using a spe-
9 cific selection term for which a recorded
10 determination has been made that the spe-
11 cific selection term is relevant to an au-
12 thorized investigation (other than a threat
13 assessment) conducted in accordance with
14 subsection (a)(2) to obtain foreign intel-
15 ligence information not concerning a
16 United States person or to protect against
17 international terrorism, clandestine intel-
18 ligence activities, or activities in prepara-
19 tion therefor;

20 “(ii) to return information as author-
21 ized under paragraph (2); or

22 “(iii) as may be necessary for tech-
23 nical assurance, data management or com-
24 pliance purposes, or for the purpose of
25 narrowing the results of queries, in which

1 case no information produced pursuant to
2 the order may be accessed, used, or dis-
3 closed for any other purpose, unless the in-
4 formation is responsive to a query author-
5 ized under paragraph (2).

6 “(2) SCOPE OF PERMISSIBLE QUERY RETURN
7 INFORMATION.—For any query performed pursuant
8 to paragraph (1)(C)(i), the query only may return
9 information concerning—

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

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

18 “(i) PROSPECTIVE CHANGES TO EXISTING PRAC-
19 TICES RELATED TO CALL DETAIL RECORDS.—

20 “(1) REQUIREMENT TO NOTIFY.—

21 “(A) IN GENERAL.—An electronic commu-
22 nication service provider shall notify the Attor-
23 ney General if that service provider intends to
24 retain its call detail records for a period less
25 than 36 months.

1 “(B) TIMING OF NOTICE.—A notification
2 under paragraph (1) shall be made not less
3 than 180 days prior to the date such electronic
4 communications service provider intends to im-
5 plement a policy to retain such records for a pe-
6 riod less than 36 months.

7 “(2) APPLICATION FOR AN ORDER TO RE-
8 TAIN.—The Director of the Federal Bureau of In-
9 vestigation may make an application to a judge of
10 the court established by section 103(a) for an order
11 requiring that such electronic communication service
12 provider shall retain its call detail records for a pe-
13 riod of at least 36 months.

14 “(3) ORDERS.—Upon an application made pur-
15 suant to paragraph (2), if the judge finds that the
16 failure to retain such call detail records for a period
17 of at least 36 months is resulting in, or is reason-
18 ably likely to result in, the loss of foreign intelligence
19 information relevant to an investigation conducted
20 under this title, the judge may enter an ex parte
21 order requiring the retention of such records for a
22 period of at least 36 months.

23 **“SEC. 504. TRANSITIONAL AGGREGATE COLLECTION OF**
24 **CERTAIN BUSINESS RECORDS.**

25 “(a) AUTHORITY.—

1 “(1) IN GENERAL.—The Director of the Fed-
2 eral Bureau of Investigation or a designee of the Di-
3 rector (whose rank shall be no lower than Assistant
4 Special Agent in Charge) may make an application
5 for an order requiring the production of any tangible
6 things (including books, records, papers, documents,
7 and other items) for an investigation to obtain for-
8 eign intelligence information not concerning a
9 United States person or to protect against inter-
10 national terrorism or clandestine intelligence activi-
11 ties, provided that such investigation of a United
12 States person is not conducted solely upon the basis
13 of activities protected by the first amendment to the
14 Constitution.

15 “(2) INVESTIGATION REQUIREMENTS.—An in-
16 vestigation conducted under this section shall—

17 “(A) be conducted under guidelines ap-
18 proved by the Attorney General under Execu-
19 tive Order 12333 (or a successor order); and

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

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

1 “(1) shall be made to—

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

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

11 “(2) shall include—

12 “(A) a statement of facts showing that
13 there are reasonable grounds to believe that the
14 tangible things sought are relevant to an au-
15 thorized investigation (other than a threat as-
16 sessment) conducted in accordance with sub-
17 section (a)(2) to obtain foreign intelligence in-
18 formation not concerning a United States per-
19 son or to protect against international terrorism
20 or clandestine intelligence activities; and

21 “(B) an enumeration of the minimization
22 procedures adopted by the Attorney General
23 under subsection (f) that are applicable to the
24 retention and dissemination by the Federal Bu-
25 reau of Investigation of any tangible things to

1 be made available to the Federal Bureau of In-
2 vestigation based on the order requested in such
3 application.

4 “(c) EX PARTE JUDICIAL ORDER OF APPROVAL.—

5 “(1) IN GENERAL.—Upon an application made
6 pursuant to this section, if the judge finds that the
7 application meets the requirements of subsections
8 (a) and (b), the judge shall enter an ex parte order
9 as requested, or as modified, approving the release
10 of tangible things. Such order shall direct that mini-
11 mization procedures adopted pursuant to subsection
12 (f) be followed.

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

15 “(A) shall describe the tangible things that
16 are ordered to be produced with sufficient par-
17 ticularity to permit them to be fairly identified;

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

23 “(C) shall provide clear and conspicuous
24 notice of the principles and procedures de-
25 scribed in subsection (d);

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

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

11 “(d) NONDISCLOSURE.—

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

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

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

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

1 “(2) OTHER NONDISCLOSURE REQUIRE-
2 MENTS.—

3 “(A) APPLICABILITY OF REQUIRE-
4 MENTS.—A person to whom disclosure is made
5 pursuant to paragraph (1) shall be subject to
6 the nondisclosure requirements applicable to a
7 person to whom an order is directed under this
8 section in the same manner as such person.

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

17 “(C) NOTIFICATION OF THE DIRECTOR.—
18 At the request of the Director of the Federal
19 Bureau of Investigation or the designee of the
20 Director, any person making or intending to
21 make a disclosure under subparagraph (A) or
22 (C) of paragraph (1) shall identify to the Direc-
23 tor or such designee the person to whom such
24 disclosure will be made or to whom such dis-
25 closure was made prior to the request.

1 “(e) JUDICIAL REVIEW OF FISA ORDERS.—

2 “(1) DEFINITIONS.—In this subsection—

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

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

8 “(2) JUDICIAL REVIEW.—

9 “(A) IN GENERAL.—

10 “(i) FILING OF PETITION.—A person
11 receiving a production order may challenge
12 the legality of that order by filing a peti-
13 tion with the pool established by section
14 103(e)(1). Not less than 1 year after the
15 date of the issuance of the production
16 order, the recipient of a production order
17 may challenge the nondisclosure order im-
18 posed in connection with such production
19 order by filing a petition to modify or set
20 aside such nondisclosure order, consistent
21 with the requirements of subparagraph
22 (C), with the pool established by section
23 103(e)(1).

24 “(ii) ASSIGNMENT; CONSIDERATION.—

25 The presiding judge shall immediately as-

1 sign a petition under clause (i) to 1 of the
2 judges serving in the pool established by
3 section 103(e)(1). Not later than 72 hours
4 after the assignment of such petition, the
5 assigned judge shall conduct an initial re-
6 view of the petition. If the assigned judge
7 determines that the petition is frivolous,
8 the assigned judge shall immediately deny
9 the petition and affirm the production
10 order or nondisclosure order. If the as-
11 signed judge determines the petition is not
12 frivolous, the assigned judge shall promptly
13 consider the petition in accordance with
14 the procedures established under section
15 103(e)(2).

16 “(iii) WRITTEN ORDER; STAY.—The
17 assigned judge shall promptly provide a
18 written statement for the record of the rea-
19 sons for any determination under this sub-
20 section. Upon the request of the Govern-
21 ment, any order setting aside a nondisclo-
22 sure order shall be stayed pending review
23 pursuant to paragraph (3).

24 “(B) STANDARD FOR CONSIDERATION.—A
25 judge considering a petition to modify or set

1 aside a production order may grant such peti-
2 tion only if the judge finds that such order does
3 not meet the requirements of this section or is
4 otherwise unlawful. If the judge does not mod-
5 ify or set aside the production order, the judge
6 shall immediately affirm such order, and order
7 the recipient to comply therewith.

8 “(C) DENIAL OF PETITION.—

9 “(i) PERMISSIBLE DENIALS.—A judge
10 considering a petition to modify or set
11 aside a nondisclosure order may grant such
12 petition only if the judge finds that there
13 is no reason to believe that disclosure may
14 endanger the national security of the
15 United States, interfere with a criminal,
16 counterterrorism, or counterintelligence in-
17 vestigation, interfere with diplomatic rela-
18 tions, or endanger the life or physical safe-
19 ty of any person.

20 “(ii) CERTIFICATION.—If, upon filing
21 of such a petition, the Attorney General,
22 Deputy Attorney General, an Assistant At-
23 torney General, or the Director of the Fed-
24 eral Bureau of Investigation certifies that
25 disclosure may endanger the national secu-

1 rity of the United States or interfere with
2 diplomatic relations, such certification shall
3 be treated as conclusive, unless the judge
4 finds that the certification was made in
5 bad faith.

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

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

17 “(3) REVIEW OF DECISION.—A petition for re-
18 view of a decision under paragraph (2) to affirm,
19 modify, or set aside an order by the Government or
20 any person receiving such order shall be made to the
21 court of review established under section 103(b),
22 which shall have jurisdiction to consider such peti-
23 tions. The court of review shall provide for the
24 record a written statement of the reasons for its de-
25 cision and, on petition by the Government or any

1 person receiving such order for writ of certiorari, the
2 record shall be transmitted under seal to the Su-
3 preme Court of the United States, which shall have
4 jurisdiction to review such decision.

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

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

21 “(f) MINIMIZATION PROCEDURES.—Not later than
22 180 days after the date of the enactment of the USA PA-
23 TRIOT Improvement and Reauthorization Act of 2005,
24 the Attorney General shall adopt specific minimization
25 procedures governing the retention and dissemination by

1 the Federal Bureau of Investigation of any tangible
2 things, or information therein, received by the Federal Bu-
3 reau of Investigation in response to an order under this
4 section. Such minimization procedures shall include a pro-
5 cedure for using a reasonable articulable suspicion stand-
6 ard to make emergency queries of the tangible things ac-
7 quired in response to an order under this section.

8 “(g) USE OF INFORMATION.—Information acquired
9 from tangible things received by the Federal Bureau of
10 Investigation in response to an order under this title con-
11 cerning any United States person may be used and dis-
12 closed by Federal officers and employees without the con-
13 sent of the United States person only in accordance with
14 the minimization procedures adopted pursuant to sub-
15 section (f). No otherwise privileged information acquired
16 from tangible things received by the Federal Bureau of
17 Investigation in accordance with the provisions of this title
18 shall lose its privileged character. No information acquired
19 from tangible things received by the Federal Bureau of
20 Investigation in response to an order under this title may
21 be used or disclosed by Federal officers or employees ex-
22 cept for lawful purposes.

23 “(h) CLARIFICATION.—Notwithstanding any other
24 provision of law, the Government is authorized to obtain
25 orders in accordance with this section for the purpose of

1 obtaining tangible things produced in bulk, in the same
2 manner as previously authorized by the court established
3 by section 103(a) in orders issued by that court under this
4 title prior to June 1, 2015. The Government is further
5 authorized to continue to retain and use tangible things
6 produced under such orders issued by that court prior to
7 June 1, 2015, subject to any procedures prescribed by
8 that court.

9 **“SEC. 505. EMERGENCY AUTHORITY FOR PRODUCTION OF**
10 **TANGIBLE THINGS.**

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

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

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

22 “(3) informs, either personally or through a
23 designee, a judge having jurisdiction under this sec-
24 tion at the time the Attorney General requires the
25 emergency production of tangible things that the de-

1 cision has been made to employ the authority under
2 this section; and

3 “(4) makes an application in accordance with
4 this title to a judge having jurisdiction under this
5 section as soon as practicable, but not later than 7
6 days after the Attorney General requires the emer-
7 gency production of tangible things under this sec-
8 tion.

9 “(b) NONDISCLOSURE.—

10 “(1) PROHIBITION ON DISCLOSURE.—No per-
11 son shall disclose to any other person that the Attor-
12 ney General has authorized the emergency produc-
13 tion of tangible things pursuant to a directive under
14 this section, other than to—

15 “(A) those persons to whom disclosure is
16 necessary to comply with such emergency pro-
17 duction;

18 “(B) an attorney to obtain legal advice or
19 assistance with respect to the production of
20 things in response to such emergency produc-
21 tion; or

22 “(C) other persons as permitted by the At-
23 torney General.

24 “(2) OTHER NONDISCLOSURE REQUIRE-
25 MENTS.—

1 “(A) APPLICABILITY OF REQUIRE-
2 MENTS.—A person to whom disclosure is made
3 pursuant to paragraph (1) shall be subject to
4 the nondisclosure requirements applicable to a
5 person to whom the directive under this section
6 is directed in the same manner as such person.

7 “(B) NOTIFICATION TO PERSON.—Any
8 person who discloses to a person described in
9 subparagraph (A), (B), or (C) of paragraph (1)
10 that the Attorney General has authorized the
11 emergency production of tangible things pursu-
12 ant to this section shall notify such person of
13 the nondisclosure requirements of this sub-
14 section.

15 “(C) NOTIFICATION OF THE ATTORNEY
16 GENERAL.—At the request of the Attorney Gen-
17 eral, any person making or intending to make
18 a disclosure under subparagraph (A) or (C) of
19 paragraph (1) shall identify to the Attorney
20 General the person to whom such disclosure will
21 be made or to whom such disclosure was made
22 prior to the request.

23 “(c) JUDICIAL REVIEW.—

24 “(1) DEFINITIONS.—In this subsection—

1 “(A) the term ‘production order’ means a
2 directive to produce any tangible thing under
3 this section; and

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

6 “(2) JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—

8 “(i) FILING OF PETITION.—A person
9 receiving a production order under this
10 section may challenge the legality of that
11 order by filing a petition with the pool es-
12 tablished by section 103(e)(1). Not less
13 than 1 year after the date of the issuance
14 of the production order, the recipient of a
15 production order may challenge the non-
16 disclosure order imposed in connection
17 with such production order by filing a peti-
18 tion to modify or set aside such nondisclo-
19 sure order, consistent with the require-
20 ments of subparagraph (C), with the pool
21 established by section 103(e)(1).

22 “(ii) ASSIGNMENT; CONSIDERATION.—

23 The presiding judge shall immediately as-
24 sign a petition under clause (i) to 1 of the
25 judges serving in the pool established by

1 section 103(e)(1). Not later than 72 hours
2 after the assignment of such petition, the
3 assigned judge shall conduct an initial re-
4 view of the petition. If the assigned judge
5 determines that the petition is frivolous,
6 the assigned judge shall immediately deny
7 the petition and affirm the production
8 order or nondisclosure order. If the as-
9 signed judge determines the petition is not
10 frivolous, the assigned judge shall promptly
11 consider the petition in accordance with
12 the procedures established under section
13 103(e)(2).

14 “(iii) WRITTEN ORDER; STAY.—The
15 assigned judge shall promptly provide a
16 written statement for the record of the rea-
17 sons for any determination under this sub-
18 section. Upon the request of the Govern-
19 ment, any order setting aside a nondisclo-
20 sure order shall be stayed pending review
21 pursuant to paragraph (3).

22 “(B) STANDARD FOR CONSIDERATION.—A
23 judge considering a petition to modify or set
24 aside a production order may grant such peti-
25 tion only if the judge finds that such order does

1 not meet the requirements of this section or is
2 otherwise unlawful. If the judge does not mod-
3 ify or set aside the production order, the judge
4 shall immediately affirm such order, and order
5 the recipient to comply therewith.

6 “(C) DENIAL OF PETITION.—

7 “(i) PERMISSIBLE DENIALS.—A judge
8 considering a petition to modify or set
9 aside a nondisclosure order may grant such
10 petition only if the judge finds that there
11 is no reason to believe that disclosure may
12 endanger the national security of the
13 United States, interfere with a criminal,
14 counterterrorism, or counterintelligence in-
15 vestigation, interfere with diplomatic rela-
16 tions, or endanger the life or physical safe-
17 ty of any person.

18 “(ii) CERTIFICATION.—If, upon filing
19 of such a petition, the Attorney General,
20 Deputy Attorney General, an Assistant At-
21 torney General, or the Director of the Fed-
22 eral Bureau of Investigation certifies that
23 disclosure may endanger the national secu-
24 rity of the United States or interfere with
25 diplomatic relations, such certification shall

1 be treated as conclusive, unless the judge
2 finds that the certification was made in
3 bad faith.

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

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

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

1 preme Court of the United States, which shall have
2 jurisdiction to review such decision.

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

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

19 “(d) TERMINATION OF AUTHORITY.—In the absence
20 of a judicial order approving the production of tangible
21 things under this subsection, the production shall termi-
22 nate when the information sought is obtained, when the
23 application for the order is denied, or after the expiration
24 of 7 days from the time the Attorney General directs the

1 emergency production of such tangible things, whichever
2 is earliest.

3 “(e) REVIEW OF DENIAL.—A denial of the applica-
4 tion made under this subsection may be reviewed as pro-
5 vided in section 103.

6 “(f) LIMITATION ON USE OF TANGIBLE THINGS.—

7 “(1) LIMITATION.—If such application for ap-
8 proval is denied, or in any other case where the pro-
9 duction of tangible things is terminated and no
10 order is issued approving the production, no infor-
11 mation obtained or evidence derived from such pro-
12 duction shall be received in evidence or otherwise
13 disclosed in any trial, hearing, or other proceeding
14 in or before any court, grand jury, department, of-
15 fice, agency, regulatory body, legislative committee,
16 or other authority of the United States, a State, or
17 a political subdivision thereof, and no information
18 concerning any United States person acquired from
19 such production shall subsequently be used or dis-
20 closed in any other manner by Federal officers or
21 employees without the consent of such person, ex-
22 cept with the approval of the Attorney General if the
23 information indicates a threat of death or serious
24 bodily harm to any person.

1 “(2) COMPLIANCE.—The Attorney General
2 shall assess compliance with the requirements of
3 paragraph (1).

4 **“SEC. 506. LIABILITY PROTECTION.**

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

7 “(1) produces tangible things or provides infor-
8 mation, facilities, or technical assistance pursuant to
9 an order issued or an emergency directive required
10 under this title;

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

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

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

21 **“SEC. 507. COMPENSATION.**

22 “‘The Government shall compensate a person for rea-
23 sonable expenses incurred for—

24 “(1) producing tangible things or providing in-
25 formation, facilities, or assistance in accordance with

1 an order issued with under this title or an emer-
2 gency directive under section 505; or

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

6 **“SEC. 508. CONGRESSIONAL OVERSIGHT.**

7 “(a) ANNUAL INFORMATION.—On an annual basis,
8 the Attorney General shall fully inform the Select Com-
9 mittee on Intelligence and the Committee on the Judiciary
10 of the Senate and the Permanent Select Committee on In-
11 telligence of the House of Representatives concerning all
12 requests for the production of tangible things under this
13 title.

14 “(b) ANNUAL REPORT TO THE APPROPRIATE COM-
15 MITTEES OF CONGRESS.—In April of each year, the Attor-
16 ney General shall submit to the appropriate committees
17 of Congress a report setting forth with respect to the pre-
18 ceding calendar year—

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

22 “(2) the total number of such orders either
23 granted, modified, or denied; and

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

4 “(A) Library circulation records, library
5 patron lists, book sales records, or book cus-
6 tomer lists.

7 “(B) Firearms sales records.

8 “(C) Tax return records.

9 “(D) Educational records.

10 “(E) Medical records containing informa-
11 tion that would identify a person.

12 “(c) ANNUAL REPORT TO CONGRESS.—

13 “(1) REQUIREMENT FOR REPORT.—In April of
14 each year, the Attorney General shall submit to Con-
15 gress a report setting forth with respect to the pre-
16 ceding year—

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

20 “(B) the total number of such orders ei-
21 ther granted, modified, or denied.

22 “(2) FORM OF REPORT.—Each report under
23 this subsection shall be submitted in unclassified
24 form.

1 **“SEC. 509. EFFECTIVE DATE AND TRANSITIONS.**

2 “(a) EFFECTIVE DATES.—

3 “(1) IN GENERAL.—Sections 501, 502, 504,
4 505, 506, 507, 508, and this section shall take effect
5 of the date of the enactment of the FISA Improve-
6 ments Act of 2015.

7 “(2) AGGREGATE COLLECTION OF CERTAIN
8 BUSINESS RECORDS.—

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

11 “(B) TABLE OF CONTENTS AMEND-
12 MENT.—The table of contents in the first sec-
13 tion is amended by striking the item relating to
14 section 504 on June 30, 2017.

15 “(3) ACCESS TO CERTAIN BUSINESS RECORDS,
16 INCLUDING CALL DETAIL RECORDS.—Section 503
17 shall take effect on June 30, 2017.

18 “(b) OPERATIONAL READINESS AND COST ASSESS-
19 MENT.—

20 “(1) REQUIREMENT FOR ASSESSMENT.—No
21 later than June 1, 2016, the Director of National
22 Intelligence, in coordination with the Attorney Gen-
23 eral, the Director of the National Security Agency,
24 and the Director of the Federal Bureau of Investiga-
25 tion, shall submit to the President and the appro-
26 priate committees of Congress an operational readi-

1 ness and cost assessment of the systems, processes,
2 and resources necessary to facilitate the transition
3 from the National Security Agency bulk telephony
4 metadata collection program to the program de-
5 scribed in section 503.

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

9 “(A) a comprehensive evaluation of the
10 current functioning and operational mecha-
11 nisms of the National Security Agency bulk te-
12 lephony metadata program, as in effect on the
13 date of the enactment of the FISA Improve-
14 ments Act of 2015, to include the annualized
15 costs to such program for—

16 “(i) data management;

17 “(ii) data security;

18 “(iii) data storage; and

19 “(iv) personnel training costs;

20 “(B) a comprehensive evaluation of the
21 technology system required to access, secure,
22 correlate and analyze data retained by elec-
23 tronic communication service providers, to in-
24 clude an estimate of the system’s initial devel-

1 opment costs and the annualized recurring costs
2 to such system for—

3 “(i) data management;

4 “(ii) data security;

5 “(iii) data storage;

6 “(iv) personnel training costs; and

7 “(v) additional special security re-
8 quirements needed to safeguard the system
9 against unauthorized access;

10 “(C) a cost-benefit analysis of
11 transitioning from the National Security Agen-
12 cy bulk telephony metadata program to the Sys-
13 tem;

14 “(D) an analysis of the optimal length of
15 time that call detail records must be retained by
16 the commercial telecommunications carriers to
17 maintain a level of operational effectiveness
18 comparable to the National Security Agency
19 bulk telephony metadata collection program;
20 and

21 “(E) an assessment of any legislative or
22 regulatory authorities needed to maintain a
23 level of operational effectiveness comparable to
24 the National Security Agency bulk data teleph-
25 ony metadata collection program.”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
 2 of contents in the first section of the Foreign Intelligence
 3 Surveillance Act of 1978 is amended by striking the head-
 4 ing for title V and the items relating to sections 501 and
 5 502 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 inter-
 national 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.”.

6 **SEC. 102. PERMANENT AUTHORITY FOR ACCESS TO BUSI-**
 7 **NESS RECORDS, ROVING SURVEILLANCE,**
 8 **AND INDIVIDUAL TERRORISTS AS AGENTS OF**
 9 **FOREIGN POWERS UNDER THE FOREIGN IN-**
 10 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

11 (a) ACCESS TO BUSINESS RECORDS AND ROVING
 12 SURVEILLANCE.—Subsection (b) of section 102 of the
 13 USA PATRIOT Improvement and Reauthorization Act of
 14 2005 (Public Law 109–177; 50 U.S.C. 1805 note, 50
 15 U.S.C. 1861 note, and 50 U.S.C. 1862 note) is repealed.

16 (b) PERMANENT AUTHORITY FOR INDIVIDUAL TER-
 17 RORIST AS AGENTS OF FOREIGN POWERS.—Section 6001
 18 of the Intelligence Reform and Terrorism Prevention Act

1 of 2004 (50 U.S.C. 1801 note) is amended by striking
2 subsection (b).

3 **TITLE II—ENHANCED NATIONAL**
4 **SECURITY PROVISIONS**

5 **SEC. 201. TEMPORARY COLLECTION OF INFORMATION RE-**
6 **LATING TO PERSONS OTHER THAN UNITED**
7 **STATES PERSONS TRAVELING INTO THE**
8 **UNITED STATES.**

9 (a) IN GENERAL.—Section 105 of the Foreign Intel-
10 ligence Surveillance Act of 1978 (50 U.S.C. 1805) is
11 amended—

12 (1) by redesignating subsections (f), (g), (h),
13 and (i) as subsections (g), (h), (i), and (j), respec-
14 tively; and

15 (2) by inserting after subsection (e) the fol-
16 lowing:

17 “(f)(1) Notwithstanding any other provision of this
18 Act, the lawfully authorized targeting of a non-United
19 States person previously believed to be located outside the
20 United States for the acquisition of foreign intelligence in-
21 formation may continue for a period not to exceed 72
22 hours from the time that the non-United States person
23 is reasonably believed to be located inside the United
24 States and the acquisition is subject to this title or to title

1 III of this Act, provided that the head of an element of
2 the intelligence community—

3 “(A) determines—

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

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

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

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

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

22 “(A) The employment of emergency electronic
23 surveillance under subsection (e) or the employment
24 of an emergency physical search pursuant to section
25 304(e).

1 “(B) An issuance of a court order under this
2 title or title III of this Act.

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

5 “(D) The head of the element of the intel-
6 ligence community conducting the acquisition deter-
7 mines that a request under paragraph (1)(C) is not
8 warranted.

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

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

19 “(4) If the Attorney General declines to authorize the
20 employment of emergency electronic surveillance under
21 subsection (e) or the employment of an emergency physical
22 search pursuant to section 304(e), or a court order is not
23 obtained under this title or title III of this Act, informa-
24 tion obtained during the 72 hour acquisition time period
25 under paragraph (1) shall not be retained, except with the

1 approval of the Attorney General if the information indi-
2 cates a threat of death or serious bodily harm to any per-
3 son.

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

6 (b) NOTIFICATION OF EMERGENCY EMPLOYMENT OF
7 ELECTRONIC SURVEILLANCE.—Section 106(j) (50 U.S.C.
8 1806(j)) is amended by striking “section 105(e)” and in-
9 serting “subsection (e) or (f) of section 105”.

10 **SEC. 202. PRESERVATION OF TREATMENT OF NON-UNITED**
11 **STATES PERSONS TRAVELING OUTSIDE THE**
12 **UNITED STATES AS AGENTS OF FOREIGN**
13 **POWERS.**

14 Section 101(b)(1) of the Foreign Intelligence Surveil-
15 lance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended—

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

19 (2) in subparagraph (B)—

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

22 (B) by striking “such activities in the
23 United States,” and inserting “such activities,”.

1 **SEC. 203. IMPROVEMENT TO INVESTIGATIONS OF INTER-**
2 **NATIONAL PROLIFERATION OF WEAPONS OF**
3 **MASS DESTRUCTION.**

4 Section 101(b)(1) of the Foreign Intelligence Surveil-
5 lance Act of 1978 (50 U.S.C. 1801(b)(1)), as amended
6 by section 202, is further amended by striking subpara-
7 graph (E) and inserting the following:

8 “(E) engages in the international prolifera-
9 tion of weapons of mass destruction, or activi-
10 ties in preparation therefor, for or on behalf of
11 a foreign power, or knowingly aids or abets any
12 person in the conduct of such proliferation or
13 activities in preparation therefor, or knowingly
14 conspires with any person to engage in such
15 proliferation or activities in preparation there-
16 for; or”.

17 **SEC. 204. INCREASE IN PENALTIES FOR MATERIAL SUP-**
18 **PORT OF FOREIGN TERRORIST ORGANIZA-**
19 **TIONS AND TERRORISTS AND OTHER TER-**
20 **RORISM CRIMES.**

21 (a) ACTS OF TERRORISM TRANSCENDING NATIONAL
22 BOUNDARIES.—Section 2332b(g)(5)(B)(i) of title 18,
23 United States Code, is amended by inserting
24 “924(c)(relating to use, carrying, or possession of fire-
25 arms),” after “844(i) (relating to arson and bombing of
26 property used in interstate commerce),”.

1 (b) PROVIDING MATERIAL SUPPORT TO TERROR-
2 ISTS.—Section 2339A(a) of title 18, United States Code,
3 is amended by striking “15 years” and inserting “20
4 years”.

5 (c) PROVIDING MATERIAL SUPPORT OR RESOURCES
6 TO DESIGNATED FOREIGN TERRORIST ORGANIZA-
7 TIONS.—Section 2339B(a)(1) of title 18, United States
8 Code, is amended by striking “15 years” and inserting
9 “20 years”.

10 (d) RECEIVING MILITARY-TYPE TRAINING FROM A
11 FOREIGN TERRORIST ORGANIZATION.—Section 2339D(a)
12 of title 18, United States Code, is amended by striking
13 “for ten years” and inserting “up to ten years”.

14 **SEC. 205. COUNTERINTELLIGENCE ACCESS TO TELEPHONE**
15 **TOLL AND TRANSACTIONAL RECORDS.**

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

18 “(b) REQUIRED CERTIFICATION.—The Director of
19 the Federal Bureau of Investigation, or the designee of
20 the Director in a position not lower than Deputy Assistant
21 Director at Bureau headquarters or a Special Agent in
22 Charge in a Bureau field office designated by the Director,
23 may request the name, address, length of service, local and
24 long distance toll billing records, and electronic commu-
25 nications transactional records of a person or entity if the

1 Director (or the designee) certifies in writing to the wire
2 or electronic communication service provider to which the
3 request is made that such information is relevant to an
4 authorized investigation to protect against international
5 terrorism or clandestine intelligence activities, provided
6 that such an investigation of a United States person is
7 not conducted solely on the basis of activities protected
8 by the first amendment to the Constitution of the United
9 States.”.

10 **TITLE III—OTHER MATTERS**

11 **SEC. 301. UNAUTHORIZED DISCLOSURE OR REMOVAL OF** 12 **CERTAIN CLASSIFIED INFORMATION.**

13 (a) PROHIBITION ON UNAUTHORIZED DISCLO-
14 SURE.—An officer, employee, contractor, or consultant of
15 the United States, or an officer, employee, contractor, or
16 consultant of a recipient of an order issued pursuant to
17 title V of the Foreign Intelligence Surveillance Act of 1978
18 (50 U.S.C. 1861 et seq.) who—

19 (1) knowingly comes into possession of classi-
20 fied information or documents or materials con-
21 taining classified information of the United States
22 that—

23 (A) was submitted in connection with an
24 application to the court established under sec-

1 tion 103(a) of the Foreign Intelligence Surveil-
2 lance Act of 1978 (50 U.S.C. 1803(a));

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

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

7 (2)(A) knowingly and willfully communicates,
8 transmits, or otherwise makes available to an unau-
9 thorized person, such classified information or docu-
10 ments or materials; or

11 (B) knowingly removes such classified informa-
12 tion or documents or materials without authority
13 and with the intent to retain such classified informa-
14 tion or documents or materials at an unauthorized
15 location,

16 shall be punished according to subsection (b).

17 (b) TERM OF IMPRISONMENT.—A person who vio-
18 lates this section shall be fined under title 18, United
19 States Code, or—

20 (1) for a violation of paragraph (2)(A) of sub-
21 section (a), imprisoned for not more than 10 years;
22 or

23 (2) for a violation of paragraph (2)(B) of such
24 subsection, imprisoned for not more than 1 year,

25 or both.

1 **SEC. 302. APPOINTMENT OF AMICUS CURIAE.**

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

5 “(i) AMICUS CURIAE.—

6 “(1) AUTHORIZATION.—Notwithstanding any
7 other provision of law, a court established under
8 subsection (a) or (b) is authorized, consistent with
9 the requirement of subsection (c) and any other stat-
10 utory requirement that the court act expeditiously or
11 within a stated time, to appoint amicus curiae to as-
12 sist the court in the consideration of a covered mat-
13 ter.

14 “(2) DEFINITIONS.—In this subsection:

15 “(A) APPROPRIATE COMMITTEES OF CON-
16 GRESS.—The term ‘appropriate committees of
17 Congress’ means—

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

21 “(ii) the Committee on the Judiciary
22 and the Permanent Select Committee on
23 Intelligence of the House of Representa-
24 tives.

1 “(B) COVERED MATTER.—The term ‘cov-
2 ered matter’ means a matter before a court es-
3 tablished under subsection (a) or (b)—

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

9 “(ii) that pertains to—

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

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

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

20 “(3) DESIGNATION.—The courts established by
21 subsection (a) and (b) shall each designate 1 or
22 more individuals who have been determined by ap-
23 propriate executive branch officials to be eligible for
24 access to classified national security information, in-
25 cluding sensitive compartmented information, who

1 may be appointed to serve as amicus curiae. In ap-
2 pointing an amicus curiae pursuant to paragraph
3 (1), the court may choose from among those so des-
4 ignated.

5 “(4) EXPERTISE.—An individual appointed as
6 an amicus curiae under paragraph (1) may be a spe-
7 cial counsel or an expert on privacy and civil lib-
8 erties, intelligence collection, telecommunications, or
9 any other area that may lend legal or technical ex-
10 pertise to the court.

11 “(5) DUTIES.—An amicus curiae appointed
12 under paragraph (1) to assist with the consideration
13 of a covered matter shall carry out the duties as-
14 signed by the appointing court. That court may au-
15 thorize, to the extent consistent with the case or
16 controversy requirements of Article III of the Con-
17 stitution of the United States and the national secu-
18 rity of the United States, the amicus curiae to re-
19 view any application, certification, petition, motion,
20 or other submission that the court determines is rel-
21 evant to the duties assigned by the court.

22 “(6) NOTIFICATION.—A court established under
23 subsection (a) or (b) shall notify the Attorney Gen-
24 eral of each exercise of the authority to appoint an
25 amicus curiae under paragraph (1).

1 “(7) ASSISTANCE.—A court established under
2 subsection (a) or (b) may request and receive (in-
3 cluding on a non-reimbursable basis) the assistance
4 of the executive branch in the implementation of this
5 subsection.

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

12 “(9) CONGRESSIONAL OVERSIGHT.—The Attor-
13 ney General shall submit to the appropriate commit-
14 tees of Congress an annual report on the number of
15 notices described in paragraph (6) received by Attor-
16 ney General for the preceding 12-month period.

17 “(j) REVIEW OF FISA COURT DECISIONS.—Fol-
18 lowing issuance of an order under this Act, a court estab-
19 lished under subsection (a) shall certify for review to the
20 court established under subsection (b) any question of law
21 that may affect resolution of the matter in controversy
22 that the court determines warrants such review because
23 of a need for uniformity or because consideration by the
24 court established under subsection (b) would serve the in-
25 terests of justice. Upon certification of a question of law

1 under this subsection, the court established under sub-
2 section (b) may give binding instructions or require the
3 entire record to be sent up for decision of the entire matter
4 in controversy.

5 “(k) REVIEW OF FISA COURT OF REVIEW DECI-
6 SIONS.—

7 “(1) CERTIFICATION.—For purposes of section
8 1254(2) of title 28, United States Code, the court
9 of review established under subsection (b) shall be
10 considered to be a court of appeals.

11 “(2) AMICUS CURIAE BRIEFING.—Upon certifi-
12 cation of an application under paragraph (1), the
13 Supreme Court of the United States may appoint an
14 amicus curiae designated under subsection (i)(3), or
15 any other person, to provide briefing or other assist-
16 ance.”.

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

19 (a) IN GENERAL.—Title VI of the Foreign Intel-
20 ligence Surveillance Act of 1978 (50 U.S.C. 1871) is
21 amended by adding at the end the following:

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

24 “(a) REPORTING.—A person subject to a nondisclo-
25 sure requirement accompanying an order or directive

1 under this Act or a national security letter may, with re-
2 spect to such order, directive, or national security letter,
3 publicly report the following information using 1 of the
4 following structures:

5 “(1) A semiannual report that aggregates the
6 number of orders or national security letters with
7 which the person was required to comply in the fol-
8 lowing separate categories:

9 “(A) The number of national security let-
10 ters received, reported in bands of 1000 start-
11 ing with 0–999.

12 “(B) The number of customer accounts af-
13 fected by national security letters, reported in
14 bands of 1000 starting with 0–999.

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

18 “(D) With respect to contents orders
19 under this Act, in bands of 1000 starting with
20 0–999, the number of customer selectors tar-
21 geted under such orders.

22 “(E) The number of orders under this Act
23 for noncontents, reported in bands of 1000
24 starting with 0–999.

1 “(F) With respect to noncontents orders
2 under this Act, in bands of 1000 starting with
3 0–999, the number of customer selectors tar-
4 geted under orders under—

5 “(i) title IV;

6 “(ii) title V with respect to applica-
7 tions described in section 502; and

8 “(iii) title V with respect to applica-
9 tions described in section 503.

10 “(2) A semiannual report that aggregates the
11 number of orders, directives, or national security let-
12 ters with which the person was required to comply
13 in the following separate categories:

14 “(A) The total number of all national secu-
15 rity process received, including all national se-
16 curity letters and orders or directives under this
17 Act, combined, reported in bands of 0–249 and
18 thereafter in bands of 250.

19 “(B) The total number of customer selec-
20 tors targeted under all national security process
21 received, including all national security letters
22 and orders or directives under this Act, com-
23 bined, reported in bands of 0–249 and there-
24 after in bands of 250.

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

5 “(A) The number of national security let-
6 ters received, reported in bands of 500 starting
7 with 0–499.

8 “(B) The number of customer accounts af-
9 fected by national security letters, reported in
10 bands of 500 starting with 0–499.

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

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

17 “(E) The number of orders under this Act
18 for noncontents, reported in bands of 500 start-
19 ing with 0–499.

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

23 “(4) An annual report that aggregates the
24 number of orders, directives, and national security

1 letters the person was required to comply with in the
2 following separate categories:

3 “(A) The total number of all national secu-
4 rity process received, including all national se-
5 curity letters and orders or directives under this
6 Act, combined, reported in bands of 0–100 and
7 thereafter in bands of 100.

8 “(B) The total number of customer selec-
9 tors targeted under all national security process
10 received, including all national security letters
11 and orders or directives under this Act, com-
12 bined, reported in bands of 0–100 and there-
13 after in bands of 100.

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

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

17 “(A) may be published every 180 days;

18 “(B) subject to subparagraph (C), shall in-
19 clude—

20 “(i) with respect to information relat-
21 ing to national security letters, information
22 relating to the previous 180 days; and

23 “(ii) with respect to information relat-
24 ing to authorities under this Act, except as

1 provided in subparagraph (C), information
2 relating to the time period—

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

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

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

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

21 “(ii) for a report published on or after
22 the date on which the 540-day waiting pe-
23 riod expires, shall include information re-
24 lating to such new order or directive re-
25 ported pursuant to subparagraph (B)(ii).

1 “(2) A report described in paragraph (2) of
2 subsection (a) may be published every 180 days and
3 shall include information relating to the previous
4 180 days.

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

8 “(A) ending on the date that is not less
9 than 1 year before the date on which the infor-
10 mation is publicly reported; and

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

13 “(c) OTHER FORMS OF AGREED TO PUBLICATION.—
14 Nothing in this section prohibits the Government and any
15 person from jointly agreeing to the publication of informa-
16 tion referred to in this subsection in a time, form, or man-
17 ner other than as described in this section.

18 “(d) DEFINITIONS.—In this section:

19 “(1) CONTENTS.—The term ‘contents’ has the
20 meaning given that term under section 2510 of title
21 18, United States Code.

22 “(2) NATIONAL SECURITY LETTER.—The term
23 ‘national security letter’ means a request for a re-
24 port, records, or other information under—

1 “(A) section 2709 of title 18, United
2 States Code;

3 “(B) section 1114(a)(5)(A) of the Right to
4 Financial Privacy Act of 1978 (12 U.S.C.
5 3414(a)(5)(A));

6 “(C) subsection (a) or (b) of section 626 of
7 the Fair Credit Reporting Act (15 U.S.C.
8 1681u(a), 1681u(b)); or

9 “(D) section 627(a) of the Fair Credit Re-
10 porting Act (15 U.S.C. 1681v(a)).”.

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

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