

116TH CONGRESS
2D SESSION

S. 3242

To amend the Foreign Intelligence Surveillance Act of 1978 to protect privacy rights, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2020

Mr. WYDEN (for himself and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to protect privacy rights, 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 “Safeguarding Americans’ Private Records Act of 2020”.

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—REFORM AND OVERSIGHT OF AUTHORITY TO ACCESS CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS AND FOR ROVING SURVEILLANCE

Subtitle A—Reform and Oversight of Authority To Access Certain Business Records for Foreign Intelligence and International Terrorism Investigations

- Sec. 101. Repeal of authority to access on an ongoing basis business records for foreign intelligence and international terrorism investigations.
- Sec. 102. Exclusion of cell site location and global positioning system information from authority to access business records for foreign intelligence and international terrorism investigations.
- Sec. 103. Exclusion of internet website browsing and internet search history information from authority to access business records for foreign intelligence and international terrorism investigations.
- Sec. 104. Exclusion from authority to access business records for foreign intelligence and international terrorism investigations of information that would otherwise require a warrant.
- Sec. 105. Modification of requirements relating to connection to foreign power for access business records for foreign intelligence and international terrorism investigations.
- Sec. 106. Justification for nondisclosure requirement concerning access business records for foreign intelligence and international terrorism investigations.
- Sec. 107. Limitations on retention of tangible things for foreign intelligence and international terrorism investigations.
- Sec. 108. Judicial review of compliance with minimization procedures for access to certain business records for foreign intelligence and international terrorism investigations.
- Sec. 109. Modification of requirement for Director of National Intelligence to report annually on matters relating to orders issued for production of tangible things for foreign intelligence and international terrorism investigations.
- Sec. 110. Limitations on use of information obtained under authority to access business records for foreign intelligence and international terrorism investigations.
- Sec. 111. Reforms relating to use of information.
- Sec. 112. Inspector General of Department of Justice report on use of activities protected by First Amendment in applications for production of business records for foreign intelligence and international terrorism investigations.
- Sec. 113. Annual report on waiver of prohibition on use of information obtained without an order for production of business records for foreign intelligence and international terrorism investigations.

Subtitle B—Oversight on Use of Authority for Roving Surveillance

- Sec. 121. Inspector General of Department of Justice report on compliance with requirements relating to use of authority for electronic surveillance.

Sec. 122. Annual report on waiver of prohibition on use of information obtained without an order for electronic surveillance.

Subtitle C—Extension of Authority To Access Certain Business Records for Foreign Intelligence and International Terrorism Investigations and for Roving Surveillance

Sec. 131. Four-year extension of authority to access certain business records for foreign intelligence and international terrorism investigations and for roving surveillance.

TITLE II—ADDITIONAL REFORMS OF AUTHORITIES UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

Sec. 201. Limitation on production of cell site location and global positioning system information under pen register and trap and trace authorities.

Sec. 202. Extension of authority for individual terrorists to be treated as agents of foreign powers under Foreign Intelligence Surveillance Act of 1978.

Sec. 203. Clarification regarding treatment of information acquired under Foreign Intelligence Surveillance Act of 1978.

TITLE III—REFORMS REGARDING FOREIGN INTELLIGENCE SURVEILLANCE ACT COURT AND PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Sec. 301. Improved role in oversight of electronic surveillance by amici curiae appointed by courts under Foreign Intelligence Surveillance Act of 1978.

Sec. 302. Reforms to the Foreign Intelligence Surveillance Court.

Sec. 303. Study and report on diversity and representation on the FISA Court and the FISA Court of Review.

Sec. 304. Reforms of the Privacy and Civil Liberties Oversight Board.

Sec. 305. Clarification of applicability of requirement to declassify significant decisions of Foreign Intelligence Surveillance Court and Foreign Intelligence Surveillance Court of Review.

TITLE IV—SUNSET OF NATIONAL SECURITY LETTER AUTHORITIES

Sec. 401. Sunset of National Security Letter authority.

TITLE V—OTHER MATTERS

Sec. 501. Limitation on collection without express statutory authority.

1 **TITLE I—REFORM AND OVER-**
2 **SIGHT OF AUTHORITY TO AC-**
3 **CESS CERTAIN BUSINESS**
4 **RECORDS FOR FOREIGN IN-**
5 **TELLIGENCE AND INTER-**
6 **NATIONAL TERRORISM IN-**
7 **VESTIGATIONS AND FOR ROV-**
8 **ING SURVEILLANCE**

9 **Subtitle A—Reform and Oversight**
10 **of Authority To Access Certain**
11 **Business Records for Foreign**
12 **Intelligence and International**
13 **Terrorism Investigations**

14 **SEC. 101. REPEAL OF AUTHORITY TO ACCESS ON AN ONGO-**
15 **ING BASIS BUSINESS RECORDS FOR FOREIGN**
16 **INTELLIGENCE AND INTERNATIONAL TER-**
17 **RORISM INVESTIGATIONS.**

18 (a) IN GENERAL.—Subsection (a) of section 501 of
19 the Foreign Intelligence Surveillance Act of 1978 (50
20 U.S.C. 1861) is amended by adding at the end the fol-
21 lowing:

22 “(4) The authority under paragraph (1) shall not in-
23 clude an application for an order requiring the produc-
24 tion—

1 “(A) on an ongoing basis of any tangible
2 things; or

3 “(B) of any tangible things other than those
4 identified by the specific selection term included in
5 the application pursuant to subsection (b)(2)(A).”.

6 (b) CONFORMING AMENDMENTS.—Such Act is
7 amended—

8 (1) in section 501 (50 U.S.C. 1861)—

9 (A) in subsection (a)(1), by striking “Sub-
10 ject to paragraph (3)” and inserting “Subject
11 to the provisions of this subsection”;

12 (B) in subsection (b)(2)—

13 (i) by striking subparagraph (C);

14 (ii) in subparagraph (B), by striking
15 “in the case of” and all that follows
16 through “in subparagraph (C)),”;

17 (iii) by redesignating subparagraph
18 (D) as subparagraph (C); and

19 (iv) in subparagraph (B)(iii), by strik-
20 ing the semicolon at the end and inserting
21 “; and”;

22 (C) in subsection (c)—

23 (i) in paragraph (1), by striking “with
24 subsection (b)(2)(D)” and inserting “with
25 subsection (b)(2)(C)”;

1 (ii) in paragraph (2), by striking sub-
2 paragraph (F) and inserting the following:

3 “(F) in the case of an application for call
4 detail records, shall direct the Government—

5 “(i) to adopt minimization procedures
6 that require the prompt destruction of all
7 call detail records produced under the
8 order that the Government determines are
9 not foreign intelligence information; and

10 “(ii) to destroy all call detail records
11 produced under the order as prescribed by
12 such procedures.”;

13 (D) by amending subsection (j) to read as
14 follows:

15 “(j) COMPENSATION.—The Government shall com-
16 pensate a person for reasonable expenses incurred for pro-
17 viding technical assistance to the Government under this
18 section.”; and

19 (E) in subsection (k)(4)(B), by striking
20 “For purposes of an application submitted
21 under subsection (b)(2)(C)” and inserting “In
22 the case of an application for a call detail
23 record”;

24 (2) in section 502(b) (50 U.S.C. 1862(b))—

25 (A) by striking paragraph (4); and

1 (B) by redesignating paragraphs (5)
2 through (8) as paragraphs (4) through (7), re-
3 spectively;

4 (3) in section 603(b)(6) (50 U.S.C.
5 1873(b)(6))—

6 (A) in the matter before subparagraph (A),
7 by striking “under section 501(b)(2)(C)” and
8 inserting “under section 501(b)(2)(B)”; and

9 (B) in subparagraph (C), by striking “any
10 database of”; and

11 (4) in section 604(a)(1)(F) (50 U.S.C.
12 1874(a)(1)(F))—

13 (A) by striking clause (iii);

14 (B) in clause (ii), by striking “; and” and
15 inserting a period; and

16 (C) in clause (i), by striking the semicolon
17 and inserting “; and”.

18 (c) TECHNICAL CORRECTION.—Paragraph (3) of sec-
19 tion 501(a) of the Foreign Intelligence Surveillance Act
20 of 1978 (50 U.S.C. 1861(a)) is amended by indenting
21 such paragraph 2 ems to the left.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the date of the enactment
24 of this Act and shall apply with respect to applications
25 made under section 501 of the Foreign Intelligence Sur-

1 veillance Act of 1978 (50 U.S.C. 1861) on or after such
2 date.

3 **SEC. 102. EXCLUSION OF CELL SITE LOCATION AND GLOB-**
4 **AL POSITIONING SYSTEM INFORMATION**
5 **FROM AUTHORITY TO ACCESS BUSINESS**
6 **RECORDS FOR FOREIGN INTELLIGENCE AND**
7 **INTERNATIONAL TERRORISM INVESTIGA-**
8 **TIONS.**

9 Section 501(k) of the Foreign Intelligence Surveil-
10 lance Act of 1978 (50 U.S.C. 1861(k)) is amended by add-
11 ing at the end the following:

12 “(5) The term ‘tangible thing’ does not include
13 the following:

14 “(A) Cell site location information.

15 “(B) Global positioning system informa-
16 tion.”.

17 **SEC. 103. EXCLUSION OF INTERNET WEBSITE BROWSING**
18 **AND INTERNET SEARCH HISTORY INFORMA-**
19 **TION FROM AUTHORITY TO ACCESS BUSI-**
20 **NESS RECORDS FOR FOREIGN INTELLIGENCE**
21 **AND INTERNATIONAL TERRORISM INVES-**
22 **TIGATIONS.**

23 Paragraph (5) of section 501(k) of the Foreign Intel-
24 ligence Surveillance Act of 1978 (50 U.S.C. 1861(k)), as

1 added by section 102, is amended by adding at the end
2 the following:

3 “(C) Internet website browsing informa-
4 tion.

5 “(D) Internet search history information.”.

6 **SEC. 104. EXCLUSION FROM AUTHORITY TO ACCESS BUSI-**
7 **NESS RECORDS FOR FOREIGN INTELLIGENCE**
8 **AND INTERNATIONAL TERRORISM INVES-**
9 **TIGATIONS OF INFORMATION THAT WOULD**
10 **OTHERWISE REQUIRE A WARRANT.**

11 Section 501(a) of the Foreign Intelligence Surveil-
12 lance Act of 1978 (50 U.S.C. 1861(a)), as amended by
13 section 101, is further amended by adding at the end the
14 following:

15 “(5) The authority under paragraph (1) shall not in-
16 clude an application for an order authorizing or requiring
17 the production of a tangible thing if the compelled produc-
18 tion of such thing would require a warrant for law enforce-
19 ment purposes.”.

1 **SEC. 105. MODIFICATION OF REQUIREMENTS RELATING TO**
2 **CONNECTION TO FOREIGN POWER FOR AC-**
3 **CESS BUSINESS RECORDS FOR FOREIGN IN-**
4 **TELLIGENCE AND INTERNATIONAL TER-**
5 **RORISM INVESTIGATIONS.**

6 Section 501(b)(2)(B) of the Foreign Intelligence Sur-
7 veillance Act of 1978 (50 U.S.C. 1861(b)(2)(B)), as
8 amended by section 101(b)(1)(A), is amended—

9 (1) by inserting “and material” after “sought
10 are relevant”; and

11 (2) by striking “such things being presump-
12 tively relevant to an authorized investigation if the
13 applicant shows in the statement of facts that they”
14 and inserting “and that such tangible things
15 sought”.

16 **SEC. 106. JUSTIFICATION FOR NONDISCLOSURE REQUIRE-**
17 **MENT CONCERNING ACCESS BUSINESS**
18 **RECORDS FOR FOREIGN INTELLIGENCE AND**
19 **INTERNATIONAL TERRORISM INVESTIGA-**
20 **TIONS.**

21 (a) IN GENERAL.—Section 501 of the Foreign Intel-
22 ligence Surveillance Act of 1978 (50 U.S.C. 1861) is
23 amended—

24 (1) in subsection (b)—

25 (A) in paragraph (1)(B), by striking “and”
26 after the semicolon;

1 (B) in paragraph (2)(D), by striking the
2 period at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(3) if the applicant is seeking a nondisclosure
5 requirement described in subsection (d), shall in-
6 clude—

7 “(A) the time period during which the Di-
8 rector of the Federal Bureau of Investigation
9 believes the nondisclosure requirement should
10 apply;

11 “(B) a statement of facts showing that
12 there are reasonable grounds to believe that dis-
13 closure of particular information about the ex-
14 istence or contents of the order requiring the
15 production of tangible things under this section
16 during such time period will result in—

17 “(i) endangering the life or physical
18 safety of any person;

19 “(ii) flight from investigation or pros-
20 ecution;

21 “(iii) destruction of or tampering with
22 evidence;

23 “(iv) intimidation of potential wit-
24 nesses;

1 “(v) interference with diplomatic rela-
2 tions;

3 “(vi) alerting a target, an associate of
4 a target, or the foreign power of which the
5 target is an agent, of the interest of the
6 Government in the target; or

7 “(vii) otherwise seriously endangering
8 the national security of the United States;
9 and

10 “(C) an explanation of how the nondislo-
11 sure requirement is narrowly tailored to address
12 the specific harm identified under subparagraph
13 (B).”;

14 (2) in subsection (c), by adding at the end the
15 following:

16 “(5) If a judge who issues an order under this
17 subsection upon an application made pursuant to
18 this section that includes a request for a nondislo-
19 sure requirement described in subsection (d) finds
20 that the requirements of subsection (b)(3) have been
21 met, such order shall include a nondisclosure re-
22 quirement that applies for a period of up to 1 year,
23 unless the judge determines that the facts justify a
24 longer period of nondisclosure, subject to the prin-

1 ciples and procedures described in subsection (d).”;
2 and

3 (3) by amending subsection (d) to read as fol-
4 lows:

5 “(d) NONDISCLOSURE.—

6 “(1) IN GENERAL.—No person who receives an
7 order entered under subsection (c) that contains a
8 nondisclosure requirement shall disclose to any per-
9 son the particular information specified in the non-
10 disclosure requirement during the time period to
11 which the requirement applies.

12 “(2) EXCEPTION.—

13 “(A) IN GENERAL.—A person who receives
14 an order entered under subsection (c) that con-
15 tains a nondisclosure requirement may disclose
16 information otherwise subject to any applicable
17 nondisclosure requirement to—

18 “(i) those persons to whom disclosure
19 is necessary to comply with the order;

20 “(ii) an attorney to obtain legal advice
21 or assistance regarding the order; or

22 “(iii) other persons as permitted by
23 the Director of the Federal Bureau of In-
24 vestigation or the designee of the Director.

1 “(B) APPLICATION.—A person to whom
2 disclosure is made under subparagraph (A)
3 shall be subject to the nondisclosure require-
4 ments applicable to a person to whom an order
5 is directed under this section in the same man-
6 ner as the person to whom the order is directed.

7 “(C) NOTICE.—Any person who discloses
8 to a person described in subparagraph (A) in-
9 formation otherwise subject to a nondisclosure
10 requirement shall notify the person of the appli-
11 cable nondisclosure requirement.

12 “(D) IDENTIFICATION OF DISCLOSURE RE-
13 CIPIENTS.—At the request of the Director of
14 the Federal Bureau of Investigation or the des-
15 ignee of the Director, any person making or in-
16 tending to make a disclosure under clause (i) or
17 (iii) of subparagraph (A) shall identify to the
18 Director or such designee the person to whom
19 such disclosure will be made or to whom such
20 disclosure was made prior to the request.

21 “(3) EXTENSION.—The Director of the Federal
22 Bureau of Investigation, or a designee of the Direc-
23 tor (whose rank shall be no lower than Assistant
24 Special Agent in Charge), may apply for renewals of
25 the prohibition on disclosure of particular informa-

1 tion about the existence or contents of an order re-
2 quiring the production of tangible things under this
3 section for additional periods of not longer than 1
4 year, unless the facts justify a longer period of non-
5 disclosure. A nondisclosure requirement shall be re-
6 newed if a court having jurisdiction under paragraph
7 (4) determines that the statement of facts included
8 in the application pursuant to subsection (b)(3)(B)
9 is true and credible.

10 “(4) JURISDICTION.—An application for a re-
11 newal under this subsection shall be made to—

12 “(A) a judge of the court established under
13 section 103(a); or

14 “(B) a United States Magistrate Judge
15 under chapter 43 of title 28, United States
16 Code, who is publicly designated by the Chief
17 Justice of the United States to have the power
18 to hear applications and grant orders for the
19 production of tangible things under this section
20 on behalf of a judge of the court established
21 under section 103(a).”.

22 (b) CONFORMING AMENDMENT.—Section
23 501(f)(1)(B) of such Act (50 U.S.C. 1861(f)(1)(B)) is
24 amended by striking “an order imposed under subsection

1 (d)” and inserting “a nondisclosure requirement imposed
2 in connection with a production order”.

3 **SEC. 107. LIMITATIONS ON RETENTION OF TANGIBLE**
4 **THINGS FOR FOREIGN INTELLIGENCE AND**
5 **INTERNATIONAL TERRORISM INVESTIGA-**
6 **TIONS.**

7 Section 501(g)(2) of the Foreign Intelligence Surveil-
8 lance Act of 1978 (50 U.S.C. 1861(g)(2)) is amended—

9 (1) in subparagraph (B), by striking “and” at
10 the end;

11 (2) by redesignating subparagraph (C) as sub-
12 paragraph (D);

13 (3) by inserting after subparagraph (B) the fol-
14 lowing new subparagraph (C):

15 “(C) procedures that require that nonpub-
16 licly available information shall not be retained
17 for more than three years unless determined to
18 include foreign intelligence information; and”;
19 and

20 (4) in subparagraph (D), as redesignated by
21 paragraph (2), by striking “and (B)” and inserting
22 “(B), and (C)”.

1 **SEC. 108. JUDICIAL REVIEW OF COMPLIANCE WITH MINI-**
2 **MIZATION PROCEDURES FOR ACCESS TO**
3 **CERTAIN BUSINESS RECORDS FOR FOREIGN**
4 **INTELLIGENCE AND INTERNATIONAL TER-**
5 **RORISM INVESTIGATIONS.**

6 Section 501(c) of the Foreign Intelligence Surveil-
7 lance Act of 1978 (50 U.S.C. 1861(c)), as amended by
8 section 106(a)(2), is further amended by adding at the
9 end the following:

10 “(6) JUDICIAL REVIEW OF COMPLIANCE WITH
11 MINIMIZATION PROCEDURES.—At or before the end
12 of the period for the production of tangible things
13 under an order entered under this section or at any
14 time after the production of tangible things under
15 an order entered under this section, a judge may as-
16 sess compliance with the minimization procedures
17 required by such order by reviewing the cir-
18 cumstances under which information concerning
19 United States persons was acquired, retained, or dis-
20 seminated.”.

1 **SEC. 109. MODIFICATION OF REQUIREMENT FOR DIRECTOR**
2 **OF NATIONAL INTELLIGENCE TO REPORT AN-**
3 **NUALLY ON MATTERS RELATING TO ORDERS**
4 **ISSUED FOR PRODUCTION OF TANGIBLE**
5 **THINGS FOR FOREIGN INTELLIGENCE AND**
6 **INTERNATIONAL TERRORISM INVESTIGA-**
7 **TIONS.**

8 (a) IN GENERAL.—Subsection (b)(5) of section 603
9 of the Foreign Intelligence Surveillance Act of 1978 (50
10 U.S.C. 1873) is amended—

11 (1) in subparagraph (A), by striking “; and”
12 and inserting a semicolon;

13 (2) in subparagraph (B)—

14 (A) by inserting “, including information
15 received electronically and through hard-copy
16 and portable media” after “such orders”; and

17 (B) by striking the semicolon and inserting
18 “; and”; and

19 (3) by adding at the end the following:

20 “(C) the number of individuals for whom
21 unique identifiers, unique personal identifiable
22 information, or other identifying information
23 has been collected pursuant to such orders, in-
24 cluding information received electronically and
25 through hard-copy and portable media;

1 “(D) the number of search terms that in-
2 cluded information concerning a United States
3 person that were used to query any database
4 containing records obtained through the use of
5 such orders;

6 “(E) the number of queries described in
7 subparagraph (D) that returned information
8 obtained from orders issued pursuant to appli-
9 cations made under section 501(b)(2);

10 “(F) the number of times the Attorney
11 General required the emergency production of
12 tangible things pursuant to section 501(i)(1)
13 and the application under subparagraph (D) of
14 such section was denied; and

15 “(G) the number of warrants under title I
16 of this Act and the number of warrants under
17 title 18, United States Code, that relied on in-
18 formation obtained through the use of such or-
19 ders;”.

20 (b) ADDITIONAL INFORMATION.—Subsection (b)(2)
21 of such section is amended—

22 (1) by redesignating subparagraph (D) as sub-
23 paragraph (E); and

24 (2) by inserting after subparagraph (C) the fol-
25 lowing:

1 “(D) the number of queries described in
2 subparagraph (C) that returned information ob-
3 tained from orders issued under such section;
4 and”.

5 (c) REPEAL OF NONAPPLICABILITY TO FEDERAL
6 BUREAU OF INVESTIGATION OF CERTAIN REPORTING RE-
7 QUIREMENTS.—Subsection (d)(2) of such section is
8 amended by striking “(A) FEDERAL BUREAU” and all that
9 follows through “Paragraph (3)(B) of” and inserting
10 “Paragraph (3)(B)”.

11 **SEC. 110. LIMITATIONS ON USE OF INFORMATION OB-**
12 **TAINED UNDER AUTHORITY TO ACCESS BUSI-**
13 **NESS RECORDS FOR FOREIGN INTELLIGENCE**
14 **AND INTERNATIONAL TERRORISM INVES-**
15 **TIGATIONS.**

16 Section 501(h) of the Foreign Intelligence Surveil-
17 lance Act of 1978 (50 U.S.C. 1861(h)) is amended—

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

20 “(1) IN GENERAL.—Information acquired”; and

21 (2) by adding at the end the following:

22 “(2) LIMITATION ON USE IN CRIMINAL, CIVIL,
23 AND ADMINISTRATIVE PROCEEDINGS AND INVES-
24 TIGATIONS.—No information about a person ac-
25 quired as described in paragraph (1) who is either

1 a United States person or is located in the United
2 States may be introduced as evidence against the
3 person in any criminal, civil, or administrative pro-
4 ceeding or used as part of any criminal, civil, or ad-
5 ministrative investigation, except—

6 “(A) with the prior approval of the Attor-
7 ney General; and

8 “(B) in a proceeding or investigation in
9 which the information is directly related to and
10 necessary to address a specific threat of—

11 “(i) terrorism (as defined in clauses
12 (i) through (iii) of section 2332(g)(5)(B)
13 of title 18, United States Code);

14 “(ii) espionage (as used in chapter 37
15 of title 18, United States Code);

16 “(iii) proliferation or use of a weapon
17 of mass destruction (as defined in section
18 2332a(c) of title 18, United States Code);

19 “(iv) a cybersecurity threat from a
20 foreign country;

21 “(v) incapacitation or destruction of
22 critical infrastructure (as defined in section
23 1016(e) of the Uniting and Strengthening
24 America by Providing Appropriate Tools
25 Required to Intercept and Obstruct Ter-

1 rorism (USA PATRIOT ACT) Act of 2001
2 (42 U.S.C. 5195c(e)); or

3 “(vi) a threat to the armed forces of
4 the United States or an ally of the United
5 States or to other personnel of the United
6 States Government or a government of an
7 ally of the United States.”.

8 **SEC. 111. REFORMS RELATING TO USE OF INFORMATION.**

9 (a) COMPLIANCE WITH MINIMIZATION PROCEDURES;
10 PRIVILEGED COMMUNICATIONS; LAWFUL PURPOSES.—
11 Subsection (a) of section 106 of the Foreign Intelligence
12 Surveillance Act of 1978 (50 U.S.C. 1806) is amended
13 by inserting “or an order issued under section 501” after
14 “pursuant to this title” both places it appears.

15 (b) STATEMENT FOR DISCLOSURE.—Subsection (b)
16 of such section is amended by inserting “or an order
17 issued under section 501” after “pursuant to this title”.

18 (c) NOTIFICATION BY UNITED STATES.—Subsection
19 (c) of such section is amended by inserting “or an order
20 issued under section 501” after “authority of this title”.

21 (d) NOTIFICATION BY STATES OR POLITICAL SUB-
22 DIVISIONS.—Subsection (d) of such section is amended—
23 (1) by inserting “or an order for production
24 issued under section 501” after “authority of this
25 title”; and

1 (2) by inserting “or production regarding” after
2 “surveillance of”.

3 (e) MOTION TO SUPPRESS.—Subsection (e) of such
4 section is amended—

5 (1) by inserting “or an order for production
6 issued under section 501” after “from an electronic
7 surveillance”; and

8 (2) by inserting “or order” after “such elec-
9 tronic surveillance”.

10 (f) IN CAMERA AND EX PARTE REVIEW BY DISTRICT
11 COURT.—Subsection (f) of such section is amended—

12 (1) in the first sentence—

13 (A) by inserting “or an order for produc-
14 tion issued under section 501” after “electronic
15 surveillance” both places it appears;

16 (B) by inserting “or the production” after
17 “to the surveillance”; and

18 (C) by inserting “or production regarding”
19 after “surveillance of”; and

20 (2) in the second sentence, by inserting “or pro-
21 duction” after “surveillance” both places it appears.

22 (g) SUPPRESSION OF EVIDENCE; DENIAL OF MO-
23 TION.—Subsection (g) of such section is amended—

24 (1) by inserting “or production” after “the sur-
25 veillance” both places it appears; and

1 (2) by inserting “or an order for production
2 issued under section 501” after “electronic surveil-
3 lance”.

4 (h) FINALITY OF ORDERS.—Subsection (h) of such
5 section is amended—

6 (1) by inserting “or an order for production
7 issued under section 501” after “electronic surveil-
8 lance”; and

9 (2) by inserting “or production” after “a sur-
10 veillance”.

11 (i) DESTRUCTION OF UNINTENTIONALLY ACQUIRED
12 INFORMATION.—Subsection (i) of such section is amend-
13 ed—

14 (1) by inserting “production or” after “uninten-
15 tional”; and

16 (2) by inserting “or records” after “contents”
17 each place it appears.

18 (j) NOTIFICATION OF EMERGENCY EMPLOYMENT OF
19 ELECTRONIC SURVEILLANCE; CONTENTS; POSTPONE-
20 MENT, SUSPENSION, OR ELIMINATION.—Subsection (j) of
21 such section is amended—

22 (1) in the matter before paragraph (1)—

23 (A) by inserting “or emergency production
24 under section 501(i)” after “of section 105”;
25 and

1 (B) by inserting “or the emergency pro-
 2 duction” after “to electronic surveillance”; and
 3 (2) in paragraph (2), by inserting “or produc-
 4 tion” after “surveillance”.

5 (k) CLARIFICATION OF AGGRIEVED PERSON.—Such
 6 section is amended by adding at the end the following:
 7 “(l) For purposes of this section, the term ‘aggrieved
 8 person’ shall include an individual about whom informa-
 9 tion has been collected pursuant to an order entered under
 10 section 501.”.

11 **SEC. 112. INSPECTOR GENERAL OF DEPARTMENT OF JUS-**
 12 **TICE REPORT ON USE OF ACTIVITIES PRO-**
 13 **TECTED BY FIRST AMENDMENT IN APPLICA-**
 14 **TIONS FOR PRODUCTION OF BUSINESS**
 15 **RECORDS FOR FOREIGN INTELLIGENCE AND**
 16 **INTERNATIONAL TERRORISM INVESTIGA-**
 17 **TIONS.**

18 (a) REPORT REQUIRED.—Not later than December
 19 31, 2021, the Inspector General of the Department of Jus-
 20 tice shall submit to the Committee on the Judiciary and
 21 the Select Committee on Intelligence of the Senate and
 22 the Committee on the Judiciary and the Permanent Select
 23 Committee on Intelligence of the House of Representatives
 24 a report on the use of activities and protected classes de-
 25 scribed in subsection (b) in—

1 (1) applications for orders under section 501 of
2 the Foreign Intelligence Surveillance Act of 1978
3 (50 U.S.C. 1861); and

4 (2) investigations for which such orders are
5 sought.

6 (b) ACTIVITIES AND PROTECTED CLASSES DE-
7 SCRIBED.—The activities and protected classes described
8 in this subsection are the following:

9 (1) Activities and expression protected by the
10 first amendment to the Constitution of the United
11 States.

12 (2) Race, ethnicity, national origin, religious af-
13 filiation, and such other protected classes as the In-
14 spector General considers appropriate.

15 **SEC. 113. ANNUAL REPORT ON WAIVER OF PROHIBITION**
16 **ON USE OF INFORMATION OBTAINED WITH-**
17 **OUT AN ORDER FOR PRODUCTION OF BUSI-**
18 **NESS RECORDS FOR FOREIGN INTELLIGENCE**
19 **AND INTERNATIONAL TERRORISM INVES-**
20 **TIGATIONS.**

21 Section 501(i) of the Foreign Intelligence Surveil-
22 lance Act of 1978 (50 U.S.C. 1861(i)) is amended by add-
23 ing at the end the following:

24 “(7) ANNUAL REPORT ON WAIVERS OF PROHI-
25 BITION AGAINST USE OF INFORMATION OBTAINED

1 WITHOUT ORDER.—Not less frequently than once
2 each year, the Attorney General shall submit to the
3 Committee on the Judiciary and the Select Com-
4 mittee on Intelligence of the Senate and the Com-
5 mittee on the Judiciary and the Permanent Select
6 Committee on Intelligence of the House of Rep-
7 resentatives an annual report on all cases in which
8 the Attorney General approved the use of informa-
9 tion that would otherwise be prohibited under para-
10 graph (5).”.

11 **Subtitle B—Oversight on Use of**
12 **Authority for Roving Surveillance**

13 **SEC. 121. INSPECTOR GENERAL OF DEPARTMENT OF JUS-**
14 **TICE REPORT ON COMPLIANCE WITH RE-**
15 **QUIREMENTS RELATING TO USE OF AUTHOR-**
16 **ITY FOR ELECTRONIC SURVEILLANCE.**

17 (a) REPORT REQUIRED.—Not later than December
18 31, 2021, the Inspector General of the Department of Jus-
19 tice shall submit to the Committee on the Judiciary and
20 the Select Committee on Intelligence of the Senate and
21 the Committee on the Judiciary and the Permanent Select
22 Committee on Intelligence of the House of Representatives
23 a report on compliance with section 105(c)(3) of the For-
24 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
25 1805(c)(3)).

1 (b) CONTENTS.—The report submitted under sub-
2 section (a) shall cover the 3-year period ending on the date
3 of the enactment of this Act and include the following:

4 (1) An assessment of the processes, if any, em-
5 ployed by the Director of the Federal Bureau of In-
6 vestigation to ascertain whether each new facility or
7 place at which electronic surveillance was directed
8 was used by the target of the surveillance.

9 (2) An assessment of whether each new facility
10 or place at which electronic surveillance was directed
11 was used by—

12 (A) the target of the surveillance; and

13 (B) individuals other than the target of the
14 surveillance, including the number of such indi-
15 viduals.

16 (3) The effectiveness of minimization proce-
17 dures to limit collection of facilities or places that
18 are determined were not used by the target of the
19 surveillance.

20 (4) An assessment of the process whereby or-
21 ders are approved absent knowledge of the identity
22 of the target.

23 (5) The number of orders in which the identity
24 of the target is not known.

1 **SEC. 122. ANNUAL REPORT ON WAIVER OF PROHIBITION**
2 **ON USE OF INFORMATION OBTAINED WITH-**
3 **OUT AN ORDER FOR ELECTRONIC SURVEIL-**
4 **LANCE.**

5 Section 105(e) of the Foreign Intelligence Surveil-
6 lance Act of 1978 (50 U.S.C. 1805(e)) is amended by add-
7 ing at the end the following:

8 “(7) Not less frequently than once each year, the At-
9 torney General shall submit to the Committee on the Judi-
10 ciary and the Select Committee on Intelligence of the Sen-
11 ate and the Committee on the Judiciary and the Perma-
12 nent Select Committee on Intelligence of the House of
13 Representatives an annual report on all cases in which the
14 Attorney General approved the use of information that
15 would otherwise be prohibited under paragraph (5).”.

1 **Subtitle C—Extension of Authority**
2 **To Access Certain Business**
3 **Records for Foreign Intelligence**
4 **and International Terrorism In-**
5 **vestigations and for Roving Sur-**
6 **veillance**

7 **SEC. 131. FOUR-YEAR EXTENSION OF AUTHORITY TO AC-**
8 **CESS CERTAIN BUSINESS RECORDS FOR FOR-**
9 **EIGN INTELLIGENCE AND INTERNATIONAL**
10 **TERRORISM INVESTIGATIONS AND FOR ROV-**
11 **ING SURVEILLANCE.**

12 Section 102 of the USA PATRIOT Improvement and
13 Reauthorization Act of 2005 (Public Law 109–177; 50
14 U.S.C. 1805 note) is amended by striking “March 15,
15 2020” and inserting “December 15, 2023”.

1 **TITLE II—ADDITIONAL RE-**
2 **FORMS OF AUTHORITIES**
3 **UNDER FOREIGN INTEL-**
4 **LIGENCE SURVEILLANCE ACT**
5 **OF 1978**

6 **SEC. 201. LIMITATION ON PRODUCTION OF CELL SITE LO-**
7 **CATION AND GLOBAL POSITIONING SYSTEM**
8 **INFORMATION UNDER PEN REGISTER AND**
9 **TRAP AND TRACE AUTHORITIES.**

10 Section 402(d) of the Foreign Intelligence Surveil-
11 lance Act of 1978 (50 U.S.C. 1842(d)) is amended by add-
12 ing at the end the following:

13 “(4) No cell site location or global positioning system
14 information may be produced pursuant to an order under
15 this subsection.”.

16 **SEC. 202. EXTENSION OF AUTHORITY FOR INDIVIDUAL TER-**
17 **RORISTS TO BE TREATED AS AGENTS OF FOR-**
18 **EIGN POWERS UNDER FOREIGN INTEL-**
19 **LIGENCE SURVEILLANCE ACT OF 1978.**

20 (a) EXTENSION.—Section 6001(b) of the Intelligence
21 Reform and Terrorism Prevention Act of 2004 (50 U.S.C.
22 1801 note) is amended by striking “March 15, 2020” and
23 inserting “December 15, 2023”.

24 (b) REPORTING.—

1 (1) INITIAL REPORT.—Not later than 180 days
2 after the date of the enactment of this Act, the Di-
3 rector of National Intelligence shall submit to Con-
4 gress a report that identifies, for the preceding 12-
5 month period, the number times a person who en-
6 gages in international terrorism, or activities in
7 preparation therefore, not for or on behalf of a for-
8 eign power, was treated as an agent of a foreign
9 power under the Foreign Intelligence Surveillance
10 Act of 1978 (50 U.S.C. 1801 et seq.).

11 (2) ANNUAL REPORTING.—

12 (A) IN GENERAL.—Section 603(b) of the
13 Foreign Intelligence Surveillance Act of 1978
14 (50 U.S.C. 1873(b)) is amended—

15 (i) in paragraph (6)(C), by striking “;
16 and” and inserting a semicolon;

17 (ii) in paragraph (7), by striking the
18 period and inserting “; and”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(8) the number times a person who engages in
22 international terrorism, or activities in preparation
23 therefore, not for or on behalf of a foreign power,
24 was treated as an agent of a foreign power under
25 this Act.”.

1 (B) EFFECTIVE DATE.—The amendment
2 made by subparagraph (A) shall take effect on
3 the date that is 180 days after the date of the
4 enactment of this Act.

5 **SEC. 203. CLARIFICATION REGARDING TREATMENT OF IN-**
6 **FORMATION ACQUIRED UNDER FOREIGN IN-**
7 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

8 (a) DEFINITION OF DERIVED.—

9 (1) IN GENERAL.—Section 101 of the Foreign
10 Intelligence Surveillance Act of 1978 (50 U.S.C.
11 1801) is amended by adding at the end the fol-
12 lowing:

13 “(q) For the purposes of notification provisions of
14 this Act, information or evidence is ‘derived’ from an elec-
15 tronic surveillance, physical search, use of a pen register
16 or trap and trace device, production of tangible things,
17 or acquisition under this Act when the Government would
18 not have originally possessed the information or evidence
19 but for that electronic surveillance, physical search, use
20 of a pen register or trap and trace device, production of
21 tangible things, or acquisition, and regardless of any claim
22 that the information or evidence is attenuated from the
23 surveillance or search, would inevitably have been discov-
24 ered, or was subsequently reobtained through other
25 means.”.

1 (2) POLICIES AND GUIDANCE.—

2 (A) IN GENERAL.—Not later than 90 days
3 after the date of the enactment of this Act, the
4 Attorney General and the Director of National
5 Intelligence shall publish the following:

6 (i) Policies concerning the application
7 of subsection (q) of section 101 of such
8 Act, as added by paragraph (1).

9 (ii) Guidance for all members of the
10 intelligence community (as defined in sec-
11 tion 3 of the National Security Act of
12 1947 (50 U.S.C. 3003)) and all Federal
13 agencies with law enforcement responsibil-
14 ities concerning the application of such
15 subsection.

16 (B) MODIFICATIONS.—Whenever the At-
17 torney General and the Director modify a policy
18 or guidance published under subparagraph (A),
19 the Attorney General and the Director shall
20 publish such modifications.

21 (b) USE OF INFORMATION ACQUIRED UNDER TITLE
22 VII.—Section 706 of such Act (50 U.S.C. 1881e) is
23 amended—

24 (1) in subsection (a), by striking “, except for
25 the purposes of subsection (j) of such section”; and

1 (2) by amending subsection (b) to read as fol-
2 lows:

3 “(b) INFORMATION ACQUIRED UNDER SECTIONS
4 703–705.—Information acquired from an acquisition con-
5 ducted under section 703, 704, or 705 shall be deemed
6 to be information acquired from an electronic surveillance
7 pursuant to title I for the purposes of section 106.”.

8 **TITLE III—REFORMS REGARD-**
9 **ING FOREIGN INTELLIGENCE**
10 **SURVEILLANCE ACT COURT**
11 **AND PRIVACY AND CIVIL LIB-**
12 **ERTIES OVERSIGHT BOARD**

13 **SEC. 301. IMPROVED ROLE IN OVERSIGHT OF ELECTRONIC**
14 **SURVEILLANCE BY AMICI CURIAE AP-**
15 **POINTED BY COURTS UNDER FOREIGN IN-**
16 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

17 (a) **ROLE OF AMICI CURIAE GENERALLY.—**

18 (1) **IN GENERAL.—**Section 103(i)(1) of the For-
19 eign Intelligence Surveillance Act of 1978 (50
20 U.S.C. 1803(i)(1)) is amended by adding at the end
21 the following: “Any amicus curiae designated pursu-
22 ant to this paragraph may raise any issue with the
23 Court at any time.”.

24 (2) **REFERRAL OF CASES FOR REVIEW.—**Sec-
25 tion 103(i) of such Act is amended—

1 (A) by redesignating paragraphs (5)
2 through (11) as paragraphs (6) through (12),
3 respectively; and

4 (B) by inserting after paragraph (4) the
5 following:

6 “(5) REFERRAL FOR REVIEW.—

7 “(A) REFERRAL TO FOREIGN INTEL-
8 LIGENCE SURVEILLANCE COURT EN BANC.—If
9 the court established under subsection (a) ap-
10 points an amicus curiae under paragraph
11 (2)(A) to assist the Court in the consideration
12 of any matter presented to the Court under this
13 Act and the Court makes a decision with re-
14 spect to such matter, the Court, in response to
15 an application by the amicus curiae or any
16 other individual designated under paragraph
17 (1), may refer the decision to the Court en banc
18 for review as the Court considers appropriate.

19 “(B) REFERRAL TO FOREIGN INTEL-
20 LIGENCE SURVEILLANCE COURT OF REVIEW.—
21 If the court established under subsection (a)
22 appoints an amicus curiae under paragraph
23 (2)(A) to assist the Court in the consideration
24 of any matter presented to the Court under this
25 Act and the Court makes a decision with re-

1 spect to such matter, the Court, in response to
2 an application by the amicus curiae or any
3 other individual designated under paragraph (1)
4 may refer the decision to the court established
5 under subsection (b) for review as the Court
6 considers appropriate.

7 “(C) REFERRAL TO SUPREME COURT.—If
8 the Court of Review appoints an amicus curiae
9 under paragraph (2) to assist the Court of Re-
10 view in the review of any matter presented to
11 the Court of Review under this Act or a ques-
12 tion of law that may affect resolution of a mat-
13 ter in controversy and the Court of Review
14 makes a decision with respect to such matter or
15 question of law, the Court of Review, in re-
16 sponse to an application by the amicus curiae
17 or any other individual designated under para-
18 graph (1) may refer the decision to the Su-
19 preme Court for review as the Court of Review
20 considers appropriate.

21 “(D) ANNUAL REPORT.—Not later than 60
22 days after the end of each calendar year, the
23 Court and the Court of Review shall each pub-
24 lish, on their respective Internet websites, a re-
25 port listing—

1 “(i) the number of applications for re-
2 ferral received by the Court or the Court
3 of Review, as applicable, during the most
4 recently concluded calendar year; and

5 “(ii) the number of such applications
6 for referral that were granted by the Court
7 or the Court of Review, as applicable, dur-
8 ing such calendar year.”.

9 (3) ASSISTANCE.—Section 103(i)(6) of such
10 Act, as redesignated, is further amended to read as
11 follows:

12 “(6) ASSISTANCE.—Any individual designated
13 pursuant to paragraph (1) may raise a legal or tech-
14 nical issue or any other issue with the Court or the
15 Court of Review at any time. If an amicus curiae is
16 appointed under paragraph (2)(A)—

17 “(A) the court shall notify all other amicus
18 curiae designated under paragraph (1) of such
19 appointment;

20 “(B) the appointed amicus curiae may re-
21 quest, either directly or through the court, the
22 assistance of the other amici curiae designated
23 under paragraph (1); and

24 “(C) all amici curiae designated under
25 paragraph (1) may provide input to the court

1 whether or not such input was formally re-
2 quested by the court or the appointed amicus
3 curiae.”.

4 (4) ACCESS TO INFORMATION.—Section
5 103(i)(7) of such Act, as redesignated, is further
6 amended—

7 (A) in subparagraph (A)—

8 (i) in clause (i)—

9 (I) by striking “that the court”
10 and inserting the following: “that—

11 “(I) the court”; and

12 (II) by striking “and” at the end
13 and inserting the following: “or

14 “(II) are cited by the Govern-
15 ment in an application or case with
16 respect to which an amicus curiae is
17 assisting a court under this sub-
18 section;”;

19 (ii) by redesignating clause (ii) as
20 clause (iii); and

21 (iii) by inserting after clause (i) the
22 following:

23 “(ii) shall have access to an
24 unredacted copy of each decision made by
25 a court established under subsection (a) or

1 (b) in which the court decides a question
2 of law, notwithstanding whether the deci-
3 sion is classified; and”;

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

6 (C) in subparagraph (C)—

7 (i) in the subparagraph heading, by
8 striking “CLASSIFIED INFORMATION” and
9 inserting “ACCESS TO INFORMATION”;

10 (ii) by striking “court may have ac-
11 cess” and inserting the following: “court—

12 “(i) shall have access to unredacted
13 copies of each opinion, order, transcript,
14 pleading, or other document of the Court
15 and the Court of Review; and

16 “(ii) may have access”; and

17 (iii) in clause (ii), as designated by
18 clause (ii) of this subparagraph, by strik-
19 ing “and to the extent consistent with the
20 national security of the United States”.

21 (5) PUBLIC NOTICE AND RECEIPT OF BRIEFS
22 FROM THIRD PARTIES.—Section 103(i) of such Act,
23 as amended by this subsection, is further amended
24 by adding at the end the following:

1 “(13) PUBLIC NOTICE AND RECEIPT OF BRIEFS
2 FROM THIRD PARTIES.—Whenever a court estab-
3 lished under subsection (a) or (b) considers a novel
4 a question of law that can be considered without dis-
5 closing classified information, sources, or methods,
6 the court shall, to the greatest extent practicable,
7 consider such question in an open manner—

8 “(A) by publishing on its Internet website
9 each question of law that the court is consid-
10 ering; and

11 “(B) by accepting briefs from third parties
12 relating to the question under consideration by
13 the court.”.

14 (b) PARTICIPATION OF AMICI CURIAE IN OVERSIGHT
15 OF AUTHORIZATIONS FOR TARGETING OF CERTAIN PER-
16 SONS OUTSIDE THE UNITED STATES OTHER THAN
17 UNITED STATES PERSONS.—

18 (1) IN GENERAL.—Section 702(j)(2) of such
19 Act (50 U.S.C. 1881a(j)(2)) is amended—

20 (A) in subparagraph (B), by redesignating
21 clauses (i) and (ii) as subclauses (I) and (II),
22 respectively, and adjusting the indentation of
23 the margin of such subclauses, as so redesign-
24 ated, two ems to the right;

1 (B) by redesignating subparagraphs (A)
2 through (C) as clauses (i) through (iii), respec-
3 tively, and adjusting the indentation of the
4 margin of such clauses, as so redesignated, two
5 ems to the right;

6 (C) by inserting before clause (i), as redesi-
7 gnated by subparagraph (B), the following:

8 “(A) IN GENERAL.—”; and

9 (D) by adding at the end the following:

10 “(B) PARTICIPATION BY AMICI CURIAE.—

11 In reviewing a certification under subparagraph
12 (A)(i), the Court shall randomly select an ami-
13 cus curiae designated under section 103(i) to
14 assist with such review.”.

15 (2) SCHEDULE.—Section 702(j)(5)(A) of such
16 Act is amended by striking “at least 30 days prior
17 to the expiration of such authorization” and insert-
18 ing “such number of days before the expiration of
19 such authorization as the Court considers necessary
20 to comply with the requirements of paragraph
21 (2)(B) or 30 days, whichever is greater”.

22 (c) PUBLIC NOTICE OF QUESTIONS OF LAW CER-
23 TIFIED FOR REVIEW.—Section 103(j) of such Act (50
24 U.S.C. 1803(j)) is amended—

1 (1) by striking “Following” and inserting the
2 following:

3 “(1) IN GENERAL.—Following”; and

4 (2) by adding at the end the following:

5 “(2) PUBLIC NOTICE.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), whenever a court established
8 under subsection (a) certifies a question of law
9 for review under paragraph (1) of this sub-
10 section, the court shall publish on its Internet
11 website—

12 “(i) a notice of the question of law to
13 be reviewed; and

14 “(ii) briefs submitted by the parties,
15 which may be redacted at the discretion of
16 the court to protect sources, methods, and
17 other classified information.

18 “(B) PROTECTION OF CLASSIFIED INFOR-
19 MATION, SOURCES, AND METHODS.—Subpara-
20 graph (A) shall apply to the greatest extent
21 practicable, consistent with otherwise applicable
22 law on the protection of classified information,
23 sources, and methods.”.

1 **SEC. 302. REFORMS TO THE FOREIGN INTELLIGENCE SUR-**
2 **VEILLANCE COURT.**

3 (a) FISA COURT JUDGES.—

4 (1) NUMBER AND DESIGNATION OF JUDGES.—

5 Section 103(a)(1) of the Foreign Intelligence Sur-
6 veillance Act of 1978 (50 U.S.C. 1803(a)(1)) is
7 amended to read as follows:

8 “(1)(A) There is a court which shall have jurisdiction
9 to hear applications for and to grant orders approving
10 electronic surveillance anywhere within the United States
11 under the procedures set forth in this Act.

12 “(B)(i) The court established under subparagraph
13 (A) shall consist of 13 judges, one of whom shall be des-
14 ignated from each judicial circuit (including the United
15 States Court of Appeals for the District of Columbia and
16 the United States Court of Appeals for the Federal Cir-
17 cuit).

18 “(ii) The Chief Justice of the United States shall—

19 “(I) designate each judge of the court estab-
20 lished under subparagraph (A) from the nominations
21 made under subparagraph (C); and

22 “(II) make the name of each judge of such
23 court available to the public.

24 “(C)(i) When a vacancy occurs in the position of a
25 judge of the court established under subparagraph (A)
26 from a judicial circuit, the chief judge of the circuit shall

1 propose a district judge for a judicial district within the
2 judicial circuit to be designated for that position.

3 “(ii) If the Chief Justice does not designate a district
4 judge proposed under clause (i), the chief judge shall pro-
5 pose 2 other district judges for a judicial district within
6 the judicial circuit to be designated for that position and
7 the Chief Justice shall designate 1 such district judge to
8 that position.

9 “(D) No judge of the court established under sub-
10 paragraph (A) (except when sitting en banc under para-
11 graph (2)) shall hear the same application for electronic
12 surveillance under this Act which has been denied pre-
13 viously by another judge of such court.

14 “(E) If any judge of the court established under sub-
15 paragraph (A) denies an application for an order author-
16 izing electronic surveillance under this Act, such judge
17 shall provide immediately for the record a written state-
18 ment of each reason for the judge’s decision and, on mo-
19 tion of the United States, the record shall be transmitted,
20 under seal, to the court of review established in subsection
21 (b).”.

22 (2) TENURE.—Section 103(d) of such Act is
23 amended by striking “redesignation,” and all that
24 follows through the end and inserting “redesigna-
25 tion.”.

1 (3) IMPLEMENTATION.—

2 (A) INCUMBENTS.—A district judge des-
3 igned to serve on the court established under
4 subsection (a) of such section before the date of
5 enactment of this Act may continue to serve in
6 that position until the end of the term of the
7 district judge under subsection (d) of such sec-
8 tion, as in effect on the day before the date of
9 the enactment of this Act.

10 (B) INITIAL APPOINTMENT AND TERM.—
11 Notwithstanding any provision of such section,
12 as amended by paragraphs (1) and (2), and not
13 later than 180 days after the date of enactment
14 of this Act, the Chief Justice of the United
15 States shall—

16 (i) designate a district court judge
17 who is serving in a judicial district within
18 the District of Columbia circuit and pro-
19 posed by the chief judge of such circuit to
20 be a judge of the court established under
21 section 103(a) of the Foreign Intelligence
22 Surveillance Act of 1978 (50 U.S.C.
23 1803(a)) for an initial term of 7 years; and

24 (ii) designate a district court judge
25 who is serving in a judicial district within

1 the Federal circuit and proposed by the
2 chief judge of such circuit to be a judge of
3 such court for an initial term of 4 years.

4 (b) COURT OF REVIEW.—Section 103(b) of such Act
5 is amended—

6 (1) by striking “The Chief Justice” and insert-
7 ing “(1) Subject to paragraph (2), the Chief Jus-
8 tice”; and

9 (2) by adding at the end the following:

10 “(2) The Chief Justice may designate a district court
11 judge or circuit court judge to a position on the court es-
12 tablished under paragraph (1) only if at least 5 associate
13 justices approve the designation of such individual.”.

14 **SEC. 303. STUDY AND REPORT ON DIVERSITY AND REP-**
15 **RESENTATION ON THE FISA COURT AND THE**
16 **FISA COURT OF REVIEW.**

17 (a) STUDY.—The Committee on Intercircuit Assign-
18 ments of the Judicial Conference of the United States
19 shall conduct a study on how to ensure judges are ap-
20 pointed to the court established under subsection (a) of
21 section 103 of the Foreign Intelligence Surveillance Act
22 of 1978 (50 U.S.C. 1803) and the court established under
23 subsection (b) of such section in a manner that ensures
24 such courts are diverse and representative.

1 (b) REPORT.—Not later than 1 year after the date
2 of the enactment of this Act, the Committee on Intercir-
3 cuit Assignments shall submit to Congress a report on the
4 study carried out under subsection (a).

5 **SEC. 304. REFORMS OF THE PRIVACY AND CIVIL LIBERTIES**
6 **OVERSIGHT BOARD.**

7 (a) INCLUSION OF FOREIGN INTELLIGENCE ACTIVI-
8 TIES IN OVERSIGHT AUTHORITY OF THE PRIVACY AND
9 CIVIL LIBERTIES OVERSIGHT BOARD.—Section 1061 of
10 the Intelligence Reform and Terrorism Prevention Act of
11 2004 (42 U.S.C. 2000ee) is amended—

12 (1) in subsection (e), by inserting “and to con-
13 duct foreign intelligence activities” after “terrorism”
14 each place such term appears; and

15 (2) in subsection (d), “and to conduct foreign
16 intelligence activities” after “terrorism” each place
17 such term appears.

18 (b) SUBMISSION OF WHISTLEBLOWER COMPLAINTS
19 TO THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT
20 BOARD.—

21 (1) IN GENERAL.—Such section, as amended by
22 subsection (a), is further amended—

23 (A) in subsection (d), by adding at the end
24 the following:

25 “(5) WHISTLEBLOWER COMPLAINTS.—

1 “(A) SUBMISSION TO BOARD.—An em-
2 ployee of, or contractor or detailee to, an ele-
3 ment of the intelligence community may submit
4 to the Board a complaint or information that
5 such employee, contractor, or detailee believes
6 relates to a privacy or civil liberties concern.
7 The confidentiality provisions under section
8 2409(b)(3) of title 10, United States Code,
9 shall apply to a submission under this subpara-
10 graph. Any disclosure under this subparagraph
11 shall be protected against discrimination under
12 the procedures, burdens of proof, and remedies
13 set forth in section 2409 of such title.

14 “(B) AUTHORITY OF BOARD.—The Board
15 may take such action as the Board considers
16 appropriate with respect to investigating a com-
17 plaint or information submitted under subpara-
18 graph (A) or transmitting such complaint or in-
19 formation to any other Executive agency or the
20 congressional intelligence committees.

21 “(C) RELATIONSHIP TO EXISTING LAWS.—
22 The authority under subparagraph (A) of an
23 employee, contractor, or detailee to submit to
24 the Board a complaint or information shall be
25 in addition to any other authority under an-

1 other provision of law to submit a complaint or
2 information. Any action taken under any other
3 provision of law by the recipient of a complaint
4 or information shall not preclude the Board
5 from taking action relating to the same com-
6 plaint or information.

7 “(D) RELATIONSHIP TO ACTIONS TAKEN
8 UNDER OTHER LAWS.—Nothing in this para-
9 graph shall prevent—

10 “(i) any individual from submitting a
11 complaint or information to any authorized
12 recipient of the complaint or information;
13 or

14 “(ii) the recipient of a complaint or
15 information from taking independent ac-
16 tion on the complaint or information.”;
17 and

18 (B) by adding at the end the following:

19 “(n) DEFINITIONS.—In this section, the terms ‘con-
20 gressional intelligence committees’ and ‘intelligence com-
21 munity’ have the meanings given such terms in section
22 3 of the National Security Act of 1947 (50 U.S.C.
23 3003).”.

24 (2) PROHIBITED PERSONNEL PRACTICES.—Sec-
25 tion 2302(b)(8)(B) of title 5, United States Code, is

1 amended, in the matter preceding clause (i), by
2 striking “or to the Inspector General of an agency
3 or another employee designated by the head of the
4 agency to receive such disclosures” and inserting
5 “the Inspector General of an agency, a supervisor in
6 the employee’s direct chain of command (up to and
7 including the head of the employing agency), the
8 Privacy and Civil Liberties Oversight Board, or an
9 employee designated by any of the aforementioned
10 individuals for the purpose of receiving such disclo-
11 sures”.

12 (c) PRIVACY AND CIVIL LIBERTIES OVERSIGHT
13 BOARD SUBPOENA POWER.—Subsection (g) of section
14 1061 of the Intelligence Reform and Terrorism Prevention
15 Act of 2004 (42 U.S.C. 2000ee) is amended—

16 (1) in paragraph (1)(D), by striking “submit a
17 written request to the Attorney General of the
18 United States that the Attorney General”;

19 (2) by striking paragraph (2); and

20 (3) by redesignating paragraphs (3) through
21 (5) as paragraphs (2) through (4), respectively.

22 (d) TENURE AND COMPENSATION OF PRIVACY AND
23 CIVIL LIBERTIES OVERSIGHT BOARD MEMBERS AND
24 STAFF.—

1 (1) IN GENERAL.—Such section, as amended by
2 subsections (a) and (b), is further amended—

3 (A) in subsection (h)—

4 (i) in paragraph (1), by inserting
5 “full-time” after “4 additional”; and

6 (ii) in paragraph (4)(B), by striking
7 “, except that” and all that follows
8 through the end and inserting a period;

9 (B) in subsection (i)(1)—

10 (i) in subparagraph (A), by striking
11 “level III of the Executive Schedule under
12 section 5314” and inserting “level II of the
13 Executive Schedule under section 5313”;
14 and

15 (ii) in subparagraph (B), by striking
16 “level IV of the Executive Schedule” and
17 all that follows through the end and insert-
18 ing “level III of the Executive Schedule
19 under section 5314 of title 5, United
20 States Code.”; and

21 (C) in subsection (j)(1), by striking “level
22 V of the Executive Schedule under section
23 5316” and inserting “level IV of the Executive
24 Schedule under section 5315”.

25 (2) EFFECTIVE DATE; APPLICABILITY.—

1 (A) IN GENERAL.—The amendments made
2 by paragraph (1)—

3 (i) shall take effect on the date of the
4 enactment of this Act; and

5 (ii) except as provided in paragraph
6 (2), shall apply to any appointment to a
7 position as a member of the Privacy and
8 Civil Liberties Oversight Board made on or
9 after the date of the enactment of this Act.

10 (B) EXCEPTIONS.—

11 (i) COMPENSATION CHANGES.—The
12 amendments made by subparagraphs
13 (B)(i) and (C) of paragraph (1) shall take
14 effect on the first day of the first pay pe-
15 riod beginning after the date of the enact-
16 ment of this Act.

17 (ii) ELECTION TO SERVE FULL TIME
18 BY INCUMBENTS.—

19 (I) IN GENERAL.—An individual
20 serving as a member of the Privacy
21 and Civil Liberties Oversight Board
22 on the date of the enactment of this
23 Act, including a member continuing to
24 serve as a member under section
25 1061(h)(4)(B) of the Intelligence Re-

1 form and Terrorism Prevention Act of
2 2004 (42 U.S.C. 2000ee(h)(4)(B)),
3 (referred to in this clause as a “cur-
4 rent member”) may make an election
5 to—

6 (aa) serve as a member of
7 the Privacy and Civil Liberties
8 Oversight Board on a full-time
9 basis and in accordance with sec-
10 tion 1061 of the Intelligence Re-
11 form and Terrorism Prevention
12 Act of 2004 (42 U.S.C. 2000ee),
13 as amended by this section; or

14 (bb) serve as a member of
15 the Privacy and Civil Liberties
16 Oversight Board on a part-time
17 basis in accordance with such
18 section 1061, as in effect on the
19 day before the date of the enact-
20 ment of this Act, including the
21 limitation on service after the ex-
22 piration of the term of the mem-
23 ber under subsection (h)(4)(B) of
24 such section, as in effect on the

1 day before the date of the enact-
2 ment of this Act.

3 (II) ELECTION TO SERVE FULL
4 TIME.—A current member making an
5 election under subclause (I)(aa) shall
6 begin serving as a member of the Pri-
7 vacy and Civil Liberties Oversight
8 Board on a full-time basis on the first
9 day of the first pay period beginning
10 not less than 60 days after the date
11 on which the current member makes
12 such election.

13 (e) PROVISION OF INFORMATION ABOUT GOVERN-
14 MENT ACTIVITIES UNDER THE FOREIGN INTELLIGENCE
15 SURVEILLANCE ACT OF 1978 TO THE PRIVACY AND CIVIL
16 LIBERTIES OVERSIGHT BOARD.—The Attorney General
17 shall fully inform the Privacy and Civil Liberties Oversight
18 Board about any activities carried out by the Government
19 under the Foreign Intelligence Surveillance Act of 1978
20 (50 U.S.C. 1801 et seq.), including by providing to the
21 Board—

22 (1) copies of each detailed report submitted to
23 a committee of Congress under such Act; and

24 (2) copies of each decision, order, and opinion
25 of the Foreign Intelligence Surveillance Court or the

1 Foreign Intelligence Surveillance Court of Review re-
2 quired to be included in the report under section
3 601(a) of such Act (50 U.S.C. 1871(a)).

4 **SEC. 305. CLARIFICATION OF APPLICABILITY OF REQUIRE-**
5 **MENT TO DECLASSIFY SIGNIFICANT DECI-**
6 **SIONS OF FOREIGN INTELLIGENCE SURVEIL-**
7 **LANCE COURT AND FOREIGN INTELLIGENCE**
8 **SURVEILLANCE COURT OF REVIEW.**

9 (a) CLARIFICATION OF APPLICABILITY.—Section 602
10 of the Foreign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1872) shall apply with respect to decisions, orders,
12 and opinions described in subsection (a) of such section
13 that were issued on, before, or after the date of the enact-
14 ment of the Uniting and Strengthening America by Ful-
15 filling Rights and Ensuring Effective Discipline Over
16 Monitoring Act of 2015 (Public Law 114–23).

17 (b) PERIOD FOR PUBLICATION.—Such section is
18 amended by adding at the end the following:

19 “(d) PERIOD FOR PUBLICATION.—The Director of
20 National Intelligence shall ensure that, for each decision,
21 order, and opinion described in subsection (a), not later
22 than 180 days after the date of the decision, order, or
23 opinion—

24 “(1) the declassification review required by such
25 subsection is completed; and

1 “(2)(A) the decision, order, or opinion is made
2 publicly available; or

3 “(B) a statement is made publicly available
4 pursuant to subsection (c)(2) with respect to the de-
5 cision, order, or opinion.”.

6 **TITLE IV—SUNSET OF NATIONAL**
7 **SECURITY LETTER AUTHORI-**
8 **TIES**

9 **SEC. 401. SUNSET OF NATIONAL SECURITY LETTER AU-**
10 **THORITY.**

11 (a) IN GENERAL.—Effective on December 15,
12 2023—

13 (1) section 1114 of the Right to Financial Pri-
14 vacy Act of 1978 (12 U.S.C. 3414) is repealed;

15 (2) section 626 of the Fair Credit Reporting
16 Act (15 U.S.C. 1681u) is repealed;

17 (3) section 627 of the Fair Credit Reporting
18 Act (15 U.S.C. 1681v) is repealed;

19 (4) section 2709 of title 18, United States Code
20 is repealed; and

21 (5) section 3511 of title 18, United States Code
22 is amended—

23 (A) by striking “section 2709(b) of this
24 title, section 626(a) or (b) or 627(a) of the Fair
25 Credit Reporting Act, section 1114(a)(5)(A) of

1 the Right to Financial Privacy Act, or section
2 802(a) of the National Security Act of 1947”
3 each place it appears and inserting “section
4 802(a) of the National Security Act of 1947
5 (50 U.S.C. 3162(a))”; and

6 (B) in subsection (b)—

7 (i) in paragraph (1)(A), by striking
8 “section 2709 of this title, section 626 or
9 627 of the Fair Credit Reporting Act (15
10 U.S.C. 1681u and 1681v), section 1114 of
11 the Right to Financial Privacy Act of 1978
12 (12 U.S.C. 3414), or”; and

13 (ii) in paragraph (2), by striking “the
14 Attorney General” and all that follows
15 through “the head or deputy head of the
16 department, agency, or instrumentality,”
17 and inserting “the head or deputy head of
18 the department, agency, or instrumentality
19 making the request”.

20 (b) CONFORMING AMENDMENTS.—Effective on De-
21 cember 15, 2023—

22 (1) the Right to Financial Privacy Act of 1978
23 (12 U.S.C. 3401 et seq.) is amended—

1 (A) in section 1101(1) (12 U.S.C.
2 3401(1)) by striking “, except as provided in
3 section 1114,”;

4 (B) in section 1102 (12 U.S.C. 3402), in
5 the matter preceding paragraph (1) by striking
6 “, 1113, or 1114” and inserting “or 1113”;
7 and

8 (C) in section 1109 (12 U.S.C. 3409)—

9 (i) by striking subsection (c); and

10 (ii) by redesignating subsection (d) as
11 subsection (c);

12 (2) section 1510(e) of title 18, United States
13 Code, is amended by striking “confidentiality re-
14 quirements” and all that follows through “National
15 Security Act of 1947 (50 U.S.C. 436(b)(1)),” and
16 inserting “confidentiality requirements under section
17 802(b)(1) of the National Security Act of 1947 (50
18 U.S.C. 3162(b)(1)),”;

19 (3) the table of sections for chapter 121 of title
20 18, United States Code, is amended by striking the
21 item relating to section 2709;

22 (4) the Foreign Intelligence Surveillance Act of
23 1978 (50 U.S.C. 1801 et seq.) is amended—

24 (A) in section 603 (50 U.S.C. 1873)—

25 (i) in subsection (b)—

1 (I) in paragraph (5), by adding
2 “and” at the end;

3 (II) in paragraph (6), by striking
4 “; and” and inserting a period; and

5 (III) by striking paragraph (7);
6 and

7 (ii) in subsection (e)—

8 (I) by striking paragraph (3);
9 and

10 (II) by redesignating paragraphs
11 (4) and (5) as paragraphs (3) and
12 (4), respectively;

13 (B) in section 801(8)(B)(2) (50 U.S.C.
14 1885(8)(B)(2)), by striking “or 2709(b)”; and

15 (C) in section 802(a)(2) (50 U.S.C.
16 1885a(a)(2)), by striking “or 2709(b)”; and

17 (5) section 507 of the National Security Act of
18 1947 (50 U.S.C. 3106) is amended—

19 (A) by striking subsection (b) and insert-
20 ing the following:

21 “(b) SEMIANNUAL REPORTS.—The dates for the sub-
22 mittal to the congressional intelligence committees of the
23 semiannual reports on decisions not to prosecute certain
24 violations of law under the Classified Information Proce-
25 dures Act (18 U.S.C. App.) as required by section 13 of

1 that Act shall be the dates each year provided in sub-
 2 section (c)(2).”;

3 (B) in subsection (c)(2), by striking “each
 4 semiannual” and inserting “the semiannual”;
 5 and

6 (C) in subsection (d)(1)(B), by striking “a
 7 semiannual” and inserting “the semiannual”.

8 **TITLE V—OTHER MATTERS**

9 **SEC. 501. LIMITATION ON COLLECTION WITHOUT EXPRESS** 10 **STATUTORY AUTHORITY.**

11 (a) PROHIBITION ON INTERCEPTION AND DISCLO-
 12 SURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICA-
 13 TIONS.—Section 2511(2)(f) of title 18, United States
 14 Code, is amended by inserting—

15 (1) by inserting “(i)” after “acquisition by the
 16 United States Government of”;

17 (2) by inserting “if the acquisition (I) is pursu-
 18 ant to express statutory authority or (II) does not
 19 include information of United States persons or per-
 20 sons inside the United States” after “international
 21 or foreign communications”; and

22 (3) by inserting “(ii)” before “foreign intel-
 23 ligence activities conducted in accordance with”.

24 (b) VOLUNTARY DISCLOSURE OF CUSTOMER COMMU-
 25 NICATIONS OR RECORDS.—Section 2702(a) of title 18,

1 United States Code, is amended by striking “to the pub-
2 lic” each place it appears.

3 (c) EXCLUSIVE MEANS RELATED TO COMMUNICA-
4 TIONS RECORDS.—The Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive
6 means by which electronic communications transactions
7 records, call detail records, or other information from com-
8 munications of United States persons or persons inside the
9 United States are collected for intelligence purposes from
10 a person or entity located in the United States that pro-
11 vides telecommunications, electronic communication or re-
12 mote computing services.

13 (d) EXCLUSIVE MEANS RELATED TO CELL SITE LO-
14 CATION, GLOBAL POSITIONING SYSTEM INFORMATION,
15 WEB BROWSING HISTORY, AND INTERNET SEARCH HIS-
16 TORY.—Title I and sections 303, 304, 703, 704, and 705
17 of the Foreign Intelligence Surveillance Act of 1978 (50
18 U.S.C. 1801 et seq., 1823, 1824, 1881b, 1881c, 1881d)
19 shall be the exclusive means by which cell site location,
20 global positioning system information, web browsing his-
21 tory, and internet search history of United States persons
22 or persons inside the United States are collected for intel-
23 ligence purposes from a person or entity located in the
24 United States.

1 (e) EXCLUSIVE MEANS RELATED TO FOURTH
2 AMENDMENT-PROTECTED INFORMATION.—Title I and
3 sections 303, 304, 703, 704, and 705 of the Foreign Intel-
4 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.,
5 1823, 1824, 1881b, 1881c, 1881d) shall be the exclusive
6 means by which any information, records, data, or tangible
7 things are collected for intelligence purposes from a person
8 or entity located in the United States if the compelled pro-
9 duction of such information, records, data, or tangible
10 things would require a warrant for law enforcement pur-
11 poses.

12 (f) UNITED STATES PERSON DEFINED.—In this sec-
13 tion, the term “United States person” has the meaning
14 given that term in section 101(i) of the Foreign Intel-
15 ligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

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