

USA FREEDOM ACT

MAY 15, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROGERS of Michigan, from the Permanent Select Committee on Intelligence, submitted the following

R E P O R T

[To accompany H.R. 3361]

[Including cost estimate of the Congressional Budget Office]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 3361) to reform the authorities of the Federal Government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “USA FREEDOM Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.

TITLE I—FISA BUSINESS RECORDS REFORMS

- Sec. 101. Additional requirements for call detail records.
- Sec. 102. Emergency authority.
- Sec. 103. Prohibition on bulk collection of tangible things.
- Sec. 104. Judicial review of minimization procedures for the production of tangible things.
- Sec. 105. Liability protection.
- Sec. 106. Compensation for assistance.
- Sec. 107. Definitions.
- Sec. 108. Inspector general reports on business records orders.
- Sec. 109. Effective date.

TITLE II—FISA PEN REGISTER AND TRAP AND TRACE DEVICE REFORM

- Sec. 201. Prohibition on bulk collection.
- Sec. 202. Minimization procedures.

TITLE III—FISA ACQUISITIONS TARGETING PERSONS OUTSIDE THE UNITED STATES REFORMS

- Sec. 301. Prohibition on reverse targeting.
 Sec. 302. Minimization procedures.
 Sec. 303. Limits on use of unlawfully obtained information.

TITLE IV—FOREIGN INTELLIGENCE SURVEILLANCE COURT REFORMS

- Sec. 401. Appointment of amicus curiae.
 Sec. 402. Declassification of decisions, orders, and opinions.

TITLE V—NATIONAL SECURITY LETTER REFORM

- Sec. 501. Prohibition on bulk collection.

TITLE VI—FISA TRANSPARENCY AND REPORTING REQUIREMENTS

- Sec. 601. Additional reporting on orders requiring production of business records.
 Sec. 602. Business records compliance reports to Congress.
 Sec. 603. Annual report by the Director of the Administrative Office of the United States Courts on orders entered.
 Sec. 604. Public reporting by persons subject to FISA orders.
 Sec. 605. Reporting requirements for decisions of the Foreign Intelligence Surveillance Court.
 Sec. 606. Submission of reports under FISA.

TITLE VII—SUNSETS

- Sec. 701. Sunsets.

SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

TITLE I—FISA BUSINESS RECORDS REFORMS**SEC. 101. ADDITIONAL REQUIREMENTS FOR CALL DETAIL RECORDS.**

(a) APPLICATION.—Section 501(b)(2) (50 U.S.C. 1861(b)(2)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking “a statement” and inserting “in the case of an application other than an application described in subparagraph (C), a statement”; and

(B) in clause (iii), by striking “; and” and inserting a semicolon;

(2) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (D), respectively; and

(3) by inserting after subparagraph (B) (as so redesignated) the following new subparagraph:

“(C) in the case of an application for the production of call detail records created on or after the date of the application, a statement of facts showing that—

“(i) there are reasonable grounds to believe that the call detail records sought to be produced based on the specific selection term required under subparagraph (A) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to protect against international terrorism; and

“(ii) there are facts giving rise to a reasonable, articulable suspicion that such specific selection term is associated with a foreign power or an agent of a foreign power; and”.

(b) ORDER.—Section 501(c)(2) (50 U.S.C. 1861(c)(2)) is amended—

(1) in subparagraph (D), by striking “; and” and inserting a semicolon;

(2) in subparagraph (E), by striking the period and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(F) in the case of an application described in subsection (b)(2)(C), shall—

“(i) authorize the production of call detail records for a period not to exceed 180 days;

“(ii) provide that an order for such production may be extended upon application under subsection (b) and the judicial finding under paragraph (1);

“(iii) provide that the Government may require the production of call detail records—

“(I) using the specific selection term that satisfies the standard required under subsection (b)(2)(C)(ii) as the basis for production; and

“(II) using the results of the production under subclause (I) as the basis for production;

“(iv) direct each person the Government directs to produce call detail records under the order to furnish the Government forthwith all information, facilities, or technical assistance necessary to accomplish the production in such a manner as will protect the secrecy of the production and produce a minimum of interference with the services that such person is providing to each subject of the production; and

“(v) direct the Government to destroy all call detail records produced under the order not later than 5 years after the date of the production of such records, except for records that are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to protect against international terrorism.”.

SEC. 102. EMERGENCY AUTHORITY.

(a) **AUTHORITY.**—Section 501 (50 U.S.C. 1861) is amended by adding at the end the following new subsection:

“(i) **EMERGENCY AUTHORITY FOR PRODUCTION OF TANGIBLE THINGS.**—

“(1) Notwithstanding any other provision of this section, the Attorney General may require the emergency production of tangible things if the Attorney General—

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

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

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

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

“(2) If the Attorney General authorizes the emergency production of tangible things under paragraph (1), the Attorney General shall require that the minimization procedures required by this section for the issuance of a judicial order be followed.

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

“(4) A denial of the application made under this subsection may be reviewed as provided in this section.

“(5) If such application for approval is denied, or in any other case where the production of tangible things is terminated and no order is issued approving the production, no information obtained or evidence derived from such production shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such production shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(6) The Attorney General shall assess compliance with the requirements of paragraph (5).”.

(b) **CONFORMING AMENDMENT.**—Section 501(d) (50 U.S.C. 1861(d)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “pursuant to an order” and inserting “pursuant to an order issued or an emergency production required”;

(B) in subparagraph (A), by striking “such order” and inserting “such order or such emergency production”;

(C) in subparagraph (B), by striking “the order” and inserting “the order or the emergency production”;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking “an order” and inserting “an order or emergency production”;

(B) in subparagraph (B), by striking “an order” and inserting “an order or emergency production”.

SEC. 103. PROHIBITION ON BULK COLLECTION OF TANGIBLE THINGS.

(a) APPLICATION.—Section 501(b)(2) (50 U.S.C. 1861(b)(2)), as amended by section 101(a) of this Act, is further amended by inserting before subparagraph (B), as redesignated by such section 101(a) of this Act, the following new subparagraph:

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

(b) ORDER.—Section 501(c) (50 U.S.C. 1861(c)) is amended—

(1) in paragraph (2)(A), by striking the semicolon and inserting “, including each specific selection term to be used as the basis for the production;”; and

(2) by adding at the end the following new paragraph:

“(3) No order issued under this subsection may authorize the collection of tangible things without the use of a specific selection term that meets the requirements of subsection (b)(2).”

SEC. 104. JUDICIAL REVIEW OF MINIMIZATION PROCEDURES FOR THE PRODUCTION OF TANGIBLE THINGS.

Section 501(c)(1) (50 U.S.C. 1861(c)(1)) is amended by inserting after “subsections (a) and (b)” the following: “and that the minimization procedures submitted in accordance with subsection (b)(2)(D) meet the definition of minimization procedures under subsection (g)”.

SEC. 105. LIABILITY PROTECTION.

Section 501(e) (50 U.S.C. 1861(e)) is amended to read as follows:

“(e) No cause of action shall lie in any court against a person who produces tangible things or provides information, facilities, or technical assistance pursuant to an order issued or an emergency production required under this section. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.”

SEC. 106. COMPENSATION FOR ASSISTANCE.

Section 501 (50 U.S.C. 1861), as amended by section 102 of this Act, is further amended by adding at the end the following new subsection:

“(j) COMPENSATION.—The Government shall compensate, at the prevailing rate, a person for producing tangible things or providing information, facilities, or assistance in accordance with an order issued or an emergency production required under this section.”

SEC. 107. DEFINITIONS.

Section 501 (50 U.S.C. 1861), as amended by section 106 of this Act, is further amended by adding at the end the following new subsection:

“(k) DEFINITIONS.—In this section:

“(1) CALL DETAIL RECORD DEFINED.—The term ‘call detail record’—

“(A) means session identifying information (including originating or terminating telephone number, International Mobile Subscriber Identity number, or International Mobile Station Equipment Identity number), a telephone calling card number, or the time or duration of a call; and

“(B) does not include—

“(i) the contents of any communication (as defined in section 2510(8) of title 18, United States Code);

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

“(iii) cell site location information.

“(2) SPECIFIC SELECTION TERM.—The term ‘specific selection term’ means a term used to uniquely describe a person, entity, or account.”

SEC. 108. INSPECTOR GENERAL REPORTS ON BUSINESS RECORDS ORDERS.

Section 106A of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 120 Stat. 200) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by inserting “and calendar years 2012 through 2014” after “2006”;

(B) by striking paragraphs (2) and (3);

(C) by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively; and

(D) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (C) and inserting the following new subparagraph:

“(C) with respect to calendar years 2012 through 2014, an examination of the minimization procedures used in relation to orders under section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) and whether the minimization procedures adequately protect the constitutional rights of United States persons;” and

(ii) in subparagraph (D), by striking “(as such term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)))”;

(2) in subsection (c), by adding at the end the following new paragraph:

“(3) CALENDAR YEARS 2012 THROUGH 2014.—Not later than December 31, 2015, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under subsection (a) for calendar years 2012 through 2014.”;

(3) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(4) by inserting after subsection (c) the following new subsection:

“(d) INTELLIGENCE ASSESSMENT.—

“(1) IN GENERAL.—For the period beginning on January 1, 2012, and ending on December 31, 2014, the Inspector General of the Intelligence Community shall assess—

“(A) the importance of the information acquired under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) to the activities of the intelligence community;

“(B) the manner in which that information was collected, retained, analyzed, and disseminated by the intelligence community;

“(C) the minimization procedures used by elements of the intelligence community under such title and whether the minimization procedures adequately protect the constitutional rights of United States persons; and

“(D) any minimization procedures proposed by an element of the intelligence community under such title that were modified or denied by the court established under section 103(a) of such Act (50 U.S.C. 1803(a)).

“(2) SUBMISSION DATE FOR ASSESSMENT.—Not later than December 31, 2015, the Inspector General of the Intelligence Community shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the assessment for calendar years 2012 through 2014.”;

(5) in subsection (e), as redesignated by paragraph (3)—

(A) in paragraph (1)—

(i) by striking “a report under subsection (c)(1) or (c)(2)” and inserting “any report under subsection (c) or (d)”;

(ii) by striking “Inspector General of the Department of Justice” and inserting “Inspector General of the Department of Justice, the Inspector General of the Intelligence Community, and any Inspector General of an element of the intelligence community that prepares a report to assist the Inspector General of the Department of Justice or the Inspector General of the Intelligence Community in complying with the requirements of this section”;

(B) in paragraph (2), by striking “the reports submitted under subsections (c)(1) and (c)(2)” and inserting “any report submitted under subsection (c) or (d)”;

(6) in subsection (f), as redesignated by paragraph (3)—

(A) by striking “The reports submitted under subsections (c)(1) and (c)(2) and inserting “Each report submitted under subsection (c)”;

(B) by striking “subsection (d)(2)” and inserting “subsection (e)(2)”;

(7) by adding at the end the following new subsection:

“(g) DEFINITIONS.—In this section:

“(1) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

“(2) UNITED STATES PERSON.—The term ‘United States person’ has the meaning given that term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).”.

SEC. 109. EFFECTIVE DATE.

The amendments made by sections 101 through 103 shall take effect on the date that is 180 days after the date of the enactment of this Act.

TITLE II—FISA PEN REGISTER AND TRAP AND TRACE DEVICE REFORM

SEC. 201. PROHIBITION ON BULK COLLECTION.

(a) PROHIBITION.—Section 402(c) (50 U.S.C. 1842(c)) is amended—

- (1) in paragraph (1), by striking “; and” and inserting a semicolon;
- (2) in paragraph (2), by striking the period and inserting a semicolon; and
- (3) by adding at the end the following new paragraph:

“(3) a specific selection term to be used as the basis for selecting the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and”.

(b) DEFINITION.—Section 401 (50 U.S.C. 1841) is amended by adding at the end the following new paragraph:

“(4) The term ‘specific selection term’ has the meaning given the term in section 501.”.

SEC. 202. MINIMIZATION PROCEDURES.

(a) DEFINITION.—Section 401 (50 U.S.C. 1841), as amended by section 201 of this Act, is further amended by adding at the end the following new paragraph:

“(5) The term ‘minimization procedures’ means—

“(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the installation and use of a pen register or trap and trace device to minimize the retention and prohibit the dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

“(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 101(e)(1), shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance; and

“(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.”.

(b) APPLICATION.—Section 402(c) (50 U.S.C. 1842(c)), as amended by section 201 of this Act, is further amended by adding at the end the following new paragraph:

“(4) a statement of proposed minimization procedures.”.

(c) ORDER.—Section 402(d) (50 U.S.C. 1842(d)) is amended—

(1) in paragraph (1), by inserting “and that the proposed minimization procedures meet the definition of minimization procedures under this title” before the period at the end; and

(2) in paragraph (2)(B)—

(A) in clause (ii)(II), by striking “; and” and inserting a semicolon; and

(B) by adding at the end the following new clause:

“(iv) the minimization procedures be followed; and”.

(d) COMPLIANCE ASSESSMENT.—Section 402 (50 U.S.C. 1842) is amended by adding at the end the following new subsection:

“(h) At or before the end of the period of time for which the installation and use of a pen register or trap and trace device is approved under an order or an extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was retained or disseminated.”.

TITLE III—FISA ACQUISITIONS TARGETING PERSONS OUTSIDE THE UNITED STATES REFORMS

SEC. 301. PROHIBITION ON REVERSE TARGETING.

Section 702(b)(2) (50 U.S.C. 1881a(b)(2)) is amended by striking “the purpose” and inserting “a purpose”.

SEC. 302. MINIMIZATION PROCEDURES.

Section 702(e)(1) (50 U.S.C. 1881a(e)(1)) is amended—

- (1) by striking “that meet” and inserting the following: “that—

- “(A) meet”;
- (2) in subparagraph (A) (as designated by paragraph (1) of this section), by striking the period and inserting “; and”; and
- (3) by adding at the end the following new subparagraph:
- “(B) consistent with such definition, minimize the acquisition, and prohibit the retention and dissemination, of any communication as to which the sender and all intended recipients are determined to be located in the United States and prohibit the use of any discrete, non-target communication that is determined to be to or from a United States person or a person who appears to be located in the United States, except to protect against an immediate threat to human life.”.

SEC. 303. LIMITS ON USE OF UNLAWFULLY OBTAINED INFORMATION.

Section 702(i)(3) (50 U.S.C. 1881a(i)(3)) is amended by adding at the end the following new subparagraph:

“(D) LIMITATION ON USE OF INFORMATION.—

“(i) IN GENERAL.—Except as provided in clause (ii), no information obtained or evidence derived from an acquisition pursuant to a certification or targeting or minimization procedures subject to an order under subparagraph (B) concerning any United States person shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of the United States person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(ii) EXCEPTION.—If the Government corrects any deficiency identified by the order of the Court under subparagraph (B), the Court may permit the use or disclosure of information acquired before the date of the correction under such minimization procedures as the Court shall establish for purposes of this clause.”.

TITLE IV—FOREIGN INTELLIGENCE SURVEILLANCE COURT REFORMS

SEC. 401. APPOINTMENT OF AMICUS CURIAE.

Section 103 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

“(i) AMICUS CURIAE.—

“(1) AUTHORIZATION.—A court established under subsection (a) or (b), consistent with the requirement of subsection (c) and any other statutory requirement that the court act expeditiously or within a stated time—

“(A) shall appoint an individual to serve as amicus curiae to assist such court in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a written finding that such appointment is not appropriate; and

“(B) may appoint an individual to serve as amicus curiae in any other instance as such court deems appropriate.

“(2) DESIGNATION.—The presiding judges of the courts established under subsections (a) and (b) shall jointly designate not less than 5 individuals to be eligible to serve as amicus curiae. Such individuals shall be persons who possess expertise in privacy and civil liberties, intelligence collection, telecommunications, or any other area of law that may lend legal or technical expertise to the courts and who have been determined by appropriate executive branch officials to be eligible for access to classified information.

“(3) DUTIES.—An individual appointed to serve as amicus curiae under paragraph (1) shall carry out the duties assigned by the appointing court. Such court may authorize the individual appointed to serve as amicus curiae to review any application, certification, petition, motion, or other submission that the court determines is relevant to the duties assigned by the court.

“(4) NOTIFICATION.—The presiding judges of the courts established under subsections (a) and (b) shall notify the Attorney General of each exercise of the authority to appoint an individual to serve as amicus curiae under paragraph (1).

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

“(6) ADMINISTRATION.—A court established under subsection (a) or (b) may provide for the designation, appointment, removal, training, or other support for an individual appointed to serve as amicus curiae under paragraph (1) in a manner that is not inconsistent with this subsection.”.

SEC. 402. DECLASSIFICATION OF DECISIONS, ORDERS, AND OPINIONS.

(a) DECLASSIFICATION.—Title VI (50 U.S.C. 1871 et seq.) is amended—

(1) in the heading, by striking “**REPORTING REQUIREMENT**” and inserting “**OVERSIGHT**”; and

(2) by adding at the end the following new section:

“SEC. 602. DECLASSIFICATION OF SIGNIFICANT DECISIONS, ORDERS, AND OPINIONS.

“(a) DECLASSIFICATION REQUIRED.—Subject to subsection (b), the Attorney General shall conduct a declassification review of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review (as defined in section 601(e)) that includes a significant construction or interpretation of any provision of this Act and, consistent with that review, make publicly available to the greatest extent practicable each such decision, order, or opinion.

“(b) REDACTED FORM.—The Attorney General may satisfy the requirement under subsection (a) to make a decision, order, or opinion described in such subsection publicly available to the greatest extent practicable by making such decision, order, or opinion publicly available in redacted form.

“(c) NATIONAL SECURITY WAIVER.—The Attorney General may waive the requirement to declassify and make publicly available a particular decision, order, or opinion under subsection (a) if the Attorney General—

“(1) determines that a waiver of such requirement is necessary to protect the national security of the United States or properly classified intelligence sources or methods; and

“(2) makes publicly available an unclassified summary of such decision, order, or opinion.”.

(b) TABLE OF CONTENTS AMENDMENTS.—The table of contents in the first section is amended—

(1) by striking the item relating to title VI and inserting the following new item:

“TITLE VI—OVERSIGHT”; AND

(2) by inserting after the item relating to section 601 the following new item:

“Sec. 602. Declassification of significant decisions, orders, and opinions.”.

TITLE V—NATIONAL SECURITY LETTER REFORM

SEC. 501. PROHIBITION ON BULK COLLECTION.

(a) COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709(b) of title 18, United States Code, is amended in the matter preceding paragraph (1) by striking “may” and inserting “may, using a specific selection term as the basis for a request”.

(b) ACCESS TO FINANCIAL RECORDS FOR CERTAIN INTELLIGENCE AND PROTECTIVE PURPOSES.—Section 1114(a)(2) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(2)) is amended by striking the period and inserting “and a specific selection term to be used as the basis for the production and disclosure of financial records.”.

(c) DISCLOSURES TO FBI OF CERTAIN CONSUMER RECORDS FOR COUNTERINTELLIGENCE PURPOSES.—Section 626(a) of the Fair Credit Reporting Act (15 U.S.C. 1681u(a)) is amended by striking “that information,” and inserting “that information that includes a specific selection term to be used as the basis for the production of that information,”.

(d) DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES OF CONSUMER REPORTS.—Section 627(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) is amended by striking “analysis.” and inserting “analysis and a specific selection term to be used as the basis for the production of such information.”.

(e) DEFINITIONS.—

- (1) COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709 of title 18, United States Code, is amended by adding at the end the following new subsection:
“(g) SPECIFIC SELECTION TERM DEFINED.—In this section, the term ‘specific selection term’ has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).”.
- (2) ACCESS TO FINANCIAL RECORDS FOR CERTAIN INTELLIGENCE AND PROTECTIVE PURPOSES.—Section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) is amended by adding at the end the following new subsection:
“(e) In this section, the term ‘specific selection term’ has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).”.
- (3) DISCLOSURES TO FBI OF CERTAIN CONSUMER RECORDS FOR COUNTERINTELLIGENCE PURPOSES.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended by adding at the end the following new subsection:
“(n) SPECIFIC SELECTION TERM DEFINED.—In this section, the term ‘specific selection term’ has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).”.
- (4) DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES OF CONSUMER REPORTS.—Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) is amended by adding at the end the following new subsection:
“(g) SPECIFIC SELECTION TERM DEFINED.—In this section, the term ‘specific selection term’ has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).”.

TITLE VI—FISA TRANSPARENCY AND REPORTING REQUIREMENTS

SEC. 601. ADDITIONAL REPORTING ON ORDERS REQUIRING PRODUCTION OF BUSINESS RECORDS.

Section 502(b) (50 U.S.C. 1862(b)) is amended—

- (1) by redesignating paragraphs (1), (2), and (3) as paragraphs (5), (6), and (7), respectively; and
- (2) by inserting before paragraph (5) (as so redesignated) the following new paragraphs:

- “(1) the total number of applications described in section 501(b)(2)(B) made for orders approving requests for the production of tangible things;
- “(2) the total number of such orders either granted, modified, or denied;
- “(3) the total number of applications described in section 501(b)(2)(C) made for orders approving requests for the production of call detail records;
- “(4) the total number of such orders either granted, modified, or denied.”.

SEC. 602. BUSINESS RECORDS COMPLIANCE REPORTS TO CONGRESS.

(a) BUSINESS RECORDS PRODUCTIONS.—Section 502(b) (50 U.S.C. 1862(b)), as amended by section 601 of this Act, is further amended—

- (1) by redesignating paragraphs (1) through (7) as paragraphs (2) through (8), respectively; and
- (2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) any compliance reviews conducted by the Federal Government of the production of tangible things under section 501.”.

(b) FISA AUTHORITIES IN GENERAL.—Section 601(a) (50 U.S.C. 1871(a)) is amended—

- (1) in paragraph (4), by striking “; and” and inserting a semicolon;
- (2) in paragraph (5), by striking the period and inserting “; and”; and
- (3) by adding at the end the following new paragraph:
“(6) any compliance reviews conducted by the Federal Government of electronic surveillance, physical searches, the installation of pen register or trap and trace devices, access to records, or acquisitions conducted under this Act.”.

SEC. 603. ANNUAL REPORT BY THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS ON ORDERS ENTERED.

(a) IN GENERAL.—Title VI (50 U.S.C. 1871 et seq.), as amended by section 402 of this Act, is further amended by adding at the end the following new section:

“SEC. 603. ANNUAL REPORT ON ORDERS ENTERED.

“The Director of the Administrative Office of the United States Courts shall annually submit to the Permanent Select Committee on Intelligence and the Committee

on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and make publicly available on an Internet website—

“(1) the number of orders entered under each of sections 105, 304, 402, 501, 702, 703, and 704;

“(2) the number of orders modified under each of those sections;

“(3) the number of orders denied under each of those sections; and

“(4) the number of appointments of an individual to serve as amicus curiae under section 103, including the name of each individual appointed to serve as amicus curiae.”

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section, as amended by section 402 of this Act, is further amended by inserting after the item relating to section 602, as added by such section 402, the following new item:

“Sec. 603. Annual report on orders entered.”.

SEC. 604. PUBLIC REPORTING BY PERSONS SUBJECT TO FISA ORDERS.

(a) IN GENERAL.—Title VI (50 U.S.C. 1871 et seq.), as amended by section 603 of this Act, is further amended by adding at the end the following new section:

“SEC. 604. PUBLIC REPORTING BY PERSONS SUBJECT TO ORDERS.

“(a) REPORTING.—A person may semiannually publicly report the following information with respect to the preceding half year using one of the following structures:

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

“(A) Criminal process, subject to no restrictions.

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

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

“(D) The number of orders under this Act for content, reported in bands of 1000 starting with 0-999.

“(E) With respect to content orders under this Act, in bands of 1000 starting with 0-999—

“(i) the number of customer accounts affected under orders under title I; and

“(ii) the number of customer selectors targeted under orders under title VII.

“(F) The number of orders under this Act for non-content, reported in bands of 1000 starting with 0-999.

“(G) With respect to non-content orders under this Act, in bands of 1000 starting with 0-999—

“(i) the number of customer accounts affected under orders under—

“(I) title I;

“(II) title IV;

“(III) title V with respect to applications described in section 501(b)(2)(B); and

“(IV) title V with respect to applications described in section 501(b)(2)(C); and

“(ii) the number of customer selectors targeted under orders under title VII.

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

“(A) Criminal process, subject to no restrictions.

“(B) The total number of all national security process received, including all national security letters and orders under this Act, reported as a single number in a band of 0-249 and thereafter in bands of 250.

“(C) The total number of customer selectors targeted under all national security process received, including all national security letters and orders under this Act, reported as a single number in a band of 0-249 and thereafter in bands of 250.

“(3) A report that aggregates the number of orders or directives the person was required to comply with in the following separate categories:

“(A) Criminal process, subject to no restrictions.

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

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

“(D) The number of orders under this Act for content, reported in bands of 500 starting with 0-499.

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

“(F) The number of orders under this Act for non-content, reported in bands of 500 starting with 0-499.

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

“(b) NATIONAL SECURITY LETTER DEFINED.—The term ‘national security letter’ means any of the following provisions:

“(1) Section 2709 of title 18, United States Code.

“(2) Section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(A)).

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

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

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section, as amended by section 603 of this Act, is further amended by inserting after the item relating to section 603, as added by section 603 of this Act, the following new item:

“Sec. 604. Public reporting by persons subject to orders.”.

SEC. 605. REPORTING REQUIREMENTS FOR DECISIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.

Section 601(c)(1) (50 U.S.C. 1871(c)) is amended to read as follows:

“(1) not later than 45 days after the date on which the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review issues a decision, order, or opinion that includes a significant construction or interpretation of any provision of this Act or a denial of a request for an order or a modification of a request for an order, or results in a change of application of any provision of this Act or a new application of any provision of this Act—

“(A) a copy of such decision, order, or opinion and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion; and

“(B) with respect to such decision, order, or opinion, a brief statement of the relevant background factual information, questions of law, legal analysis, and decision rendered; and”.

SEC. 606. SUBMISSION OF REPORTS UNDER FISA.

(a) ELECTRONIC SURVEILLANCE.—Section 108(a)(1) (50 U.S.C. 1808(a)(1)) is amended by striking “the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, and the Committee on the Judiciary of the Senate,” and inserting “the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate”.

(b) PHYSICAL SEARCHES.—Section 306 (50 U.S.C. 1826) is amended—

(1) in the first sentence, by striking “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the Senate,” and inserting “Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate”; and

(2) in the second sentence, by striking “and the Committee on the Judiciary of the House of Representatives”.

(c) PEN REGISTER AND TRAP AND TRACE DEVICES.—Section 406(b) (50 U.S.C. 1846(b)) is amended—

(1) in paragraph (2), by striking “; and” and inserting a semicolon;

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

(3) by adding at the end the following new paragraphs:

“(4) each department or agency on behalf of which the Government has made application for orders approving the use of pen registers or trap and trace devices under this title; and

“(5) for each department or agency described in paragraph (4), a breakdown of the numbers required by paragraphs (1), (2), and (3).”.

(d) ACCESS TO CERTAIN BUSINESS RECORDS AND OTHER TANGIBLE THINGS.—Section 502(a) (50 U.S.C. 1862(a)) is amended by striking “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate” and inserting “Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate”.

TITLE VII—SUNSETS

SEC. 701. SUNSETS.

(a) USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (50 U.S.C. 1805 note) is amended by striking “June 1, 2015” and inserting “December 31, 2017”.

(b) INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—Section 6001(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 1801 note) is amended by striking “June 1, 2015” and inserting “December 31, 2017”.

PURPOSE

The purpose of H.R. 3361 is to modernize the Foreign Intelligence Surveillance Act of 1978 (FISA) and other national security authorities to address public misperceptions of intelligence activities.

BACKGROUND AND NEED FOR LEGISLATION

Until last year, the existence of a program to collect bulk telephone call detail records, also known as telephone metadata, under Section 215 of the USA PATRIOT Act was highly classified. The classified nature of the program stemmed from the simple fact that if our adversaries knew of the program and its capabilities, they would change their communications patterns so as to evade surveillance. The Committee has been aware of the bulk telephone metadata program since its inception and reauthorized Section 215 in 2005, 2006, 2010, and 2011 because the program was a lawful and effective counterterrorism tool. If the program had been in place in 2001, the U.S. government potentially could have connected phone calls from an al Qaeda safe house in Yemen to Khalid al-Mihdhar, one of the September 11th hijackers inside the U.S.¹ In the words of former FBI director Robert Mueller, finding Mihdhar “could have derailed the plan” and prevented the attacks.² Since 2001, the program has helped prevent imminent attacks and quickly discover terrorist networks—or, equally as critical, confirm their absence—inside the U.S. We are all safer because the bulk telephone metadata program gives the government the ability to identify and track terrorist threats with speed and agility.

Not only is the program effective, it is legal. Two presidential administrations of different parties and seventeen federal judges shared the Committee’s view of the program’s legality. There has not been a single case in which a government official engaged in a willful effort to circumvent or violate the restrictions on the use of telephone metadata. To the contrary, the Committee’s oversight has continuously revealed a strong culture of compliance and lawfulness among the men and women of the National Security Agency (NSA).

However, following the unprecedented and unquantifiably damaging unauthorized disclosures of classified information, the Direc-

¹ See *ACLU v. Clapper*, 959 F. Supp. 2d 724, 729 (S.D.N.Y. 2013) (citing *The 9/11 Commission Report: The Final Report of the National Commission on Terrorist Attacks Upon the United States* (2004)).

² *Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary*, 113th Cong. 26 (2013) (statement of Robert Mueller, Director, Federal Bureau of Investigation).

tor of National Intelligence declassified many aspects of the bulk telephone metadata program. The unauthorized disclosure of this program and others caused incalculable damage to U.S. national security, much of which may not become apparent for years. Even so, the disclosures have caused public concern about the program, notwithstanding the care demonstrated by the NSA to abide by the law and to protect the constitutional rights of U.S. persons. This public concern led the Committee to consider ways to end the bulk collection of telephone metadata and enhance privacy and civil liberties while preserving as much of the operational effectiveness and flexibility of the program as possible.

The Committee's decision to end the bulk collection of telephone metadata does not extend to any other intelligence programs currently conducted under FISA, including access to business records through Section 215 for foreign intelligence, counterterrorism, and counterintelligence purposes, and the targeting of persons outside the United States under Section 702. The Committee remains of the view that these other forms of collection are effective, lawful, and subject to vigorous oversight and review by the Intelligence Community, the Department of Justice, Congress, and the courts.

SCOPE OF COMMITTEE REVIEW

The Committee systematically reviews programs conducted under FISA on a ongoing basis through hearings, member briefings, and staff briefings to ensure that the Intelligence Community aggressively pursues foreign intelligence targets while respecting Americans' privacy and civil liberties.

In the 113th Congress, the Committee conducted 12 closed hearings and member briefings concerning FISA. Additionally, the Committee held open hearings on potential changes to FISA on June 18, 2013, and October 29, 2013.

COMMITTEE STATEMENT AND VIEWS

Ban on bulk collection

This bill first bans the bulk collection of tangible things under Section 215 of the USA PATRIOT Act. This ban is intended to stop the use of Section 215 to acquire bulk call detail records and to prohibit any future attempt to acquire bulk electronic communications records. The Committee recognizes that "bulk" collection means indiscriminate acquisition. It does not mean the acquisition of a large number of communications records or other tangible things—it would be nonsensical and dangerous for our intelligence agencies' collection authorities to contract as the number of our adversaries expands.

Second, this bill contains amendments to other collection authorities, including Section 402 of FISA and National Security Letter authorities. These amendments respond to concerns that those existing authorities could somehow contain a "loophole" that would permit the reconstitution of a bulk telephone records program. The Committee does not intend these prophylactic amendments to affect any programs currently authorized by Section 402 or the use of National Security Letters.

This bill also makes technical amendments in Title III that are not designed to have a substantive impact on currently authorized

intelligence activities conducted under Section 702 of FISA. Rather, the bill restates the existing prohibition on reverse targeting of U.S. persons through Section 702, codifies two portions of existing minimization procedures for certain types of communications acquired through Section 702, and prohibits the use in court of communications obtained through deficient Section 702 acquisitions. None of these changes are intended to alter activities currently conducted under Section 702. Rather, the changes are intended to provide statutory clarity about the scope of Section 702 and how it is and is not being used.

Targeted call detail records collection

Notwithstanding the effectiveness and legality of the bulk telephone metadata program, this bill creates a mechanism for a more-targeted authority for the prospective collection of call detail records for counterterrorism purposes. The government can continue to obtain specified historical call detail records through the existing Section 215 authority. Even so, the bill creates a new mechanism for obtaining prospective records on a continuing basis for up to 180 days when there are reasonable grounds to believe the call detail records are relevant to an authorized investigation to protect against international terrorism and there is a reasonable and articulable suspicion the records are associated with a foreign power or the agent of a foreign power. The new authority would allow the government to obtain two “hops” of call detail records, based on the reasonable and articulable suspicion determination made for the initial seed query.³

The bill also includes an emergency authority that allows the government to obtain records directly from telecommunications companies when a pressing threat does not leave enough time to seek judicial approval. The Committee intends this emergency authority to provide the flexibility necessary to protect the country from threats when judicial preapproval would result in data being lost or not acquired in enough time to be useful.

The Committee does not intend these changes to affect any current uses of Section 215 outside of the bulk telephone metadata program, including the use of Section 215 to obtain call detail records related to foreign intelligence information not concerning a U.S. person or call detail records related to clandestine intelligence activities.

Although the Committee believes the authority created by this bill will continue to have operational utility, the Intelligence Community will not have the same capability as it did under the existing bulk telephone metadata collection program. Speed and agility will be diminished, but a majority of our peers have determined that risk is acceptable in order to protect against perceived privacy violations.

³The Committee understands that “[t]he first ‘hop’ from a seed returns results including all identifiers (and their associated metadata) with a contact and/or connection with the seed. The second ‘hop’ returns results that include all identifiers (and their associated metadata) with a contact and/or connection with an identifier revealed by the first ‘hop.’” *In re Application of the FBI for an Order Requiring the Production of Tangible Things*, BR 14–01, at 1–2 n.1 (FISC Feb. 5, 2014).

FISA transparency provisions

This bill also provides greater transparency for several FISA authorities while attempting not to compromise sensitive sources and methods of intelligence operations. Specifically, the bill requires the Director of National Intelligence and the Attorney General to declassify all significant opinions of the Foreign Intelligence Surveillance Court or, if national security prevents the declassification of the opinion even in redacted form, to publish an unclassified summary of the opinion. The bill also reinforces the court's existing discretionary authority to appoint an *amicus curiae* in significant or novel cases and allows the recipients of FISA orders to publicly disclose how many orders they receive in certain bands.

The bill extends the sunsets on three counterterrorism authorities from June 1, 2015, to December 31, 2017—Section 215, the “roving wiretap” provision of the USA PATRIOT Act, and the “lone wolf” provision of the Intelligence Reform and Terrorism Prevention Act of 2004. This extension is based on the Committee's view that these three authorities are effective national security tools subject to continuing oversight.

The Committee's work on this bill is not yet done. Although the Committee reported the bill to the House favorably, it did so in the interest of expediency and comity with other committees of the House. Members of the Committee will continue to work to make a number of important technical changes to ensure the preservation of operational equities before the full House considers the bill. These technical changes will ensure that the bill does not inadvertently disrupt important intelligence operations.

COMMITTEE CONSIDERATION AND ROLL CALL VOTES

On May 8, 2014, The Committee considered the amendment in the nature of a substitute to H.R. 3361. The contents of the amendment in the nature of a substitute are described in the Section-by-Section analysis and the Explanation of Amendment.

Chairman Rogers offered an amendment to revise the emergency authority of Section 102, add Section 604, and make other technical changes. The amendment was agreed to by a voice vote.

Mr. Schiff offered an amendment that would establish a public interest advocate for the Foreign Intelligence Surveillance Court, which he subsequently withdrew.

Chairman Rogers then offered a motion to adopt the amendment in the nature of a substitute, as amended. The motion was agreed to by a voice vote.

The Committee then adopted a motion by Chairman Rogers to favorably report the bill H.R. 3361 to the House, as amended. The motion was agreed to by a voice vote.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF AMENDMENT

TITLE I—FISA BUSINESS RECORD REFORMS

Sec. 101—Additional requirements for call detail records

This section creates a new process for the prospective collection of call detail records. For counterterrorism purposes only, when the government has a reasonable and articulable suspicion that a specific selection term is associated with a foreign power or an agent

of a foreign power, it may apply to the FISA court for an order requiring the ongoing production of call detail records related to that specific selection term and two “hops” removed for a period not to exceed 180 days. The government may apply to renew these orders.

Except for records that remain relevant to an authorized counterterrorism investigation, the government is required to destroy all information obtained under this program within five years of its production.

This process created by this section applies solely to government requests for call detail records. It has no effect on government applications for any other type of tangible thing.

Sec. 102—Emergency authority

This section creates a new emergency authority for the use of Section 215. The Attorney General may authorize the emergency production of tangible things, provided that such an application is presented to the court within seven days. If the court denies an emergency application, the government may not use any of the information obtained under the emergency authority except in instances of a threat of death or serious bodily harm.

Sec. 103—Prohibition on bulk collection of tangible things

This section provides that Section 215 does not authorize the bulk collection of tangible things.

Sec. 104—Judicial review of minimization procedures for the production of tangible things

This section provides that the court may evaluate the adequacy of minimization procedures under Section 215.

Sec. 105—Liability protection

This section extends liability protections to third parties who provide information, facilities, or technical assistance to the government in compliance with an order issued under Section 215. This provision mirrors the liability provisions in Titles I and VII of FISA.

Sec. 106—Compensation for assistance

This section expressly permits the government to compensate third parties for producing tangible things or providing information, facilities, or assistance in accordance with an order issued under Section 215.

Sec. 107—Definitions

This section provides a definition for the terms “call detail records” and “specific selection term.” The term “call detail records” is defined to mean a telephone number, an International Mobile Subscriber Identity number, an International Mobile Station Equipment Identity number, a telephone calling card number, or the time or duration of a call. The term does not include the contents of any communication; names, addresses, or financial information; or cell site location information.

The term “specific selection term” is defined to mean a term used to uniquely describe a person, entity, or account.

Sec. 108—Inspector general reports on business records orders

This section requires the Inspector General of the Department of Justice to conduct a comprehensive review of the use of Section 215 with respect to calendar years 2012 to 2014. Also requires the Inspector General of the Intelligence Community to assess the value and use of intelligence obtained under Section 215 over the same period.

Sec. 109—Effective date

This section provides that the new telephone metadata program, the new Section 215 emergency authority, and the prohibition on bulk collection of tangible things under Section 215 take effect 180 days after enactment.

TITLE II—FISA PEN REGISTER AND TRAP AND TRACE DEVICE REFORM

Sec. 201—Prohibition on bulk collection

This section provides that the pen register and trap and trace device authority may not be used without a specific selection term as the basis for selecting the telephone line or other facility to which the pen register or trap and trace devices is to be attached or applied. The Committee does not intend this change to affect any current uses of the pen register and trap and trace device authority.

Sec. 202—Minimization procedures

This section requires that the government adopt procedures that are reasonably designed to minimize the retention and prohibit the dissemination of nonpublic information about United States persons. This section also explicitly authorizes the court to assess compliance with these procedures while a pen register and trap and trace device is in use.

TITLE III—FISA ACQUISITIONS TARGETING PERSONS OUTSIDE THE UNITED STATES REFORMS

Sec. 301—Prohibition on reverse targeting

This section restates the prohibition on reverse targeting by providing that the government may not intentionally target a person under Section 702 in order to target a person reasonably believed to be in the United States. The Committee does not intend this change to affect any currently authorized uses of Section 702.

Sec. 302—Minimization procedures

This section codifies existing procedures that require the government to prohibit the retention and dissemination of wholly domestic communications captured under Section 702. The Committee does not intend this change to affect any currently authorized uses of Section 702.

Sec. 303—Limits on use of unlawfully obtained information

This section provides that the government may not use information acquired outside the scope of court-approved targeting and minimization procedures in legal proceedings.

TITLE IV—FOREIGN INTELLIGENCE SURVEILLANCE COURT REFORMS

Sec. 401—Appointment of amicus curiae

This section provides that both the FISA Court and the FISA Court of Review may appoint an individual to serve as amicus curiae in a case involving a novel or significant interpretation of law. The presiding judges of the courts will designate not less than five individuals who are eligible to serve as amicus curiae. These individuals shall possess expertise in privacy and civil liberties, intelligence collection, telecommunications, or any other area of law that may lend legal or technical expertise to the courts, and shall possess appropriate security clearances.

Sec. 402—Declassification of decisions, orders, and opinions

This section requires the Attorney General, to conduct a declassification review of each decision, order, or opinion of the FISA court that includes a significant construction or interpretation of law. If necessary to protect national security, the Attorney General may waive this requirement so long as it provides an unclassified summary of the decision. The Committee expects the Attorney General to consult with the classification authority for court opinions, the Director of National Intelligence, as appropriate.

TITLE V—NATIONAL SECURITY LETTER REFORM

Sec. 501—Prohibition on bulk collection

This section prohibits the use of various National Security Letter authorities without the use of a specific selection term as the basis for the National Security Letter request. The Committee does not expect this change to affect any current authorized uses of National Security Letters.

TITLE VI—FISA TRANSPARENCY AND REPORTING REQUIREMENTS

Sec. 601—Additional reporting on orders requiring production of business records

In addition to existing annual reporting requirements, this section requires the government to report on the number of requests made for call detail records under the new telephone metadata program.

Sec. 602—Business records compliance reports to Congress

This section requires the government to provide to Congress any compliance reports related to the use of Section 215.

Sec. 603—Annual report by the Director of the Administrative Office of the United States Courts on orders entered

This section requires the Director of the Administrative Office of the United States Courts to make an annual report on the number of orders issued under sections 105, 304, 402, 501, 702, 703, and 704 of FISA, as well as the number of appointments of individuals to serve as amicus curiae to the FISA court.

Sec. 604—Public reporting by persons subject to FISA orders

This section allows persons subject to FISA orders to choose one of three options to publicly report, within certain bands, how many orders they receive over a six-month period.

Sec. 605—Reporting requirements for decisions of the Foreign Intelligence Surveillance Court

This section requires the Attorney General to provide to the relevant committees, within 45 days of each decision, order, or opinion that includes a significant construction or interpretation, a copy of each such decision and a brief statement of the relevant background.

Sec. 606—Submission of reports under FISA

This section includes the House Judiciary Committee in several existing reporting requirements.

TITLE VII—SUNSETS

Sec. 701—Sunsets

This section aligns the three sun-setting provisions, including: (1) business records (section 215 of the USA PATRIOT Act); (2) roving wiretaps (section 206 of the USA PATRIOT Act); and (3) lone wolf (section 6001(a) of IRTPA), with the sunset of the FISA Amendment Act Reauthorization Act on December 31, 2017.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held multiple closed hearings and briefings on the classified intelligence programs affected by H.R. 3361. The Committee also held open hearings on June 18, 2013, and October 29, 2013, on potential changes to the Foreign Intelligence Surveillance Act. The bill, as reported by the Committee, reflects conclusions reached by the Committee in light of this oversight activity.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 3361 is to modernize intelligence collection and increase transparency under the Foreign Intelligence Surveillance Act of 1978. These activities enhance the national security of the United States, support and assist the armed forces of the United States, and support the President in the execution of the foreign policy of the United States.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

STATEMENT ON CONGRESSIONAL EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee states that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3361 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 14, 2014.

Hon. MIKE ROGERS,
*Chairman, Permanent Select Committee on Intelligence,
House of Representatives, Washington, DC.*

DEAR MR. CHARIMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3361, the USA FREEDOM Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jason Wheelock.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf, Director).

Enclosure.

H.R. 3361—USA FREEDOM Act

H.R. 3361 would make several amendments to investigative and surveillance authorities of the United States government, and would specify the conditions under which the federal government may conduct certain types of surveillance. CBO does not provide estimates for classified programs; therefore, this estimate addresses only the unclassified aspects of the bill. On that limited basis, CBO estimates implementing H.R. 3361 would cost approximately \$15 million over the 2015–2019 period, subject to the appropriation of the necessary amounts.

Enacting H.R. 3361 also could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. The bill could potentially result in additional criminal penalties because it would extend for two years the authority of the government to conduct surveillance in certain instances. Such penalties are recorded as revenues, deposited in the Crime Victims Fund, and later spent. However, CBO anticipates that any amounts collected would be minimal and the net impact would be insignificant.

Effects on the Federal Budget

The bill would amend the Foreign Intelligence Surveillance Act (FISA). Those amendments would affect the operations of the Foreign Intelligence Surveillance Court (FISC) and the Judiciary. First, H.R. 3361 would permit the FISC to appoint an amicus cu-

riae, or “friend of the court,” to assist the court when the government makes an application under FISA that presents a novel or significant interpretation of FISA. Second, the bill would limit collection of telephone call records, thereby requiring the intelligence agencies—acting through the Department of Justice—to seek additional warrants from the FISC to access such data. Finally, the bill would require an annual report by the Director of the Administrative Office of the U.S. Courts (AOUSC), providing data on certain types of FISA orders. Based on information from the AOUSC, CBO estimates that implementing those requirements would cost approximately \$5 million over the 2015–2019 period, assuming appropriation of the necessary amounts.

In addition, the bill would require federal agencies to conduct several program assessments and reviews, and would establish new reporting requirements. Section 108 would require the Inspectors General of the Justice Department and the Intelligence Community to assess the effectiveness of the surveillance programs affected by the bill; section 402 would require the Attorney General to conduct declassification reviews of certain court decisions, orders, and opinions related to FISA. CBO estimates that fulfilling these and other reporting requirements in the bill would cost approximately \$10 million over the 2015–2019 period, assuming appropriation of the necessary amounts.

Intergovernmental and private-sector mandates

The bill would impose two mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on both private and governmental entities. First, the bill would expand liability protections and limit the ability of plaintiffs to sue in cases where a defendant provides information to the federal government pursuant to a FISA order. Second, it would require entities, when compelled to provide information about telephone calls to federal officials, to protect the secrecy of the records and to minimize any disruption of services.

CBO estimates that the costs of those mandates would be small. The change in expanded liability protection is a slight modification to current law, and CBO estimates that the elimination of any legal right of action for future plaintiffs would affect a limited number of potential lawsuits. Information from the Department of Justice indicates that public entities receive few requests for call records, and the cost to those entities of providing that information is negligible. In addition, since public and private entities already take action to protect private information in complying with requests from the federal government and such entities would be fully compensated by the government at the prevailing rate for the services they provide, the costs to those entities would be insignificant. Consequently, CBO estimates that the total costs of all mandates in the bill would fall well below the intergovernmental and private-sector thresholds established in UMRA (\$76 million and \$152 million in 2014, respectively, adjusted annually for inflation).

Previous CBO estimate

On May 7, 2014, the House Committee on the Judiciary ordered reported a similar version of H.R. 3361. CBO’s cost estimates for both versions are the same.

Staff contacts

The CBO staff contacts for this estimate are Jason Wheelock (for federal costs), J'nell L. Blanco (for the intergovernmental effects), and Elizabeth Bass (for the private-sector effects). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1978".

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* * * * *

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TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

* * * * *

DESIGNATION OF JUDGES

SEC. 103. (a) * * *

* * * * *

(i) *AMICUS CURIAE.*—

(1) *AUTHORIZATION.*—*A court established under subsection (a) or (b), consistent with the requirement of subsection (c) and any other statutory requirement that the court act expeditiously or within a stated time—*

(A) shall appoint an individual to serve as amicus curiae to assist such court in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a written finding that such appointment is not appropriate; and

(B) may appoint an individual to serve as amicus curiae in any other instance as such court deems appropriate.

(2) *DESIGNATION.*—*The presiding judges of the courts established under subsections (a) and (b) shall jointly designate not less than 5 individuals to be eligible to serve as amicus curiae. Such individuals shall be persons who possess expertise in pri-*

vacy and civil liberties, intelligence collection, telecommunications, or any other area of law that may lend legal or technical expertise to the courts and who have been determined by appropriate executive branch officials to be eligible for access to classified information.

(3) *DUTIES.*—An individual appointed to serve as *amicus curiae* under paragraph (1) shall carry out the duties assigned by the appointing court. Such court may authorize the individual appointed to serve as *amicus curiae* to review any application, certification, petition, motion, or other submission that the court determines is relevant to the duties assigned by the court.

(4) *NOTIFICATION.*—The presiding judges of the courts established under subsections (a) and (b) shall notify the Attorney General of each exercise of the authority to appoint an individual to serve as *amicus curiae* under paragraph (1).

(5) *ASSISTANCE.*—A court established under subsection (a) or (b) may request and receive (including on a non-reimbursable basis) the assistance of the executive branch in the implementation of this subsection.

(6) *ADMINISTRATION.*—A court established under subsection (a) or (b) may provide for the designation, appointment, removal, training, or other support for an individual appointed to serve as *amicus curiae* under paragraph (1) in a manner that is not inconsistent with this subsection.

* * * * *

CONGRESSIONAL OVERSIGHT

SEC. 108. (a)(1) On a semiannual basis the Attorney General shall fully inform [the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, and the Committee on the Judiciary of the Senate,] *the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate* concerning all electronic surveillance under this title. Nothing in this title shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties.

* * * * *

**TITLE III—PHYSICAL SEARCHES WITH-
IN THE UNITED STATES FOR FOREIGN
INTELLIGENCE PURPOSES**

* * * * *

CONGRESSIONAL OVERSIGHT

SEC. 306. On a semiannual basis the Attorney General shall fully inform the [Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the Senate,]

Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate concerning all physical searches conducted pursuant to this title. On a semiannual basis the Attorney General shall also provide to those committees [and the Committee on the Judiciary of the House of Representatives] a report setting forth with respect to the preceding six-month period—

(1) * * *

* * * * *

TITLE IV—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

DEFINITIONS

SEC. 401. As used in this title:

(1) * * *

* * * * *

(4) *The term “specific selection term” has the meaning given the term in section 501.*

(5) *The term “minimization procedures” means—*

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the installation and use of a pen register or trap and trace device to minimize the retention and prohibit the dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 101(e)(1), shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance; and

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.

PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

SEC. 402. (a) * * *

* * * * *

(c) Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application[; and];

(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution[.];

(3) a specific selection term to be used as the basis for selecting the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and

(4) a statement of proposed minimization procedures.

(d)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section *and that the proposed minimization procedures meet the definition of minimization procedures under this title.*

(2) An order issued under this section—

(A) * * *

(B) shall direct that—

(i) * * *

(ii) such provider, landlord, custodian, or other person—

(I) * * *

(II) shall maintain, under security procedures approved by the Attorney General and the Director of National Intelligence pursuant to section 105(b)(2)(C) of this Act, any records concerning the pen register or trap and trace device or the aid furnished[; and];

* * * * *

(iv) *the minimization procedures be followed; and*

* * * * *

(h) *At or before the end of the period of time for which the installation and use of a pen register or trap and trace device is approved under an order or an extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was retained or disseminated.*

* * * * *

CONGRESSIONAL OVERSIGHT

SEC. 406. (a) * * *

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) and to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

(1) * * *

(2) the total number of such orders either granted, modified, or denied[; and];

(3) the total number of pen registers and trap and trace devices whose installation and use was authorized by the Attor-

ney General on an emergency basis under section 403, and the total number of subsequent orders approving or denying the installation and use of such pen registers and trap and trace devices【.】;

(4) *each department or agency on behalf of which the Government has made application for orders approving the use of pen registers or trap and trace devices under this title; and*

(5) *for each department or agency described in paragraph (4), a breakdown of the numbers required by paragraphs (1), (2), and (3).*

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

SEC. 501. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

(a) * * *

(b) Each application under this section—

(1) * * *

(2) shall include—

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

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

(i) * * *

* * * * *

(iii) *an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation【; and】;*

(C) *in the case of an application for the production of call detail records created on or after the date of the application, a statement of facts showing that—*

(i) *there are reasonable grounds to believe that the call detail records sought to be produced based on the specific selection term required under subparagraph (A) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to protect against international terrorism; and*

(ii) *there are facts giving rise to a reasonable, articulable suspicion that such specific selection term is associated with a foreign power or an agent of a foreign power; and*

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

(c)(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b) *and that the minimization procedures submitted in accordance with subsection (b)(2)(D) meet the definition of minimization procedures under subsection (g)*, the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (g) be followed.

(2) An order under this subsection—

(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified**[(;)]**, *including each specific selection term to be used as the basis for the production;*

* * * * *

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

(E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a)**[(.)]**; *and*

(F) *in the case of an application described in subsection (b)(2)(C), shall—*

(i) authorize the production of call detail records for a period not to exceed 180 days;

(ii) provide that an order for such production may be extended upon application under subsection (b) and the judicial finding under paragraph (1);

(iii) provide that the Government may require the production of call detail records—

(I) using the specific selection term that satisfies the standard required under subsection (b)(2)(C)(ii) as the basis for production; and

(II) using the results of the production under subclause (I) as the basis for production;

(iv) direct each person the Government directs to produce call detail records under the order to furnish the Government forthwith all information, facilities, or technical assistance necessary to accomplish the production in such a manner as will protect the secrecy of the production and produce a minimum of interference with the services that such person is providing to each subject of the production; and

(v) direct the Government to destroy all call detail records produced under the order not later than 5 years after the date of the production of such records,

except for records that are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to protect against international terrorism.

(3) *No order issued under this subsection may authorize the collection of tangible things without the use of a specific selection term that meets the requirements of subsection (b)(2).*

(d)(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things **【pursuant to an order】** pursuant to an order issued or an emergency production required under this section, other than to—

(A) those persons to whom disclosure is necessary to comply with **【such order】** such order or such emergency production;

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

* * * * *

(2)(A) A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom **【an order】** an order or emergency production is directed under this section in the same manner as such person.

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

* * * * *

【(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.】

(e) No cause of action shall lie in any court against a person who produces tangible things or provides information, facilities, or technical assistance pursuant to an order issued or an emergency production required under this section. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

* * * * *

(i) **EMERGENCY AUTHORITY FOR PRODUCTION OF TANGIBLE THINGS.—**

(1) Notwithstanding any other provision of this section, the Attorney General may require the emergency production of tangible things if the Attorney General—

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

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

(C) informs, either personally or through a designee, a judge having jurisdiction under this section at the time the Attorney General requires the emergency production of tangible things that the decision has been made to employ the authority under this subsection; and

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

(2) If the Attorney General authorizes the emergency production of tangible things under paragraph (1), the Attorney General shall require that the minimization procedures required by this section for the issuance of a judicial order be followed.

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

(4) A denial of the application made under this subsection may be reviewed as provided in this section.

(5) If such application for approval is denied, or in any other case where the production of tangible things is terminated and no order is issued approving the production, no information obtained or evidence derived from such production shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such production shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

(j) **COMPENSATION.**—The Government shall compensate, at the prevailing rate, a person for producing tangible things or providing information, facilities, or assistance in accordance with an order issued or an emergency production required under this section.

(k) **DEFINITIONS.**—In this section:

(1) **CALL DETAIL RECORD DEFINED.**—The term “call detail record”—

(A) means session identifying information (including originating or terminating telephone number, International Mobile Subscriber Identity number, or International Mobile Station Equipment Identity number), a telephone calling card number, or the time or duration of a call; and

(B) does not include—

(i) the contents of any communication (as defined in section 2510(8) of title 18, United States Code);

- (ii) the name, address, or financial information of a subscriber or customer; or
- (iii) cell site location information.

(2) *SPECIFIC SELECTION TERM.*—The term “specific selection term” means a term used to uniquely describe a person, entity, or account.

SEC. 502. CONGRESSIONAL OVERSIGHT.

(a) On an annual basis, the Attorney General shall fully inform the **[Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate]** *Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate* concerning all requests for the production of tangible things under section 501.

(b) In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year—

(1) *any compliance reviews conducted by the Federal Government of the production of tangible things under section 501;*

(2) *the total number of applications described in section 501(b)(2)(B) made for orders approving requests for the production of tangible things;*

(3) *the total number of such orders either granted, modified, or denied;*

(4) *the total number of applications described in section 501(b)(2)(C) made for orders approving requests for the production of call detail records;*

(5) *the total number of such orders either granted, modified, or denied;*

[(1)] (6) the total number of applications made for orders approving requests for the production of tangible things under section 501;

[(2)] (7) the total number of such orders either granted, modified, or denied; and

[(3)] (8) the number of such orders either granted, modified, or denied for the production of each of the following:

(A) * * *

* * * * *

**TITLE VI—[REPORTING REQUIREMENT]
OVERSIGHT**

SEC. 601. SEMIANNUAL REPORT OF THE ATTORNEY GENERAL.

(a) **REPORT.**—On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate, in a manner consistent with the

protection of the national security, a report setting forth with respect to the preceding 6-month period—

(1) * * *

* * * * *

(4) a summary of significant legal interpretations of this Act involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice[; and];

(5) copies of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this Act[.]; and

(6) any compliance reviews conducted by the Federal Government of electronic surveillance, physical searches, the installation of pen register or trap and trace devices, access to records, or acquisitions conducted under this Act.

* * * * *

(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

[(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and]

(1) not later than 45 days after the date on which the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review issues a decision, order, or opinion that includes a significant construction or interpretation of any provision of this Act or a denial of a request for an order or a modification of a request for an order, or results in a change of application of any provision of this Act or a new application of any provision of this Act—

(A) a copy of such decision, order, or opinion and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion; and

(B) with respect to such decision, order, or opinion, a brief statement of the relevant background factual information, questions of law, legal analysis, and decision rendered; and

* * * * *

SEC. 602. DECLASSIFICATION OF SIGNIFICANT DECISIONS, ORDERS, AND OPINIONS.

(a) *DECLASSIFICATION REQUIRED.*—Subject to subsection (b), the Attorney General shall conduct a declassification review of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review (as defined in section 601(e)) that includes a significant construction or interpretation of any provision of this Act and, consistent with

that review, make publicly available to the greatest extent practicable each such decision, order, or opinion.

(b) *REDACTED FORM*.—The Attorney General may satisfy the requirement under subsection (a) to make a decision, order, or opinion described in such subsection publicly available to the greatest extent practicable by making such decision, order, or opinion publicly available in redacted form.

(c) *NATIONAL SECURITY WAIVER*.—The Attorney General may waive the requirement to declassify and make publicly available a particular decision, order, or opinion under subsection (a) if the Attorney General—

(1) determines that a waiver of such requirement is necessary to protect the national security of the United States or properly classified intelligence sources or methods; and

(2) makes publicly available an unclassified summary of such decision, order, or opinion.

SEC. 603. ANNUAL REPORT ON ORDERS ENTERED.

The Director of the Administrative Office of the United States Courts shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and make publicly available on an Internet website—

(1) the number of orders entered under each of sections 105, 304, 402, 501, 702, 703, and 704;

(2) the number of orders modified under each of those sections;

(3) the number of orders denied under each of those sections; and

(4) the number of appointments of an individual to serve as *amicus curiae* under section 103, including the name of each individual appointed to serve as *amicus curiae*.

SEC. 604. PUBLIC REPORTING BY PERSONS SUBJECT TO ORDERS.

(a) *REPORTING*.—A person may semiannually publicly report the following information with respect to the preceding half year using one of the following structures:

(1) A report that aggregates the number of orders or directives the person was required to comply with in the following separate categories:

(A) Criminal process, subject to no restrictions.

(B) The number of national security letters received, reported in bands of 1000 starting with 0-999.

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

(D) The number of orders under this Act for content, reported in bands of 1000 starting with 0-999.

(E) With respect to content orders under this Act, in bands of 1000 starting with 0-999—

(i) the number of customer accounts affected under orders under title I; and

(ii) the number of customer selectors targeted under orders under title VII.

(F) *The number of orders under this Act for non-content, reported in bands of 1000 starting with 0-999.*

(G) *With respect to non-content orders under this Act, in bands of 1000 starting with 0-999—*

(i) the number of customer accounts affected under orders under—

(I) title I;

(II) title IV;

(III) title V with respect to applications described in section 501(b)(2)(B); and

(IV) title V with respect to applications described in section 501(b)(2)(C); and

(ii) the number of customer selectors targeted under orders under title VII.

(2) *A report that aggregates the number of orders or directives the person was required to comply with in the following separate categories:*

(A) Criminal process, subject to no restrictions.

(B) The total number of all national security process received, including all national security letters and orders under this Act, reported as a single number in a band of 0-249 and thereafter in bands of 250.

(C) The total number of customer selectors targeted under all national security process received, including all national security letters and orders under this Act, reported as a single number in a band of 0-249 and thereafter in bands of 250.

(3) *A report that aggregates the number of orders or directives the person was required to comply with in the following separate categories:*

(A) Criminal process, subject to no restrictions.

(B) The number of national security letters received, reported in bands of 500 starting with 0-499.

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

(D) The number of orders under this Act for content, reported in bands of 500 starting with 0-499.

(E) The number of customer selectors targeted under such orders, in bands of 500 starting with 0-499.

(F) The number of orders under this Act for non-content, reported in bands of 500 starting with 0-499.

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

(b) **NATIONAL SECURITY LETTER DEFINED.**—*The term “national security letter” means any of the following provisions:*

(1) Section 2709 of title 18, United States Code.

(2) Section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(A)).

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

(4) Section 627(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)).

**TITLE VII—ADDITIONAL PROCEDURES
REGARDING CERTAIN PERSONS OUT-
SIDE THE UNITED STATES**

* * * * *
**SEC. 702. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE
THE UNITED STATES OTHER THAN UNITED STATES PER-
SONS.**

(a) * * *
 (b) LIMITATIONS.—An acquisition authorized under subsection
 (a)—

- (1) * * *
 (2) may not intentionally target a person reasonably believed
 to be located outside the United States if **the purpose** a *pur-
 pose* of such acquisition is to target a particular, known person
 reasonably believed to be in the United States;

* * * * *
 (e) MINIMIZATION PROCEDURES.—

- (1) REQUIREMENT TO ADOPT.—The Attorney General, in con-
 sultation with the Director of National Intelligence, shall adopt
 minimization procedures **that meet** *that*—
 (A) *meet* the definition of minimization procedures under
 section 101(h) or 301(4), as appropriate, for acquisitions
 authorized under subsection (a)**;** and
 (B) *consistent with such definition, minimize the acquisi-
 tion, and prohibit the retention and dissemination, of any
 communication as to which the sender and all intended re-
 cipients are determined to be located in the United States
 and prohibit the use of any discrete, non-target communica-
 tion that is determined to be to or from a United States per-
 son or a person who appears to be located in the United
 States, except to protect against an immediate threat to
 human life.*

* * * * *
 (i) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—
 (1) * * *

* * * * *
 (3) ORDERS.—
 (A) * * *

* * * * *
 (D) LIMITATION ON USE OF INFORMATION.—
 (i) *IN GENERAL.*—*Except as provided in clause (ii), no
 information obtained or evidence derived from an ac-
 quisition pursuant to a certification or targeting or
 minimization procedures subject to an order under sub-
 paragraph (B) concerning any United States person
 shall be received in evidence or otherwise disclosed in
 any trial, hearing, or other proceeding in or before any
 court, grand jury, department, office, agency, regu-
 latory body, legislative committee, or other authority of
 the United States, a State, or political subdivision
 thereof, and no information concerning any United*

States person acquired from the acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of the United States person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(ii) EXCEPTION.—If the Government corrects any deficiency identified by the order of the Court under subparagraph (B), the Court may permit the use or disclosure of information acquired before the date of the correction under such minimization procedures as the Court shall establish for purposes of this clause.

* * * * *

USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005

* * * * *

TITLE I—USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT

* * * * *

SEC. 102. USA PATRIOT ACT SUNSET PROVISIONS.

(a) * * *

(b) SECTIONS 206 AND 215 SUNSET.—

(1) IN GENERAL.—Effective [June 1, 2015] *December 31, 2017*, the Foreign Intelligence Surveillance Act of 1978 is amended so that sections 501, 502, and 105(c)(2) read as they read on October 25, 2001.

* * * * *

SEC. 106A. AUDIT ON ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES.

(a) * * *

(b) REQUIREMENTS.—The audit required under subsection (a) shall include—

(1) an examination of each instance in which the Attorney General, any other officer, employee, or agent of the Department of Justice, the Director of the Federal Bureau of Investigation, or a designee of the Director, submitted an application to the Foreign Intelligence Surveillance Court (as such term is defined in section 301(3) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(3))) for an order under section 501 of such Act during the calendar years of 2002 through 2006 and calendar years 2012 through 2014, including—

(A) * * *

* * * * *

(2) the justification for the failure of the Attorney General to issue implementing procedures governing requests for the production of tangible things under such section in a timely fashion, including whether such delay harmed national security;

[(3) whether bureaucratic or procedural impediments to the use of such requests for production prevent the Federal Bureau of Investigation from taking full advantage of the authorities provided under section 501 of such Act;]

[(4)] (2) any noteworthy facts or circumstances relating to orders under such section, including any improper or illegal use of the authority provided under such section; and

[(5)] (3) an examination of the effectiveness of such section as an investigative tool, including—

(A) * * *

* * * * *

[(C) with respect to calendar year 2006, an examination of the minimization procedures adopted by the Attorney General under section 501(g) of such Act and whether such minimization procedures protect the constitutional rights of United States persons;]

(C) with respect to calendar years 2012 through 2014, an examination of the minimization procedures used in relation to orders under section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) and whether the minimization procedures adequately protect the constitutional rights of United States persons;

(D) whether, and how often, the Federal Bureau of Investigation utilized information acquired pursuant to an order under section 501 of such Act to produce an analytical intelligence product for distribution within the Federal Bureau of Investigation, to the intelligence community [(as such term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))], or to other Federal, State, local, or tribal government Departments, agencies, or instrumentalities; and

* * * * *

(c) SUBMISSION DATES.—

(1) * * *

* * * * *

(3) CALENDAR YEARS 2012 THROUGH 2014.— *Not later than December 31, 2015, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under subsection (a) for calendar years 2012 through 2014.*

(d) INTELLIGENCE ASSESSMENT.—

(1) IN GENERAL.—*For the period beginning on January 1, 2012, and ending on December 31, 2014, the Inspector General of the Intelligence Community shall assess—*

(A) *the importance of the information acquired under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) to the activities of the intelligence community;*

(B) *the manner in which that information was collected, retained, analyzed, and disseminated by the intelligence community;*

(C) *the minimization procedures used by elements of the intelligence community under such title and whether the minimization procedures adequately protect the constitutional rights of United States persons; and*

(D) *any minimization procedures proposed by an element of the intelligence community under such title that were modified or denied by the court established under section 103(a) of such Act (50 U.S.C. 1803(a)).*

(2) *SUBMISSION DATE FOR ASSESSMENT.—Not later than December 31, 2015, the Inspector General of the Intelligence Community shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the assessment for calendar years 2012 through 2014.*

[(d)] (e) PRIOR NOTICE TO ATTORNEY GENERAL AND DIRECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—

(1) **NOTICE.**—Not less than 30 days before the submission of **[a report under subsection (c)(1) or (c)(2)]** *any report under subsection (c) or (d), the [Inspector General of the Department of Justice] Inspector General of the Department of Justice, the Inspector General of the Intelligence Community, and any Inspector General of an element of the intelligence community that prepares a report to assist the Inspector General of the Department of Justice or the Inspector General of the Intelligence Community in complying with the requirements of this section shall provide such report to the Attorney General and the Director of National Intelligence.*

(2) **COMMENTS.**—The Attorney General or the Director of National Intelligence may provide comments to be included in **[the reports submitted under subsections (c)(1) and (c)(2)]** *any report submitted under subsection (c) or (d) as the Attorney General or the Director of National Intelligence may consider necessary.*

[(e)] (f) UNCLASSIFIED FORM.—**[The reports submitted under subsections (c)(1) and (c)(2)]** *Each report submitted under subsection (c) and any comments included under [subsection (d)(2)] subsection (e)(2) shall be in unclassified form, but may include a classified annex.*

(g) **DEFINITIONS.**—*In this section:*

(1) **INTELLIGENCE COMMUNITY.**—*The term “intelligence community” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).*

(2) **UNITED STATES PERSON.**—*The term “United States person” has the meaning given that term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).*

* * * * *

TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

* * * * *

§ 2709. Counterintelligence access to telephone toll and transactional records

(a) * * *

(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, [may] may, using a specific selection term as the basis for a request—

(1) * * *

* * * * *

(g) SPECIFIC SELECTION TERM DEFINED.—In this section, the term “specific selection term” has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).

* * * * *

RIGHT TO FINANCIAL PRIVACY ACT OF 1978

* * * * *

TITLE XI—RIGHT TO FINANCIAL PRIVACY

* * * * *

SPECIAL PROCEDURES

SEC. 1114. (a)(1) * * *

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority[.] and a specific selection term to be used as the basis for the production and disclosure of financial records.

* * * * *

(e) In this section, the term “specific selection term” has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).

FAIR CREDIT REPORTING ACT

* * * * *

TITLE VI—CONSUMER CREDIT REPORTING

* * * * *

§ 626. Disclosures to FBI for counterintelligence purposes

(a) **IDENTITY OF FINANCIAL INSTITUTIONS.**—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for **[that information,]** *that information that includes a specific selection term to be used as the basis for the production of that information*, signed by the Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

* * * * *

(n) **SPECIFIC SELECTION TERM DEFINED.**—*In this section, the term "specific selection term" has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).*

§ 627. Disclosures to governmental agencies for counterterrorism purposes

(a) **DISCLOSURE.**—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct or such investigation, activity or **[analysis.]** *analysis and a specific selection term to be used as the basis for the production of such information.*

* * * * *

(g) **SPECIFIC SELECTION TERM DEFINED.**—*In this section, the term "specific selection term" has the meaning given the term in section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861).*

* * * * *

**INTELLIGENCE REFORM AND TERRORISM PREVENTION
ACT OF 2004**

* * * * *

TITLE VI—TERRORISM PREVENTION
**Subtitle A—Individual Terrorists as Agents
of Foreign Powers**

SEC. 6001. INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

(a) * * *

(b) SUNSET.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall cease to have effect on **[June 1, 2015]** *December 31, 2017*.

* * * * *

DISCLOSURE OF DIRECTED RULE MAKING

H.R. 3361 does not specifically direct any rule makings within the meaning of 5 U.S.C. 551.

DUPLICATION OF FEDERAL PROGRAMS

H.R. 3361 does not duplicate or reauthorize an established program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

COMMITTEE CORRESPONDENCE



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE JOHN D. BATES
Director

WASHINGTON, D.C. 20544

May 13, 2014

Honorable Mike Rogers
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the Judicial Branch, I am writing to the Committee regarding H.R. 3361, the "USA Freedom Act," which was recently ordered reported by your Committee, to recommend that three elements of the bill be adjusted.

In a letter to the Committee on January 13, 2014, we expressed views of the Judiciary on various proposed changes to the Foreign Intelligence Surveillance Act (FISA). Our comments focused on the operational impact of certain proposed changes on the Judicial Branch, particularly the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review ("FISA Courts"), and did not express views on policy choices that the political branches are considering. We emphasized the potential for greater demands on judicial resources. In keeping with that approach, this letter focuses narrowly on three provisions of H.R. 3361 that bear directly on the work of the FISA Courts and how that work is presented to the public: the provisions regarding amicus curiae participation, public summaries of unreleased FISA Court opinions, and public reporting by the Judiciary on FISA Court orders.

We respectfully request that, if possible, this letter be included with your Committee's report to the House on the bill.

The amicus curiae provisions in Section 401 of the bill are generally in keeping with the views set forth in the January 13 letter. Section 401 would facilitate the FISA Courts' receiving briefing or other assistance from a legal or technical expert outside the Executive Branch in particular matters where such assistance would be helpful, while not creating a permanent institution of a public advocate or imposing an adversarial process in the general run of cases where it would be unnecessary and even counterproductive to do so. We would recommend

Honorable Mike Rogers
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adjusting the language in H.R. 3361 to slightly clarify the breadth of the FISA Courts' discretion to appoint amici in any needed circumstance by deleting the words "of law" in the paragraph labeled "Designation."

Section 401 largely leaves it to the discretion of the FISA Courts when to appoint an amicus. We believe that this general approach is correct because those courts, operating in the context of specific cases, are best positioned to assess when amicus participation would be helpful. We do, however, question the need for providing that an amicus "shall" be appointed in any case "that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a written finding that such appointment is not appropriate." Section 401 (proposed Section 103(i)(1) of FISA). Not every novel or significant issue is necessarily difficult for a court to resolve, and the judges of the FISA Courts would have every incentive to appoint amici when they believe that their deliberations would benefit from doing so. The bill drafters seem to acknowledge this likelihood by allowing the FISA courts to provide, in the alternative, a written statement justifying the decision not to appoint an amicus.

Section 402 would create a presumption that the FISA Courts' significant decisions be released to the public in redacted form by the Attorney General. In those cases where the Attorney General determines that even a redacted release would harm national security, the Attorney General would be required to make an unclassified summary of the opinion available to the public. Section 7 (proposed Section 602(c)(2) of FISA). For the following reasons, we recommend eliminating the requirement for unclassified summaries of unreleased opinions.

To be sure, summaries of federal court opinions are sometimes prepared for the convenience of readers. But in those situations the full opinion is also public. Any ambiguity or imprecision in the summary is unlikely to confuse or mislead readers because the opinion itself can be consulted and is understood to be authoritative. In contrast, a summary that is made public *instead of* a court's opinion, and is intended to convey some information about the opinion while concealing the rest, is much more likely to result in misunderstanding of the opinion's reasoning and result.

In the January 13 letter, we explained why it can be challenging to release FISA Court opinions in a form that is both informative to the public and adequately protective of sensitive national security information. For example, the subject of an opinion might be "how to apply FISA's four-part definition of 'electronic surveillance,' see 50 U.S.C. § 1801(f), to a proposed surveillance method for a new communications technology." January 13, 2014, Letter at 14. It may be necessary to withhold from the public details about how the surveillance is effected "so that valid intelligence targets are not given a lesson in how to evade it." *Id.* On the other hand, however, releasing the opinion with that information redacted may not enhance public understanding.

Notwithstanding these challenges, recent experience shows that the preparation and release of redacted opinions can, in some cases, contribute to public understanding of the FISA Courts' work. Our concern is with proposed Section 602(c)(2), which would require the

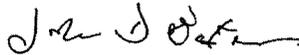
Honorable Mike Rogers
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preparation and publication of unclassified summaries for those opinions that cannot be released – even in redacted form – without harming national security. By its terms, this requirement would apply to the subset of opinions in which national security information is inextricably intertwined with the opinion’s entire line of reasoning – otherwise, redaction and partial release would be feasible. For the same reasons that a redacted release could not be accomplished for those opinions, attempts to “summarize” them without disclosing the operative facts are likely to fall short in one of two ways. The summary may be so conclusory as to be minimally informative (“The Court held that a novel surveillance technique fell within the definition of ‘electronic surveillance’ under 50 U.S.C. § 1801(f), such that the application to use that technique was within its jurisdiction.”). Or, in a well-meaning attempt to say more without disclosing classified information, the summary may describe the opinion’s reasoning abstractly and incompletely, divorced from the relevant facts. Such a summary is more likely to distort, rather than illuminate, the opinion for which it is substituted.

Finally, although we do not object to the reporting requirements in Section 603, the Committee should be aware that such information might in the future include material that the Executive Branch considers to be sensitive for national security purposes. This could potentially place the Judiciary in an awkward position of addressing a statutory command for public distribution of such information when the Executive Branch regards it as classified. (The sharing of classified information among authorized persons in other branches of government does not raise the same concerns.) We recommend that this possibility be addressed in the legislation, by, for example, making more explicit the Executive Branch’s responsibility for making any classification or declassification determinations as to such information, or excusing the Judiciary from the public release of information the Executive Branch deems to be classified.

We thank the Committees for their previously expressed interest in our perspectives on these matters. I hope these further comments are helpful to Congress in its deliberations on potential legislation. If we can be of further assistance to you, please do not hesitate to contact us through our Office of Legislative Affairs at 202-502-1700.

Sincerely,



John D. Bates
Director

cc: Honorable John A. Boehner
Honorable Eric Cantor

Identical letter sent to: Honorable C. A. Dutch Ruppertsberger
Honorable Bob Goodlatte
Honorable John Conyers, Jr.