

**Collection of bills amending
50 U.S.C. § 1861 of FISA**

Amash and Conyers

Udall and Wyden

Sanders

Merkley

Amash and Conyers

Bill and redline of

50 U.S.C. § 1861

and

50 U.S.C. § 1871

.....
(Original Signature of Member)

113TH CONGRESS
1ST SESSION

H. R.

To prevent the mass collection of records of innocent Americans under section 501 of the Foreign Intelligence Surveillance Act of 1978, as amended by section 215 of the USA PATRIOT Act, and to provide for greater accountability and transparency in the implementation of the USA PATRIOT Act and the Foreign Intelligence Surveillance Act of 1978.

IN THE HOUSE OF REPRESENTATIVES

Mr. CONYERS introduced the following bill; which was referred to the Committee on _____

A BILL

To prevent the mass collection of records of innocent Americans under section 501 of the Foreign Intelligence Surveillance Act of 1978, as amended by section 215 of the USA PATRIOT Act, and to provide for greater accountability and transparency in the implementation of the USA PATRIOT Act and the Foreign Intelligence Surveillance Act of 1978.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Limiting Internet and
3 Blanket Electronic Review of Telecommunications and
4 Email Act” or “LIBERT-E Act”.

5 **SEC. 2. REFORMS TO ACCESS TO CERTAIN BUSINESS**
6 **RECORDS FOR FOREIGN INTELLIGENCE AND**
7 **INTERNATIONAL TERRORISM INVESTIGA-**
8 **TIONS.**

9 Section 501 of the Foreign Intelligence Surveillance
10 Act of 1978 (50 U.S.C. 1861) is amended—

11 (1) in subsection (b)(2)(A)—

12 (A) in the matter preceding clause (i)—

13 (i) by inserting “specific and
14 articulable” before “facts showing”;

15 (ii) by inserting “and material” after
16 “are relevant”; and

17 (iii) by striking “clandestine intel-
18 ligence activities” and all that follows and
19 inserting “clandestine intelligence activities
20 and pertain only to an individual that is
21 the subject of such investigation; and”;
22 and

23 (B) by striking clauses (i) through (iii);

24 (2) in subsection (c)(2)—

25 (A) in subparagraph (D), by striking “;
26 and” and inserting a semicolon;

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

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

5 “(F) shall direct the applicant to provide
6 notice to each person required to produce a tan-
7 gible thing under the order of—

8 “(i) the right to challenge the legality
9 of a production order or nondisclosure
10 order (as defined in subsection (f)) by fil-
11 ing a petition in accordance with sub-
12 section (f); and

13 “(ii) the procedures to follow to file
14 such a petition in accordance with such
15 subsection.”; and

16 (3) in subsection (f)(2)—

17 (A) in subparagraph (A)—

18 (i) in clause (i)—

19 (I) in the first sentence, by strik-
20 ing “production order” and inserting
21 “production order or nondisclosure
22 order”; and

23 (II) by striking the second sen-
24 tence; and

- 1 (ii) in clause (ii) in the third sentence,
2 by striking “production order or nondisclo-
3 sure order” and inserting “order”; and
4 (B) in subparagraph (C)—
5 (i) by striking clause (ii); and
6 (ii) by redesignating clause (iii) as
7 clause (ii).

8 **SEC. 3. ADDITIONAL DISCLOSURES TO CONGRESS AND THE**
9 **PUBLIC.**

10 (a) IN GENERAL.—Section 601 of the Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C. 1871) is
12 amended—

13 (1) by redesignating subsection (e) as sub-
14 section (f); and

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

17 “(e) ADDITIONAL DISCLOSURES TO CONGRESS AND
18 THE PUBLIC.—

19 “(1) ALL MEMBERS OF CONGRESS.—Not later
20 than 45 days after the date on which the Attorney
21 General submits a report, decision, order, opinion,
22 pleading, application, or memoranda of law under
23 subsection (a) or (c), the Attorney General shall
24 make such report, decision, order, opinion, pleading,
25 application, or memoranda of law available to all

1 Members of Congress (including the Delegates and
2 Resident Commissioner to the Congress) in a man-
3 ner consistent with the protection of national secu-
4 rity.

5 “(2) UNCLASSIFIED SUMMARIES OF DECISIONS,
6 ORDERS, OR OPINIONS.—Not later than 180 days
7 after the date on which the Attorney General sub-
8 mits a decision, order, or opinion under subsection
9 (c), the Attorney General shall make publicly avail-
10 able an unclassified summary of such decision,
11 order, or opinion.”.

12 (b) SUBMISSIONS MADE PRIOR TO DATE OF ENACT-
13 MENT.—

14 (1) ALL MEMBERS OF CONGRESS.—Not later
15 than 45 days after the date of the enactment of this
16 Act, the Attorney General shall make each report,
17 decision, order, opinion, pleading, application, or
18 memoranda of law submitted under subsection (a) or
19 (c) of section 601 of the Foreign Intelligence Sur-
20 veillance Act of 1978 (50 U.S.C. 1871) prior to the
21 date of the enactment of this Act available to all
22 Members of Congress (including the Delegates and
23 Resident Commissioner to the Congress) in a man-
24 ner consistent with the protection of national secu-
25 rity.

1 (2) UNCLASSIFIED SUMMARIES OF DECISIONS,
2 ORDERS, OR OPINIONS.—Not later than 180 days
3 after the date of the enactment of this Act, the At-
4 torney General shall make publicly available an un-
5 classified summary of each decision, order, or opin-
6 ion submitted under section 601(c) of the Foreign
7 Intelligence Surveillance Act of 1978 (50 U.S.C.
8 1871(c)) prior to the date of the enactment of this
9 Act.

10 **SEC. 4. REPORT ON IMPACT OF PROVISIONS RELATING TO**
11 **ACCESS TO CERTAIN BUSINESS RECORDS**
12 **AND TARGETING NON-UNITED STATES PER-**
13 **SONS OUTSIDE OF THE UNITED STATES ON**
14 **PRIVACY OF PERSONS LOCATED IN THE**
15 **UNITED STATES.**

16 (a) REPORT.—Not later than one year after the date
17 of enactment of this Act, the Inspector General of the De-
18 partment of Justice and the inspector general of each ele-
19 ment of the intelligence community authorized to acquire
20 information pursuant to an order under section 501 of the
21 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
22 1861) or an order or determination under section 702 of
23 such Act (50 U.S.C. 1881a) on or after October 26, 2001,
24 shall jointly submit to Congress a report on the impact
25 of acquisitions made under such section 501 or such sec-

1 tion 702 on or after October 26, 2001, on the privacy in-
2 terests of United States persons.

3 (b) CONTENTS.—The report required by subsection
4 (a) shall include the following

5 (1) An assessment of the impact that imple-
6 mentation of section 501 (as in effect on or after
7 October 26, 2001) and section 702 of the Foreign
8 Intelligence Surveillance Act of 1978 (50 U.S.C.
9 1861, 1881a) has had on the privacy of persons in-
10 side the United States.

11 (2) An assessment of the extent to which acqui-
12 sitions made under such section 501 and such sec-
13 tion 702 have resulted in the acquisition or review
14 of the contents of communications of persons located
15 inside the United States, including—

16 (A) the number of persons located inside
17 the United States who have had the contents of
18 their communications acquired under such sec-
19 tion 501 or such section 702, and the number
20 of persons located inside the United States who
21 have had the contents of their communications
22 reviewed under such section 501 or such section
23 702; or

24 (B) if it is not possible to determine such
25 numbers, the estimate of the inspectors general

1 of such numbers made using representative
2 sampling or other analytical techniques.

3 (3) A review of the inspectors general of inci-
4 dents of non-compliance with such section 501 or
5 such section 702, with a particular focus on any
6 types of non-compliance incidents that have re-
7 curred, and the impact of such non-compliance on
8 the privacy of persons inside the United States.

9 (c) DISCLOSURE TO THE PUBLIC.—Not later than
10 180 days after the date on which the report required by
11 subsection (a) is submitted, the Inspector General of the
12 Department of Justice shall make such report available
13 to the public, with any redactions limited to those that
14 are necessary to protect properly classified information.

15 (d) INTELLIGENCE COMMUNITY DEFINED.—In this
16 section, the term “intelligence community” has the mean-
17 ing given the term in section 3(4) of the National Security
18 Act of 1947 (50 U.S.C. 3003(4)).

19 **SEC. 5. FORM OF ASSESSMENTS OF PROCEDURES TAR-**
20 **GETING CERTAIN PERSONS LOCATED OUT-**
21 **SIDE THE UNITED STATES.**

22 Section 702(l) of the Foreign Intelligence Surveil-
23 lance Act of 1978 (50 U.S.C. 1881a) is amended by add-
24 ing at the end the following new paragraph:

1 “(4) FORM OF ASSESSMENTS AND REVIEWS.—
2 Each assessment or review required under para-
3 graph (1), (2), or (3) shall be submitted or provided
4 in unclassified form, but may include a classified
5 annex.”.

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50 USC § 1861 - Access to certain business records for foreign intelligence and international terrorism investigations

[USC-prelim](#) [US Code](#) [Notes](#) [Updates](#)

[USC Prelim](#) is a preliminary release and may be subject to further revision before it is released again as a final version.

Current through Pub. L. [113-9](#). (See [Public Laws for the current Congress](#).)

(a) Application for order; conduct of investigation generally

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

(2) An investigation conducted under this section shall—

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

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

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

(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section [1803 \(a\)](#) of this title; or

(B) a United States Magistrate Judge under chapter [43](#) of title [28](#), who is publicly

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designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall include— **specific and articulable**

(A) a statement of **facts and material** 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—~~ **clandestine intelligence activities and pertain only to an individual that is**

~~(i) a foreign power or an agent of a foreign power;~~ **subject of usch investigation; and**

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

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

(B) 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) Ex parte judicial order of approval

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

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

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

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

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

(F) shall direct the applicant to provide notice to each person required to produce a tangible thing under the order of -

(i) the right to challenge the legality of a production order or nondisclosure order (as defined in subsection (f)) by filing a petition in accordance with subsection (f); and

(ii) the procedures to follow the file such a petition in accordance with such subsection.

(d) Nondisclosure

(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 under this section, other than to—

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

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

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

(2)

(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 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 under this section shall notify such person of the nondisclosure requirements of this subsection.

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

(e) Liability for good faith disclosure; waiver

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.

(f) Judicial review of FISA orders

(1) In this subsection—

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

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

(2)

(A)

production order or nondisclosure order

(i) A person receiving a ~~production order~~ may challenge the legality of that order by filing a petition with the pool established by section [1803 \(e\)\(1\)](#) of this title. ~~Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section [1803 \(e\)\(1\)](#) of this title.~~

(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section [1803 \(e\)\(1\)](#) of this title. Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the ~~production order or nondisclosure order~~. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section [1803 \(e\)\(2\)](#) of this title.

(iii) The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending

review pursuant to paragraph (3).

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

(C)

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

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

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

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

(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section [1803 \(b\)](#) of this title, which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

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

(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review *ex parte* and *in camera* any Government submission, or portions thereof, which may include classified information.

(g) Minimization procedures

(1) In general

Not later than 180 days after March 9, 2006, the Attorney General shall adopt specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this subchapter.

(2) Defined

In this section, the term “minimization procedures” means—

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, 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 [1801 \(e\)\(1\)](#) of this title, 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.

(h) Use of information

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

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50 USC § 1871 - Semiannual report of the Attorney General

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Current through Pub. L. [113–9](#). (See [Public Laws for the current Congress](#).)

(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) the aggregate number of persons targeted for orders issued under this chapter, including a breakdown of those targeted for—

- (A) electronic surveillance under section [1805](#) of this title;
- (B) physical searches under section [1824](#) of this title;
- (C) pen registers under section [1842](#) of this title;
- (D) access to records under section [1861](#) of this title;
- (E) acquisitions under section [1881b](#) of this title; and
- (F) acquisitions under section [1881c](#) of this title;

(2) the number of individuals covered by an order issued pursuant to section [1801 \(b\) \(1\)\(C\)](#) of this title;

(3) the number of times that the Attorney General has authorized that information obtained under this chapter may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;

(4) a summary of significant legal interpretations of this chapter 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 chapter.

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(b) Frequency

The first report under this section shall be submitted not later than 6 months after December 17, 2004. Subsequent reports under this section shall be submitted semi-annually thereafter.

(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 chapter, 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
- (2) a copy of each such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on July 10, 2008, and not previously submitted in a report under subsection (a).

(d) Protection of national security

The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.

(f) Definitions

In this section:

(1) Foreign Intelligence Surveillance Court

The term “Foreign Intelligence Surveillance Court” means the court established under section [1803 \(a\)](#) of this title.

(2) Foreign Intelligence Surveillance Court of Review

The term “Foreign Intelligence Surveillance Court of Review” means the court established under section [1803 \(b\)](#) of this title.

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(e) ADDITIONAL DISCLOSURES TO CONGRESS AND THE PUBLIC -

(1) **ALL MEMBERS OF CONGRESS.**— Not later than 45 days after the date on which the Attorney General submits a report, decision, order, opinion, pleading, application, or memoranda of law under subsection (a) or (c), the Attorney General shall make such report, decision, order, opinion, pleading, application, or memoranda of law available to all Members of Congress (including the Delegates and Resident Commissioner to the Congress) in a manner consistent with the protection of national security.

(2) **UNCLASSIFIED SUMMARIES OF DECISIONS, ORDERS, OR OPINIONS.**— Not later than 180 days after the date on which the Attorney General submits a decision, order, or opinion under subsection (c), the Attorney General shall make publicly available an unclassified summary of such decision, order, or opinion.”

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Udall and Wyden

Bill and redline of
50 U.S.C. § 1861

113TH CONGRESS
1ST SESSION

S. _____

To modify the Foreign Intelligence Surveillance Act of 1978 to require specific evidence for access to business records and other tangible things, and provide appropriate transition procedures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To modify the Foreign Intelligence Surveillance Act of 1978 to require specific evidence for access to business records and other tangible things, and provide appropriate transition procedures, and for other purposes.

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

3 **SECTION 1. SPECIFIC EVIDENCE FOR COURT ORDERS TO**
4 **PRODUCE RECORDS AND OTHER ITEMS IN IN-**
5 **TELLIGENCE INVESTIGATIONS.**

6 (a) **FACTUAL BASIS FOR REQUESTED ORDER.**—Sec-
7 tion 501(b)(2) of the Foreign Intelligence Surveillance Act

1 of 1978 (50 U.S.C. 1861(b)(2)) is amended to read as
2 follows:

3 “(2) shall include—

4 “(A) a statement of facts showing that
5 there are reasonable grounds to believe that the
6 records or other things sought—

7 “(i) are relevant to an authorized in-
8 vestigation (other than a threat assess-
9 ment) conducted in accordance with sub-
10 section (a)(2) to obtain foreign intelligence
11 information not concerning a United
12 States person or to protect against inter-
13 national terrorism or clandestine intel-
14 ligence activities; and

15 “(ii)(I) pertain to a foreign power or
16 an agent of a foreign power;

17 “(II) are relevant to the activities of
18 a suspected agent of a foreign power who
19 is the subject of such authorized investiga-
20 tion; or

21 “(III) pertain to an individual in con-
22 tact with, or known to, a suspected agent
23 of a foreign power; and

24 “(B) an enumeration of the minimization
25 procedures adopted by the Attorney General

1 under subsection (g) that are applicable to the
2 retention and dissemination by the Federal Bu-
3 reau of Investigation of any tangible things to
4 be made available to the Federal Bureau of In-
5 vestigation based on the order requested in such
6 application.”.

7 (b) EXCEPTION.—Notwithstanding the amendment
8 made by subsection (a), an order issued by a court estab-
9 lished under section 103(a) of the Foreign Intelligence
10 Surveillance Act of 1978 (50 U.S.C. 1803) for access to
11 business records under title V of such Act (50 U.S.C.
12 1861 et seq.) in effect on, and issued prior to, the effective
13 date set out in subsection (c), shall remain in effect under
14 the provisions of such title V in effect on the day before
15 such effective date, until the date of expiration of such
16 order. Any renewal or extension of such order shall be sub-
17 ject to the provisions of such title V in effect on such effec-
18 tive date.

19 (c) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall take effect on the date that is 6
21 months after the date of the enactment of this Act.

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50 USC § 1861 - Access to certain business records for foreign intelligence and international terrorism investigations

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Current through Pub. L. [113-9](#). (See [Public Laws for the current Congress](#).)

(a) Application for order; conduct of investigation generally

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

(2) An investigation conducted under this section shall—

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

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

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

(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section [1803 \(a\)](#) of this title; or

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

(2) shall include—

~~(A) a statement of facts showing that there are reasonable grounds to believe that the~~

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(A) a statement of facts showing that there are reasonable grounds to believe that the records or other things sought -

(i) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

(ii)

(I) pertain to a foreign power or an agent of a foreign power; (II) are relevant to the activities of a suspected agent of a foreign power who is subject of such authorized investigation; or

(III) pertain to an individual in contact with, or known to, a suspected agent of a foreign power; and

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

- ~~(i) a foreign power or an agent of a foreign power;~~
- ~~(ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or~~
- ~~(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and~~

(B) 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) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (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;
- (B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;
- (C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);
- (D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and
- (E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).

(d) Nondisclosure

(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section, other than to—

- (A) those persons to whom disclosure is necessary to comply with such order;
- (B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or
- (C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(2)

- (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 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

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things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

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

(e) Liability for good faith disclosure; waiver

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.

(f) Judicial review of FISA orders

(1) In this subsection—

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

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

(2)

(A)

(i) A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section [1803 \(e\)\(1\)](#) of this title. Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section [1803 \(e\)\(1\)](#) of this title.

(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section [1803 \(e\)\(1\)](#) of this title. Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section [1803 \(e\)\(2\)](#) of this title.

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

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

(C)

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

(ii) If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive,

unless the judge finds that the certification was made in bad faith.

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

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

(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section [1803 \(b\)](#) of this title, which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

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

(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

(g) Minimization procedures

(1) In general

Not later than 180 days after March 9, 2006, the Attorney General shall adopt specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this subchapter.

(2) Defined

In this section, the term “minimization procedures” means—

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, 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 [1801 \(e\)\(1\)](#) of this title, 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.

(h) Use of information

Information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures adopted pursuant to subsection (g). No otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this subchapter

shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

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Sanders

Bill and redline of
50 U.S.C. § 1861
and
50 U.S.C. § 1862

113TH CONGRESS
1ST SESSION

S. _____

To amend the Foreign Intelligence Surveillance Act of 1978 to limit overbroad surveillance requests and expand reporting requirements and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to limit overbroad surveillance requests and expand reporting requirements and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “_____ Act of
5 2013”.

6 **SEC. 2. LIMITING OVERBROAD SURVEILLANCE REQUESTS.**

7 Section 501 of the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1861) is amended—

1 (1) in subsection (a)(1), by striking “to protect
2 against international terrorism or clandestine intel-
3 ligence activities,” and inserting “for an investiga-
4 tion concerning international terrorism which inves-
5 tigation is being conducted by the Federal Bureau of
6 Investigation,”;

7 (2) in subsection (b)(2)(A)—

8 (A) in the matter preceding clause (i)—

9 (i) by striking “a statement of facts
10 showing that there are reasonable
11 grounds” and inserting “specific and
12 articulable facts giving reason”;

13 (ii) by inserting “each of” before “the
14 tangible things”;

15 (iii) by striking “are” and inserting
16 “is”; and

17 (iv) by striking “to protect against
18 international terrorism or clandestine intel-
19 ligence activities,” and inserting “an inves-
20 tigation concerning international terrorism
21 which investigation is being conducted by
22 the Federal Bureau of Investigation,”;

23 (B) in clause (i), by adding “or” at the
24 end;

1 (C) in clause (ii), by striking “or” and in-
2 serting “and”; and

3 (D) by striking clause (iii); and

4 (3) in subsection (c)(1), after “the release of
5 tangible things.” by inserting “For each tangible
6 thing to be released, the judge shall enter a finding
7 that the Director of the Federal Bureau of Inves-
8 tigation or the Director’s designee has presented
9 specific and articulable facts giving reason to believe
10 that the thing is relevant to an authorized investiga-
11 tion (other than a threat assessment) conducted in
12 accordance with subsection (a)(2) of this section to
13 obtain foreign intelligence information not con-
14 cerning a United States person or an investigation
15 concerning international terrorism which investiga-
16 tion is being conducted by the Federal Bureau of In-
17 vestigation.”.

18 **SEC. 3. EXPANSION OF REPORTING REQUIREMENTS UNDER**

19 **FISA.**

20 Section 502 of the Foreign Intelligence Surveillance
21 Act of 1978 (50 U.S.C. 1862) is amended by striking sub-
22 sections (a), (b), and (c) and inserting the following:

23 “(a) On a semiannual basis, the Attorney General
24 shall fully inform Congress concerning all requests for the

1 production of tangible things under section 501, including
2 with respect to the preceding 6-month period—

3 “(1) the total number of applications made for
4 orders approving requests for the production of tan-
5 gible things under section 501; and

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

8 “(b) In informing Congress under subsection (a), the
9 Attorney General shall include the following:

10 “(1) A description with respect to each applica-
11 tion for an order requiring the production of any
12 tangible things for the specific purpose for such pro-
13 duction.

14 “(2) An analysis of the effectiveness of each ap-
15 plication that was granted or modified in protecting
16 citizens of the United States against terrorism.

17 “(c) In a manner consistent with the protection of
18 the national security of the United States, the Attorney
19 General shall make available to the public the information
20 provided to Congress under subsection (a).”.

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(a) Application for order; conduct of investigation generally

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

for an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation

(2) An investigation conducted under this section shall—

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

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

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

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(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section [1803 \(a\)](#) of this title; or

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

(2) shall include— **specific and articulable facts giving reason** each of

(A) ~~a statement of facts showing that there are reasonable grounds~~ to believe that the

tangible things sought ^{is} ~~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—

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- (i) a foreign power or an agent of a foreign power; **or**
- (ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; **or and**
- ~~(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~~

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(B) 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) Ex parte judicial order of approval

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

For each tangible thing to be released, the judge shall enter a finding that the Director of the Federal Bureau of Investigation or the Director's designee has presented specific and articulable facts giving reason to believe that the thing is relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) of this section to obtain foreign intelligence information not concerning a United States person or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation.

(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;
- (B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;
- (C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);
- (D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and
- (E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).

(d) Nondisclosure

(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section, other than to—

- (A) those persons to whom disclosure is necessary to comply with such order;
- (B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or
- (C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(2)

(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 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 under this section shall notify such person of the nondisclosure requirements of this subsection.

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

(e) Liability for good faith disclosure; waiver

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.

(f) Judicial review of FISA orders

(1) In this subsection—

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

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

(2)

(A)

(i) A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section [1803 \(e\)\(1\)](#) of this title. Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section [1803 \(e\)\(1\)](#) of this title.

(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section [1803 \(e\)\(1\)](#) of this title. Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section [1803 \(e\)\(2\)](#) of this title.

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

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

(C)

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

(ii) If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive,

unless the judge finds that the certification was made in bad faith.

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

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

(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section [1803 \(b\)](#) of this title, which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

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

(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

(g) Minimization procedures

(1) In general

Not later than 180 days after March 9, 2006, the Attorney General shall adopt specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this subchapter.

(2) Defined

In this section, the term “minimization procedures” means—

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, 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 [1801 \(e\)\(1\)](#) of this title, 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.

(h) Use of information

Information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures adopted pursuant to subsection (g). No otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this subchapter

shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

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50 USC § 1862 - Congressional oversight

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Current through Pub. L. [113-9](#). (See [Public Laws for the current Congress](#).)

~~(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 concerning all requests for the production of tangible things under section [1861](#) of this title.~~

~~(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) the total number of applications made for orders approving requests for the production of tangible things under section [1861](#) of this title;~~
- ~~(2) the total number of such orders either granted, modified, or denied; and~~
- ~~(3) the number of such orders either granted, modified, or denied for the production of each of the following:~~
 - ~~(A) Library circulation records, library patron lists, book sales records, or book customer lists;~~
 - ~~(B) Firearms sales records;~~
 - ~~(C) Tax return records;~~
 - ~~(D) Educational records;~~
 - ~~(E) Medical records containing information that would identify a person.~~

~~(c)~~

- ~~(1) In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—~~
 - ~~(A) the total number of applications made for orders approving requests for the production of tangible things under section [1861](#) of this title; and~~
 - ~~(B) the total number of such orders either granted, modified, or denied;~~
- ~~(2) Each report under this subsection shall be submitted in unclassified form.~~

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~~“(a) On a semiannual basis, the Attorney General shall fully inform Congress concerning all requests for the production of tangible things under section 501, including with respect to the preceding 6-month period~~

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

~~“(2) the total number of such orders either 7 granted, modified, or denied.~~

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~~“(b) In informing Congress under subsection (a), the Attorney General shall include the following:~~

~~(1) A description with respect to each application for an order requiring the production of any tangible things for the specific purpose for such production.~~

~~(2) An analysis of the effectiveness of each application that was granted or modified in protecting citizens of the United States against terrorism.~~

~~(c) In a manner consistent with the protection of the national security of the United States, the Attorney General shall make available to the public the information provided to Congress under subsection (a).~~

Merkley

Bill

(no redline because it merely
adds a section)

Jeffrey A. Merkley

113TH CONGRESS
1ST SESSION

S. _____

To require the Attorney General to disclose each decision, order, or opinion of a Foreign Intelligence Surveillance Court that includes significant legal interpretation of section 501 or 702 of the Foreign Intelligence Surveillance Act of 1978 unless such disclosure is not in the national security interest of the United States and for other purposes.

_____ *Mr. TESTER*
Mr. Wyden

IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY (for himself, Mr. LEE, Mr. HELLER, Mr. LEAHY, Mr. BEGICH, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require the Attorney General to disclose each decision, order, or opinion of a Foreign Intelligence Surveillance Court that includes significant legal interpretation of section 501 or 702 of the Foreign Intelligence Surveillance Act of 1978 unless such disclosure is not in the national security interest of the United States and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ending Secret Law
3 Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Secret law is inconsistent with democratic
7 governance. In order for the rule of law to prevail,
8 the requirements of the law must be publicly discov-
9 erable.

10 (2) The United States Court of Appeals for the
11 Seventh Circuit stated in 1998 that the “idea of se-
12 cret laws is repugnant”.

13 (3) The open publication of laws and directives
14 is a defining characteristic of government of the
15 United States. The first Congress of the United
16 States mandated that every “law, order, resolution,
17 and vote [shall] be published in at least three of the
18 public newspapers printed within the United
19 States”.

20 (4) The practice of withholding decisions of the
21 Foreign Intelligence Surveillance Court is at odds
22 with the United States tradition of open publication
23 of law.

24 (5) The Foreign Intelligence Surveillance Court
25 acknowledges that such Court has issued legally sig-
26 nificant interpretations of the Foreign Intelligence

1 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
2 that are not accessible to the public.

3 (6) The exercise of surveillance authorities
4 under the Foreign Intelligence Surveillance Act of
5 1978 (50 U.S.C. 1801 et seq.), as interpreted by se-
6 cret court opinions, potentially implicates the com-
7 munications of United States persons who are nec-
8 essarily unaware of such surveillance.

9 (7) Section 501 of the Foreign Intelligence Sur-
10 veillance Act of 1978 (50 U.S.C. 1861), as amended
11 by section 215 of the USA PATRIOT Act (Public
12 Law 107-56; 115 Stat. 287), authorizes the Federal
13 Bureau of Investigation to require the production of
14 “any tangible things” and the extent of such author-
15 ity, as interpreted by secret court opinions, has been
16 concealed from the knowledge and awareness of the
17 people of the United States.

18 (8) In 2010, the Department of Justice and the
19 Office of the Director of National Intelligence estab-
20 lished a process to review and declassify opinions of
21 the Foreign Intelligence Surveillance Court, but
22 more than two years later no declassifications have
23 been made.

1 **SEC. 3. SENSE OF CONGRESS.**

2 It is the sense of Congress that each decision, order,
3 or opinion issued by the Foreign Intelligence Surveillance
4 Court or the Foreign Intelligence Surveillance Court of
5 Review that includes significant construction or interpre-
6 tation of section 501 or section 702 of the Foreign Intel-
7 ligence Surveillance Act of 1978 (50 U.S.C. 1861 and
8 1881a) should be declassified in a manner consistent with
9 the protection of national security, intelligence sources and
10 methods, and other properly classified and sensitive infor-
11 mation.

12 **SEC. 4. REQUIREMENT FOR DISCLOSURE OF DECISIONS,**
13 **ORDERS, AND OPINIONS OF THE FOREIGN IN-**
14 **TELLIGENCE SURVEILLANCE COURT.**

15 (a) SECTION 501.—

16 (1) IN GENERAL.—Section 501 of the Foreign
17 Intelligence Surveillance Act of 1978 (50 U.S.C.
18 1861) is amended by adding at the end the fol-
19 lowing:

20 “(i) DISCLOSURE OF DECISIONS.—

21 “(1) DECISION DEFINED.—In this subsection,
22 the term ‘decision’ means any decision, order, or
23 opinion issued by the Foreign Intelligence Surveil-
24 lance Court or the Foreign Intelligence Surveillance
25 Court of Review that includes significant construc-
26 tion or interpretation of this section.

1 “(2) REQUIREMENT FOR DISCLOSURE.—Sub-
2 ject to paragraphs (3) and (4), the Attorney General
3 shall declassify and make available to the public—

4 “(A) each decision that is required to be
5 submitted to committees of Congress under sec-
6 tion 601(c), not later than 45 days after such
7 opinion is issued; and

8 “(B) each decision issued prior to the date
9 of the enactment of the Ending Secret Law Act
10 that was required to be submitted to commit-
11 tees of Congress under section 601(c), not later
12 than 180 days after such date of enactment.

13 “(3) UNCLASSIFIED SUMMARIES.—Notwith-
14 standing paragraph (2) and subject to paragraph
15 (4), if the Attorney General makes a determination
16 that a decision may not be declassified and made
17 available in a manner that protects the national se-
18 curity of the United States, including methods or
19 sources related to national security, the Attorney
20 General shall release an unclassified summary of
21 such decision.

22 “(4) UNCLASSIFIED REPORT.—Notwithstanding
23 paragraphs (2) and (3), if the Attorney General
24 makes a determination that any decision may not be
25 declassified under paragraph (2) and an unclassified

1 summary of such decision may not be made available
2 under paragraph (3), the Attorney General shall
3 make available to the public an unclassified report
4 on the status of the internal deliberations and proc-
5 ess regarding the declassification by personnel of
6 Executive branch of such decisions. Such report
7 shall include—

8 “(A) an estimate of the number of deci-
9 sions that will be declassified at the end of such
10 deliberations; and

11 “(B) an estimate of the number of deci-
12 sions that, through a determination by the At-
13 torney General, shall remain classified to pro-
14 tect the national security of the United
15 States.”.

16 (2) SECTION 702.—Section 702(l) of the For-
17 eign Intelligence Surveillance Act of 1978 (50
18 U.S.C. 1881a(l)) is amended by adding at the end
19 the following:

20 “(4) DISCLOSURE OF DECISIONS.—

21 “(A) DECISION DEFINED.—In this para-
22 graph, the term ‘decision’ means any decision,
23 order, or opinion issued by the Foreign Intel-
24 ligence Surveillance Court or the Foreign Intel-
25 ligence Surveillance Court of Review that in-

1 cludes significant construction or interpretation
2 of this section.

3 “(B) REQUIREMENT FOR DISCLOSURE.—
4 Subject to subparagraphs (C) and (D), the At-
5 torney General shall declassify and make avail-
6 able to the public—

7 “(i) each decision that is required to
8 be submitted to committees of Congress
9 under section 601(e), not later than 45
10 days after such opinion is issued; and

11 “(ii) each decision issued prior to the
12 date of the enactment of the Ending Secret
13 Law Act that was required to be submitted
14 to committees of Congress under section
15 601(e), not later than 180 days after such
16 date of enactment.

17 “(C) UNCLASSIFIED SUMMARIES.—Not-
18 withstanding subparagraph (B) and subject to
19 subparagraph (D), if the Attorney General
20 makes a determination that a decision may not
21 be declassified and made available in a manner
22 that protects the national security of the United
23 States, including methods or sources related to
24 national security, the Attorney General shall re-
25 lease an unclassified summary of such decision.

1 “(D) UNCLASSIFIED REPORT.—Notwith-
2 standing subparagraphs (B) and (C), if the At-
3 torney General makes a determination that any
4 decision may not be declassified under subpara-
5 graph (B) and an unclassified summary of such
6 decision may not be made available under sub-
7 paragraph (C), the Attorney General shall make
8 available to the public an unclassified report on
9 the status of the internal deliberations and
10 process regarding the declassification by per-
11 sonnel of Executive branch of such decisions.
12 Such report shall include—

13 “(i) an estimate of the number of de-
14 cisions that will be declassified at the end
15 of such deliberations; and

16 “(ii) an estimate of the number of de-
17 cisions that, through a determination by
18 the Attorney General, shall remain classi-
19 fied to protect the national security of the
20 United States.”.