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S. 1552

To amend title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 to strengthen protections of civil liberties in the exercise of the foreign intelligence surveillance authorities under Federal law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

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

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A BILL

To amend title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 to strengthen protections of civil liberties in the exercise of the foreign intelligence surveillance authorities under Federal law, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting the Rights of Individuals Act".

SEC. 2. LIMITATION ON AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.

Section 3103a of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''a criminal offense in violation of the laws of the United States'' and inserting ''an act dangerous to human life that constitutes a Federal crime of terrorism (as that term is defined in section 2332b(g)(5) of this title)'';

(B) in paragraph (1), by striking ''may have an adverse result (as defined in section 2705)'' and inserting ''will endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant''; and

(C) in paragraph (3), by striking ''a reasonable period'' and all that follows and inserting ''seven calendar days, which period, upon application of the Attorney General, the Deputy Attorney General, or an Associate Attorney General, may thereafter be extended by the court for additional periods of up to seven cal-

endar days each if the court finds, for each application, reasonable cause to believe that notice of the execution of the warrant will endanger the life or physical safety of an individual.''; and

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

''(c) REPORTS.—(1) On a semiannual basis, the Attorney General shall transmit to Congress and make public a report concerning all requests for delays of notice, and for extensions of delays of notice, with respect to warrants under subsection (b).

''(2) Each report under paragraph (1) shall include, with respect to the preceding six-month period—

''(A) the total number of requests for delays of notice with respect to warrants under subsection (b);

''(B) the total number of such requests granted or denied; and

''(C) for each request for delayed notice that was granted, the total number of applications for extensions of the delay of notice and the total number of such extensions granted or denied.''.

SEC. 3. MODIFICATION OF DEFINITION OF DOMESTIC TERRORISM.

(a) MODIFICATION.—Section 2331(5) of title 18, United States Code, is amended—

(1) by striking subparagraphs (A) and (B) and inserting the following new subparagraph (A):

"(A) involve acts dangerous to human life that constitute a Federal crime of terrorism (as that term is defined in section 2332b(g)(5) of this title); and"; and

(2) by redesignating subparagraph (C) as subparagraph (B).

(b) CONSTRUCTION.—Nothing in section 2331 of title 18, United States Code, shall be construed to prohibit a State from enforcing the laws of the State relating to terrorism.

SEC. 4. ENHANCEMENT OF PROTECTION OF BUSINESS RECORDS AND MATERIALS PROTECTED BY THE FIRST AMENDMENT FROM ACCESS FOR FOREIGN INTELLIGENCE SURVEILLANCE PURPOSES.

(a) ACCESS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in subsection (b)—

(A) by striking ''and'' at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting ''; and''; and

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

''(3) shall include a statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that the person to whom the records pertain is a foreign power or an agent of a foreign power.''; and

(2) in subsection (c)(1), by striking ''finds'' and all that follows and inserting ''finds—

''(A)(i) unless clause (ii) applies, that on the basis of the facts submitted by the applicant there is reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; or

''(ii) in the case of medical records or library records and other records involving the purchase or rental of books, video, or music, or the accessing of legal and publicly available content through the Internet, that on the basis of the facts submitted by the applicant there is probable cause to believe that

the person to whom the records pertain is a foreign power or an agent of a foreign power; and

"(B) that the application meets the other requirements of this section.".

(b) COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "(1)" before "A wire or electronic communication service provider"; and

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

"(2) A library shall not be treated as a wire or electronic communication service provider for purposes of this section."; and

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

"(f) LIBRARY DEFINED.—In this section, the term 'library' means a library (as that term is defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2)) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.".

SEC. 5. ELIMINATION OF JOHN DOE ROVING WIRETAPS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting before the semicolon the following: ‘‘, however, if the identity is unknown, a facility or place shall be specified’’; and

(B) in subparagraph (B), by inserting before the semicolon the following: ‘‘, however, if the facility or place is unknown, the identity of the target shall be specified’’; and

(2) in paragraph (2)(A), by inserting before the semicolon the following: ‘‘, and, in cases where the facility or place at which the surveillance is to be directed is not known at the time the order is issued, that the surveillance be conducted only when the presence of the target at a particular facility or place has been ascertained by the person conducting the surveillance’’.

SEC. 6. CLARIFICATION OF USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES FOR CRIMINAL INVESTIGATION PURPOSES.

(a) APPLICATION FOR ORDER.—Section 3122(b)(2) of title 18, United States Code, is amended to read as follows:

"(2) a statement by the applicant of specific and articulable facts that indicate that a crime has been, is being, or will be committed, and that information likely to be obtained by such installation and use is relevant to the investigation of that crime.".

(b) ISSUANCE OF ORDER.—(1) Section 3123(a)(1) of that title is amended by striking "the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation." and inserting "there exist specific and articulable facts that reasonably indicate that a crime has been, is being, or will be committed, and that information likely to be obtained by such installation and use is relevant to the investigation of that crime.".

(2) Section 3123(a)(2) of that title is amended by striking "the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation." and inserting "there exist

specific and articulable facts that reasonably indicate that a crime has been, is being, or will be committed, and that information likely to be obtained by such installation and use is relevant to the investigation of that crime.''.

(c) CLARIFICATION OF INTERNET CONTENT ACCESSIBLE.—Section 3121(c) of that title is amended—

(1) by inserting ''(1)'' before ''A government agency''; and

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

''(2) For purposes of paragraph (1), the contents of Internet electronic communications include the subject line of such communications and any portion of a Uniform Resource Identifier (URI) other than the server name and top level domain.''.

SEC. 7. MORATORIUM ON DATA-MINING.

(a) MORATORIUM.—No officer or employee of any department or agency of the Federal Government may take any action to implement or carry out any data-mining program or activity except pursuant to a law specifically authorizing such data-mining program or activity by such department or agency.

(b) REPORT OF DEVELOPMENT OR USE OF DATA-MINING.—(1) The head of each department or agency of the Federal Government that engages or plans to engage

in any activities relating to the development or use of a data-mining program or activity shall submit to Congress, and make available to the public, a report on such activities.

(2) A report under paragraph (1) shall include, for each activity relating to the development or use of a data-mining program or activity, information as follows:

(A) A thorough description of the data-mining program or activity concerned.

(B) A thorough discussion of the plans for the use of the data-mining program or activity, or of any technology relating to such program or activity.

(C) A thorough discussion of the policies, procedures, and guidelines that are to be applied in the use of such data-mining program or activity, or of any technology relating to such program or activity, for data-mining in order to—

(i) protect the privacy rights of individuals; and

(ii) ensure that only accurate, complete, and timely information is collected.

(3)(A) In the case of a department or agency of the Federal Government that is engaged in activities described in paragraph (1) as of the date of the enactment of this Act, the report under paragraph (1) on such activities

shall be submitted not later than 90 days after the date of enactment of this Act.

(B) In the case of a department or agency of the Federal Government that plans to commence activities described in paragraph (1) after the date of the enactment of this Act, the report under paragraph (1) on such activities shall be submitted not later than 90 days after the department or agency commences planning for such activities.

(c) DEFINITIONS.—In this section:

(1) The term ''data-mining'' means a query or search of one or more electronic databases by or at the behest of a department or agency of the Federal Government in which—

(A) at least one of the databases is obtained from or remains under the control of a non-Federal entity, or the information in at least one database was acquired initially by another department or agency of the Federal Government for purposes other than intelligence or law enforcement;

(B) the search does not use the personal identifiers of a particular individual to acquire information concerning that individual; and

(C) the department or agency is conducting the search in an effort to find evidence of a pattern indicating possible terrorist or other criminal activity.

(2)(A) The term ''database'' means a collection or grouping of information about individuals that is held in electronic form and that contains personally identifiable information about individuals, such as names, or identifying numbers, symbols or other identifying particulars assigned to individuals, such as fingerprints, voice prints, or photographs.

(B) The term does not include telephone directories or information publicly available over the Internet without payment of a fee.

SEC. 8. PUBLIC REPORTING REQUIREMENT UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) PUBLIC REPORTING REQUIREMENT.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

(A) by redesignating title VI and section 601 as title VII and section 701, respectively; and

(B) by inserting after title V the following new title:

"TITLE VI—PUBLIC REPORTING REQUIREMENT

"PUBLIC REPORT OF THE ATTORNEY GENERAL

"SEC. 601. In addition to the reports required by sections 107, 108, 306, 406, and 502 in April of each year, the Attorney General shall issue each year a public report setting forth with respect to the preceding calendar year—

"(1) the total number of orders and extensions of orders under this Act that were granted, modified, or denied, including those approving—

"(A) electronic surveillance under section 105;

"(B) physical searches under section 304;

"(C) pen registers or trap and trace devices under section 402; and

"(D) access to records under section 501;

"(2)(A) the total number of applications made for orders approving requests for the production of tangible things under section 501 to be served on public media; and

"(B) the total number of such orders either granted, modified, or denied;

"(3) the number of United States persons targeted for orders under this Act, including those targeted for—

"(A) electronic surveillance under section 105;

"(B) physical searches under section 304;

"(C) pen registers or trap and trace devices under section 402; and

"(D) access to records under section 501;

"(4) the number of times that the Attorney General authorized that information obtained under the provisions of law referred to in paragraph (3), or any information derived therefrom, be used in a criminal proceeding;

"(5) the number of times that a statement was completed pursuant to section 106(b), 305(c), or 405(b) to accompany a disclosure of information acquired under this Act for law enforcement purposes; and

"(6) in a manner consistent with the protection of the national security of the United States—

"(A) the portions of the documents and applications filed with the court established under section 103 that include significant construction or interpretation of the provisions of this Act, or any provision of the United States Constitution, not including the facts of any particular matter, which may be redacted;

"(B) the portions of the opinions and orders of the court established under section 103 that include significant construction or interpretation of the provisions of this Act, or any provision of the United States Constitution, not including the facts of any particular matter, which may be redacted; and

"(C) in the first report submitted under this section, the matters specified in subparagraphs (A) and (B) for all documents and applications filed with the court established under section 103, and all otherwise unpublished opinions and orders of the court, for the four years before the preceding calendar year in addition to that year.".

(2) The table of contents for that Act is amended by striking the items relating to title VI and section 601 and inserting the following:

"TITLE VI—PUBLIC REPORTING REQUIREMENT

"Sec. 601. Public report of the Attorney General.

"TITLE VII—EFFECTIVE DATE

"Sec. 701. Effective date.".

(b) MODIFICATION OF REPORTING REQUIREMENTS TO CONGRESS.—(1) Section 107 of that Act (50 U.S.C. 1807) is amended—

(A) by redesignating clause (a) paragraph (1);

(B) in paragraph (1), as so redesignated, by striking ''and'' at the end; and

(C) by striking clause (b) and inserting the following new paragraphs:

''(2) the total number of initial orders for electronic surveillance either granted, modified, or denied;

''(3) the total number of extensions of orders for electronic surveillance either granted, modified, or denied; and

''(4) the total number of United States persons to whom such orders or extensions that were granted pertain.''.

(2) Section 406(b) of such Act (50 U.S.C. 1846(b)) is amended—

(A) by striking ''and'' at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting ''; and''; and

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

''(3) the total number of United States persons to whom such orders that were granted or modified pertain.''.

(3) Section 502(b) of such Act (50 U.S.C. 1862(b)) is amended—

(A) by striking ''and'' at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting ''; and''; and

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

''(3) the total number of United States persons to whom such orders that were granted or modified pertain, or in cases where the order does not name a specific person whose records are being sought, an estimate of the total number of persons to whom records being sought pertain.''.

SEC. 9. APPLICATION OF DISCOVERY PROCEDURES TO EVIDENCE USED IN COURT PROCEEDINGS.

(a) ELECTRONIC SURVEILLANCE.—Section 106(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(f)) is amended—

(1) in the first sentence—

(A) by striking ''or an adversary hearing''; and

(B) by striking ''and ex parte''; and

(2) by striking the last sentence and inserting the following new sentence: ''In making this deter-

mination, the court shall, if otherwise discoverable, disclose to the aggrieved person, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.), portions of the application, order, or other materials relating to the surveillance unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case.''.

(b) PHYSICAL SEARCHES.—Section 305(g) of that Act (50 U.S.C. 1825(g)) is amended—

(1) in the first sentence—

(A) by striking ''or an adversary hearing''; and

(B) by striking ''and ex parte''; and

(2) by striking the last sentence and inserting the following new sentence: ''In making this determination, the court shall, if otherwise discoverable, disclose to the aggrieved person, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.), portions of the application, order, or other materials relating to the physical search, or may require the Attorney General to provide to the aggrieved person a summary of such materials, unless the court finds that

such disclosure would not assist in determining any legal or factual issue pertinent to the case.''.

(c) PEN REGISTER AND TRAP AND TRACE DEVICES.—Section 405(f) of that Act (50 U.S.C. 1845(f)) is amended by striking paragraph (2) and inserting the following new paragraph (2):

''(2) Unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case, the court shall, if otherwise discoverable, disclose to the aggrieved person, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.), portions of the application, order, or other materials relating to the use of pen register or trap and trace device, as the case may be, or evidence or information obtained or derived from the use of pen register or trap and trace device, as the case may be.''.

(d) DISCLOSURE OF CERTAIN BUSINESS RECORDS.—(1) Title V of that Act (50 U.S.C. 1861 et seq.) is amended—

(A) by redesignating section 502 as section 503; and

(B) by inserting after section 501 the following:

"DISCLOSURE OF CERTAIN BUSINESS RECORDS AND ITEMS GOVERNED BY THE CLASSIFIED INFORMATION PROCEDURES ACT

"SEC. 502. Any disclosure of applications, information, or items submitted or acquired pursuant to an order issued under section 501, if such information is otherwise discoverable, shall be conducted under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.).".

(2) The table of contents for that Act is amended by striking the item relating to section 502 and inserting the following new items:

"Sec. 502. Disclosure of certain business records and items governed by the Classified Information Procedures Act.
"Sec. 503. Congressional oversight.".

SEC. 10. FOREIGN INTELLIGENCE INFORMATION.

Sections 104(a)(7)(B) and 303(a)(7)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)(B), 1823(a)(7)(B)) are each amended by striking "a significant purpose" and inserting "the primary purpose".

SEC. 11. DISCLOSURE OF EDUCATION RECORDS.

(a) APPLICATIONS FOR ORDERS.—Section 444(j)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232g(j)(2)(A)) and section 408(c)(2)(A) of the National Education Statistics Act of 1994 (20 U.S.C. 9573(e)(2)(A)) are each amended by striking "certify that

there are specific and articulable facts giving reason to believe'' and inserting ''set forth specific and articulable facts indicating''.

(b) ISSUANCE OF ORDERS.—Section 444(j)(2)(B) of the General Education Provisions Act (20 U.S.C. 1232g(j)(2)(B)) and section 408(c)(2)(B) of the National Education Statistics Act of 1994 (20 U.S.C. 9573(e)(2)(B)) are each amended by striking ''the application for the order includes the certification described in subparagraph (A)'' and inserting ''there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A)''.

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