

113TH CONGRESS
2^D SESSION

H. R. 3361

AN ACT

To reform the authorities of the Federal Government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes.

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

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

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

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

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

TITLE I—FISA BUSINESS RECORDS REFORMS

- Sec. 101. Additional requirements for call detail records.
- Sec. 102. Emergency authority.
- Sec. 103. Prohibition on bulk collection of tangible things.
- Sec. 104. Judicial review of minimization procedures for the production of tangible things.
- Sec. 105. Liability protection.
- Sec. 106. Compensation for assistance.
- Sec. 107. Definitions.
- Sec. 108. Inspector general reports on business records orders.
- Sec. 109. Effective date.
- Sec. 110. Rule of construction.

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

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

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

- Sec. 301. Minimization procedures.
- Sec. 302. Limits on use of unlawfully obtained information.

TITLE IV—FOREIGN INTELLIGENCE SURVEILLANCE COURT REFORMS

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

TITLE V—NATIONAL SECURITY LETTER REFORM

- Sec. 501. Prohibition on bulk collection.

TITLE VI—FISA TRANSPARENCY AND REPORTING REQUIREMENTS

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

TITLE VII—SUNSETS

- Sec. 701. Sunsets.

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

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

9 **TITLE I—FISA BUSINESS**
 10 **RECORDS REFORMS**

11 **SEC. 101. ADDITIONAL REQUIREMENTS FOR CALL DETAIL**
 12 **RECORDS.**

13 (a) APPLICATION.—Section 501(b)(2) (50 U.S.C.
 14 1861(b)(2)) is amended—

15 (1) in subparagraph (A)—

16 (A) in the matter preceding clause (i), by
 17 striking “a statement” and inserting “in the
 18 case of an application other than an application
 19 described in subparagraph (C) (including an ap-
 20 plication for the production of call detail

1 records other than in the manner described in
2 subparagraph (C)), a statement”; and

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

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

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

9 “(C) in the case of an application for the
10 production on a daily basis of call detail records
11 created before, on, or after the date of the ap-
12 plication relating to an authorized investigation
13 (other than a threat assessment) conducted in
14 accordance with subsection (a)(2) to protect
15 against international terrorism, a statement of
16 facts showing that—

17 “(i) there are reasonable grounds to
18 believe that the call detail records sought
19 to be produced based on the specific selec-
20 tion term required under subparagraph (A)
21 are relevant to such investigation; and

22 “(ii) there are facts giving rise to a
23 reasonable, articulable suspicion that such
24 specific selection term is associated with a

1 foreign power or an agent of a foreign
2 power; and”.

3 (b) ORDER.—Section 501(c)(2) (50 U.S.C.
4 1861(c)(2)) is amended—

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

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

9 (3) by adding at the end the following new sub-
10 paragraph:

11 “(F) in the case of an application de-
12 scribed in subsection (b)(2)(C), shall—

13 “(i) authorize the production on a
14 daily basis of call detail records for a pe-
15 riod not to exceed 180 days;

16 “(ii) provide that an order for such
17 production may be extended upon applica-
18 tion under subsection (b) and the judicial
19 finding under paragraph (1);

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

23 “(I) using the specific selection
24 term that satisfies the standard re-

1 required under subsection (b)(2)(C)(ii)
2 as the basis for production; and

3 “(II) using call detail records
4 with a direct connection to such spe-
5 cific selection term as the basis for
6 production of a second set of call de-
7 tail records;

8 “(iv) provide that, when produced,
9 such records be in a form that will be use-
10 ful to the Government;

11 “(v) direct each person the Govern-
12 ment directs to produce call detail records
13 under the order to furnish the Government
14 forthwith all information, facilities, or
15 technical assistance necessary to accom-
16 plish the production in such a manner as
17 will protect the secrecy of the production
18 and produce a minimum of interference
19 with the services that such person is pro-
20 viding to each subject of the production;
21 and

22 “(vi) direct the Government to—

23 “(I) adopt minimization proce-
24 dures that require the prompt de-
25 struction of all call detail records pro-

1 duced under the order that the Gov-
2 ernment determines are not foreign
3 intelligence information; and

4 “(II) destroy all call detail
5 records produced under the order as
6 prescribed by such procedures.”.

7 **SEC. 102. EMERGENCY AUTHORITY.**

8 (a) **AUTHORITY.**—Section 501 (50 U.S.C. 1861) is
9 amended by adding at the end the following new sub-
10 section:

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

13 “(1) Notwithstanding any other provision of
14 this section, the Attorney General may require the
15 emergency production of tangible things if the Attor-
16 ney General—

17 “(A) reasonably determines that an emer-
18 gency situation requires the production of tan-
19 gible things before an order authorizing such
20 production can with due diligence be obtained;

21 “(B) reasonably determines that the fac-
22 tual basis for the issuance of an order under
23 this section to approve such production of tan-
24 gible things exists;

1 “(C) informs, either personally or through
2 a designee, a judge having jurisdiction under
3 this section at the time the Attorney General
4 requires the emergency production of tangible
5 things that the decision has been made to em-
6 ploy the authority under this subsection; and

7 “(D) makes an application in accordance
8 with this section to a judge having jurisdiction
9 under this section as soon as practicable, but
10 not later than 7 days after the Attorney Gen-
11 eral requires the emergency production of tan-
12 gible things under this subsection.

13 “(2) If the Attorney General authorizes the
14 emergency production of tangible things under para-
15 graph (1), the Attorney General shall require that
16 the minimization procedures required by this section
17 for the issuance of a judicial order be followed.

18 “(3) In the absence of a judicial order approv-
19 ing the production of tangible things under this sub-
20 section, the production shall terminate when the in-
21 formation sought is obtained, when the application
22 for the order is denied, or after the expiration of 7
23 days from the time the Attorney General begins re-
24 quiring the emergency production of such tangible
25 things, whichever is earliest.

1 “(4) A denial of the application made under
2 this subsection may be reviewed as provided in sec-
3 tion 103.

4 “(5) If such application for approval is denied,
5 or in any other case where the production of tangible
6 things is terminated and no order is issued approv-
7 ing the production, no information obtained or evi-
8 dence derived from such production shall be received
9 in evidence or otherwise disclosed in any trial, hear-
10 ing, or other proceeding in or before any court,
11 grand jury, department, office, agency, regulatory
12 body, legislative committee, or other authority of the
13 United States, a State, or political subdivision there-
14 of, and no information concerning any United States
15 person acquired from such production shall subse-
16 quently be used or disclosed in any other manner by
17 Federal officers or employees without the consent of
18 such person, except with the approval of the Attor-
19 ney General if the information indicates a threat of
20 death or serious bodily harm to any person.

21 “(6) The Attorney General shall assess compli-
22 ance with the requirements of paragraph (5).”.

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

25 (1) in paragraph (1)—

1 (A) in the matter preceding subparagraph
2 (A), by striking “pursuant to an order” and in-
3 serting “pursuant to an order issued or an
4 emergency production required”;

5 (B) in subparagraph (A), by striking “such
6 order” and inserting “such order or such emer-
7 gency production”; and

8 (C) in subparagraph (B), by striking “the
9 order” and inserting “the order or the emer-
10 gency production”; and

11 (2) in paragraph (2)—

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

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

18 **SEC. 103. PROHIBITION ON BULK COLLECTION OF TAN-**
19 **GIBLE THINGS.**

20 (a) APPLICATION.—Section 501(b)(2) (50 U.S.C.
21 1861(b)(2)), as amended by section 101(a) of this Act,
22 is further amended by inserting before subparagraph (B),
23 as redesignated by such section 101(a) of this Act, the
24 following new subparagraph:

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

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

6 (1) in paragraph (2)(A), by striking the semi-
7 colon and inserting “, including each specific selec-
8 tion term to be used as the basis for the produc-
9 tion;”; and

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

12 “(3) No order issued under this subsection may au-
13 thorize the collection of tangible things without the use
14 of a specific selection term that meets the requirements
15 of subsection (b)(2).”.

16 **SEC. 104. JUDICIAL REVIEW OF MINIMIZATION PROCE-**
17 **DURES FOR THE PRODUCTION OF TANGIBLE**
18 **THINGS.**

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

1 **SEC. 105. LIABILITY PROTECTION.**

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

4 “(e)(1) No cause of action shall lie in any court
5 against a person who—

6 “(A) produces tangible things or provides infor-
7 mation, facilities, or technical assistance pursuant to
8 an order issued or an emergency production required
9 under this section; or

10 “(B) otherwise provides technical assistance to
11 the Government under this section or to implement
12 the amendments made to this section by the USA
13 FREEDOM Act.

14 “(2) A production or provision of information, facili-
15 ties, or technical assistance described in paragraph (1)
16 shall not be deemed to constitute a waiver of any privilege
17 in any other proceeding or context.”.

18 **SEC. 106. COMPENSATION FOR ASSISTANCE.**

19 Section 501 (50 U.S.C. 1861), as amended by section
20 102 of this Act, is further amended by adding at the end
21 the following new subsection:

22 “(j) COMPENSATION.—The Government shall com-
23 pensate a person for reasonable expenses incurred for—

24 “(1) producing tangible things or providing in-
25 formation, facilities, or assistance in accordance with
26 an order issued with respect to an application de-

1 scribed in subsection (b)(2)(C) or an emergency pro-
2 duction under subsection (i) that, to comply with
3 subsection (i)(1)(D), requires an application de-
4 scribed in subsection (b)(2)(C); or

5 “(2) otherwise providing technical assistance to
6 the Government under this section or to implement
7 the amendments made to this section by the USA
8 FREEDOM Act.”.

9 **SEC. 107. DEFINITIONS.**

10 Section 501 (50 U.S.C. 1861), as amended by section
11 106 of this Act, is further amended by adding at the end
12 the following new subsection:

13 “(k) DEFINITIONS.—In this section:

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

16 “(A) means session identifying information
17 (including originating or terminating telephone
18 number, International Mobile Subscriber Iden-
19 tity number, or International Mobile Station
20 Equipment Identity number), a telephone call-
21 ing card number, or the time or duration of a
22 call; and

23 “(B) does not include—

1 “(i) the contents of any communica-
2 tion (as defined in section 2510(8) of title
3 18, United States Code);

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

6 “(iii) cell site location information.

7 “(2) SPECIFIC SELECTION TERM.—The term
8 ‘specific selection term’ means a discrete term, such
9 as a term specifically identifying a person, entity, ac-
10 count, address, or device, used by the Government to
11 limit the scope of the information or tangible things
12 sought pursuant to the statute authorizing the provi-
13 sion of such information or tangible things to the
14 Government.”.

15 **SEC. 108. INSPECTOR GENERAL REPORTS ON BUSINESS**
16 **RECORDS ORDERS.**

17 Section 106A of the USA PATRIOT Improvement
18 and Reauthorization Act of 2005 (Public Law 109–177;
19 120 Stat. 200) is amended—

20 (1) in subsection (b)—

21 (A) in paragraph (1), by inserting “and
22 calendar years 2012 through 2014” after
23 “2006”;

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

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

3 (D) in paragraph (3) (as so redesign-
4 nated)—

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

7 “(C) with respect to calendar years 2012
8 through 2014, an examination of the minimiza-
9 tion procedures used in relation to orders under
10 section 501 of the Foreign Intelligence Surveil-
11 lance Act of 1978 (50 U.S.C. 1861) and wheth-
12 er the minimization procedures adequately pro-
13 tect the constitutional rights of United States
14 persons;” and

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

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

21 “(3) CALENDAR YEARS 2012 THROUGH 2014.—
22 Not later than December 31, 2015, the Inspector
23 General of the Department of Justice shall submit
24 to the Committee on the Judiciary and the Select
25 Committee on Intelligence of the Senate and the

1 Committee on the Judiciary and the Permanent Se-
2 lect Committee on Intelligence of the House of Rep-
3 resentatives a report containing the results of the
4 audit conducted under subsection (a) for calendar
5 years 2012 through 2014.”;

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

8 (4) by inserting after subsection (c) the fol-
9 lowing new subsection:

10 “(d) INTELLIGENCE ASSESSMENT.—

11 “(1) IN GENERAL.—For the period beginning
12 on January 1, 2012, and ending on December 31,
13 2014, the Inspector General of the Intelligence Com-
14 munity shall assess—

15 “(A) the importance of the information ac-
16 quired under title V of the Foreign Intelligence
17 Surveillance Act of 1978 (50 U.S.C. 1861 et
18 seq.) to the activities of the intelligence commu-
19 nity;

20 “(B) the manner in which that information
21 was collected, retained, analyzed, and dissemi-
22 nated by the intelligence community;

23 “(C) the minimization procedures used by
24 elements of the intelligence community under
25 such title and whether the minimization proce-

1 dures adequately protect the constitutional
2 rights of United States persons; and

3 “(D) any minimization procedures pro-
4 posed by an element of the intelligence commu-
5 nity under such title that were modified or de-
6 nied by the court established under section
7 103(a) of such Act (50 U.S.C. 1803(a)).

8 “(2) SUBMISSION DATE FOR ASSESSMENT.—

9 Not later than 180 days after the date on which the
10 Inspector General of the Department of Justice sub-
11 mits the report required under subsection (c)(3), the
12 Inspector General of the Intelligence Community
13 shall submit to the Committee on the Judiciary and
14 the Select Committee on Intelligence of the Senate
15 and the Committee on the Judiciary and the Perma-
16 nent Select Committee on Intelligence of the House
17 of Representatives a report containing the results of
18 the assessment for calendar years 2012 through
19 2014.”;

20 (5) in subsection (e), as redesignated by para-
21 graph (3)—

22 (A) in paragraph (1)—

23 (i) by striking “a report under sub-
24 section (c)(1) or (c)(2)” and inserting “any
25 report under subsection (c) or (d)”;

1 (ii) by striking “Inspector General of
2 the Department of Justice” and inserting
3 “Inspector General of the Department of
4 Justice, the Inspector General of the Intel-
5 ligence Community, and any Inspector
6 General of an element of the intelligence
7 community that prepares a report to assist
8 the Inspector General of the Department
9 of Justice or the Inspector General of the
10 Intelligence Community in complying with
11 the requirements of this section”; and

12 (B) in paragraph (2), by striking “the re-
13 ports submitted under subsections (c)(1) and
14 (c)(2)” and inserting “any report submitted
15 under subsection (c) or (d)”;

16 (6) in subsection (f), as redesignated by para-
17 graph (3)—

18 (A) by striking “The reports submitted
19 under subsections (c)(1) and (c)(2)” and insert-
20 ing “Each report submitted under subsection
21 (c)”;

22 (B) by striking “subsection (d)(2)” and in-
23 serting “subsection (e)(2)”;

24 (7) by adding at the end the following new sub-
25 section:

1 “(g) DEFINITIONS.—In this section:

2 “(1) INTELLIGENCE COMMUNITY.—The term
3 ‘intelligence community’ has the meaning given that
4 term in section 3 of the National Security Act of
5 1947 (50 U.S.C. 3003).

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

10 **SEC. 109. EFFECTIVE DATE.**

11 (a) IN GENERAL.—The amendments made by sec-
12 tions 101 through 103 shall take effect on the date that
13 is 180 days after the date of the enactment of this Act.

14 (b) RULE OF CONSTRUCTION.—Nothing in this Act
15 shall be construed to alter or eliminate the authority of
16 the Government to obtain an order under title V of the
17 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
18 1861 et seq.) as in effect prior to the effective date de-
19 scribed in subsection (a) during the period ending on such
20 effective date.

21 **SEC. 110. RULE OF CONSTRUCTION.**

22 Nothing in this Act shall be construed to authorize
23 the production of the contents (as such term is defined
24 in section 2510(8) of title 18, United States Code) of any
25 electronic communication from an electronic communica-

1 tion service provider (as such term is defined in section
2 701(b)(4) of the Foreign Intelligence Surveillance Act of
3 1978 (50 U.S.C. 1881(b)(4)) under title V of the Foreign
4 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et
5 seq.).

6 **TITLE II—FISA PEN REGISTER**
7 **AND TRAP AND TRACE DE-**
8 **VICE REFORM**

9 **SEC. 201. PROHIBITION ON BULK COLLECTION.**

10 (a) PROHIBITION.—Section 402(c) (50 U.S.C.
11 1842(c)) is amended—

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

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

16 (3) by adding at the end the following new
17 paragraph:

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

22 (b) DEFINITION.—Section 401 (50 U.S.C. 1841) is
23 amended by adding at the end the following new para-
24 graph:

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

3 **SEC. 202. PRIVACY PROCEDURES.**

4 (a) **IN GENERAL.**—Section 402 (50 U.S.C. 1842) is
5 amended by adding at the end the following new sub-
6 section:

7 “(h) The Attorney General shall ensure that appro-
8 priate policies and procedures are in place to safeguard
9 nonpublicly available information concerning United
10 States persons that is collected through the use of a pen
11 register or trap and trace device installed under this sec-
12 tion. Such policies and procedures shall, to the maximum
13 extent practicable and consistent with the need to protect
14 national security, include protections for the collection, re-
15 tention, and use of information concerning United States
16 persons.”.

17 (b) **EMERGENCY AUTHORITY.**—Section 403 (50
18 U.S.C. 1843) is amended by adding at the end the fol-
19 lowing new subsection:

20 “(d) Information collected through the use of a pen
21 register or trap and device installed under this section
22 shall be subject to the policies and procedures required
23 under section 402(h).”.

1 **TITLE III—FISA ACQUISITIONS**
2 **TARGETING PERSONS OUT-**
3 **SIDE THE UNITED STATES RE-**
4 **FORMS**

5 **SEC. 301. MINIMIZATION PROCEDURES.**

6 Section 702(e)(1) (50 U.S.C. 1881a(e)(1)) is amend-
7 ed—

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

10 “(A) meet”;

11 (2) in subparagraph (A) (as designated by
12 paragraph (1) of this section), by striking the period
13 and inserting “; and”; and

14 (3) by adding at the end the following new sub-
15 paragraph:

16 “(B) consistent with such definition—

17 “(i) minimize the acquisition, and pro-
18 hibit the retention and dissemination, of
19 any communication as to which the sender
20 and all intended recipients are determined
21 to be located in the United States at the
22 time of acquisition, consistent with the
23 need of the United States to obtain,
24 produce, and disseminate foreign intel-
25 ligence information; and

1 “(ii) prohibit the use of any discrete
2 communication that is not to, from, or
3 about the target of an acquisition and is to
4 or from an identifiable United States per-
5 son or a person reasonably believed to be
6 located in the United States, except to pro-
7 tect against an immediate threat to human
8 life.”.

9 **SEC. 302. LIMITS ON USE OF UNLAWFULLY OBTAINED IN-**
10 **FORMATION.**

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

13 “(D) LIMITATION ON USE OF INFORMA-
14 TION.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), to the extent the Court
17 orders a correction of a deficiency in a cer-
18 tification or procedures under subpara-
19 graph (B), no information obtained or evi-
20 dence derived pursuant to the part of the
21 certification or procedures that has been
22 identified by the Court as deficient con-
23 cerning any United States person shall be
24 received in evidence or otherwise disclosed
25 in any trial, hearing, or other proceeding

1 in or before any court, grand jury, depart-
2 ment, office, agency, regulatory body, legis-
3 lative committee, or other authority of the
4 United States, a State, or political subdivi-
5 sion thereof, and no information con-
6 cerning any United States person acquired
7 pursuant to such part of such certification
8 shall subsequently be used or disclosed in
9 any other manner by Federal officers or
10 employees without the consent of the
11 United States person, except with the ap-
12 proval of the Attorney General if the infor-
13 mation indicates a threat of death or seri-
14 ous bodily harm to any person.

15 “(ii) EXCEPTION.—If the Government
16 corrects any deficiency identified by the
17 order of the Court under subparagraph
18 (B), the Court may permit the use or dis-
19 closure of information obtained before the
20 date of the correction under such mini-
21 mization procedures as the Court shall es-
22 tablish for purposes of this clause.”.

1 **TITLE IV—FOREIGN INTEL-**
2 **LIGENCE SURVEILLANCE**
3 **COURT REFORMS**

4 **SEC. 401. APPOINTMENT OF AMICUS CURIAE.**

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

7 “(i) AMICUS CURIAE.—

8 “(1) AUTHORIZATION.—A court established
9 under subsection (a) or (b), consistent with the re-
10 quirement of subsection (c) and any other statutory
11 requirement that the court act expeditiously or with-
12 in a stated time—

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

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

23 “(2) DESIGNATION.—The presiding judges of
24 the courts established under subsections (a) and (b)
25 shall jointly designate not less than 5 individuals to

1 be eligible to serve as amicus curiae. Such individ-
2 uals shall be persons who possess expertise in pri-
3 vacy and civil liberties, intelligence collection, tele-
4 communications, or any other area that may lend
5 legal or technical expertise to the courts and who
6 have been determined by appropriate executive
7 branch officials to be eligible for access to classified
8 information.

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

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

22 “(5) ASSISTANCE.—A court established under
23 subsection (a) or (b) may request and receive (in-
24 cluding on a non-reimbursable basis) the assistance

1 of the executive branch in the implementation of this
2 subsection.

3 “(6) ADMINISTRATION.—A court established
4 under subsection (a) or (b) may provide for the des-
5 ignation, appointment, removal, training, or other
6 support for an individual appointed to serve as ami-
7 cus curiae under paragraph (1) in a manner that is
8 not inconsistent with this subsection.”.

9 **SEC. 402. DECLASSIFICATION OF DECISIONS, ORDERS, AND**
10 **OPINIONS.**

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

13 (1) in the heading, by striking “**REPORT-**
14 **ING REQUIREMENT**” and inserting “**OVER-**
15 **SIGHT**”; and

16 (2) by adding at the end the following new sec-
17 tion:

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

20 “(a) DECLASSIFICATION REQUIRED.—Subject to
21 subsection (b), the Director of National Intelligence, in
22 consultation with the Attorney General, shall conduct a
23 declassification review of each decision, order, or opinion
24 issued by the Foreign Intelligence Surveillance Court or
25 the Foreign Intelligence Surveillance Court of Review (as

1 defined in section 601(e)) that includes a significant con-
2 struction or interpretation of any provision of this Act,
3 including a construction or interpretation of the term ‘spe-
4 cific selection term’, and, consistent with that review,
5 make publicly available to the greatest extent practicable
6 each such decision, order, or opinion.

7 “(b) REDACTED FORM.—The Director of National
8 Intelligence, in consultation with the Attorney General,
9 may satisfy the requirement under subsection (a) to make
10 a decision, order, or opinion described in such subsection
11 publicly available to the greatest extent practicable by
12 making such decision, order, or opinion publicly available
13 in redacted form.

14 “(c) NATIONAL SECURITY WAIVER.—The Director of
15 National Intelligence, in consultation with the Attorney
16 General, may waive the requirement to declassify and
17 make publicly available a particular decision, order, or
18 opinion under subsection (a) if—

19 “(1) the Director of National Intelligence, in
20 consultation with the Attorney General, determines
21 that a waiver of such requirement is necessary to
22 protect the national security of the United States or
23 properly classified intelligence sources or methods;
24 and

1 “(2) the Director of National Intelligence
2 makes publicly available an unclassified statement
3 prepared by the Attorney General, in consultation
4 with the Director of National Intelligence—

5 “(A) summarizing the significant construc-
6 tion or interpretation of a provision under this
7 Act; and

8 “(B) that specifies that the statement has
9 been prepared by the Attorney General and
10 constitutes no part of the opinion of the For-
11 eign Intelligence Surveillance Court or the For-
12 eign Intelligence Surveillance Court of Re-
13 view.”.

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

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

 “TITLE VI—OVERSIGHT”;

18 and

19 (2) by inserting after the item relating to sec-
20 tion 601 the following new item:

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

1 **TITLE V—NATIONAL SECURITY**
2 **LETTER REFORM**

3 **SEC. 501. PROHIBITION ON BULK COLLECTION.**

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

10 (b) ACCESS TO FINANCIAL RECORDS FOR CERTAIN
11 INTELLIGENCE AND PROTECTIVE PURPOSES.—Section
12 1114(a)(2) of the Right to Financial Privacy Act of 1978
13 (12 U.S.C. 3414(a)(2)) is amended by striking the period
14 and inserting “and a specific selection term to be used
15 as the basis for the production and disclosure of financial
16 records.”.

17 (c) DISCLOSURES TO FBI OF CERTAIN CONSUMER
18 RECORDS FOR COUNTERINTELLIGENCE PURPOSES.—Sec-
19 tion 626(a) of the Fair Credit Reporting Act (15 U.S.C.
20 1681u(a)) is amended by striking “that information,” and
21 inserting “that information that includes a specific selec-
22 tion term to be used as the basis for the production of
23 that information,”.

24 (d) DISCLOSURES TO GOVERNMENTAL AGENCIES
25 FOR COUNTERTERRORISM PURPOSES OF CONSUMER RE-

1 PORTS.—Section 627(a) of the Fair Credit Reporting Act
2 (15 U.S.C. 1681v(a)) is amended by striking “analysis.”
3 and inserting “analysis and a specific selection term to
4 be used as the basis for the production of such informa-
5 tion.”.

6 (e) DEFINITIONS.—

7 (1) COUNTERINTELLIGENCE ACCESS TO TELE-
8 PHONE TOLL AND TRANSACTIONAL RECORDS.—Sec-
9 tion 2709 of title 18, United States Code, is amend-
10 ed by adding at the end the following new sub-
11 section:

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

16 (2) ACCESS TO FINANCIAL RECORDS FOR CER-
17 TAIN INTELLIGENCE AND PROTECTIVE PURPOSES.—
18 Section 1114 of the Right to Financial Privacy Act
19 of 1978 (12 U.S.C. 3414) is amended by adding at
20 the end the following new subsection:

21 “(e) In this section, the term ‘specific selection term’
22 has the meaning given the term in section 501 of the For-
23 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
24 1861).”.

1 (3) DISCLOSURES TO FBI OF CERTAIN CON-
2 SUMER RECORDS FOR COUNTERINTELLIGENCE PUR-
3 POSES.—Section 626 of the Fair Credit Reporting
4 Act (15 U.S.C. 1681u) is amended by adding at the
5 end the following new subsection:

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

10 (4) DISCLOSURES TO GOVERNMENTAL AGEN-
11 CIES FOR COUNTERTERRORISM PURPOSES OF CON-
12 SUMER REPORTS.—Section 627 of the Fair Credit
13 Reporting Act (15 U.S.C. 1681v) is amended by
14 adding at the end the following new subsection:

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

19 **TITLE VI—FISA TRANSPARENCY**
20 **AND REPORTING REQUIRE-**
21 **MENTS**

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

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

1 (1) by redesignating paragraphs (1), (2), and
2 (3) as paragraphs (5), (6), and (7), respectively; and

3 (2) by inserting before paragraph (5) (as so re-
4 designated) the following new paragraphs:

5 “(1) the total number of applications described
6 in section 501(b)(2)(B) made for orders approving
7 requests for the production of tangible things;

8 “(2) the total number of such orders either
9 granted, modified, or denied;

10 “(3) the total number of applications described
11 in section 501(b)(2)(C) made for orders approving
12 requests for the production of call detail records;

13 “(4) the total number of such orders either
14 granted, modified, or denied;”.

15 **SEC. 602. BUSINESS RECORDS COMPLIANCE REPORTS TO**
16 **CONGRESS.**

17 Section 502(b) (50 U.S.C. 1862(b)), as amended by
18 section 601 of this Act, is further amended—

19 (1) by redesignating paragraphs (1) through
20 (7) as paragraphs (2) through (8), respectively; and

21 (2) by inserting before paragraph (2) (as so re-
22 designated) the following new paragraph:

23 “(1) a summary of all compliance reviews con-
24 ducted by the Federal Government of the production
25 of tangible things under section 501;”.

1 **SEC. 603. ANNUAL REPORTS BY THE GOVERNMENT ON OR-**
2 **DERS ENTERED.**

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

6 **“SEC. 603. ANNUAL REPORT ON ORDERS ENTERED.**

7 “(a) REPORT BY DIRECTOR OF THE ADMINISTRA-
8 TIVE OFFICE OF THE UNITED STATES COURTS.—The Di-
9 rector of the Administrative Office of the United States
10 Courts shall annually submit to the Permanent Select
11 Committee on Intelligence and the Committee on the Judi-
12 ciary of the House of Representatives and the Select Com-
13 mittee on Intelligence and the Committee on the Judiciary
14 of the Senate and, subject to a declassification review by
15 the Attorney General and Director of National Intel-
16 ligence, make publicly available on an Internet website—

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

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

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

23 “(4) the number of appointments of an indi-
24 vidual to serve as amicus curiae under section 103,
25 including the name of each individual appointed to
26 serve as amicus curiae.

1 “(b) REPORT BY DIRECTOR OF NATIONAL INTEL-
2 LIGENCE.—The Director of National Intelligence shall an-
3 nually make publicly available a report that identifies, for
4 the preceding 12-month period—

5 “(1) the total number of orders issued pursuant
6 titles I and III and sections 703 and 704 and the
7 estimated number of targets affected by such orders;

8 “(2) the total number of orders issued pursuant
9 to section 702 and the estimated number of targets
10 affected by such orders;

11 “(3) the total number of orders issued pursuant
12 to title IV and the estimated number of targets af-
13 fected by such orders;

14 “(4) the total number of orders issued pursuant
15 to applications made under section 501(b)(2)(B) and
16 the estimated number of targets affected by such or-
17 ders;

18 “(5) the total number of orders issued pursuant
19 to applications made under section 501(b)(2)(C) and
20 the estimated number of targets affected by such or-
21 ders; and

22 “(6) the total number of national Security let-
23 ters issued and the number of requests for informa-
24 tion contained within such national security letters.

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

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

6 “(2) Section 1114(a)(5)(A) of the Right to Fi-
7 nancial Privacy Act of 1978 (12 U.S.C.
8 3414(a)(5)(A)).

9 “(3) Subsection (a) or (b) of section 626 of the
10 Fair Credit Reporting Act (15 U.S.C. 1681u(a),
11 1681u(b)).

12 “(4) Section 627(a) of the Fair Credit Report-
13 ing Act (15 U.S.C. 1681v(a)).”.

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

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

19 **SEC. 604. PUBLIC REPORTING BY PERSONS SUBJECT TO**
20 **FISA ORDERS.**

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

1 **“SEC. 604. PUBLIC REPORTING BY PERSONS SUBJECT TO**
2 **ORDERS.**

3 “(a) REPORTING.—A person may semiannually pub-
4 licly report the following information with respect to the
5 preceding half year using one of the following structures:

6 “(1) Subject to subsection (b), a report that ag-
7 gregates the number of orders or national security
8 letters the person was required to comply with in the
9 following separate categories:

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

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

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

19 “(D) With respect to content orders under
20 this Act, in bands of 1000 starting with 0-999,
21 the number of customer accounts affected
22 under orders under title I;

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

1 “(F) With respect to non-content orders
2 under this Act, in bands of 1000 starting with
3 0-999, the number of customer accounts af-
4 fected under orders under—

5 “(i) title IV;

6 “(ii) title V with respect to applica-
7 tions described in section 501(b)(2)(B);
8 and

9 “(iii) title V with respect to applica-
10 tions described in section 501(b)(2)(C).

11 “(2) A report that aggregates the number of or-
12 ders, directives, or national security letters the per-
13 son was required to comply with in the following
14 separate categories:

15 “(A) The total number of all national secu-
16 rity process received, including all national se-
17 curity letters and orders or directives under this
18 Act, reported as a single number in a band of
19 0-249 and thereafter in bands of 250.

20 “(B) The total number of customer selec-
21 tors targeted under all national security process
22 received, including all national security letters
23 and orders or directives under this Act, re-
24 ported as a single number in a band of 0-249
25 and thereafter in bands of 250.

1 “(3) Subject to subsection (b), a report that ag-
2 gregates the number of orders or national security
3 letters the person was required to comply with in the
4 following separate categories:

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

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

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

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

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

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

23 “(b) PERIOD OF TIME COVERED BY REPORTS.—
24 With respect to a report described in paragraph (1) or

1 (3) of subsection (a), such report shall only include infor-
2 mation—

3 “(1) except as provided in paragraph (2), for
4 the period of time ending on the date that is at least
5 180 days before the date of the publication of such
6 report; and

7 “(2) with respect to an order under this Act or
8 national security letter received with respect to a
9 platform, product, or service for which a person did
10 not previously receive such an order or national se-
11 curity letter (not including an enhancement to or
12 iteration of an existing publicly available platform,
13 product, or service), for the period of time ending on
14 the date that is at least 2 years before the date of
15 the publication of such report.

16 “(c) OTHER FORMS OF AGREED TO PUBLICATION.—
17 Nothing in this section shall be construed to prohibit the
18 Government and any person from jointly agreeing to the
19 publication of information referred to in this subsection
20 in a time, form, or manner other than as described in this
21 section.

22 “(d) NATIONAL SECURITY LETTER DEFINED.—The
23 term ‘national security letter’ has the meaning given the
24 term in section 603.”.

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

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

6 **SEC. 605. REPORTING REQUIREMENTS FOR DECISIONS OF**
7 **THE FOREIGN INTELLIGENCE SURVEIL-**
8 **LANCE COURT.**

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

11 “(1) not later than 45 days after the date on
12 which the Foreign Intelligence Surveillance Court or
13 the Foreign Intelligence Surveillance Court of Re-
14 view issues a decision, order, or opinion, including
15 any denial or modification of an application under
16 this Act, that includes a significant construction or
17 interpretation of any provision of this Act or results
18 in a change of application of any provision of this
19 Act or a new application of any provision of this Act,
20 a copy of such decision, order, or opinion and any
21 pleadings, applications, or memoranda of law associ-
22 ated with such decision, order, or opinion; and”.

23 **SEC. 606. SUBMISSION OF REPORTS UNDER FISA.**

24 (a) ELECTRONIC SURVEILLANCE.—Section 108(a)(1)
25 (50 U.S.C. 1808(a)(1)) is amended by striking “the

1 House Permanent Select Committee on Intelligence and
2 the Senate Select Committee on Intelligence, and the
3 Committee on the Judiciary of the Senate,” and inserting
4 “the Permanent Select Committee on Intelligence and the
5 Committee on the Judiciary of the House of Representa-
6 tives and the Select Committee on Intelligence and the
7 Committee on the Judiciary of the Senate”.

8 (b) PHYSICAL SEARCHES.—Section 306 (50 U.S.C.
9 1826) is amended—

10 (1) in the first sentence, by striking “Perma-
11 nent Select Committee on Intelligence of the House
12 of Representatives and the Select Committee on In-
13 telligence of the Senate, and the Committee on the
14 Judiciary of the Senate,” and inserting “Permanent
15 Select Committee on Intelligence and the Committee
16 on the Judiciary of the House of Representatives
17 and the Select Committee on Intelligence and the
18 Committee on the Judiciary of the Senate”; and

19 (2) in the second sentence, by striking “and the
20 Committee on the Judiciary of the House of Rep-
21 resentatives”.

22 (c) PEN REGISTER AND TRAP AND TRACE DE-
23 VICES.—Section 406(b) (50 U.S.C. 1846(b)) is amend-
24 ed—

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

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

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

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

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

14 (d) ACCESS TO CERTAIN BUSINESS RECORDS AND
15 OTHER TANGIBLE THINGS.—Section 502(a) (50 U.S.C.
16 1862(a)) is amended by striking “Permanent Select Com-
17 mittee on Intelligence of the House of Representatives and
18 the Select Committee on Intelligence and the Committee
19 on the Judiciary of the Senate” and inserting “Permanent
20 Select Committee on Intelligence of the House of Rep-
21 resentatives, the Select Committee on Intelligence of the
22 Senate, and the Committees on the Judiciary of the House
23 of Representatives and the Senate”.

1 **TITLE VII—SUNSETS**

2 **SEC. 701. SUNSETS.**

3 (a) USA PATRIOT IMPROVEMENT AND REAUTHOR-
4 IZATION ACT OF 2005.—Section 102(b)(1) of the USA
5 PATRIOT Improvement and Reauthorization Act of 2005
6 (50 U.S.C. 1805 note) is amended by striking “June 1,
7 2015” and inserting “December 31, 2017”.

8 (b) INTELLIGENCE REFORM AND TERRORISM PRE-
9 VENTION ACT OF 2004.—Section 6001(b)(1) of the Intel-
10 ligence Reform and Terrorism Prevention Act of 2004 (50
11 U.S.C. 1801 note) is amended by striking “June 1, 2015”
12 and inserting “December 31, 2017”.

Passed the House of Representatives May 22, 2014.

Attest:

Clerk.

113TH CONGRESS
2^D SESSION

H. R. 3361

AN ACT

To reform the authorities of the Federal Government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes.