

PROVIDING FOR CONSIDERATION OF THE BILL (S. 139) TO IMPLEMENT THE USE OF RAPID DNA INSTRUMENTS TO INFORM DECISIONS ABOUT PRETRIAL RELEASE OR DETENTION AND THEIR CONDITIONS, TO SOLVE AND PREVENT VIOLENT CRIMES AND OTHER CRIMES, TO EXONERATE THE INNOCENT, TO PREVENT DNA ANALYSIS BACKLOGS, AND FOR OTHER PURPOSES

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JANUARY 9, 2018.—Referred to the House Calendar and ordered to be printed

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Mr. COLLINS of Georgia, from the Committee on Rules,  
submitted the following

## R E P O R T

[To accompany H. Res. 682]

The Committee on Rules, having had under consideration House Resolution 682, by a record vote of 6 to 3, report the same to the House with the recommendation that the resolution be adopted.

### SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of S. 139, the Rapid DNA Act of 2017, under a structured rule. The resolution provides one hour of debate with 40 minutes equally divided and controlled by the chair and ranking minority member of the Permanent Select Committee on Intelligence, and 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary. The resolution waives all points of order against consideration of the bill. The resolution provides that an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115-53 shall be considered as adopted and the bill, as amended, shall be considered as read. The resolution waives all points of against provisions in the bill, as amended. The resolution makes in order only the further amendment printed in this report, if offered by the Member designated in this report, which shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The resolution waives all points of order against the amendment printed in this report. The resolution provides one motion to commit with or without instructions.

## EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in the bill, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against the amendment printed in this report includes a waiver of clause 12(a)(2) of rule XXI, which prohibits consideration of an amendment in the nature of a substitute unless there is a searchable electronic comparative print that shows how the amendment proposes to change current law.

## COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

*Rules Committee record vote No. 173*

Motion by Mr. Polis to make in order and provide the appropriate waivers to amendment #3, offered by Rep. Poe (TX) and Rep. Nadler (NY) and Rep. Lofgren (CA) and Rep. Gabbard (HI) and Rep. Jayapal (WA) and Rep. Gomez (CA) and Rep. Farenthold (TX) and Rep. Polis (CO), which mandates a warrant requirement for a search of the 702 database on a US person. It also ends “about” collection. Defeated: 3–6

Majority Members	Vote	Minority Members	Vote
Mr. Cole .....	Nay	Ms. Slaughter .....	Yea
Mr. Woodall .....	Nay	Mr. McGovern .....	Yea
Mr. Burgess .....	.....	Mr. Hastings of Florida .....	.....
Mr. Collins .....	Nay	Mr. Polis .....	Yea
Mr. Byrne .....	.....		
Mr. Newhouse .....	Nay		
Mr. Buck .....	.....		
Ms. Cheney .....	Nay		
Mr. Sessions, Chairman .....	Nay		

*Rules Committee record vote No. 174*

Motion by Mr. Cole to report the rule. Adopted: 6–3

Majority Members	Vote	Minority Members	Vote
Mr. Cole .....	Yea	Ms. Slaughter .....	Nay
Mr. Woodall .....	Yea	Mr. McGovern .....	Nay
Mr. Burgess .....	Yea	Mr. Hastings of Florida .....	.....
Mr. Collins .....	Yea	Mr. Polis .....	Nay
Mr. Byrne .....	.....		
Mr. Newhouse .....	Yea		
Mr. Buck .....	.....		
Ms. Cheney .....	.....		
Mr. Sessions, Chairman .....	Yea		

SUMMARY OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE  
MADE IN ORDER

1. Amash (MI): Replaces the text of S. 139 with the text of the USA RIGHTS Act, to protect Americans' Fourth Amendment rights. (20 minutes)

TEXT OF AMENDMENT IN THE NATURE OF A SUBSTITUTE MADE IN  
ORDER

1. AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE OFFERED BY REPRESENTATIVE AMASH OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 1, strike line 1 and all that follows and insert the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “Uniting and Strengthening America by Reforming and Improving the Government’s High-Tech Surveillance Act” or the “USA RIGHTS Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification on prohibition on querying of collections of communications to conduct warrantless queries for the communications of United States persons and persons inside the United States.
- Sec. 3. Prohibition on reverse targeting under certain authorities of the Foreign Intelligence Surveillance Act of 1978.
- Sec. 4. Prohibition on acquisition, pursuant to certain FISA authorities to target certain persons outside the United States, of communications that do not include persons targeted under such authorities.
- Sec. 5. Prohibition on acquisition of entirely domestic communications under authorities to target certain persons outside the United States.
- Sec. 6. Limitation on use of information obtained under certain authority of Foreign Intelligence Surveillance Act of 1947 relating to United States persons.
- Sec. 7. Reforms of the Privacy and Civil Liberties Oversight Board.
- Sec. 8. Improved role in oversight of electronic surveillance by amici curiae appointed by courts under Foreign Intelligence Surveillance Act of 1978.
- Sec. 9. Reforms to the Foreign Intelligence Surveillance Court.
- Sec. 10. Study and report on diversity and representation on the FISA Court and the FISA Court of Review.
- Sec. 11. Grounds for determining injury in fact in civil action relating to surveillance under certain provisions of Foreign Intelligence Surveillance Act of 1978.
- Sec. 12. Clarification of applicability of requirement to declassify significant decisions of Foreign Intelligence Surveillance Court and Foreign Intelligence Surveillance Court of Review.
- Sec. 13. Clarification regarding treatment of information acquired under Foreign Intelligence Surveillance Act of 1978.
- Sec. 14. Limitation on technical assistance from electronic communication service providers under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 15. Modification of authorities for public reporting by persons subject to non-disclosure requirement accompanying order under Foreign Intelligence Surveillance Act of 1978.
- Sec. 16. Annual publication of statistics on number of persons targeted outside the United States under certain Foreign Intelligence Surveillance Act of 1978 authority.
- Sec. 17. Repeal of nonapplicability to Federal Bureau of Investigation of certain reporting requirements under Foreign Intelligence Surveillance Act of 1978.
- Sec. 18. Publication of estimates regarding communications collected under certain provision of Foreign Intelligence Surveillance Act of 1978.
- Sec. 19. Four-year extension of FISA Amendments Act of 2008.

**SEC. 2. CLARIFICATION ON PROHIBITION ON QUERYING OF COLLECTIONS OF COMMUNICATIONS TO CONDUCT WARRANTLESS QUERIES FOR THE COMMUNICATIONS OF UNITED STATES PERSONS AND PERSONS INSIDE THE UNITED STATES.**

Section 702(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(b)) is amended—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and indenting such subparagraphs, as so redesignated, an additional two ems from the left margin;

(2) by striking “An acquisition” and inserting the following: “(1) IN GENERAL.—An acquisition”; and

(3) by adding at the end the following:

“(2) CLARIFICATION ON PROHIBITION ON QUERYING OF COLLECTIONS OF COMMUNICATIONS OF UNITED STATES PERSONS AND PERSONS INSIDE THE UNITED STATES.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), no officer or employee of the United States may conduct a query of information acquired under this section in an effort to find communications of or about a particular United States person or a person inside the United States.

“(B) CONCURRENT AUTHORIZATION AND EXCEPTION FOR EMERGENCY SITUATIONS.—Subparagraph (A) shall not apply to a query for communications related to a particular United States person or person inside the United States if—

“(i) such United States person or person inside the United States is the subject of an order or emergency authorization authorizing electronic surveillance or physical search under section 105, 304, 703, 704, or 705 of this Act, or under title 18, United States Code, for the effective period of that order;

“(ii) the entity carrying out the query has a reasonable belief that the life or safety of such United States person or person inside the United States is threatened and the information is sought for the purpose of assisting that person;

“(iii) such United States person or person in the United States is a corporation; or

“(iv) such United States person or person inside the United States has consented to the query.

“(C) QUERIES OF FEDERATED DATA SETS AND MIXED DATA.—If an officer or employee of the United States conducts a query of a data set, or of federated data sets, that includes any information acquired under this section, the system shall be configured not to return such information unless the officer or employee enters a code or other information indicating that—

“(i) the person associated with the search term is not a United States person or person inside the United States; or

“(ii) if the person associated with the search term is a United States person or person inside the United

States, one or more of the conditions of subparagraph (B) are satisfied.

“(D) MATTERS RELATING TO EMERGENCY QUERIES.—

“(i) TREATMENT OF DENIALS.—In the event that a query for communications related to a particular United States person or a person inside the United States is conducted pursuant to an emergency authorization authorizing electronic surveillance or a physical search described in subsection (B)(i) and the application for such emergency authorization is denied, or in any other case in which the query has been conducted and no order is issued approving the query—

“(I) no information obtained or evidence derived from such query may be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof; and

“(II) no information concerning any United States person acquired from such query may subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(ii) ASSESSMENT OF COMPLIANCE.—The Attorney General shall assess compliance with the requirements under clause (i).”.

**SEC. 3. PROHIBITION ON REVERSE TARGETING UNDER CERTAIN AUTHORITIES OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

Section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), as amended by section 2, is further amended—

(1) in subsection (b)(1)(B), as redesignated by section 2, by striking “the purpose of such acquisition is to target” and inserting “a significant purpose of such acquisition is to acquire the communications of”;

(2) in subsection (d)(1)(A)—

(A) by striking “ensure that” and inserting the following: “ensure—

“(i) that”; and

(B) by adding at the end the following:

“(ii) that an application is filed under title I, if otherwise required, when a significant purpose of an acquisition authorized under subsection (a) is to acquire the communications of a particular, known person reasonably believed to be located in the United States; and”;

(3) in subsection (g)(2)(A)(i)(I)—

(A) by striking “ensure that” and inserting the following: “ensure—

“(aa) that”; and

(B) by adding at the end the following:

“(bb) that an application is filed under title I, if otherwise required, when a significant purpose of an acquisition authorized under subsection (a) is to acquire the communications of a particular, known person reasonably believed to be located in the United States; and”;

(4) in subsection (i)(2)(B)(i)—

(A) by striking “ensure that” and inserting the following: “ensure—

“(I) that”;

(B) by adding at the end the following:

“(II) that an application is filed under title I, if otherwise required, when a significant purpose of an acquisition authorized under subsection (a) is to acquire the communications of a particular, known person reasonably believed to be located in the United States; and”.

**SEC. 4. PROHIBITION ON ACQUISITION, PURSUANT TO CERTAIN FISA AUTHORITIES TO TARGET CERTAIN PERSONS OUTSIDE THE UNITED STATES, OF COMMUNICATIONS THAT DO NOT INCLUDE PERSONS TARGETED UNDER SUCH AUTHORITIES.**

Section 702(b)(1) of the Foreign Intelligence Surveillance Act of 1978, as redesignated by section 2, is amended—

(1) in subparagraph (D), as redesignated by section 2, by striking “; and” and inserting a semicolon;

(2) by redesignating subparagraph (E) as subparagraph (G); and

(3) by inserting after subparagraph (D) the following:

“(E) may not acquire a communication as to which no participant is a person who is targeted pursuant to the authorized acquisition;”.

**SEC. 5. PROHIBITION ON ACQUISITION OF ENTIRELY DOMESTIC COMMUNICATIONS UNDER AUTHORITIES TO TARGET CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

Section 702(b)(1) of the Foreign Intelligence Surveillance Act of 1978, as redesignated by section 2 and amended by section 4, is further amended by inserting after subparagraph (E), as added by section 4, the following:

“(F) may not acquire communications known to be entirely domestic; and”.

**SEC. 6. LIMITATION ON USE OF INFORMATION OBTAINED UNDER CERTAIN AUTHORITY OF FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1947 RELATING TO UNITED STATES PERSONS.**

Section 706(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881e(a)) is amended—

(1) by striking “Information acquired” and inserting the following:

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

(2) by adding at the end the following:

“(2) LIMITATION ON USE IN CRIMINAL, CIVIL, AND ADMINISTRATIVE PROCEEDINGS AND INVESTIGATIONS.—No communication to or from, or information about, a person acquired under section

702 who is either a United States person or is located in the United States may be introduced as evidence against the person in any criminal, civil, or administrative proceeding or used as part of any criminal, civil, or administrative investigation, except—

“(A) with the prior approval of the Attorney General; and

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

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

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

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

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

“(v) incapacitation or destruction of critical infrastructure (as defined in section 1016(e) of the USA PATRIOT Act (42 U.S.C. 5195c(e))); or

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

**SEC. 7. REFORMS OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.**

(a) **INCLUSION OF FOREIGN INTELLIGENCE ACTIVITIES IN OVERSIGHT AUTHORITY OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.**—Section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee) is amended—

(1) in subsection (c), by inserting “and to conduct foreign intelligence activities” after “terrorism” each place such term appears; and

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

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

(1) **IN GENERAL.**—Section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee), as amended by subsection (a), is further amended—

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

“(5) **WHISTLEBLOWER COMPLAINTS.**—

“(A) **SUBMISSION TO BOARD.**—An employee of, or contractor or detailee to, an element of the intelligence community may submit to the Board a complaint or information that such employee, contractor, or detailee believes relates to a privacy or civil liberties concern. The confidentiality provisions under section 2409(b)(3) of title 10, United States Code, shall apply to a submission under this subparagraph. Any disclosure under this subparagraph shall be protected against discrimination under the proce-

dures, burdens of proof, and remedies set forth in section 2409 of such title.

“(B) **AUTHORITY OF BOARD.**—The Board may take such action as the Board considers appropriate with respect to investigating a complaint or information submitted under subparagraph (A) or transmitting such complaint or information to any other Executive agency or the congressional intelligence committees.

“(C) **RELATIONSHIP TO EXISTING LAWS.**—The authority under subparagraph (A) of an employee, contractor, or detailee to submit to the Board a complaint or information shall be in addition to any other authority under another provision of law to submit a complaint or information. Any action taken under any other provision of law by the recipient of a complaint or information shall not preclude the Board from taking action relating to the same complaint or information.

“(D) **RELATIONSHIP TO ACTIONS TAKEN UNDER OTHER LAWS.**—Nothing in this paragraph shall prevent—

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

“(ii) the recipient of a complaint or information from taking independent action on the complaint or information.”; and

(B) by adding at the end the following:

“(n) **DEFINITIONS.**—In this section, the terms ‘congressional intelligence committees’ and ‘intelligence community’ have the meanings given such terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).”.

(2) **PROHIBITED PERSONNEL PRACTICES.**—Section 2302(b)(8)(B) of title 5, United States Code, is amended, in the matter preceding clause (i), by striking “or to the Inspector of an agency or another employee designated by the head of the agency to receive such disclosures” and inserting “the Inspector General of an agency, a supervisor in the employee’s direct chain of command (up to and including the head of the employing agency), the Privacy and Civil Liberties Oversight Board, or an employee designated by any of the aforementioned individuals for the purpose of receiving such disclosures”.

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

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

(2) by striking paragraph (2); and

(3) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(d) **APPOINTMENT OF STAFF OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.**—Section 1061(j) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

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

(2) by inserting after paragraph (1) the following:

“(2) APPOINTMENT IN ABSENCE OF CHAIRMAN.—If the position of chairman of the Board is vacant, during the period of the vacancy the Board, at the direction of the majority of the members of the Board, may exercise the authority of the chairman under paragraph (1).”.

(e) TENURE AND COMPENSATION OF PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD MEMBERS AND STAFF.—

(1) IN GENERAL.—Section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee), as amended by subsections (a) and (b), is further amended—

(A) in subsection (h)—

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

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

(B) in subsection (i)(1)—

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

(ii) in subparagraph (B), by striking “level IV of the Executive Schedule” and all that follows through the end and inserting “level III of the Executive Schedule under section 5314 of title 5, United States Code.”; and

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

(2) EFFECTIVE DATE; APPLICABILITY.—

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

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

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

(B) EXCEPTIONS.—

(i) COMPENSATION CHANGES.—The amendments made by subparagraphs (B)(i) and (C) of paragraph (1) shall take effect on the first day of the first pay period beginning after the date of the enactment of this Act.

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

(I) IN GENERAL.—An individual serving as a member of the Privacy and Civil Liberties Oversight Board on the date of the enactment of this Act, including a member continuing to serve as a member under section 1061(h)(4)(B) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee(h)(4)(B)), (referred to in this clause as a “current member”) may make an election to—

(aa) serve as a member of the Privacy and Civil Liberties Oversight Board on a full-time basis and in accordance with section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee), as amended by this section; or

(bb) serve as a member of the Privacy and Civil Liberties Oversight Board on a part-time basis in accordance with such section 1061, as in effect on the day before the date of the enactment of this Act, including the limitation on service after the expiration of the term of the member under subsection (h)(4)(B) of such section, as in effect on the day before the date of the enactment of this Act.

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

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

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

(2) copies of each decision, order, and opinion of the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review required to be included in the report under section 601(a) of such Act (50 U.S.C. 1871(a)).

**SEC. 8. IMPROVED ROLE IN OVERSIGHT OF ELECTRONIC SURVEILLANCE BY AMICI CURIAE APPOINTED BY COURTS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) ROLE OF AMICI CURIAE GENERALLY.—

(1) IN GENERAL.—Section 103(i)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(i)(1)) is amended by adding at the end the following: “Any amicus curiae designated pursuant to this paragraph may raise any issue with the Court at any time.”

(2) REFERRAL OF CASES FOR REVIEW.—Section 103(i) of such Act is amended—

(A) by redesignating paragraphs (5) through (10) as paragraphs (6) through (11), respectively; and

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

“(5) REFERRAL FOR REVIEW.—

“(A) REFERRAL TO FOREIGN INTELLIGENCE SURVEILLANCE COURT EN BANC.—If the court established under subsection (a) appoints an amicus curiae under paragraph (2)(A) to assist the Court in the consideration of any matter presented to the Court under this Act and the Court makes

a decision with respect to such matter, the Court, in response to an application by the amicus curiae or any other individual designated under paragraph (1), may refer the decision to the Court en banc for review as the Court considers appropriate.

“(B) REFERRAL TO FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—If the court established under subsection (a) appoints an amicus curiae under paragraph (2)(A) to assist the Court in the consideration of any matter presented to the Court under this Act and the Court makes a decision with respect to such matter, the Court, in response to an application by the amicus curiae or any other individual designated under paragraph (1) may refer the decision to the court established under subsection (b) for review as the Court considers appropriate.

“(C) REFERRAL TO SUPREME COURT.—If the Court of Review appoints an amicus curiae under paragraph (2) to assist the Court of Review in the review of any matter presented to the Court of Review under this Act or a question of law that may affect resolution of a matter in controversy and the Court of Review makes a decision with respect to such matter or question of law, the Court of Review, in response to an application by the amicus curiae or any other individual designated under paragraph (1) may refer the decision to the Supreme Court for review as the Court of Review considers appropriate.

“(D) ANNUAL REPORT.—Not later than 60 days after the end of each calendar year, the Court and the Court of Review shall each publish, on their respective websites, a report listing—

- “(i) the number of applications for referral received by the Court or the Court of Review, as applicable, during the most recently concluded calendar year; and
- “(ii) the number of such applications for referral that were granted by the Court or the Court of Review, as applicable, during such calendar year.”.

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

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

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

“(B) the appointed amicus curiae may request, either directly or through the court, the assistance of the other amici curiae designated under paragraph (1); and

“(C) all amici curiae designated under paragraph (1) may provide input to the court whether or not such input was formally requested by the court or the appointed amicus curiae.”.

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

(A) in subparagraph (A)—

(i) in clause (i)—

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

“(I) the court”; and

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

“(II) are cited by the Government in an application or case with respect to which an amicus curiae is assisting a court under this subsection;”;

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

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

“(ii) shall have access to an unredacted copy of each decision made by a court established under subsection (a) or (b) in which the court decides a question of law, notwithstanding whether the decision is classified; and”;

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

(C) in subparagraph (C)—

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

(ii) by striking “court may have access” and inserting the following: “court—

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

“(ii) may have access”.

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

“(12) PUBLIC NOTICE AND RECEIPT OF BRIEFS FROM THIRD PARTIES.—Whenever a court established under subsection (a) or (b) considers a novel question of law that can be considered without disclosing classified information, sources, or methods, the court shall, to the greatest extent practicable, consider such question in an open manner—

“(A) by publishing on its website each question of law that the court is considering; and

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

(b) PARTICIPATION OF AMICI CURIAE IN OVERSIGHT OF AUTHORIZATIONS FOR TARGETING OF CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.—

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

(A) in subparagraph (B), by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and adjusting the indentation of the margin of such subclauses, as so redesignated, two ems to the right;

(B) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the indentation of the margin of such clauses, as so redesignated, two ems to the right;

(C) by inserting before clause (i), as redesignated by subparagraph (B), the following:

“(A) IN GENERAL.—”; and

(D) by adding at the end the following:

“(B) PARTICIPATION BY AMICI CURIAE.—In reviewing a certification under subparagraph (A)(i), the Court shall randomly select an amicus curiae designated under section 103(i) to assist with such review.”.

(2) SCHEDULE.—Section 702(i)(5)(A) of such Act is amended by striking “at least 30 days prior to the expiration of such authorization” and inserting “such number of days before the expiration of such authorization as the Court considers necessary to comply with the requirements of paragraph (2)(B) or 30 days, whichever is greater”.

(c) PUBLIC NOTICE OF QUESTIONS OF LAW CERTIFIED FOR REVIEW.—Section 103(j) of such Act (50 U.S.C. 1803(j)) is amended—

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

“(1) IN GENERAL.—Following”; and

(2) by adding at the end the following:

“(2) PUBLIC NOTICE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), whenever a court established under subsection (a) certifies a question of law for review under paragraph (1) of this subsection, the court shall publish on its website—

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

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

“(B) PROTECTION OF CLASSIFIED INFORMATION, SOURCES, AND METHODS.—Subparagraph (A) shall apply to the greatest extent practicable, consistent with otherwise applicable law on the protection of classified information, sources, and methods.”.

#### **SEC. 9. REFORMS TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

(a) FISA COURT JUDGES.—

(1) NUMBER AND DESIGNATION OF JUDGES.—Section 103(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)(1)) is amended to read as follows:

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

“(B)(i) The court established under subparagraph (A) shall consist of 13 judges, one of whom shall be designated from each judicial circuit (including the United States Court of Appeals for the District of Columbia and the United States Court of Appeals for the Federal Circuit).

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

“(I) designate each judge of the court established under subparagraph (A) from the nominations made under subparagraph (C); and

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

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

the chief judge of the circuit shall propose a district judge for a judicial district within the judicial circuit to be designated for that position.

“(ii) If the Chief Justice does not designate a district judge proposed under clause (i), the chief judge shall propose 2 other district judges for a judicial district within the judicial circuit to be designated for that position and the Chief Justice shall designate 1 such district judge to that position.

“(D) No judge of the court established under subparagraph (A) (except when sitting en banc under paragraph (2)) shall hear the same application for electronic surveillance under this Act which has been denied previously by another judge of such court.

“(E) If any judge of the court established under subparagraph (A) denies an application for an order authorizing electronic surveillance under this Act, such judge shall provide immediately for the record a written statement of each reason for the judge’s decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b).”.

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

(3) IMPLEMENTATION.—

(A) INCUMBENTS.—A district judge designated to serve on the court established under subsection (a) of such section before the date of enactment of this Act may continue to serve in that position until the end of the term of the district judge under subsection (d) of such section, as in effect on the day before the date of the enactment of this Act.

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

(i) designate a district court judge who is serving in a judicial district within the District of Columbia circuit and proposed by the chief judge of such circuit to be a judge of the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) for an initial term of 7 years; and

(ii) designate a district court judge who is serving in a judicial district within the Federal circuit and proposed by the chief judge of such circuit to be a judge of such court for an initial term of 4 years.

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

(1) by striking “The Chief Justice” and inserting “(1) Subject to paragraph (2), the Chief Justice”; and

(2) by adding at the end the following:

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

**SEC. 10. STUDY AND REPORT ON DIVERSITY AND REPRESENTATION ON THE FISA COURT AND THE FISA COURT OF REVIEW.**

(a) **STUDY.**—The Committee on Intercircuit Assignments of the Judicial Conference of the United States shall conduct a study on how to ensure judges are appointed to the court established under subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) and the court established under subsection (b) of such section in a manner that ensures such courts are diverse and representative.

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

**SEC. 11. GROUNDS FOR DETERMINING INJURY IN FACT IN CIVIL ACTION RELATING TO SURVEILLANCE UNDER CERTAIN PROVISIONS OF FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

Section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), as amended by sections 2, 3, 4, 5, and 8(b), is further amended by adding at the end the following:

“(m) **CHALLENGES TO GOVERNMENT SURVEILLANCE.**—

“(1) **INJURY IN FACT.**—In any claim in a civil action brought in a court of the United States relating to surveillance conducted under this section, the person asserting the claim has suffered an injury in fact if the person—

“(A) has a reasonable basis to believe that the person’s communications will be acquired under this section; and

“(B) has taken objectively reasonable steps to avoid surveillance under this section.

“(2) **REASONABLE BASIS.**—A person shall be presumed to have demonstrated a reasonable basis to believe that the communications of the person will be acquired under this section if the profession of the person requires the person regularly to communicate foreign intelligence information with persons who—

“(A) are not United States persons; and

“(B) are located outside the United States.

“(3) **OBJECTIVE STEPS.**—A person shall be presumed to have taken objectively reasonable steps to avoid surveillance under this section if the person demonstrates that the steps were taken in reasonable response to rules of professional conduct or analogous professional rules.”.

**SEC. 12. CLARIFICATION OF APPLICABILITY OF REQUIREMENT TO DECLASSIFY SIGNIFICANT DECISIONS OF FOREIGN INTELLIGENCE SURVEILLANCE COURT AND FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.**

Section 602 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1872) shall apply with respect to decisions, orders, and opinions described in subsection (a) of such section that were issued on, before, or after the date of the enactment of the Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015 (Public Law 114–23).

**SEC. 13. CLARIFICATION REGARDING TREATMENT OF INFORMATION ACQUIRED UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) DERIVED DEFINED.—

(1) IN GENERAL.—Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended by adding at the end the following:

“(q) For the purposes of notification provisions of this Act, information or evidence is ‘derived’ from an electronic surveillance, physical search, use of a pen register or trap and trace device, production of tangible things, or acquisition under this Act when the Government would not have originally possessed the information or evidence but for that electronic surveillance, physical search, use of a pen register or trap and trace device, production of tangible things, or acquisition, and regardless of any claim that the information or evidence is attenuated from the surveillance or search, would inevitably have been discovered, or was subsequently re-obtained through other means.”

(2) POLICIES AND GUIDANCE.—

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

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

(ii) Guidance for all members of the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)) and all Federal agencies with law enforcement responsibilities concerning the application of such subsection.

(B) MODIFICATIONS.—Whenever the Attorney General and the Director modify a policy or guidance published under subparagraph (A), the Attorney General and the Director shall publish such modifications.

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

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

(2) by amending subsection (b) to read as follows:

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

**SEC. 14. LIMITATION ON TECHNICAL ASSISTANCE FROM ELECTRONIC COMMUNICATION SERVICE PROVIDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

Section 702(h)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(h)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and moving such clauses 2 ems to the right;

(2) by striking “With respect to” and inserting the following: “(A) IN GENERAL.—Subject to subparagraph (B), in carrying out”; and

(3) by adding at the end the following:

“(B) LIMITATIONS.—The Attorney General or the Director of National Intelligence may not request assistance from an electronic communication service provider under subparagraph (A) without demonstrating, to the satisfaction of the Court, that the assistance sought—

“(i) is necessary;

“(ii) is narrowly tailored to the surveillance at issue; and

“(iii) would not pose an undue burden on the electronic communication service provider or its customers who are not an intended target of the surveillance.

“(C) COMPLIANCE.—An electronic communication service provider is not obligated to comply with a directive to provide assistance under this paragraph unless—

“(i) such assistance is a manner or method that has been explicitly approved by the Court; and

“(ii) the Court issues an order, which has been delivered to the provider, explicitly describing the assistance to be furnished by the provider that has been approved by the Court.”.

**SEC. 15. MODIFICATION OF AUTHORITIES FOR PUBLIC REPORTING BY PERSONS SUBJECT TO NONDISCLOSURE REQUIREMENT ACCOMPANYING ORDER UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) MODIFICATION OF AGGREGATION BANDING.—Subsection (a) of section 604 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1874) is amended—

(1) by striking paragraphs (1) through (3) and inserting the following:

“(1) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories of—

“(A) the number of national security letters received, reported—

“(i) for the first 1000 national security letters received, in bands of 200 starting with 1–200; and

“(ii) for more than 1000 national security letters received, the precise number of national security letters received;

“(B) the number of customer selectors targeted by national security letters, reported—

“(i) for the first 1000 customer selectors targeted, in bands of 200 starting with 1–200; and

“(ii) for more than 1000 customer selectors targeted, the precise number of customer selectors targeted;

“(C) the number of orders or directives received, combined, under this Act for contents—

“(i) reported—

“(I) for the first 1000 orders and directives received, in bands of 200 starting with 1–200; and

“(II) for more than 1000 orders and directives received, the precise number of orders received; and

“(ii) disaggregated by whether the order or directive was issued under section 105, 402, 501, 702, 703, or 704;

“(D) the number of customer selectors targeted under orders or directives received, combined, under this Act for contents—

“(i) reported—

“(I) for the first 1000 customer selectors targeted, in bands of 200 starting with 1–200; and

“(II) for more than 1000 customer selectors targeted, the precise number of customer selectors targeted; and

“(ii) disaggregated by whether the order or directive was issued under section 105, 402, 501, 702, 703, or 704;

“(E) the number of orders or directives received under this Act for noncontents—

“(i) reported—

“(I) for the first 1000 orders or directives received, in bands of 200 starting with 1–200; and

“(II) for more than 1000 orders or directives received, the precise number of orders received; and

“(ii) disaggregated by whether the order or directive was issued under section 105, 402, 501, 702, 703, or 704; and

“(F) the number of customer selectors targeted under orders or directives under this Act for noncontents—

“(i) reported—

“(I) for the first 1000 customer selectors targeted, in bands of 200 starting with 1–200; and

“(II) for more than 1000 customer selectors targeted, the precise number of customer selectors targeted; and

“(ii) disaggregated by whether the order or directive was issued under section 105, 402, 501, 702, 703, or 704.”; and

(2) by redesignating paragraph (4) as paragraph (2).

(b) **ADDITIONAL DISCLOSURES.**—Such section is amended—

(1) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively; and

(2) by inserting after subsection (a) the following:

“(b) **ADDITIONAL DISCLOSURES.**—A person who publicly reports information under subsection (a) may also publicly report the following information, relating to the previous 180 days, using a semi-annual report that indicates whether the person was or was not required to comply with an order, directive, or national security letter issued under each of sections 105, 402, 501, 702, 703, and 704 and the provisions listed in section 603(e)(3).”.

**SEC. 16. ANNUAL PUBLICATION OF STATISTICS ON NUMBER OF PERSONS TARGETED OUTSIDE THE UNITED STATES UNDER CERTAIN FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AUTHORITY.**

Not less frequently than once each year, the Director of National Intelligence shall publish the following:

(1) A description of the subject matter of each of the certifications provided under subsection (g) of section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a) in the last calendar year.

(2) Statistics revealing the number of persons targeted in the last calendar year under subsection (a) of such section, disaggregated by certification under which the person was targeted.

**SEC. 17. REPEAL OF NONAPPLICABILITY TO FEDERAL BUREAU OF INVESTIGATION OF CERTAIN REPORTING REQUIREMENTS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

Section 603(d)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1873(d)(2)) is amended by striking “(A) FEDERAL BUREAU” and all that follows through “Paragraph (3)(B) of” and inserting “Paragraph (3)(B)”.

**SEC. 18. PUBLICATION OF ESTIMATES REGARDING COMMUNICATIONS COLLECTED UNDER CERTAIN PROVISION OF FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) **IN GENERAL.**—Except as provided in subsection (b), not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence shall publish an estimate of—

(1) the number of United States persons whose communications are collected under section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a); or

(2) the number of communications collected under such section to which a party is a person inside the United States.

(b) **IN CASE OF TECHNICAL IMPOSSIBILITY.**—If the Director determines that publishing an estimate pursuant to subsection (a) is not technically possible—

(1) subsection (a) shall not apply; and

(2) the Director shall publish an assessment in unclassified form explaining such determination, but may submit a classified annex to the appropriate committees of Congress as necessary.

(c) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003));

(2) the Committee on the Judiciary of the Senate; and

(3) the Committee on the Judiciary of the House of Representatives.

**SEC. 19. FOUR-YEAR EXTENSION OF FISA AMENDMENTS ACT OF 2008.**

(a) **EXTENSION.**—Section 403(b) of the FISA Amendments Act of 2008 (Public Law 110–261) is amended—

(1) in paragraph (1) (50 U.S.C. 1881–1881g note), by striking “December 31, 2017” and inserting “September 30, 2021”; and

(2) in paragraph (2) (18 U.S.C. 2511 note), in the material preceding subparagraph (A), by striking “December 31, 2017” and inserting “September 30, 2021”.

(b) CONFORMING AMENDMENT.—The heading of section 404(b)(1) of the FISA Amendments Act of 2008 (Public Law 110–261; 50 U.S.C. 1801 note) is amended by striking “DECEMBER 31, 2017” and inserting “SEPTEMBER 30, 2021”.

