To extend the FISA Amendments Act of 2008 for 8 years, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Burr, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

A BILL

To extend the FISA Amendments Act of 2008 for 8 years, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “FISA Amendments
5 Reauthorization Act of 2017”.
SEC. 2. EIGHT-YEAR EXTENSION OF FISA AMENDMENTS ACT OF 2008.

(a) EXTENSION.—Section 403(b) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2474) is amended—

(1) in paragraph (1), by striking “December 31, 2017” and inserting “December 31, 2025”; and

(2) in paragraph (2) in the matter preceding subparagraph (A), by striking “December 31, 2017” and inserting “December 31, 2025”.

(b) CONFORMING AMENDMENT.—The heading for section 404(b)(1) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2476) is amended by striking “DECEMBER 31, 2017” and inserting “DECEMBER 31, 2025”.

SEC. 3. CONGRESSIONAL REVIEW AND OVERSIGHT OF COLLECTION.

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

(1) in paragraph (4), by striking “and” at the end;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:
“(5) may not intentionally acquire communications that contain a reference to, but are not to or from, a facility, place, premises, or property at which an acquisition authorized under subsection (a) is directed or conducted, except as provided under subsection (m); and”.

(b) CONGRESSIONAL REVIEW AND OVERSIGHT OF COMMUNICATIONS OF ABOUTS COLLECTION.—Section 702 of the Foreign Intelligence Surveillance Act (50 U.S.C. 1881a) is amended by adding at the end the following:

“(m) CONGRESSIONAL REVIEW AND OVERSIGHT OF ABOUTS COLLECTION.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘abouts communication’ means a communication that contain reference to, but is not to or from, a facility, a place, premises, or property at which an acquisition authorized under subsection (a) is directed or conducted;

“(B) the term ‘material breach’ means significant noncompliance with applicable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications; and
“(C) the term ‘qualifying legislation’
means a bill of either House of Congress—

“(i) the title of which is as follows ‘A
bill to prohibit the acquisition of abouts
communications.’; and

“(ii) the matter after the enacting
clause of which is as follows: ‘Congress dis-
approves the intentional acquisition under
section 702 of the Foreign Intelligence
1881a) of abouts communications (as de-
defined in subsection (m) of such section
702).’.

“(2) SUBMISSION TO CONGRESS.—

“(A) REQUIREMENT.—Notwithstanding
any other provision of law, and except as pro-
vided in paragraph (5), if the Attorney General
and the Director of National Intelligence intend
to implement the authorization of the inten-
tional acquisition of abouts communications, be-
fore the first such implementation after the
date of enactment of this subsection, the Attor-
ney General and the Director of National Intel-
ligence shall submit to the Committee on the
Judiciary and the Select Committee on Inte-
ligence of the Senate and the Committee on the
Judiciary and the Permanent Select Committee
on Intelligence of the House of Representatives
a written notice of the intent to implement the
authorization of such an acquisition, and any
supporting materials in accordance with this
subsection.

"(B) CONGRESSIONAL REVIEW PERIOD.—
During the 30-day period beginning on the date
written notice is submitted under subparagraph
(A), the Committee on the Judiciary and the
Select Committee on Intelligence of the Senate
and the Committee on the Judiciary and the
Permanent Select Committee on Intelligence of
the House of Representatives shall, as appro-
priate, hold hearings and briefings and other-
wise obtain information in order to fully review
the written notice.

"(C) LIMITATION ON ACTION DURING CON-
GRESSIONAL REVIEW PERIOD.—Notwith-
standing any other provision of law, and subject
to paragraph (5), unless the Attorney General
and the Director of National Intelligence make
a determination pursuant to subsection (e)(2),
the Attorney General and the Director of Na-
tional Intelligence may not implement the au-
uthorization of the intentional acquisition of
abouts communications before the end of the
period described in subparagraph (B).

"(D) Effect of enactment of dis-
approval.—If qualifying legislation is enacted
during the 30-day period described in subpara-
graph (B), the Attorney General and the Direc-
tor of National Intelligence may not implement
the authorization of the intentional acquisition
of abouts communications.

"(E) Effect of failure to enact dis-
approval.—If qualifying legislation is not en-
acted during the 30-day period described in
subparagraph (B), after the end of such period,
the Attorney General and the Director of Na-
tional Intelligence may implement the author-
ization of the intentional acquisition of abouts
communications.

"(3) Written notice.—Written notice under
paragraph (2)(A) shall include—

"(A) a copy of any certification submitted
to the Foreign Intelligence Surveillance Court
pursuant to subsection (g), or amendment
thereto, authorizing the intentional acquisition
of abouts communications, including all affidavit,
procedures, exhibits, and attachments sub-
mitted therewith;

“(B) any decision, order, or opinion of the
Foreign Intelligence Surveillance Court concern-
ning such certification, and any pleadings,
applications, or memoranda of law associated
with such decision, order, or opinion; and

“(C) a summary of the protections in place
to detect any material breach;

“(D) data or other results of modeling,
simulation, or auditing of sample data dem-
onstrating that any acquisition method involv-
ing the intentional acquisition of abouts com-
munications shall be conducted in accordance
with this title, if such data or other results exist
at the time the written notice is submitted and
were provided to the Foreign Intelligence Sur-
veillance Court; and

“(E) except as provided under paragraph
(5), a statement that no acquisition authorized
under subsection (a) shall include the inten-
tional acquisition of an abouts communication
until after the end of the 30-day period de-
scribed in paragraph (2)(B).
“(4) Expedited Consideration of Legislation.—

“(A) Introduction.—It shall be in order in the Senate and the House of Representatives, not later than 30 days after the date on which written notice is submitted under paragraph (2)(A), or notice of an emergency authorization is provided under paragraph (5), to introduce qualifying legislation, which shall be entitled to expedited consideration under this paragraph.

“(B) Consideration in the House of Representatives.—

“(i) Reporting and Discharge.—Any committee of the House of Representatives to which qualifying legislation is referred shall report it to the House of Representatives not later than 10 legislative days after the date of the referral.

“(ii) Proceeding to Consideration.—On and after the third legislative day after each committee to which qualifying legislation has been referred reports it to the House of Representatives from its further consideration, it shall be in order
to move to proceed to consider the qualifying legislation. The motion to proceed to consideration of the qualifying legislation shall not be debatable.

"(C) CONSIDERATION IN THE SENATE.—

"(i) REPORTING AND DISCHARGE.—Any committee of the Senate to which qualifying legislation is referred shall report it to the Senate not later than 10 days on which the Senate is in session after the date of the referral.

"(ii) PROCEEDING TO CONSIDERATION.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order at any time after the committee to which qualifying legislation is referred reports it to the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the qualifying legislation. The motion to proceed to consideration of the qualifying legislation shall not be debatable.

"(iii) CONSIDERATION.—

"(I) IN GENERAL.—If the Senate proceeds to the consideration of quali-
fying legislation, consideration of the qualifying legislation, and all amendments, debatable motions, and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees.

“(II) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the consideration of the qualifying legislation, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

“(III) CONSIDERATION OF VETO MESSAGES.—Consideration in the Senate of any veto message with respect to qualifying legislation, including all debatable messages and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the
majority leader and the minority leader or their designees.

"(5) EXCEPTION FOR EMERGENCY ACQUISITION.—

"(A) NOTICE OF DETERMINATION.—If the Attorney General and the Director of National Intelligence make a determination pursuant to subsection (e)(2) with respect to the intentional acquisition of abouts communications, the Attorney General and the Director of National Intelligence shall notify the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives as soon as practicable, but not later than 7 days after the determination is made.

"(B) IMPLEMENTATION OR CONTINUATION.—

"(i) IN GENERAL.—If the Foreign Intelligence Surveillance Court approves a certification that authorizes the intentional acquisition of abouts communications before the end of the 30-day period described in paragraph (2)(B) and qualifying legisla-
tion has not been enacted, the Attorney General and the Director of National Intelligence may authorize the immediate implementation or continuation of that certification if the Attorney General and the Director of National Intelligence jointly determine that exigent circumstances exist such that without such immediate implementation or continuation intelligence important to the national security of the United States may be lost or not timely acquired.

"(ii) NOTICE.—The Attorney General and Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives notification of a determination pursuant to clause (i) as soon as practicable, but not later than 3 days after the determination is made.

"(6) REPORTING OF MATERIAL BREACH.—The head of any agency involved in the acquisition of
about communications shall fully and concurrently inform the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives of a material breach.”.

SEC. 4. APPOINTMENT OF AMICUS CURIAE.

(a) In general.—Section 103(i)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(i)(2)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the margin accordingly;

(2) by striking “A court established” and inserting the following:

“(A) In general.—A court established”; and

(3) by adding at the end the following:

“(B) Presumption in section 702 certifications.—For purposes of subparagraph (A)(i), the first certification under section 702(g) or amendment thereto that authorizes the acquisition of communications that contain a reference to, but are not to or from, a facility, place, premises, or property at which an acqui-
sition authorized under section 702(a) is di-
rected or conducted, presents a novel or signifi-
cant interpretation of the law, unless the court
determines otherwise.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—
Section 103(i) of the Foreign Intelligence Surveillance Act
of 1978 (50 U.S.C. 1803(i)) is amended—

(1) in paragraph (4), in the matter preceding
subparagraph (A), by striking “paragraph (2)(A)”
and inserting “paragraph (2)(A)(i)”;

(2) in paragraph (5), by striking “paragraph
(2)(A)” and inserting “paragraph (2)(A)(i)”.

SEC. 5. MINIMIZATION AND DISCLOSURE PROVISIONS.

(a) END USE RESTRICTION.—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 in-
serting the following:

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

(2) by adding at the end the following:

“(2) UNITED STATES PERSONS.—

“(A) IN GENERAL.—Any communication
to, from, or which contains a reference to a
United States person acquired under section
702 shall not be used in evidence against that
United States person in any criminal proceeding unless the Attorney General determines that—

"(i) the criminal proceeding affects, involves, or is related to the national security of the United States; or

"(ii) the criminal proceeding involves—

"(I) death;

"(II) kidnapping;

"(III) serious bodily injury, as defined in section 1365 of title 18, United States Code;

"(IV) conduct that constitutes a criminal offense that is a specified offense against a minor, as defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006 (34 U.S.C. 20911);

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

"(VI) cybersecurity, including conduct described in section 1016(e)
of the USA PATRIOT Act (42 U.S.C. 5195c(e)) or section 1029, 1030, or 2511 of title 18, United States Code;

“(VII) transnational crime, including transnational narcotics trafficking and transnational organized crime; or

“(VIII) human trafficking.

“(B) NO JUDICIAL REVIEW.—A determination by the Attorney General under subparagraph (A) is not subject to judicial review.”.

(b) INTELLIGENCE COMMUNITY DISCLOSURE PROVISION.—Section 603 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1873) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking “good faith estimate of the number of targets of such orders;” and inserting the following: “good faith estimate of—

“(A) the number of targets of such orders;

“(B) the number of targets of such orders who are known to not be United States persons;

and

“(C) the number of targets of such orders who are known to be United States persons;”;

...
(B) in paragraph (2)—
(i) by redesignating subparagraphs
(A) and (B) as subparagraphs (B) and
(C), respectively;
(ii) by inserting before subparagraph
(B), as so redesignated, the following:
"(A) the number of targets of such or-
ders;”;
(iii) in subparagraph (B), as so redes-
ignated, by striking “and” at the end; and
(iv) by adding at the end the fol-
lowing:
“(D) the number of instances in which the
Federal Bureau of Investigation has received
and reviewed the unminimized contents of elec-
tronic communications or wire communications
concerning a United States person obtained
through acquisitions authorized under such sec-
tion in response to a search term that was rea-
sonably designed to find evidence of a crime
that would not be considered foreign intel-
ligence information; and
“(E) the number of instances in which the
Federal Bureau of Investigation opened, under
the Criminal Investigative Division or any suc-
cessor division, an investigation of a United States person (who is not considered a threat to national security) based wholly or in part on an acquisition authorized under such section;”;

(C) in paragraph (3)(A), by striking “orders; and” and inserting the following: “orders, including—

“(i) the number of targets of such orders who are known to not be United States persons; and

“(ii) the number of targets of such orders who are known to be United States persons; and”;

(D) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

(E) by inserting after paragraph (3) the following:

“(4) the number of criminal proceedings in which the United States or a State or political subdivision thereof provided notice pursuant to subsection (c) or (d) of section 106 (including with respect to information acquired from an acquisition conducted under section 702) or subsection (d) or (e) of section 305 of the intent of the government
to enter into evidence or otherwise use or disclose
any information obtained or derived from electronic
surveillance, physical search, or an acquisition con-
ducted pursuant to this Act;”; and
(2) in subsection (d)—
(A) in paragraph (1), by striking “(4), or
(5)” and inserting “(5), or (6)”;
(B) in paragraph (2)(A), by striking
“(2)(A), (2)(B), and (5)(C)” and inserting
“(2)(B), (2)(C), and (6)(C)”; and
(C) in paragraph (3)(A), in the matter
preceding clause (i), by striking “subsection
(b)(2)(B)” and inserting “subsection
(b)(2)(C)”. 

SEC. 6. SECTION 705 EMERGENCY PROVISION.

Section 705 of the Foreign Intelligence Surveillance
Act of 1978 (50 U.S.C. 1881d) is amended by adding at
the end the following:
“(c) EMERGENCY AUTHORIZATION.—If the Attorney
General authorized the emergency employment of elec-
tronic surveillance or a physical search pursuant to section
105 or 304, the Attorney General may authorize, for the
effective period of the emergency authorization and subse-
quent order pursuant to section 105 or 304, without a
separate order under section 703 or 704, the targeting of
the United States person that is the target for the purpose
of acquiring foreign intelligence information while such
United States person is reasonably believed to be located
outside the United States.

"(d) USE OF INFORMATION.—If an application sub-
mitted to the Court pursuant to section 104 or 303 is de-
nied, or in any other case in which the acquisition is termi-
nated and no order with respect to the target of the acqui-
sition is issued under section 105 or 304, all information
obtained or evidence derived from such acquisition shall
be handled in accordance with section 704(d)(4).".

SEC. 7. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
REFORM.

Section 552b(a)(1) of title 5, United States Code, is
amended—

(1) by striking "term 'agency' means" and in-
serting the following: "term 'agency'—

"(A) means";

(2) by inserting "and" after "the agency;"; and

(3) by adding at the end the following:

"(B) does not include the Privacy and Civil
Liberties Oversight Board,".