

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Foreign Intelligence Surveillance Act of 1978 to protect privacy rights and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

---

**A BILL**

To amend the Foreign Intelligence Surveillance Act of 1978 to protect privacy rights 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 “Uniting and Strengthening America by Reforming and  
6 Improving the Government’s High-Tech Surveillance Act  
7 of 2017” or the “USA RIGHTS Act of 2017”.

8 (b) **TABLE OF CONTENTS.**—The table of contents for  
9 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 nondisclosure requirement accompanying order under Foreign Intelligence Surveillance Act of 1978.
- Sec. 16. Annual publication of statistics on number of persons targeted outside the United State 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.

1 **SEC. 2. CLARIFICATION ON PROHIBITION ON QUERYING OF**  
2 **COLLECTIONS OF COMMUNICATIONS TO**  
3 **CONDUCT WARRANTLESS QUERIES FOR THE**  
4 **COMMUNICATIONS OF UNITED STATES PER-**  
5 **SONS AND PERSONS INSIDE THE UNITED**  
6 **STATES.**

7 Section 702(b) of the Foreign Intelligence Surveil-  
8 lance Act of 1978 (50 U.S.C. 1881a(b)) is amended—

9 (1) by redesignating paragraphs (1) through  
10 (5) as subparagraphs (A) through (E), respectively,  
11 and indenting such subparagraphs, as so redesign-  
12 ated, an additional two ems from the left margin;

13 (2) by striking “An acquisition” and inserting  
14 the following:

15 “(1) IN GENERAL.—An acquisition”; and

16 (3) by adding at the end the following:

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

21 “(A) IN GENERAL.—Except as provided in  
22 subparagraphs (B) and (C), no officer or em-  
23 ployee of the United States may conduct a  
24 query of information acquired under this sec-  
25 tion in an effort to find communications of or

1 about a particular United States person or a  
2 person inside the United States.

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

9 “(i) such United States person or per-  
10 son inside the United States is the subject  
11 of an order or emergency authorization au-  
12 thORIZING electronic surveillance or physical  
13 search under section 105, 304, 703, 704,  
14 or 705 of this Act, or under title 18,  
15 United States Code, for the effective period  
16 of that order;

17 “(ii) the entity carrying out the query  
18 has a reasonable belief that the life or safe-  
19 ty of such United States person or person  
20 inside the United States is threatened and  
21 the information is sought for the purpose  
22 of assisting that person;

23 “(iii) such United States person or  
24 person in the United States is a corpora-  
25 tion; or

1           “(iv) such United States person or  
2           person inside the United States has con-  
3           sented to the query.

4           “(C) QUERIES OF FEDERATED DATA SETS  
5           AND MIXED DATA.—If an officer or employee of  
6           the United States conducts a query of a data  
7           set, or of federated data sets, that includes any  
8           information acquired under this section, the  
9           system shall be configured not to return such  
10          information unless the officer or employee en-  
11          ters a code or other information indicating  
12          that—

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

16                 “(ii) if the person associated with the  
17                 search term is a United States person or  
18                 person inside the United States, one or  
19                 more of the conditions of subparagraph  
20                 (B) are satisfied.

21           “(D) MATTERS RELATING TO EMERGENCY  
22           QUERIES.—

23                 “(i) TREATMENT OF DENIALS.—In  
24                 the event that a query for communications  
25                 related to a particular United States per-

1 son or a person inside the United States is  
2 conducted pursuant to an emergency au-  
3 thorization authorizing electronic surveil-  
4 lance or a physical search described in sub-  
5 section (B)(i) and the application for such  
6 emergency authorization is denied, or in  
7 any other case in which the query has been  
8 conducted and no order is issued approving  
9 the query—

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

20 “(II) no information concerning  
21 any United States person acquired  
22 from such query may subsequently be  
23 used or disclosed in any other manner  
24 by Federal officers or employees with-  
25 out the consent of such person, except

1 with the approval of the Attorney  
2 General if the information indicates a  
3 threat of death or serious bodily harm  
4 to any person.

5 “(ii) ASSESSMENT OF COMPLIANCE.—  
6 The Attorney General shall assess compli-  
7 ance with the requirements under clause  
8 (i).”.

9 **SEC. 3. PROHIBITION ON REVERSE TARGETING UNDER**  
10 **CERTAIN AUTHORITIES OF THE FOREIGN IN-**  
11 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

12 Section 702 of the Foreign Intelligence Surveillance  
13 Act of 1978 (50 U.S.C. 1881a), as amended by section  
14 2, is further amended—

15 (1) in subsection (b)(1)(B), as redesignated by  
16 section 2, by striking “the purpose of such acquisi-  
17 tion is to target” and inserting “a significant pur-  
18 pose of such acquisition is to acquire the commu-  
19 nications of”;

20 (2) in subsection (d)(1)(A)—

21 (A) by striking “ensure that” and insert-  
22 ing the following: “ensure—

23 “(i) that”; and

24 (B) by adding at the end the following:





1 (B) by adding at the end the following:

2 “(II) that an application is filed  
3 under title I, if otherwise required,  
4 when a significant purpose of an ac-  
5 quisition authorized under subsection  
6 (a) is to acquire the communications  
7 of a particular, known person reason-  
8 ably believed to be located in the  
9 United States; and”.

10 **SEC. 4. PROHIBITION ON ACQUISITION, PURSUANT TO CER-**  
11 **TAIN FISA AUTHORITIES TO TARGET CER-**  
12 **TAIN PERSONS OUTSIDE THE UNITED**  
13 **STATES, OF COMMUNICATIONS THAT DO NOT**  
14 **INCLUDE PERSONS TARGETED UNDER SUCH**  
15 **AUTHORITIES.**

16 Section 702(b)(1) of the Foreign Intelligence Surveil-  
17 lance Act of 1978, as redesignated by section 2, is amend-  
18 ed—

19 (1) in subparagraph (D), as redesignated by  
20 section 2, by striking “; and” and inserting a semi-  
21 colon;

22 (2) by redesignating subparagraph (E) as sub-  
23 paragraph (G); and

24 (3) by inserting after subparagraph (D) the fol-  
25 lowing:

1           “(E) may not acquire a communication as  
2           to which no participant is a person who is tar-  
3           geted pursuant to the authorized acquisition;”.

4 **SEC. 5. PROHIBITION ON ACQUISITION OF ENTIRELY DO-**  
5 **MESTIC COMMUNICATIONS UNDER AUTHORI-**  
6 **TIES TO TARGET CERTAIN PERSONS OUTSIDE**  
7 **THE UNITED STATES.**

8           Section 702(b)(1) of the Foreign Intelligence Surveil-  
9 lance Act of 1978, as redesignated by section 2 and  
10 amended by section 4, is further amended by inserting  
11 after subparagraph (E), as added by section 4, the fol-  
12 lowing:

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

15 **SEC. 6. LIMITATION ON USE OF INFORMATION OBTAINED**  
16 **UNDER CERTAIN AUTHORITY OF FOREIGN IN-**  
17 **TELLIGENCE SURVEILLANCE ACT OF 1947 RE-**  
18 **LATING TO UNITED STATES PERSONS.**

19           Section 706(a) of the Foreign Intelligence Act of  
20 1978 (50 U.S.C. 1881e(a)) is amended—

21           (1) by striking “Information acquired” and in-  
22           serting the following:

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

24           (2) by adding at the end the following:

1           “(2) LIMITATION ON USE IN CRIMINAL, CIVIL,  
2           AND ADMINISTRATIVE PROCEEDINGS AND INVES-  
3           TIGATIONS.—No communication to or from, or infor-  
4           mation about, a person acquired under section 702  
5           who is either a United States person or is located in  
6           the United States may be introduced as evidence  
7           against the person in any criminal, civil, or adminis-  
8           trative proceeding or used as part of any criminal,  
9           civil, or administrative investigation, except—

10                   “(A) with the prior approval of the Attor-  
11                   ney General; and

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

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

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

20                           “(iii) proliferation or use of a weapon  
21                           of mass destruction (as defined in section  
22                           2332a(c) of title 18, United States Code);

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

1           “(v) incapacitation or destruction of  
2           critical infrastructure (as defined in section  
3           1016(e) of the Uniting and Strengthening  
4           America by Providing Appropriate Tools  
5           Required to Intercept and Obstruct Ter-  
6           rorism (USA PATRIOT ACT) Act fo 2001  
7           (42 U.S.C. 5195c(e)); or

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

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

15       (a) INCLUSION OF FOREIGN INTELLIGENCE ACTIVI-  
16 TIES IN OVERSIGHT AUTHORITY OF THE PRIVACY AND  
17 CIVIL LIBERTIES OVERSIGHT BOARD.—Section 1061 of  
18 the Intelligence Reform and Terrorism Prevention Act of  
19 2004 (42 U.S.C. 2000ee) is amended—

20           (1) in subsection (c), by inserting “and to con-  
21           duct foreign intelligence activities” after “terrorism”  
22           each place such term appears; and

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

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

4 (1) IN GENERAL.—Section 1061 of the Intel-  
5 ligence Reform and Terrorism Prevention Act of  
6 2004 (42 U.S.C. 2000ee), as amended by subsection  
7 (a), is further amended—

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

10 “(5) WHISTLEBLOWER COMPLAINTS.—

11 “(A) SUBMISSION TO BOARD.—An em-  
12 ployee of, or contractor or detailee to, an ele-  
13 ment of the intelligence community may submit  
14 to the Board a complaint or information that  
15 such employee, contractor, or detailee believes  
16 relates to a privacy or civil liberties concern.  
17 The confidentiality provisions under section  
18 2409(b)(3) of title 10, United States Code,  
19 shall apply to a submission under this subpara-  
20 graph. Any disclosure under this subparagraph  
21 shall be protected against discrimination under  
22 the procedures, burdens of proof, and remedies  
23 set forth in section 2409 of such title.

24 “(B) AUTHORITY OF BOARD.—The Board  
25 may take such action as the Board considers

1 appropriate with respect to investigating a com-  
2 plaint or information submitted under subpara-  
3 graph (A) or transmitting such complaint or in-  
4 formation to any other Executive agency or the  
5 congressional intelligence committees.

6 “(C) RELATIONSHIP TO EXISTING LAWS.—  
7 The authority under subparagraph (A) of an  
8 employee, contractor, or detailee to submit to  
9 the Board a complaint or information shall be  
10 in addition to any other authority under an-  
11 other provision of law to submit a complaint or  
12 information. Any action taken under any other  
13 provision of law by the recipient of a complaint  
14 or information shall not preclude the Board  
15 from taking action relating to the same com-  
16 plaint or information.

17 “(D) RELATIONSHIP TO ACTIONS TAKEN  
18 UNDER OTHER LAWS.—Nothing in this para-  
19 graph shall prevent—

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

24 “(ii) the recipient of a complaint or  
25 information from taking independent ac-

1                   tion on the complaint or information.”;

2                   and

3                   (B) by adding at the end the following:

4           “(n) DEFINITIONS.—In this section, the terms ‘con-  
5 gressional intelligence committees’ and ‘intelligence com-  
6 munity’ have the meanings given such terms in section  
7 3 of the National Security Act of 1947 (50 U.S.C.  
8 3003).”.

9           (2) PROHIBITED PERSONNEL PRACTICES.—Sec-  
10 tion 2302(b)(8)(B) of title 5, United States Code, is  
11 amended, in the matter preceding clause (i), by  
12 striking “or to the Inspector of an agency or another  
13 employee designated by the head of the agency to re-  
14 ceive such disclosures” and inserting “the Inspector  
15 General of an agency, a supervisor in the employee’s  
16 direct chain of command (up to and including the  
17 head of the employing agency), the Privacy and Civil  
18 Liberties Oversight Board, or an employee des-  
19 igned by any of the aforementioned individuals for  
20 the purpose of receiving such disclosures”.

21           (c) PRIVACY AND CIVIL LIBERTIES OVERSIGHT  
22 BOARD SUBPOENA POWER.—Section 1061(g) of the Intel-  
23 ligence Reform and Terrorism Prevention Act of 2004 (42  
24 U.S.C. 2000ee(g)) is amended—

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

4 (2) by striking paragraph (2); and

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

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

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

13 (2) by inserting after paragraph (1) the fol-  
14 lowing:

15 “(2) APPOINTMENT IN ABSENCE OF CHAIR-  
16 MAN.—If the position of chairman of the Board is  
17 vacant, during the period of the vacancy the Board,  
18 at the direction of the majority of the members of  
19 the Board, may exercise the authority of the chair-  
20 man under paragraph (1).”.

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

24 (1) IN GENERAL.—Section 1061 of the Intel-  
25 ligence Reform and Terrorism Prevention Act of



1       2004 (42 U.S.C. 2000ee), as amended by sub-  
2       sections (a) and (b), is further amended—

3               (A) in subsection (h)—

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

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

9               (B) in subsection (i)(1)—

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

15                       (ii) in subparagraph (B), by striking  
16                       “level IV of the Executive Schedule” and  
17                       all that follows through the end and insert-  
18                       ing “level III of the Executive Schedule  
19                       under section 5314 of title 5, United  
20                       States Code.”; and

21               (C) in subsection (j)(1), by striking “level  
22       V of the Executive Schedule under section  
23       5316” and inserting “level IV of the Executive  
24       Schedule under section 5315”.

25       (2) EFFECTIVE DATE; APPLICABILITY.—

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

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

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

10 (B) EXCEPTIONS.—

11 (i) COMPENSATION CHANGES.—The  
12 amendments made by subparagraphs  
13 (B)(i) and (C) of paragraph (1) shall take  
14 effect on the first day of the first pay pe-  
15 riod beginning after the date of the enact-  
16 ment of this Act.

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

19 (I) IN GENERAL.—An individual  
20 serving as a member of the Privacy  
21 and Civil Liberties Oversight Board  
22 on the date of the enactment of this  
23 Act, including a member continuing to  
24 serve as a member under section  
25 1061(h)(4)(B) of the Intelligence Re-

1 form and Terrorism Prevention Act of  
2 2004 (42 U.S.C. 2000ee(h)(4)(B)),  
3 (referred to in this clause as a “cur-  
4 rent member”) may make an election  
5 to—

6 (aa) serve as a member of  
7 the Privacy and Civil Liberties  
8 Oversight Board on a full-time  
9 basis and in accordance with sec-  
10 tion 1061 of the Intelligence Re-  
11 form and Terrorism Prevention  
12 Act of 2004 (42 U.S.C. 2000ee),  
13 as amended by this section; or

14 (bb) serve as a member of  
15 the Privacy and Civil Liberties  
16 Oversight Board on a part-time  
17 basis in accordance with such  
18 section 1061, as in effect on the  
19 day before the date of the enact-  
20 ment of this Act, including the  
21 limitation on service after the ex-  
22 piration of the term of the mem-  
23 ber under subsection (h)(4)(B) of  
24 such section, as in effect on the

1 day before the date of the enact-  
2 ment of this Act.

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

13 (f) PROVISION OF INFORMATION ABOUT GOVERN-  
14 MENT ACTIVITIES UNDER THE FOREIGN INTELLIGENCE  
15 SURVEILLANCE ACT OF 1978 TO THE PRIVACY AND CIVIL  
16 LIBERTIES OVERSIGHT BOARD.—The Attorney General  
17 shall fully inform the Privacy and Civil Liberties Oversight  
18 Board about any activities carried out by the Government  
19 under the Foreign Intelligence Surveillance Act of 1978  
20 (50 U.S.C. 1801 et seq.), including by providing to the  
21 Board—

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

24 (2) copies of each decision, order, and opinion  
25 of the Foreign Intelligence Surveillance Court or the

1 Foreign Intelligence Surveillance Court of Review re-  
2 quired to be included in the report under section  
3 601(a) of such Act (50 U.S.C. 1871(a)).

4 **SEC. 8. IMPROVED ROLE IN OVERSIGHT OF ELECTRONIC**  
5 **SURVEILLANCE BY AMICI CURIAE AP-**  
6 **POINTED BY COURTS UNDER FOREIGN IN-**  
7 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

8 (a) **ROLE OF AMICI CURIAE GENERALLY.—**

9 (1) **IN GENERAL.—**Section 103(i)(1) of the For-  
10 eign Intelligence Surveillance Act of 1978 (50  
11 U.S.C. 1803(i)(1)) is amended by adding at the end  
12 the following: “Any amicus curiae designated pursu-  
13 ant to this paragraph may raise any issue with the  
14 Court at any time.”.

15 (2) **REFERRAL OF CASES FOR REVIEW.—**Sec-  
16 tion 103(i) of such Act is amended—

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

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

22 “(5) **REFERRAL FOR REVIEW.—**

23 “(A) **REFERRAL TO FOREIGN INTEL-**  
24 **LIGENCE SURVEILLANCE COURT EN BANC.—**If  
25 the court established under subsection (a) ap-

1 points an amicus curiae under paragraph  
2 (2)(A) to assist the Court in the consideration  
3 of any matter presented to the Court under this  
4 Act and the Court makes a decision with re-  
5 spect to such matter, the Court, in response to  
6 an application by the amicus curiae or any  
7 other individual designated under paragraph  
8 (1), may refer the decision to the Court en banc  
9 for review as the Court considers appropriate.

10 “(B) REFERRAL TO FOREIGN INTEL-  
11 LIGENCE SURVEILLANCE COURT OF REVIEW.—  
12 If the court established under subsection (a)  
13 appoints an amicus curiae under paragraph  
14 (2)(A) to assist the Court in the consideration  
15 of any matter presented to the Court under this  
16 Act and the Court makes a decision with re-  
17 spect to such matter, the Court, in response to  
18 an application by the amicus curiae or any  
19 other individual designated under paragraph (1)  
20 may refer the decision to the court established  
21 under subsection (b) for review as the Court  
22 considers appropriate.

23 “(C) REFERRAL TO SUPREME COURT.—If  
24 the Court of Review appoints an amicus curiae  
25 under paragraph (2) to assist the Court of Re-

1 view in the review of any matter presented to  
2 the Court of Review under this Act or a ques-  
3 tion of law that may affect resolution of a mat-  
4 ter in controversy and the Court of Review  
5 makes a decision with respect to such matter or  
6 question of law, the Court of Review, in re-  
7 sponse to an application by the amicus curiae  
8 or any other individual designated under para-  
9 graph (1) may refer the decision to the Su-  
10 preme Court for review as the Court of Review  
11 considers appropriate.

12 “(D) ANNUAL REPORT.—Not later than 60  
13 days after the end of each calendar year, the  
14 Court and the Court of Review shall each pub-  
15 lish, on their respective websites, a report list-  
16 ing—

17 “(i) the number of applications for re-  
18 ferral received by the Court or the Court  
19 of Review, as applicable, during the most  
20 recently concluded calendar year; and

21 “(ii) the number of such applications  
22 for referral that were granted by the Court  
23 or the Court of Review, as applicable, dur-  
24 ing such calendar year.”.

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

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

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

12           “(B) the appointed amicus curiae may re-  
13 quest, either directly or through the court, the  
14 assistance of the other amici curiae designated  
15 under paragraph (1); and

16           “(C) all amici curiae designated under  
17 paragraph (1) may provide input to the court  
18 whether or not such input was formally re-  
19 quested by the court or the appointed amicus  
20 curiae.”.

21           (4) ACCESS TO INFORMATION.—Section  
22 103(i)(7) of such Act, as redesignated, is further  
23 amended—

24           (A) in subparagraph (A)—

25           (i) in clause (i)—



1 (I) by striking “that the court”  
2 and inserting the following: “that—  
3 “(I) the court”; and  
4 (II) by striking “and” at the end  
5 and inserting the following: “or  
6 “(II) are cited by the Govern-  
7 ment in an application or case with  
8 respect to which an amicus curiae is  
9 assisting a court under this sub-  
10 section;”;  
11 (ii) by redesignating clause (ii) as  
12 clause (iii); and  
13 (iii) by inserting after clause (i) the  
14 following:  
15 “(ii) shall have access to an  
16 unredacted copy of each decision made by  
17 a court established under subsection (a) or  
18 (b) in which the court decides a question  
19 of law, notwithstanding whether the deci-  
20 sion is classified; and”;  
21 (B) in subparagraph (B), by striking  
22 “may” and inserting “shall”; and  
23 (C) in subparagraph (C)—

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

4 (ii) by striking “court may have ac-  
5 cess” and inserting the following: “court—

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

10 “(ii) may have access”.

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

15 “(12) PUBLIC NOTICE AND RECEIPT OF BRIEFS  
16 FROM THIRD PARTIES.—Whenever a court estab-  
17 lished under subsection (a) or (b) considers a novel  
18 a question of law that can be considered without dis-  
19 closing classified information, sources, or methods,  
20 the court shall, to the greatest extent practicable,  
21 consider such question in an open manner—

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

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

4           (b) PARTICIPATION OF AMICI CURIAE IN OVERSIGHT  
5 OF AUTHORIZATIONS FOR TARGETING OF CERTAIN PER-  
6 SONS OUTSIDE THE UNITED STATES OTHER THAN  
7 UNITED STATES PERSONS.—

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

10           (A) in subparagraph (B), by redesignating  
11 clauses (i) and (ii) as subclauses (I) and (II),  
12 respectively, and adjusting the indentation of  
13 the margin of such subclauses, as so redesign-  
14 ated, two ems to the right;

15           (B) by redesignating subparagraphs (A)  
16 through (C) as clauses (i) through (iii), respec-  
17 tively, and adjusting the indentation of the  
18 margin of such clauses, as so redesignated, two  
19 ems to the right;

20           (C) by inserting before clause (i), as redes-  
21 igned by subparagraph (B), the following:

22           “(A) IN GENERAL.—”; and

23           (D) by adding at the end the following:

24           “(B) PARTICIPATION BY AMICI CURIAE.—

25           In reviewing a certification under subparagraph

1 (A)(i), the Court shall randomly select an ami-  
2 cus curiae designated under section 103(i) to  
3 assist with such review.”.

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

11 (c) PUBLIC NOTICE OF QUESTIONS OF LAW CER-  
12 TIFIED FOR REVIEW.—Section 103(j) of such Act (50  
13 U.S.C. 1803(j)) is amended—

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

16 “(1) IN GENERAL.—Following”; and

17 (2) by adding at the end the following:

18 “(2) PUBLIC NOTICE.—

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

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

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

5                   “(B) PROTECTION OF CLASSIFIED INFOR-  
6                   MATION, SOURCES, AND METHODS.—Subpara-  
7                   graph (A) shall apply to the greatest extent  
8                   practicable, consistent with otherwise applicable  
9                   law on the protection of classified information,  
10                  sources, and methods.”.

11 **SEC. 9. REFORMS TO THE FOREIGN INTELLIGENCE SUR-**  
12 **VEILLANCE COURT.**

13                  (a) FISA COURT JUDGES.—

14                   (1) NUMBER AND DESIGNATION OF JUDGES.—  
15                  Section 103(a)(1) of the Foreign Intelligence Sur-  
16                  veillance Act of 1978 (50 U.S.C. 1803(a)(1)) is  
17                  amended to read as follows:

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

22                  “(B)(i) The court established under subparagraph  
23                  (A) shall consist of 13 judges, one of whom shall be des-  
24                  ignated from each judicial circuit (including the United  
25                  States Court of Appeals for the District of Columbia and

1 the United States Court of Appeals for the Federal Cir-  
2 cuit).

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

4 “(I) designate each judge of the court estab-  
5 lished under subparagraph (A) from the nominations  
6 made under subparagraph (C); and

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

9 “(C)(i) When a vacancy occurs in the position of a  
10 judge of the court established under subparagraph (A)  
11 from a judicial circuit, the chief judge of the circuit shall  
12 propose a district judge for a judicial district within the  
13 judicial circuit to be designated for that position.

14 “(ii) If the Chief Justice does not designate a district  
15 judge proposed under clause (i), the chief judge shall pro-  
16 pose 2 other district judges for a judicial district within  
17 the judicial circuit to be designated for that position and  
18 the Chief Justice shall designate 1 such district judge to  
19 that position.

20 “(D) No judge of the court established under sub-  
21 paragraph (A) (except when sitting en banc under para-  
22 graph (2)) shall hear the same application for electronic  
23 surveillance under this Act which has been denied pre-  
24 viously by another judge of such court.

1           “(E) If any judge of the court established under sub-  
2 paragraph (A) denies an application for an order author-  
3 izing electronic surveillance under this Act, such judge  
4 shall provide immediately for the record a written state-  
5 ment of each reason for the judge’s decision and, on mo-  
6 tion of the United States, the record shall be transmitted,  
7 under seal, to the court of review established in subsection  
8 (b).”.

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

13           (3) IMPLEMENTATION.—

14           (A) INCUMBENTS.—A district judge des-  
15 igned to serve on the court established under  
16 subsection (a) of such section before the date of  
17 enactment of this Act may continue to serve in  
18 that position until the end of the term of the  
19 district judge under subsection (d) of such sec-  
20 tion, as in effect on the day before the date of  
21 the enactment of this Act.

22           (B) INITIAL APPOINTMENT AND TERM.—  
23 Notwithstanding any provision of such section,  
24 as amended by paragraphs (1) and (2), and not  
25 later than 180 days after the date of enactment

1 of this Act, the Chief Justice of the United  
2 States shall—

3 (i) designate a district court judge  
4 who is serving in a judicial district within  
5 the District of Columbia circuit and pro-  
6 posed by the chief judge of such circuit to  
7 be a judge of the court established under  
8 section 103(a) of the Foreign Intelligence  
9 Surveillance Act of 1978 (50 U.S.C.  
10 1803(a)) for an initial term of 7 years; and

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

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

18 (1) by striking “The Chief Justice” and insert-  
19 ing “(1) Subject to paragraph (2), the Chief Jus-  
20 tice”; and

21 (2) by adding at the end the following:

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



1 **SEC. 10. STUDY AND REPORT ON DIVERSITY AND REP-**  
2 **RESENTATION ON THE FISA COURT AND THE**  
3 **FISA COURT OF REVIEW.**

4 (a) STUDY.—The Committee on Intercircuit Assign-  
5 ments of the Judicial Conference of the United States  
6 shall conduct a study on how to ensure judges are ap-  
7 pointed to the court established under subsection (a) of  
8 section 103 of the Foreign Intelligence Surveillance Act  
9 of 1978 (50 U.S.C. 1803) and the court established under  
10 subsection (b) of such section in a manner that ensures  
11 such courts are diverse and representative.

12 (b) REPORT.—Not later than 1 year after the date  
13 of the enactment of this Act, the Committee on Intercir-  
14 cuit Assignments shall submit to Congress a report on the  
15 study carried out under subsection (a).

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

20 Section 702 of the Foreign Intelligence Surveillance  
21 Act of 1978 (50 U.S.C. 1881a), as amended by sections  
22 2, 3, 4, 5, and 8(b), is further amended by adding at the  
23 end the following:

24 “(m) CHALLENGES TO GOVERNMENT SURVEIL-  
25 LANCE.—

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

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

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

11           “(2) REASONABLE BASIS.—A person shall be  
12           presumed to have demonstrated a reasonable basis  
13           to believe that the communications of the person will  
14           be acquired under this section if the profession of  
15           the person requires the person regularly to commu-  
16           nicate foreign intelligence information with persons  
17           who—

18                   “(A) are not United States persons; and

19                   “(B) are located outside the United States.

20           “(3) OBJECTIVE STEPS.—A person shall be pre-  
21           sumed to have taken objectively reasonable steps to  
22           avoid surveillance under this section if the person  
23           demonstrates that the steps were taken in reason-  
24           able response to rules of professional conduct or  
25           analogous professional rules.”.

1 **SEC. 12. CLARIFICATION OF APPLICABILITY OF REQUIRE-**  
2 **MENT TO DECLASSIFY SIGNIFICANT DECI-**  
3 **SIONS OF FOREIGN INTELLIGENCE SURVEIL-**  
4 **LANCE COURT AND FOREIGN INTELLIGENCE**  
5 **SURVEILLANCE COURT OF REVIEW.**

6 Section 602 of the Foreign Intelligence Surveillance  
7 Act of 1978 (50 U.S.C. 1872) shall apply with respect  
8 to decisions, orders, and opinions described in subsection  
9 (a) of such section that were issued on, before, or after  
10 the date of the enactment of the Uniting and Strength-  
11 ening America by Fulfilling Rights and Ensuring Effective  
12 Discipline Over Monitoring Act of 2015 (Public Law 114–  
13 23).

14 **SEC. 13. CLARIFICATION REGARDING TREATMENT OF IN-**  
15 **FORMATION ACQUIRED UNDER FOREIGN IN-**  
16 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

17 (a) DERIVED DEFINED.—

18 (1) IN GENERAL.—Section 101 of the Foreign  
19 Intelligence Surveillance Act of 1978 (50 U.S.C.  
20 1801) is amended by adding at the end the fol-  
21 lowing:

22 “(q) For the purposes of notification provisions of  
23 this Act, information or evidence is ‘derived’ from an elec-  
24 tronic surveillance, physical search, use of a pen register  
25 or trap and trace device, production of tangible things,  
26 or acquisition under this Act when the Government would

1 not have originally possessed the information or evidence  
2 but for that electronic surveillance, physical search, use  
3 of a pen register or trap and trace device, production of  
4 tangible things, or acquisition, and regardless of any claim  
5 that the information or evidence is attenuated from the  
6 surveillance or search, would inevitably have been discov-  
7 ered, or was subsequently reobtained through other  
8 means.”.

9 (2) POLICIES AND GUIDANCE.—

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

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

17 (ii) Guidance for all members of the  
18 intelligence community (as defined in sec-  
19 tion 3 of the National Security Act of  
20 1947 (50 U.S.C. 3003)) and all Federal  
21 agencies with law enforcement responsibil-  
22 ities concerning the application of such  
23 subsection.

24 (B) MODIFICATIONS.—Whenever the At-  
25 torney General and the Director modify a policy

1 or guidance published under subparagraph (A),  
2 the Attorney General and the Director shall  
3 publish such modifications.

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

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

9 (2) by amending subsection (b) to read as fol-  
10 lows:

11 “(b) INFORMATION ACQUIRED UNDER SECTIONS  
12 703–705.—Information acquired from an acquisition con-  
13 ducted under section 703, 704, or 705 shall be deemed  
14 to be information acquired from an electronic surveillance  
15 pursuant to title I for the purposes of section 106.”.

16 **SEC. 14. LIMITATION ON TECHNICAL ASSISTANCE FROM**  
17 **ELECTRONIC COMMUNICATION SERVICE**  
18 **PROVIDERS UNDER THE FOREIGN INTEL-**  
19 **LIGENCE SURVEILLANCE ACT OF 1978.**

20 Section 702(h)(1) of the Foreign Intelligence Surveil-  
21 lance Act of 1978 (50 U.S.C. 1881a(h)(1)) is amended—

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

1           (2) by striking “With respect to” and inserting  
2           the following:

3                   “(A) IN GENERAL.—Subject to subpara-  
4                   graph (B), in carrying out”; and

5           (3) by adding at the end the following:

6                   “(B) LIMITATIONS.—The Attorney Gen-  
7                   eral or the Director of National Intelligence  
8                   may not request assistance from an electronic  
9                   communication service provider under subpara-  
10                  graph (A) without demonstrating, to the satis-  
11                  faction of the Court, that the assistance  
12                  sought—

13                           “(i) is necessary;

14                           “(ii) is narrowly tailored to the sur-  
15                           veillance at issue; and

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

20                   “(C) COMPLIANCE.—An electronic commu-  
21                   nication service provider is not obligated to  
22                   comply with a directive to provide assistance  
23                   under this paragraph unless—

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

4                   “(ii) the Court issues an order, which  
5                   has been delivered to the provider, explic-  
6                   itly describing the assistance to be fur-  
7                   nished by the provider that has been ap-  
8                   proved by the Court.”.

9   **SEC. 15. MODIFICATION OF AUTHORITIES FOR PUBLIC RE-**  
10                   **PORTING BY PERSONS SUBJECT TO NON-**  
11                   **DISCLOSURE REQUIREMENT ACCOMPANYING**  
12                   **ORDER UNDER FOREIGN INTELLIGENCE SUR-**  
13                   **VEILLANCE ACT OF 1978.**

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

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

19                   “(1) A semiannual report that aggregates the  
20                   number of orders, directives, or national security let-  
21                   ters with which the person was required to comply  
22                   into separate categories of—

23                   “(A) the number of national security let-  
24                   ters received, reported—

1                   “(i) for the first 1000 national secu-  
2                   rity letters received, in bands of 200 start-  
3                   ing with 1–200; and

4                   “(ii) for more than 1000 national se-  
5                   curity letters received, the precise number  
6                   of national security letters received;

7                   “(B) the number of customer selectors tar-  
8                   geted by national security letters, reported—

9                   “(i) for the first 1000 customer selec-  
10                  tors targeted, in bands of 200 starting  
11                  with 1–200; and

12                  “(ii) for more than 1000 customer se-  
13                  lectors targeted, the precise number of cus-  
14                  tomer selectors targeted;

15                  “(C) the number of orders or directives re-  
16                  ceived, combined, under this Act for contents—

17                  “(i) reported—

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

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



1                   “(ii) disaggregated by whether the  
2                   order or directive was issued under section  
3                   105, 402, 501, 702, 703, or 704;

4                   “(D) the number of customer selectors tar-  
5                   geted under orders or directives received, com-  
6                   bined, under this Act for contents—

7                   “(i) reported—

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

11                  “(II) for more than 1000 cus-  
12                  tomer selectors targeted, the precise  
13                  number of customer selectors tar-  
14                  geted; and

15                  “(ii) disaggregated by whether the  
16                  order or directive was issued under section  
17                  105, 402, 501, 702, 703, or 704;

18                  “(E) the number of orders or directives re-  
19                  ceived under this Act for noncontents—

20                  “(i) reported—

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

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

4                   “(ii) disaggregated by whether the  
5                   order or directive was issued under section  
6                   105, 402, 501, 702, 703, or 704; and

7                   “(F) the number of customer selectors tar-  
8                   geted under orders or directives under this Act  
9                   for noncontents—

10                   “(i) reported—

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

14                   “(II) for more than 1000 cus-  
15                   tomer selectors targeted, the precise  
16                   number of customer selectors tar-  
17                   geted; and

18                   “(ii) disaggregated by whether the  
19                   order or directive was issued under section  
20                   105, 402, 501, 702, 703, or 704.”; and

21                   (2) by redesignating paragraph (4) as para-  
22                   graph (2).

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

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

3           (2) by inserting after subsection (a) the fol-  
4           lowing:

5           “(b) **ADDITIONAL DISCLOSURES.**—A person who  
6 publicly reports information under subsection (a) may also  
7 publicly report the following information, relating to the  
8 previous 180 days, using a semiannual report that indi-  
9 cates whether the person was or was not required to com-  
10 ply with an order, directive, or national security letter  
11 issued under each of sections 105, 402, 501, 702, 703,  
12 and 704 and the provisions listed in section 603(e)(3).”.

13 **SEC. 16. ANNUAL PUBLICATION OF STATISTICS ON NUM-**  
14 **BER OF PERSONS TARGETED OUTSIDE THE**  
15 **UNITED STATE UNDER CERTAIN FOREIGN IN-**  
16 **TELLIGENCE SURVEILLANCE ACT OF 1978 AU-**  
17 **THORITY.**

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

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

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

5 **SEC. 17. REPEAL OF NONAPPLICABILITY TO FEDERAL BU-**  
6                   **REAU OF INVESTIGATION OF CERTAIN RE-**  
7                   **PORTING REQUIREMENTS UNDER FOREIGN**  
8                   **INTELLIGENCE SURVEILLANCE ACT OF 1978.**

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

14 **SEC. 18. PUBLICATION OF ESTIMATES REGARDING COMMU-**  
15                   **NICATIONS COLLECTED UNDER CERTAIN**  
16                   **PROVISION OF FOREIGN INTELLIGENCE SUR-**  
17                   **VEILLANCE ACT OF 1978.**

18          (a) IN GENERAL.—Except as provided in subsection  
19          (b), not later than 90 days after the date of the enactment  
20          of this Act, the Director of National Intelligence shall pub-  
21          lish an estimate of—

22               (1) the number of United States persons whose  
23               communications are collected under section 702 of  
24               the Foreign Intelligence Surveillance Act of 1978  
25               (50 U.S.C. 1881a); or

1           (2) the number of communications collected  
2           under such section to which a party is a person in-  
3           side the United States.

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

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

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

12          (c) APPROPRIATE COMMITTEES OF CONGRESS DE-  
13          FINED.—In this section, the term “appropriate commit-  
14          tees of Congress” means—

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

18          (2) the Committee on the Judiciary of the Sen-  
19          ate; and

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

1 **SEC. 19. FOUR-YEAR EXTENSION OF FISA AMENDMENTS**

2 **ACT OF 2008.**

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

6 (1) in paragraph (1) (50 U.S.C. 1881–1881g  
7 note), by striking “December 31, 2017” and insert-  
8 ing “September 30, 2021”; and

9 (2) in paragraph (2) (18 U.S.C. 2511 note), in  
10 the material preceding subparagraph (A), by striking  
11 “December 31, 2017” and inserting “September 30,  
12 2021”.

13 (b) **CONFORMING AMENDMENT.**—The heading of sec-  
14 tion 404(b)(1) of the FISA Amendments Act of 2008  
15 (Public Law 110–261; 50 U.S.C. 1801 note) is amended  
16 by striking “DECEMBER 31, 2017” and inserting “SEP-  
17 TEMBER 30, 2021”.

## The USA RIGHTS Act

Section 702 of the Foreign Intelligence Surveillance Act, which expires on December 31, 2017, allows the government to compel American companies to assist in the warrantless surveillance of foreigners. This results in the collection of an unknown number of Americans' private calls, emails, and other communications.

- **End the back door searches:** Under current law, the government can conduct unlimited, warrantless searches through the vast data collected under Section 702 for private communications to, from and about Americans. The bill requires a warrant for those searches.
- **End reverse targeting:** With no limits to the warrantless backdoor searches of Americans or the amount of information on Americans that gets reported around the government, there are no checks in place to prevent "reverse targeting" of Americans communicating with foreign targets. The bill requires a warrant when a significant purpose of targeting foreigners is to collect the communications of Americans.
- **Codify the ban on "abouts" collection:** The bill permanently bans the government from collecting communications that are not to or from a foreign target, but merely about a foreign target and can be entirely between Americans.
- **Prohibit the collection of domestic communications:** Section 702 is intended to collect foreign communications. The bill clarifies that it should not authorize the collection of communications known to be entirely domestic.
- **Prevent the misuse of information on Americans:** The bill prohibits the use of information on Americans collected under Section 702, except for foreign intelligence and crimes directly related to national security, such as terrorism and espionage..
- **Strengthen the Privacy and Civil Liberties Oversight Board (PCLOB):** The bill strengthens the PCLOB's oversight by authorizing it to review all foreign intelligence surveillance programs and not just those related to terrorism.
- **Strengthen FISA Court oversight.** The bill strengthens the FISA court amici.
- **Strengthen external oversight:** The bill establishes a basis for "standing," allowing outside plaintiffs to challenge the constitutionality of this authority.
- **Improve transparency.** The bill allows for release of key FISC opinions and data necessary for the public's understanding of Section 702.
- **Establish a four-year sunset:** The bill requires congressional reauthorization in 4 years.

## **Section 1. Short Title; Table of Contents**

### **Section 2. End “Back Door Searches”**

This provision prohibits U.S. government employees from querying information gathered under Section 702 for communications of or about a U.S. person or person inside the U.S. (other than a corporation), unless the Government has obtained an order authorizing electronic surveillance or physical search under various FISA or Title 18 provisions. This prohibition does not apply in case of life-threatening emergencies or when the target of the query has consented to the query and allows for a query based on an emergency authorization followed by a court order. This provision includes additional requirements to ensure that computer systems that enable U.S. government personnel to query information from “federated” surveillance databases enforce the above prohibition.

### **Section 3. End Reverse Targeting**

This provision prevents the Government from engaging in the “reverse targeting” of Americans by requiring a warrant whenever a significant purpose of the targeting of foreign persons is to collect the communications of someone in the United States. Under existing law, no warrant is required unless the sole purpose of the surveillance is to collect the communications of the American. As a result, any interest in the foreign target could justify extensive querying of and reporting on the American communicant without a warrant.

### **Section 4. Codify the Ban on “Abouts” Collection**

This provision prohibits by law the currently-ceased NSA practice of collecting communications between individuals who are themselves not targets, but whose communications include a target’s name or other unique identifier (such as an email address).

### **Section 5. Prohibit the Collection of Domestic Communications**

This provision prohibits the government from using Section 702 to collect communications it knows are entirely domestic, codifying testimony made by Director of National Intelligence Coats at an open Senate Select Committee on Intelligence hearing.

### **Section 6. Prevent the Misuse of Information on Americans (Use Restrictions)**

This provision prohibits the use of communications to or from, or information about, Americans or persons inside the United States that is acquired under Section 702 in any criminal, civil, or administrative proceeding or investigation. There are exceptions for crimes directly related to national security, such as terrorism, espionage, and the proliferation of weapons of mass destruction.

### **Section 7. PCLOB Reform**

This provision expands the mandate of the PCLOB to cover all foreign intelligence activities, allows the PCLOB to receive and investigate whistleblower complaints, gives the PCLOB independent subpoena authority, provides for adequate staffing of the PCLOB to include converting all non-chair members of PCLOB to full-time, salaried positions, and requires the Attorney General to keep the PCLOB fully informed about all FISA activities.



**(a):** This provision expands the PCLOB's mandate beyond counter-terrorism programs to include oversight over all foreign intelligence activities.

**(b):** This provision authorizes employees of the intelligence community, along with contractors and detailees, to submit whistleblower complaints to the PCLOB. The provision also provides PCLOB with the authority to investigate these whistleblower complaints or to refer complaints to any other Executive agency or the congressional intelligence committees. These authorizations supplement and do not preclude whistleblower procedures under other laws.

**(c):** This provision provides the PCLOB with direct power to issue subpoenas to persons (other than elements of the Executive branch) requiring those persons to produce many types of documentary and testimonial evidence. This removes the current provision which requires the PCLOB to submit written requests to the Attorney General in order to obtain subpoenas.

**(d):** This provision ensures that the PCLOB can maintain adequate staffing levels at all times by granting authority to the PCLOB as a whole to appoint staff when the position of chairman of the Board is vacant. Under the current statute the chair alone has authority to appoint staff.

**(e):** This provision converts the four non-chair positions on the PCLOB into full-time, paid positions to provide the entire Board with the ability to focus their efforts on their service on the Board.

**(f):** This provision requires the Attorney General to fully inform the PCLOB about any activities carried out under FISA, including copies of each detailed report submitted to a committee of Congress under FISA along with any decisions, orders, or opinions of the FISC or FISCR that are required to be included in the report.

## **Section 8. FISC Amici**

**(a)** This provision enhances the role of the FISC amici in several manners:

**(1):** Provides any amicus curiae designated by the court with the authority to raise any issue with the FISC at any time.

**(2):** Permits the FISC to refer decisions for an appeal to FISC *en banc* or FISCR, and the FISCR to refer for an appeal decisions to the Supreme Court, in response to an application from an amicus curiae. Currently, in cases where only the government and amici are appearing before the court, only the government may appeal. The provision also requires the FISC and FISCR to publish annual statistics on the number of applications for referral that they receive and that they grant.

**(3):** Requires notification to all amicus curiae designated by the court whenever an amicus is appointed, allows the appointed amicus to request the assistance of other amici designated by the court, and allows any amici designated by the court to provide

input to the court regardless of whether such input was formally requested by the court or the appointed amicus curiae.

**(4):** Provides amici with increased access to information, including materials cited by the Government in an application or case with respect to which an amicus curiae is assisting, any decision made by the FISC or FISCR that decides a question of law (in unredacted form), and requires the Attorney General to periodically brief the designated amici on significant developments in interpretations of FISA and issues raised by operations conducted pursuant to FISA.

**(5):** Requires the FISC and FISCR to provide public notice whenever either court considers a novel question of law (that can be considered without disclosing classified information) and to accept briefs from third parties related to that question.

**(b):** Requires the FISC to seek amici assistance when reviewing Section 702 applications.

### **Section 9. FISC Judge Selection**

This provision changes the method of FISC judge selection. Currently, all of the FISC judges are selected by the Chief Justice of the Supreme Court. This provision instead requires the chief judge of each of the thirteen U.S. judicial circuits to choose one district judge from that circuit to serve as a FISC judge. Vacancies in the court shall be filled by the circuit whose judge created the vacancy. Finally, the provisions requires that FISA Court of Review judges selected by the Chief Justice of the United States be approved by at least five associate justices of the Supreme Court.

### **Section 10. FISA Court Reporting Requirement**

Requires a study from the Judicial Conference of the United States on how to ensure judges are chosen who are diverse and representative.

### **Section 11. Standing**

This provision confers standing to challenge the constitutionality of surveillance conducted under Section 702 on individuals who have a reasonable basis to believe their communications will be acquired and who have taken reasonable steps to avoid surveillance. The provision provides that a reasonable basis exists when an individual is required professionally to communicate foreign intelligence information with non-U.S. persons outside the United States. Reasonable steps to avoid surveillance are set by applicable rules of professional conduct. Under current law, only individuals who can prove that they have been the subject of surveillance under Section 702 may challenge its constitutionality.

### **Section 12. Unsealing FISC Opinions**

The USA FREEDOM ACT of 2015 required the government to declassify significant interpretations of law or statutory language by the FISC. The Department of Justice has interpreted that requirement to only apply to decisions of the court issued after the enactment of

USA FREEDOM. This provision clarifies that government should declassify pre-2015 FISC decisions too.

### **Section 13. Parallel Construction**

This provision resolves confusion about notice requirements to criminal defendants regarding information “derived from” FISA collection by applying it to information that would not be available “but for” FISA. This further ensures that FISA cannot be used to build criminal cases without notice to criminal defendants.

### **Section 14. FISC oversight of Section 702 assistance demanded of Internet companies**

This provision requires that all forms of technical assistance with Section 702 surveillance demanded by the government of electronic communications service providers must be approved by the FISC. The court must certify that the assistance is necessary, is narrowly tailored to the surveillance at issue; and that the surveillance assistance would not pose an undue burden on the provider or its other customers who are not intended targets of the surveillance. Currently, the FISC does not play a role in overseeing the technical assistance that the Director of National Intelligence and Attorney General may demand of providers under Section 702.

### **Section 15. Provider Transparency Reports**

This provision permits recipients of directives under Section 702 to publish rough numbers of those directives as well as directives under other FISA authorities and allows for more meaningful reporting related to national security requests, including Section 702, than is currently permitted by statute.

### **Section 16. 702 Target Transparency**

This provision requires the Director of National Intelligence to annually publish a description of the subject matter of certifications provided under section 702 during the preceding year as well as statistics on the number of persons targeted in that year under each of these certifications.

### **Section 17. 702 FBI Statistics**

This provision requires that the FBI report on the number of its U.S. person queries of Section 702, a requirement that already applies to the CIA and NSA.

### **Section 18. Statistics on Americans Swept Up by Section 702**

This provision requires the DNI to publish either an estimate of the number of United States persons whose communications are collected under section 702 or an estimate of the number of communications collected to which a person inside the United States is a party. The provision provides an exception if the DNI makes a determination that developing an estimate is technically impossible and publishes an assessment in unclassified form explaining such determination.

**Section 19. Establish A Four-Year Sunset**

Provides for a sunset for FISA authorization on September 30, 2021 (four years from the effective date of the reauthorization). This ensures that Congress continues to reexamine this key surveillance authority as technology changes and new legal and operational issues emerge.