

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 3989**  
**OFFERED BY M . \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Uniting and Strengthening American Liberty Act of  
4 2017” or the “USA Liberty Act of 2017”.

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

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

**TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE AND  
ACCOUNTABILITY**

- Sec. 101. Court orders and protection of incidentally collected United States person communications.
- Sec. 102. Limitation on collection and improvements to targeting procedures and minimization procedures.
- Sec. 103. Publication of minimization procedures under section 702.
- Sec. 104. Appointment of amicus curiae for annual certifications.
- Sec. 105. Increased accountability on incidentally collected communications.
- Sec. 106. Semiannual reports on certain queries by Federal Bureau of Investigation.
- Sec. 107. Additional reporting requirements.
- Sec. 108. Application of certain amendments.
- Sec. 109. Sense of Congress on purpose of section 702 and respecting foreign nationals.

**TITLE II—SAFEGUARDS AND OVERSIGHT OF PRIVACY AND CIVIL  
LIBERTIES**

- Sec. 201. Limitation on retention of certain data.
- Sec. 202. Improvements to Privacy and Civil Liberties Oversight Board.
- Sec. 203. Privacy and civil liberties officers.

Sec. 204. Whistleblower protections for contractors of the intelligence community.

**TITLE III—EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS**

Sec. 301. Extension of title VII of FISA; effective dates.

Sec. 302. Increased penalty for unauthorized removal and retention of classified documents or material.

Sec. 303. Comptroller General study on unauthorized disclosures and the classification system.

Sec. 304. Sense of Congress on information sharing among intelligence community to protect national security.

Sec. 305. Sense of Congress on combating terrorism.

Sec. 306. Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review.

Sec. 307. Severability.

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

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

**9 TITLE I—FOREIGN INTEL-  
10 LIGENCE SURVEILLANCE AND  
11 ACCOUNTABILITY**

**12 SEC. 101. COURT ORDERS AND PROTECTION OF INCIDENT-  
13 TALLY COLLECTED UNITED STATES PERSON  
14 COMMUNICATIONS.**

15 (a) IN GENERAL.—Section 702 (50 U.S.C. 1881a)  
16 is amended—

1           (1) by redesignating subsections (j) through (l)  
2 as subsections (k) through (m), respectively; and

3           (2) by inserting after subsection (i) the fol-  
4 lowing new subsection (j):

5           “(j) REQUIREMENTS FOR ACCESS AND DISSEMINA-  
6 TION OF COLLECTIONS OF COMMUNICATIONS.—

7           “(1) QUERY REQUIREMENTS.—The contents of  
8 communications acquired under subsection (a) and  
9 the information relating to the dialing, routing, ad-  
10 dressing, signaling, or other similar noncontents in-  
11 formation of such communications that are returned  
12 in response to a query may be accessed only if the  
13 query is reasonably designed to return foreign intel-  
14 ligence information or evidence of a crime.

15           “(2) COURT ORDERS AND OTHER REQUIRE-  
16 MENTS.—

17           “(A) APPLICATION TO COURT TO ACCESS  
18 CONTENTS.—Except as provided by subpara-  
19 graph (D), the contents of communications ac-  
20 quired under subsection (a) may be accessed or  
21 disseminated only upon—

22           “(i) an application by the Attorney  
23 General to a judge of the Foreign Intel-  
24 ligence Surveillance Court that describes

1 the determination of the Attorney General  
2 that—

3 “(I) there is probable cause to  
4 believe that such contents provide evi-  
5 dence of a crime specified in section  
6 2516 of title 18, United States Code;

7 “(II) noncontents information  
8 accessed or disseminated pursuant to  
9 subparagraph (C) is not the sole basis  
10 for such probable cause;

11 “(III) such communications are  
12 relevant to an authorized investigation  
13 or assessment, provided that such in-  
14 vestigation or assessment is not con-  
15 ducted solely on the basis of activities  
16 protected by the first amendment to  
17 the Constitution of the United States;  
18 and

19 “(IV) any use of such commu-  
20 nications pursuant to section 706 will  
21 be carried out in accordance with such  
22 section; and

23 “(ii) an order of the judge under sub-  
24 paragraph (B) approving such application.

25 “(B) ORDER.—

1           “(i) APPROVAL.—Upon an application  
2           made under subparagraph (A), the Foreign  
3           Intelligence Surveillance Court shall enter  
4           an order as requested or as modified by  
5           the Court approving the access or dissemi-  
6           nation of contents of communications cov-  
7           ered by the application if the Court deter-  
8           mines that, based on an independent re-  
9           view—

10                   “(I) the application contains all  
11                   information required by clause (i) of  
12                   such subparagraph;

13                   “(II) on the basis of the facts in  
14                   the application, there is probable  
15                   cause to believe that such contents  
16                   provide evidence of a crime specified  
17                   in section 2516 of title 18, United  
18                   States Code; and

19                   “(III) the minimization proce-  
20                   dures adopted pursuant to subsection  
21                   (e) ensure the compliance with sub-  
22                   paragraph (A)(i)(IV).

23           “(ii) REVIEW.—A denial of an appli-  
24           cation made under subparagraph (A) may  
25           be reviewed as provided in section 103.

1           “(C) RELEVANCE AND SUPERVISORY AP-  
2           PROVAL TO ACCESS NONCONTENTS INFORMA-  
3           TION.—Except as provided by subparagraph  
4           (D), the information of communications ac-  
5           quired under subsection (a) relating to the dial-  
6           ing, routing, addressing, signaling, or other  
7           similar noncontents information may be  
8           accessed or disseminated only upon a deter-  
9           mination by the Attorney General that—

10           “(i) such communications are relevant  
11           to an authorized investigation or assess-  
12           ment, provided that such investigation or  
13           assessment is not conducted solely on the  
14           basis of activities protected by the first  
15           amendment to the Constitution of the  
16           United States; and

17           “(ii) any use of such communications  
18           pursuant to section 706 will be carried out  
19           in accordance with such section.

20           “(D) EXCEPTIONS.—The requirement for  
21           an order of a judge pursuant to subparagraph  
22           (A) and the requirement for a determination by  
23           the Attorney General under subparagraph (C),  
24           respectively, shall not apply to accessing or dis-  
25           seminating communications acquired under sub-

1 section (a) if one or more of the following con-  
2 ditions are met:

3 “(i) Pursuant to the procedures  
4 adopted under subsection (e)(3), the query  
5 that returned such communications is rea-  
6 sonably designed for the primary purpose  
7 of returning foreign intelligence informa-  
8 tion.

9 “(ii) The Attorney General makes a  
10 determination that the person identified by  
11 the queried term is the subject of an order  
12 based upon a finding of probable cause, or  
13 emergency authorization, that authorizes  
14 electronic surveillance or physical search  
15 under this Act or title 18, United States  
16 Code (other than such emergency author-  
17 izations under title IV of this Act or sec-  
18 tion 3125 of title 18, United States Code).

19 “(iii) The Attorney General—

20 “(I) reasonably determines that  
21 an emergency situation requires the  
22 accessing or dissemination of the com-  
23 munications before an order pursuant  
24 to subparagraph (A) authorizing such  
25 access or dissemination, or before a

1 determination required under sub-  
2 paragraph (C), as the case may be,  
3 can with due diligence be obtained;

4 “(II) reasonably believes that the  
5 factual basis for the issuance of such  
6 an order or such a determination ex-  
7 ists; and

8 “(III) with respect to the access  
9 or dissemination of the contents of  
10 communications under subparagraph  
11 (A)—

12 “(aa) informs the Court at  
13 the time the Attorney General re-  
14 quires the emergency access or  
15 dissemination that the decision  
16 has been made to employ the au-  
17 thority under this clause;

18 “(bb) makes an application  
19 for an order under such subpara-  
20 graph as soon as practicable, but  
21 not less than 7 days after the At-  
22 torney General requires such  
23 emergency production; and

24 “(cc) may not use such com-  
25 munications pursuant to section



1 706 if such application for an  
2 order is denied, or in any other  
3 case where the access or dissemi-  
4 nation is terminated and no  
5 order with respect to such access  
6 or dissemination is issued pursu-  
7 ant to subparagraph (A).

8 “(iv) In the case of consent provided  
9 pursuant to paragraph (6).

10 “(E) LIMITATION ON ELECTRONIC SUR-  
11 VEILLANCE OF UNITED STATES PERSONS.—If  
12 the Attorney General determines that it is nec-  
13 essary to conduct electronic surveillance on a  
14 known United States person whose communica-  
15 tions have been acquired under subsection (a),  
16 the Attorney General may only conduct such  
17 electronic surveillance using authority provided  
18 under other provisions of law.

19 “(F) SIMULTANEOUS QUERY OF FBI DATA-  
20 BASES.—Except as otherwise provided by law  
21 or applicable minimization procedures, the Di-  
22 rector of the Federal Bureau of Investigation  
23 shall ensure that all available investigative or  
24 intelligence databases of the Federal Bureau of  
25 Investigation are simultaneously queried when

1 the Bureau properly uses an information sys-  
2 tem of the Bureau to determine whether infor-  
3 mation exists in such a database.

4 “(G) DELEGATION.—The Attorney Gen-  
5 eral shall delegate the authority under this  
6 paragraph to the fewest number of officials that  
7 the Attorney General determines practicable.

8 “(3) RETENTION OF AUDITABLE RECORDS.—  
9 The Attorney General and each Director concerned  
10 shall retain records of queries of a collection of com-  
11 munications acquired under subsection (a). Such  
12 records shall—

13 “(A) include such queries for not less than  
14 5 years after the date on which the query is  
15 made; and

16 “(B) be maintained in a manner that is  
17 auditable and available for congressional over-  
18 sight.

19 “(4) COMPLIANCE AND MAINTENANCE.—The  
20 requirements of this subsection do not apply with re-  
21 spect to queries made for the purpose of—

22 “(A) submitting to Congress information  
23 required by this Act or otherwise ensuring com-  
24 pliance with the requirements of this section; or

1           “(B) performing maintenance or testing of  
2 information systems.

3           “(5) CONSENT.—The requirements of this sub-  
4 section do not apply with respect to—

5           “(A) queries made using a term identifying  
6 a person who is a party to the communications  
7 acquired under subsection (a), or a person who  
8 otherwise has lawful authority to provide con-  
9 sent, and who consents to such queries; or

10           “(B) the accessing or the dissemination of  
11 the contents of communications acquired under  
12 subsection (a) of a person who is a party to the  
13 communications, or a person who otherwise has  
14 lawful authority to provide consent, and who  
15 consents to such access or dissemination.

16           “(6) DIRECTOR CONCERNED.—In this sub-  
17 section, the term ‘Director concerned’ means the fol-  
18 lowing:

19           “(A) The Director of the National Security  
20 Agency, with respect to matters concerning the  
21 National Security Agency.

22           “(B) The Director of the Federal Bureau  
23 of Investigation, with respect to matters con-  
24 cerning the Federal Bureau of Investigation.

1           “(C) The Director of the Central Intel-  
2           ligence Agency, with respect to matters con-  
3           cerning the Central Intelligence Agency.

4           “(D) The Director of the National  
5           Counterterrorism Center, with respect to mat-  
6           ters concerning the National Counterterrorism  
7           Center.”.

8           (b) PROCEDURES.—Subsection (e) of such section  
9           (50 U.S.C. 1881a(e)) is amended by adding at the end  
10          the following new paragraph:

11           “(3) CERTAIN PROCEDURES FOR QUERYING.—  
12          The minimization procedures adopted in accordance  
13          with paragraph (1) shall describe a query reasonably  
14          designed for the primary purpose of returning for-  
15          eign intelligence information under subsection  
16          (j)(2)(D)(i).”.

17          (c) CONFORMING AMENDMENT.—Subsection  
18          (g)(2)(B) of such section (50 U.S.C. 1881a(g)(2)(B)) is  
19          amended by striking “and (e)” and inserting “(e), and  
20          (j)”.

1 **SEC. 102. LIMITATION ON COLLECTION AND IMPROVE-**  
2 **MENTS TO TARGETING PROCEDURES AND**  
3 **MINIMIZATION PROCEDURES.**

4 (a) **TARGETING PROCEDURES; LIMITATION ON COL-**  
5 **LECTION.**—Subsection (d) of section 702 (50 U.S.C.  
6 1881a(d)) is amended—

7 (1) in paragraph (1), by striking “The Attorney  
8 General” and inserting “In accordance with para-  
9 graphs (3) and (4), the Attorney General”; and

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

12 “(3) **DUE DILIGENCE.**—The procedures adopted  
13 in accordance with paragraph (1) shall require due  
14 diligence in determining whether a person targeted  
15 is a non-United States person reasonably believed to  
16 be located outside the United States by—

17 “(A) making the determination based on  
18 the totality of the circumstances, including by,  
19 to the extent practicable, ensuring that any con-  
20 flicting information regarding whether the per-  
21 son is reasonably believed to be located outside  
22 the United States or is a United States person  
23 is resolved before making such determination;

24 “(B) documenting the processes under sub-  
25 paragraph (A); and

1           “(C) documenting the rationale for why  
2           targeting such person will result in the acquisi-  
3           tion of foreign intelligence information author-  
4           ized by subsection (a).

5           “(4) LIMITATION.—During the period pre-  
6           ceding September 30, 2023, the procedures adopted  
7           in accordance with paragraph (1) shall require that  
8           the targeting of a person is limited to communica-  
9           tions to or from the targeted person.”.

10          (b) MINIMIZATION PROCEDURES.—Subsection (e) of  
11          such section (50 U.S.C. 1881a(e)), as amended by section  
12          101, is further amended—

13                 (1) in paragraph (1), by inserting “, and the re-  
14                 quirements of this subsection” before the period at  
15                 the end; and

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

18                 “(4) REQUESTS TO UNMASK INFORMATION.—  
19                 The procedures adopted under paragraph (1) shall  
20                 include specific procedures adopted by the Attorney  
21                 General for elements of the Federal Government to  
22                 submit requests to unmask information in dissemi-  
23                 nated intelligence reports. Such specific procedures  
24                 shall—

1           “(A) require the documentation of the re-  
2           questing individual that such request is for le-  
3           gitimate reasons authorized pursuant to para-  
4           graph (1); and

5           “(B) require the retention of the records of  
6           each request, including—

7                   “(i) a copy of the request;

8                   “(ii) the name and position of the in-  
9                   dividual who is making the request; and

10                   “(iii) if the request is approved, the  
11                   name and position of the individual who  
12                   approved the request and the date of the  
13                   approval.”.

14           (c) UNMASK DEFINED.—Section 701(b) (50 U.S.C.  
15 1881(b)) is amended by adding at the end the following  
16 new paragraph:

17                   “(6) UNMASK.—The term ‘unmask’ means,  
18                   with respect to a disseminated intelligence report  
19                   containing a reference to a United States person  
20                   that does not identify that person (including by  
21                   name or title), to disseminate the identity of the  
22                   United States person, including the name or title of  
23                   the person.”.

24           (d) CONSISTENT REQUIREMENTS TO RETAIN  
25 RECORDS ON REQUESTS TO UNMASK INFORMATION.—

1 The Foreign Intelligence Surveillance Act of 1978 (50  
2 U.S.C. 1801 et seq.) is amended as follows:

3 (1) In section 101(h) (50 U.S.C. 1801(h))—

4 (A) in paragraph (3), by striking “; and”  
5 and inserting a semicolon;

6 (B) in paragraph (4), by striking the pe-  
7 riod at the end and inserting “; and”; and

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

10 “(5) specific procedures as described in section  
11 702(e)(4).”.

12 (2) In section 301(4) (50 U.S.C. 1821(4))—

13 (A) in subparagraph (C), by striking “;  
14 and” and inserting a semicolon;

15 (B) in subparagraph (D), by striking the  
16 period at the end and inserting “; and”; and

17 (C) by adding at the end the following new  
18 subparagraph:

19 “(E) specific procedures as described in  
20 section 702(e)(4).”.

21 (3) In section 402(h) (50 U.S.C. 1842(h))—

22 (A) by redesignating paragraph (2) as  
23 paragraph (3); and

24 (B) by inserting after paragraph (1) the  
25 following new paragraph (2):



1           “(2) REQUESTS FOR NONPUBLICLY AVAILABLE  
2 INFORMATION.—The policies and procedures adopt-  
3 ed under paragraph (1) shall include specific proce-  
4 dures as described in section 702(e)(4).”.

5           (4) In section 501(g)(2) (50 U.S.C.  
6 1861(g)(2))—

7           (A) in subparagraph (B), by striking “;  
8 and” and inserting a semicolon;

9           (B) in subparagraph (C), by striking the  
10 period at the end and inserting “; and”; and

11           (C) by adding at the end the following new  
12 subparagraph:

13           “(D) specific procedures as described in  
14 section 702(e)(4).”.

15       (e) REPORT ON UNMASKING.—Not later than 90  
16 days after the date of the enactment of this Act, the Direc-  
17 tor of National Intelligence shall submit to the Permanent  
18 Select Committee on Intelligence of the House of Rep-  
19 resentatives, the Select Committee on Intelligence of the  
20 Senate, and the Committees on the Judiciary of the House  
21 of Representatives and the Senate a report on the progress  
22 made by the Director with respect to—

23           (1) ensuring that incidentally collected commu-  
24 nications of United States persons are properly  
25 masked if masking is necessary; and

1           (2) implementing procedures for requests to  
2 unmask information under section 702(e)(4) of such  
3 Act (50 U.S.C. 1881a(e)(4)), as added by subsection  
4 (c).

5 **SEC. 103. PUBLICATION OF MINIMIZATION PROCEDURES**  
6 **UNDER SECTION 702.**

7 Subsection (e) of section 702 (50 U.S.C. 1881a(e)),  
8 as amended by sections 101 and 102, is further amended  
9 by adding at the end the following new paragraph:

10           “(5) PUBLICATION.—The Director of National  
11 Intelligence, in consultation with the Attorney Gen-  
12 eral, shall—

13           “(A) conduct a declassification review of  
14 any minimization procedures adopted or amend-  
15 ed in accordance with paragraph (1); and

16           “(B) consistent with such review, and not  
17 later than 180 days after conducting such re-  
18 view, make such minimization procedures pub-  
19 licly available to the greatest extent practicable,  
20 which may be in redacted form.”.

21 **SEC. 104. APPOINTMENT OF AMICUS CURIAE FOR ANNUAL**  
22 **CERTIFICATIONS.**

23           (a) IN GENERAL.—Section 103(i) (50 U.S.C.  
24 1803(i)(2)) is amended—

25           (1) in paragraph (2)—

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

3 (B) by redesignating subparagraph (B) as  
4 subparagraph (C); and

5 (C) by inserting after subparagraph (A)  
6 the following new subparagraph (B):

7 “(B) shall appoint an individual who has  
8 been designated under paragraph (1) to serve  
9 as amicus curiae to assist such court in the re-  
10 view of a certification under section 702(i), un-  
11 less the court issues a finding that such ap-  
12 pointment is not appropriate; and”;

13 (2) in paragraphs (4) and (5), by striking  
14 “paragraph (2)(A)” both places it appears and in-  
15 serting “subparagraph (A) or (B) of paragraph (2)”.

16 (b) **TIMING OF REVIEW.**—Section 702(i)(1)(B) (50  
17 U.S.C. 1881a(i)(1)(B)) is amended by adding at the end  
18 the following new sentence: “Such 30-day period shall be  
19 extended to 90 days if an individual is appointed under  
20 section 103(i) to serve as amicus curiae to assist the Court  
21 in the review of the certification.”.

22 **SEC. 105. INCREASED ACCOUNTABILITY ON INCIDENTALLY**  
23 **COLLECTED COMMUNICATIONS.**

24 Section 707 (50 U.S.C. 1881f) is amended by adding  
25 at the end the following new subsection:

1           “(c) INCIDENTALLY COLLECTED COMMUNICATIONS  
2 AND OTHER INFORMATION.—Together with the semi-  
3 annual report submitted under subsection (a), the Direc-  
4 tor of National Intelligence shall submit to the congres-  
5 sional committees specified in such subsection a report on  
6 incidentally collected communications and other informa-  
7 tion regarding United States persons under section 702.  
8 Each such report shall include, with respect to the 6-  
9 month period covered by the report, the following:

10           “(1) Except as provided by paragraph (2), the  
11 number, or a good faith estimate, of communications  
12 acquired under subsection (a) of such section of  
13 United States persons, including a description of any  
14 efforts of the intelligence community to ascertain  
15 such number or good faith estimate.

16           “(2) If the Director determines that calculating  
17 the number, or a good faith estimate, under para-  
18 graph (1) is not achievable, a detailed explanation  
19 for why such calculation is not achievable.

20           “(3) The number of—

21           “(A) United States persons whose informa-  
22 tion is unmasked pursuant to the procedures  
23 adopted under subsection (e)(4) of such section;

24           “(B) requests made by an element of the  
25 Federal Government, listed by each such ele-

1           ment, to unmask information pursuant to such  
2           subsection; and

3           “(C) requests that resulted in the dissemi-  
4           nation of names, titles, or other identifiers po-  
5           tentially associated with individuals pursuant to  
6           such subsection, including the element of the in-  
7           telligence community and position of the indi-  
8           vidual making the request.

9           “(4) The number of disseminations of commu-  
10          nications acquired under subsection (a) of section  
11          702 to the Federal Bureau of Investigation for cases  
12          unrelated to foreign intelligence.

13          “(5) The number of instances in which evidence  
14          of a crime unrelated to foreign intelligence that was  
15          identified in communications acquired under sub-  
16          section (a) of section 702 was disseminated from the  
17          national security branch of the Bureau to the crimi-  
18          nal investigative division of the Bureau (or from  
19          such successor branch to such successor division).

20          “(6) The number of individuals to whom the  
21          Attorney General has delegated authority pursuant  
22          to subsection (j)(2)(G) of section 702.”.

1 **SEC. 106. SEMIANNUAL REPORTS ON CERTAIN QUERIES BY**  
2 **FEDERAL BUREAU OF INVESTIGATION.**

3 Section 707 (50 U.S.C. 1881f), as amended by sec-  
4 tion 105, is further amended by adding at the end the  
5 following new subsection:

6 “(d) SEMIANNUAL FBI REPORTS.—Together with  
7 the semiannual report submitted under subsection (a), the  
8 Director of the Federal Bureau of Investigation shall sub-  
9 mit to the congressional committees specified in such sub-  
10 section, and make publicly available, a report containing,  
11 with respect to the period covered by the report—

12 “(1) the number of applications made by the  
13 Federal Bureau of Investigation described in sub-  
14 section (j)(2)(A) of section 702;

15 “(2) the number of such applications that were  
16 approved and resulted in communications being  
17 accessed or disseminated pursuant to such sub-  
18 section; and

19 “(3) the number of determinations made by the  
20 Attorney General pursuant to subsection (j)(2)(C) of  
21 such section.”.

22 **SEC. 107. ADDITIONAL REPORTING REQUIREMENTS.**

23 (a) ELECTRONIC SURVEILLANCE.—Section 107 (50  
24 U.S.C. 1807) is amended to read as follows:

1 **“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.**

2 “(a) ANNUAL REPORT.—In April of each year, the  
3 Attorney General shall transmit to the Administrative Of-  
4 fice of the United States Courts and to Congress a report  
5 setting forth with respect to the preceding calendar year—

6 “(1) the total number of applications made for  
7 orders and extensions of orders approving electronic  
8 surveillance under this title;

9 “(2) the total number of such orders and exten-  
10 sions either granted, modified, or denied; and

11 “(3) the total number of persons who were sub-  
12 ject to electronic surveillance conducted under an  
13 order or emergency authorization under this title,  
14 rounded to the nearest 500, including the number of  
15 such individuals who are United States persons, re-  
16 ported to the nearest band of 500, starting with 0–  
17 499.

18 “(b) FORM.—Each report under subsection (a) shall  
19 be submitted in unclassified form. Not later than 7 days  
20 after the date on which the Attorney General submits each  
21 such report, the Attorney General shall make the report  
22 publicly available.”.

23 (b) PEN REGISTERS AND TRAP AND TRACE DE-  
24 VICES.—Section 406 (50 U.S.C. 1846) is amended—

25 (1) in subsection (b)—

1 (A) in paragraph (4), by striking “; and”  
2 and inserting a semicolon;

3 (B) in paragraph (5), by striking the pe-  
4 riod at the end and inserting “; and”; and

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

7 “(6) a good faith estimate of the total number  
8 of subjects who were targeted by the installation and  
9 use of a pen register or trap and trace device under  
10 an order or emergency authorization issued under  
11 this title, rounded to the nearest 500, including—

12 “(A) the number of such subjects who are  
13 United States persons, reported to the nearest  
14 band of 500, starting with 0–499; and

15 “(B) of the number of United States per-  
16 sons described in subparagraph (A), the num-  
17 ber of persons whose information acquired pur-  
18 suant to such order was reviewed or accessed by  
19 a Federal officer, employee, or agent, reported  
20 to the nearest band of 500, starting with 0–  
21 499.”; and

22 (2) by adding at the end the following new sub-  
23 section:

24 “(c) Each report under subsection (b) shall be sub-  
25 mitted in unclassified form. Not later than 7 days after



1 the date on which the Attorney General submits such a  
2 report, the Attorney General shall make such report pub-  
3 licly available.”.

4 **SEC. 108. APPLICATION OF CERTAIN AMENDMENTS.**

5 The amendments made by sections 101, 102, and  
6 201(a) to the Foreign Intelligence Surveillance Act of  
7 1978 (50 U.S.C. 1801 et seq.) shall apply with respect  
8 to orders, certifications, and procedures submitted to the  
9 Foreign Intelligence Surveillance Court on or after the  
10 date that is 120 days after the date of the enactment of  
11 this Act.

12 **SEC. 109. SENSE OF CONGRESS ON PURPOSE OF SECTION**  
13 **702 AND RESPECTING FOREIGN NATIONALS.**

14 It is the sense of Congress that—

15 (1) the acquisition of communications by the  
16 National Security Agency under section 702 of the  
17 Foreign Intelligence Surveillance Act (50 U.S.C.  
18 1881a) should be conducted within the bounds of  
19 treaties and agreements to which the United States  
20 is a party, and there should be no targeting of non-  
21 United States persons for any unfounded discrimina-  
22 tory purpose or for the purpose of affording a com-  
23 mercial competitive advantage to companies and  
24 business sectors of the United States; and

1           (2) the authority to collect intelligence under  
2 such section 702 is meant to shield the United  
3 States, and by extension, the allies of the United  
4 States, from security threats both at home and  
5 abroad.

6 **TITLE II—SAFEGUARDS AND**  
7 **OVERSIGHT OF PRIVACY AND**  
8 **CIVIL LIBERTIES**

9 **SEC. 201. LIMITATION ON RETENTION OF CERTAIN DATA.**

10       (a) REQUIRED PURGING.—Subsection (e) of section  
11 702 (50 U.S.C. 1881a(e)), as amended by title I, is fur-  
12 ther amended by adding at the end the following new para-  
13 graph:

14           “(6) LIMITATION ON RETENTION.—

15           “(A) PERIOD OF RETENTION AND RE-  
16 QUIREMENT FOR PURGING.—Notwithstanding  
17 section 309 of the Intelligence Authorization  
18 Act for Fiscal Year 2015 (50 U.S.C. 1813), ex-  
19 cept as provided by subparagraph (B), the pro-  
20 cedures adopted under paragraph (1) shall en-  
21 sure that any communications that do not con-  
22 tain foreign intelligence information are purged  
23 by not later than 90 days after the date on  
24 which the communications are determined to  
25 not contain foreign intelligence information.

1           “(B) WAIVER.—The Director of the Na-  
2           tional Security Agency may waive the require-  
3           ments of subparagraph (A), on an individual-  
4           ized and specific basis, if the Director deter-  
5           mines that such waiver is necessary to protect  
6           the national security of the United States.”.

7           (b) SEMIANNUAL ASSESSMENT.—Subsection (m) of  
8           such section, as redesignated by section 101, is amend-  
9           ed—

10           (1) by redesignating paragraphs (2) and (3) as  
11           paragraphs (3) and (4); and

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

14           “(2) MATTERS INCLUDED IN SEMIANNUAL AS-  
15           SESSMENT TO FISC AND CONGRESS.—Each semi-  
16           annual assessment under paragraph (1) shall in-  
17           clude, with respect to the 6-month period covered by  
18           the assessment, the following:

19           “(A) An affidavit by the Director of the  
20           National Security Agency, without delegation,  
21           that communications described in subsection  
22           (e)(6)(A) were purged pursuant to such sub-  
23           section.

1           “(B) The number of waivers made under  
2           subsection (e)(6)(B), including a description of  
3           the purpose for each such waiver.”.

4   **SEC. 202. IMPROVEMENTS TO PRIVACY AND CIVIL LIB-**  
5           **ERTIES OVERSIGHT BOARD.**

6           (a) APPOINTMENT OF STAFF.—Subsection (j) of sec-  
7   tion 1061 of the Intelligence Reform and Terrorism Pre-  
8   vention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

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

11          (2) by inserting after paragraph (1) the fol-  
12          lowing new paragraph:

13               “(2) APPOINTMENT IN ABSENCE OF CHAIR-  
14          MAN.—If the position of chairman of the Board is  
15          vacant, during the period of the vacancy, the Board,  
16          at the direction of the unanimous vote of the serving  
17          members of the Board, may exercise the authority of  
18          the chairman under paragraph (1).”.

19          (b) MEETINGS.—Subsection (f) of such section (42  
20   U.S.C. 2000ee(f)) is amended—

21               (1) by striking “The Board shall” and inserting  
22          “‘The Board’”;

23               (2) in paragraph (1) by striking “make its” and  
24          inserting “shall make its”; and

25               (3) in paragraph (2)—

1 (A) by striking “hold public” and inserting  
2 “shall hold public”; and

3 (B) by inserting before the period at the  
4 end the following: “, but may, notwithstanding  
5 section 552b of title 5, United States Code,  
6 meet or otherwise communicate in any number  
7 to confer or deliberate in a manner that is  
8 closed to the public”.

9 (c) REPORT ON SECTION 702 AND TERRORISM.—Not  
10 later than 1 year after the date on which the Privacy and  
11 Civil Liberties Oversight Board first achieves a quorum  
12 following the date of the enactment of this Act, the Board  
13 shall submit to the Committee on the Judiciary and the  
14 Permanent Select Committee on Intelligence of the House  
15 of Representatives and the Committee on the Judiciary  
16 and the Select Committee on Intelligence of the Senate  
17 a report assessing—

18 (1) how communications acquired under section  
19 702 of the of the Foreign Intelligence Surveillance  
20 Act of 1978 (50 U.S.C. 1881a) are used by the  
21 United States to prevent or defend against ter-  
22 rorism;

23 (2) whether technological challenges and  
24 changes in technology affect the prevention and de-  
25 fense of terrorism, and how effectively the foreign

1 intelligence elements of the intelligence community  
2 have responded to those challenges; and

3 (3) how privacy and civil liberties are affected  
4 by the actions identified under paragraph (1) and  
5 the changes in technology identified under para-  
6 graph (2), and whether race, religion, political affili-  
7 ation, or activities protected by the First Amend-  
8 ment are determinative in the targeting or querying  
9 decisions made pursuant to such section 702.

10 **SEC. 203. PRIVACY AND CIVIL LIBERTIES OFFICERS.**

11 (a) CODIFICATION OF CERTAIN OFFICERS.—Section  
12 1062(a) of the Intelligence Reform and Terrorism Preven-  
13 tion Act of 2004 (42 U.S.C. 2000ee–1(a)) is amended by  
14 inserting “, the Director of the National Security Agency,  
15 the Director of the Federal Bureau of Investigation” after  
16 “the Director of the Central Intelligence Agency”.

17 (b) ANNUAL REPORTS ON INCIDENTAL COMMUNICA-  
18 TIONS OF UNITED STATES PERSONS.—Paragraph (4)(A)  
19 of subsection (m) of section 702 (50 U.S.C. 1881a), as  
20 redesignated by sections 101 and 201, is amended—

21 (1) in clause (iii), by striking “; and” and in-  
22 serting a semicolon;

23 (2) in clause (iv), by striking the period at the  
24 end and inserting “; and”; and

1           (3) by adding at the end the following new  
2       clause:

3                       “(v) a review by the privacy and civil  
4                       liberties officer of the element of inciden-  
5                       tally collected communications of United  
6                       States persons.”.

7       **SEC. 204. WHISTLEBLOWER PROTECTIONS FOR CONTRAC-**  
8                       **TORS OF THE INTELLIGENCE COMMUNITY.**

9           (a) PROHIBITED PERSONNEL PRACTICES IN THE IN-  
10       TELLIGENCE COMMUNITY.—Section 1104 of the National  
11       Security Act of 1947 (50 U.S.C. 3234) is amended—

12               (1) in subsection (a), by adding at the end the  
13       following new paragraph:

14                       “(4) CONTRACTOR EMPLOYEE.—The term ‘con-  
15       tractor employee’ means an employee of a con-  
16       tractor, subcontractor, grantee, subgrantee, or per-  
17       sonal services contractor, of a covered intelligence  
18       community element.”;

19               (2) by redesignating subsections (c) and (d) as  
20       subsections (d) and (e), respectively;

21               (3) by inserting after subsection (b) the fol-  
22       lowing new subsection (c):

23                       “(c) CONTRACTOR EMPLOYEES.—(1) Any employee  
24       of a contractor, subcontractor, grantee, subgrantee, or  
25       personal services contractor, of a covered intelligence com-

1 munity element, or any employee of an agency, who has  
2 authority to take, direct others to take, recommend, or ap-  
3 prove any personnel action, shall not, with respect to such  
4 authority, take or fail to take a personnel action with re-  
5 spect to any contractor employee as a reprisal for a lawful  
6 disclosure of information by the contractor employee to  
7 the Director of National Intelligence (or an employee des-  
8 ignated by the Director of National Intelligence for such  
9 purpose), the Inspector General of the Intelligence Com-  
10 munity, the head of the contracting agency (or an em-  
11 ployee designated by the head of that agency for such pur-  
12 pose), the appropriate inspector general of the contracting  
13 agency, a congressional intelligence committee, or a mem-  
14 ber of a congressional intelligence committee, which the  
15 contractor employee reasonably believes evidences—

16           “(A) a violation of any Federal law, rule, or  
17           regulation (including with respect to evidence of an-  
18           other employee or contractor employee accessing or  
19           sharing classified information without authoriza-  
20           tion); or

21           “(B) mismanagement, a gross waste of funds,  
22           an abuse of authority, or a substantial and specific  
23           danger to public health or safety.

24           “(2) A personnel action under paragraph (1) is pro-  
25           hibited even if the action is undertaken at the request of



1 an agency official, unless the request takes the form of  
2 a nondiscretionary directive and is within the authority of  
3 the agency official making the request.

4 “(3) A contractor employee may raise a violation of  
5 paragraph (1) in any proceeding to implement or challenge  
6 a personnel action described in such paragraph.”;

7 (4) in subsection (b), by striking the heading  
8 and inserting “AGENCY EMPLOYEES.—”; and

9 (5) in subsection (e), as redesignated by para-  
10 graph (2), by inserting “contractor employee,” after  
11 “any employee,”.

12 (b) FEDERAL BUREAU OF INVESTIGATION.—

13 (1) IN GENERAL.—Any employee of a con-  
14 tractor, subcontractor, grantee, subgrantee, or per-  
15 sonal services contractor, of the Federal Bureau of  
16 Investigation, or any employee of the Bureau, who  
17 has authority to take, direct others to take, rec-  
18 ommend, or approve any personnel action, shall not,  
19 with respect to such authority, take or fail to take  
20 a personnel action with respect to a contractor em-  
21 ployee as a reprisal for a disclosure of information—

22 (A) made—

23 (i) to a supervisor in the direct chain  
24 of command of the contractor employee, up

1 to and including the Director of the Fed-  
2 eral Bureau of Investigation;  
3 (ii) to the Inspector General;  
4 (iii) to the Office of Professional Re-  
5 sponsibility of the Department of Justice;  
6 (iv) to the Office of Professional Re-  
7 sponsibility of the Federal Bureau of In-  
8 vestigation;  
9 (v) to the Inspection Division of the  
10 Federal Bureau of Investigation;  
11 (vi) as described in section 7211 of  
12 title 5, United States Code;  
13 (vii) to the Office of Special Counsel;  
14 or  
15 (viii) to an employee designated by  
16 any officer, employee, office, or division de-  
17 scribed in clauses (i) through (vii) for the  
18 purpose of receiving such disclosures; and  
19 (B) which the contractor employee reason-  
20 ably believes evidences—  
21 (i) any violation of any law, rule, or  
22 regulation (including with respect to evi-  
23 dence of another employee or contractor  
24 employee accessing or sharing classified in-  
25 formation without authorization); or

1                   (ii) gross mismanagement, a gross  
2                   waste of funds, an abuse of authority, or  
3                   a substantial and specific danger to public  
4                   health or safety.

5                   (2) ACTIONS BY REQUEST.—A personnel action  
6                   under paragraph (1) is prohibited even if the action  
7                   is undertaken at the request of an official of the Bu-  
8                   reau, unless the request takes the form of a nondis-  
9                   cretionary directive and is within the authority of  
10                  the official making the request.

11                  (3) VIOLATION.—A contractor employee may  
12                  raise a violation of paragraph (1) in any proceeding  
13                  to implement or challenge a personnel action de-  
14                  scribed in such paragraph.

15                  (4) REGULATIONS.—The Attorney General shall  
16                  prescribe regulations to ensure that a personnel ac-  
17                  tion described in paragraph (1) shall not be taken  
18                  against a contractor employee of the Bureau as a re-  
19                  prisal for any disclosure of information described in  
20                  subparagraph (A) of such paragraph.

21                  (5) ENFORCEMENT.—The President shall pro-  
22                  vide for the enforcement of this subsection in a man-  
23                  ner consistent with applicable provisions of sections  
24                  1214 and 1221 of title 5, United States Code.

25                  (6) DEFINITIONS.—In this subsection:

1           (A) The term “contractor employee”  
2 means an employee of a contractor, subcon-  
3 tractor, grantee, subgrantee, or personal serv-  
4 ices contractor, of the Federal Bureau of Inves-  
5 tigation.

6           (B) The term “personnel action” means  
7 any action described in clauses (i) through (x)  
8 of section 2302(a)(2)(A) of title 5, United  
9 States Code, with respect to a contractor em-  
10 ployee.

11       (c) RETALIATORY REVOCATION OF SECURITY  
12 CLEARANCES AND ACCESS DETERMINATIONS.—Section  
13 3001(j) of the Intelligence Reform and Terrorism Preven-  
14 tion Act of 2004 (50 U.S.C. 3341(j)) is amended by add-  
15 ing at the end the following new paragraph:

16           “(8) INCLUSION OF CONTRACTOR EMPLOY-  
17 EES.—In this subsection, the term ‘employee’ in-  
18 cludes an employee of a contractor, subcontractor,  
19 grantee, subgrantee, or personal services contractor,  
20 of an agency. With respect to such employees, the  
21 term ‘employing agency’ shall be deemed to be the  
22 contracting agency.”.

1 **TITLE III—EXTENSION OF AU-**  
2 **THORITIES, INCREASED PEN-**  
3 **ALTIES, REPORTS, AND**  
4 **OTHER MATTERS**

5 **SEC. 301. EXTENSION OF TITLE VII OF FISA; EFFECTIVE**  
6 **DATES.**

7 (a) EXTENSION.—Section 403(b) of the FISA  
8 Amendments Act of 2008 (Public Law 110–261; 122 Stat.  
9 2474) is amended—

10 (1) in paragraph (1)—

11 (A) by striking “December 31, 2017” and  
12 inserting “September 30, 2023”; and

13 (B) by inserting “and by the USA Liberty  
14 Act of 2017” after “section 101(a)”; and

15 (2) in paragraph (2) in the matter preceding  
16 subparagraph (A), by striking “December 31, 2017”  
17 and inserting “September 30, 2023”.

18 (b) CONFORMING AMENDMENTS.—Section 404(b) of  
19 the FISA Amendments Act of 2008 (Public Law 110–261;  
20 122 Stat. 2476) is amended—

21 (1) in paragraph (1)—

22 (A) in the heading, by striking “DECEM-

23 BER 31, 2017” and inserting “SEPTEMBER 30,

24 2023”; and

1 (B) by inserting “and by the USA Liberty  
2 Act of 2017” after “section 101(a)”;

3 (2) in paragraph (2), by inserting “and by the  
4 USA Liberty Act of 2017” after “section 101(a)”;

5 and

6 (3) in paragraph (4)—

7 (A) by striking “702(l)” each place it ap-  
8 pears and inserting “702(m)”;

9 (B) by inserting “and amended by the  
10 USA Liberty Act of 2017” after “as added by  
11 section 101(a)” both places it appears; and

12 (C) by inserting “and by the USA Liberty  
13 Act of 2017” after “as amended by section  
14 101(a)” both places it appears.

15 (c) EFFECTIVE DATE OF AMENDMENTS TO FAA.—

16 The amendments made to the FISA Amendments Act of  
17 2008 (Public Law 110–261) by this section shall take ef-  
18 fect on the earlier of the date of the enactment of this  
19 Act or December 31, 2017.

20 **SEC. 302. INCREASED PENALTY FOR UNAUTHORIZED RE-**  
21 **MOVAL AND RETENTION OF CLASSIFIED DOC-**  
22 **UMENTS OR MATERIAL.**

23 Section 1924(a) of title 18, United States Code, is  
24 amended by striking “one year” and inserting “five  
25 years”.

1 **SEC. 303. COMPTROLLER GENERAL STUDY ON UNAUTHOR-**  
2 **IZED DISCLOSURES AND THE CLASSIFICA-**  
3 **TION SYSTEM.**

4 (a) STUDY.—The Comptroller General of the United  
5 States shall conduct a study of the unauthorized disclosure  
6 of classified information and the classification system of  
7 the United States.

8 (b) MATTERS INCLUDED.—The study under sub-  
9 section (a) shall address the following:

10 (1) Insider threat risks to the unauthorized dis-  
11 closure of classified information.

12 (2) The effect of modern technology on the un-  
13 authorized disclosure of classified information, in-  
14 cluding with respect to—

15 (A) using cloud storage for classified infor-  
16 mation; and

17 (B) any technological means to prevent or  
18 detect such unauthorized disclosure.

19 (3) The effect of overclassification on the unau-  
20 thorized disclosure of classified information.

21 (4) Any ways to improve the classification sys-  
22 tem of the United States, including with respect to  
23 changing the levels of classification used in such sys-  
24 tem and to reduce overclassification.

1           (5) How to improve the authorized sharing of  
2           classified information, including with respect to sen-  
3           sitive compartmented information.

4           (6) The value of polygraph tests in determining  
5           who is authorized to access classified information.

6           (7) Whether each element of the intelligence  
7           community (as defined in section 3(4) of the Na-  
8           tional Security Act of 1947 (50 U.S.C. 3003(4))—

9                   (A) applies uniform standards in deter-  
10                  mining who is authorized to access classified in-  
11                  formation; and

12                   (B) provides proper training with respect  
13                  to the handling of classified information and  
14                  the avoidance of overclassification.

15           (c) COOPERATION.—The heads of the intelligence  
16           community shall provide to the Comptroller General infor-  
17           mation the Comptroller General determines necessary to  
18           carry out the study under subsection (a).

19           (d) REPORT.—Not later than 180 days after the date  
20           of the enactment of this Act, the Comptroller General shall  
21           submit to the Committee on the Judiciary and the Perma-  
22           nent Select Committee on Intelligence of the House of  
23           Representatives and the Committee on the Judiciary and  
24           the Select Committee on Intelligence of the Senate a re-  
25           port containing the study under subsection (a).



1 (e) FORM.—The report under subsection (d) shall be  
2 submitted in unclassified form, but may include a classi-  
3 fied annex.

4 **SEC. 304. SENSE OF CONGRESS ON INFORMATION SHARING**  
5 **AMONG INTELLIGENCE COMMUNITY TO PRO-**  
6 **TECT NATIONAL SECURITY.**

7 It is the sense of Congress that, in carrying out sec-  
8 tion 702 of the Foreign Intelligence Surveillance Act of  
9 1978 (50 U.S.C. 1881a), as amended by this Act, the  
10 United States Government should ensure that the bar-  
11 riers, whether real or perceived, to sharing critical foreign  
12 intelligence among the intelligence community that existed  
13 before September 11, 2001, are not reimposed by sharing  
14 information vital to national security among the intel-  
15 ligence community in a manner that is consistent with  
16 such section, applicable provisions of law, and the Con-  
17 stitution of the United States.

18 **SEC. 305. SENSE OF CONGRESS ON COMBATING TER-**  
19 **RORISM.**

20 It is the sense of Congress that, consistent with the  
21 protection of sources and methods, when lawful and ap-  
22 propriate, the President should share information learned  
23 by acquiring communications under section 702 of the  
24 Foreign Intelligence Surveillance Act (50 U.S.C. 1881a)

1 with allies of the United States to prevent and defend  
2 against terrorism.

3 **SEC. 306. TECHNICAL AMENDMENTS AND AMENDMENTS TO**  
4 **IMPROVE PROCEDURES OF THE FOREIGN IN-**  
5 **TELLIGENCE SURVEILLANCE COURT OF RE-**  
6 **VIEW.**

7 (a) TECHNICAL AMENDMENTS.—The Foreign Intel-  
8 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
9 is amended as follows:

10 (1) In section 103(b) (50 U.S.C. 1803(b)), by  
11 striking “designate as the” and inserting “des-  
12 ignated as the”.

13 (2) In section 302(a)(1)(A)(iii) (50 U.S.C.  
14 1822(a)(1)(A)(iii)), by striking “paragraphs (1)  
15 through (4)” and inserting “subparagraphs (A)  
16 through (D)”.

17 (3) In section 406(b) (50 U.S.C. 1846(b)), by  
18 striking “and to the Committees on the Judiciary of  
19 the House of Representatives and the Senate”.

20 (4) In section 604(a) (50 U.S.C. 1874(a))—

21 (A) in paragraph (1)(D), by striking “con-  
22 tents” and inserting “contents,”; and

23 (B) in paragraph (3), by striking “comply  
24 in the into” and inserting “comply into”.

25 (5) In section 701 (50 U.S.C. 1881)—

1 (A) in subsection (a), by striking “The  
2 terms” and inserting “In this title, the terms”;  
3 and

4 (B) in subsection (b)—

5 (i) by inserting “In this title:” after  
6 the subsection heading; and

7 (ii) in paragraph (5), by striking “(50  
8 U.S.C. 401a(4))” and inserting “(50  
9 U.S.C. 3003(4))”.

10 (6) In section 702(g)(2)(A)(i) (50 U.S.C.  
11 1881a(g)(2)(A)(i)), by inserting “targeting” before  
12 “procedures in place”.

13 (7) In section 801(7) (50 U.S.C. 1885(7)), by  
14 striking “(50 U.S.C. 401a(4))” and inserting “(50  
15 U.S.C. 3003(4))”.

16 (b) COURT-RELATED AMENDMENTS.—The Foreign  
17 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
18 seq.) is further amended as follows:

19 (1) In section 103 (50 U.S.C. 1803)—

20 (A) in subsection (b), by striking “imme-  
21 diately”; and

22 (B) in subsection (h), by striking “the  
23 court established under subsection (a)” and in-  
24 serting “a court established under this section”.

1           (2) In section 105(d) (50 U.S.C. 1805(d)), by  
2           adding at the end the following new paragraph:

3           “(4) A denial of the application made under section  
4 104 may be reviewed as provided in section 103.”.

5           (3) In section 302(d) (50 U.S.C. 1822(d)), by  
6           striking “immediately”.

7           (4) In section 402(d) (50 U.S.C. 1842(d)), by  
8           adding at the end the following new paragraph:

9           “(3) A denial of the application made under this sub-  
10 section may be reviewed as provided in section 103.”.

11           (5) In section 403(c) (50 U.S.C. 1843(c)), by  
12           adding at the end the following new paragraph:

13           “(3) A denial of the application made under sub-  
14 section (a)(2) may be reviewed as provided in section  
15 103.”.

16           (6) In section 501(c) (50 U.S.C. 1861(c)), by  
17           adding at the end the following new paragraph:

18           “(4) A denial of the application made under  
19 this subsection may be reviewed as provided in sec-  
20 tion 103.”.

21 **SEC. 307. SEVERABILITY.**

22           If any provision of this Act, any amendment made  
23 by this Act, or the application thereof to any person or  
24 circumstances is held invalid, the validity of the remainder  
25 of the Act, of any such amendments, and of the applica-

- 1 tion of such provisions to other persons and circumstances
- 2 shall not be affected thereby.



H.R. 3989, Uniting and Strengthening American (USA) Liberty Act of 2017  
Section-by-Section

H.R. 3989, the USA Liberty Act of 2017 preserves the core purpose of Section 702: the collection of electronic communications for use in our nation's defense. Recognizing the sheer amount of information collected under Section 702, however, the bill also creates a new framework of protections and transparency requirements to ensure that the government's use of Section 702 accords with principles of privacy and due process.

**TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE AND ACCOUNTABILITY**

**Sec.101. Court orders and protection of incidentally collected United States person communications.**

Only queries designed to return foreign intelligence information or evidence of a crime may permit access to 702 content.

Prohibits the government from accessing or disseminating Section 702 content to advance a criminal investigation without a probable cause order, otherwise known as a "warrant" in criminal investigations, approved by the FISA Court.

Use of 702-derived information must be in accord with notice requirements to the defense in a criminal prosecution.

Includes exceptions for emergencies, consent, and for cases where a probable cause-based order or warrant already exists on the target. Does not apply to queries intended to return foreign intelligence information.

Prohibits a government agent/analyst from accessing or disseminating non-content information derived from Section 702 unless the access has been approved by a supervisor and the information is shown to be relevant to an authorized investigation.

Requires new minimization procedures to describe what "query reasonably designed for the primary purpose of returning foreign intelligence information" means.

\*Note: This section does not impose any burden on the querying of information in assessments or investigations of the FBI.

**Sec.102. Limitation on collection and improvements to targeting procedures and minimization procedures.**

Codifies due diligence procedures used by the government to determine whether or not a target of Section 702 surveillance is believed to be a non-United States person located outside of the United States.

Ends so-called “about” collection for the 702 reauthorization period by ensuring that the government may only target communications that are to or from the targeted person.

Reforms “unmasking” procedures. Requires officials to document unmasking requests that are auditable by Congress and to certify that unmasking requests are made only for legitimate reasons. Requires a report on unmasking by the Director of National Intelligence to the Committees on the Judiciary and the Select Committees on Intelligence.

**Sec.103. Publication of minimization procedures under section 702.**

The DNI, in consultation with the AG, shall conduct a declassification review of a minimization procedures, and to the extent practicable, make such review publicly available in redacted form.

**Sec.104. Appointment of amicus curiae for annual certifications.**

Appoints an amicus curiae to the FISA Court by default. The amicus will review minimization and targeting procedures. The Court may decline to appoint an amicus, but must document its reasons for doing so.

**Sec.105. Increased accountability on incidentally collected communications.**

Requires the DNI to report on known incidentally collected U.S.-person communications and other information of U.S. persons acquired under Section 702 including: the number of U.S.-persons, and the number of U.S.-persons whose information is unmasked, the number of requests made by the federal government to unmask information, the number of disseminations of communications to the FBI that are unrelated to foreign intelligence, and the number of times that communications containing evidence of a crime were disseminated from FBI’s National Security Branch to FBI’s Criminal Investigative Division.

Requires the AG to specify the number of individuals to whom he has delegated authority under Section 702(j)(2)(G).

**Sec.106. Semiannual reports on certain queries by Federal Bureau of Investigation.**

Requires the FBI to report semiannually on its use of the new probable cause and non-contents construct in Section 101.

**Sec.107. Additional reporting requirements.**

Requires the AG to submit an annual report on the government’s use of FISA, detailing: the total number of applications made for orders and extension of orders; the total number of orders and extensions approving surveillance granted, modified, or denied; and, the total number of persons subject to surveillance conducted under an order or emergency authorization.

Requires the AG to provide a good faith estimate of the total number of subjects targeted by the installation and use of a pen register or trap and trace device under emergency authorization.

**Sec.108. Application of Certain Amendments.**

Requires the FISA Court and the government to implement new statutory requirements within 120 days.

**Sec.109. Sense of Congress on purpose of section 702 and respecting foreign nationals.**

Expresses the sense of Congress that Section 702 surveillance should be conducted within the bounds of U.S. treaties and agreements, and there should be no targeting of non-U.S. persons for any unfounded discriminatory purpose, or for the purpose of affording a commercial competitive advantage to companies and business sectors of the U.S.

The authority to collect intelligence under Section 702 is meant to shield the U.S. and its allies from security threats both at home and abroad.

**TITLE II—SAFEGUARDS AND OVERSIGHT OF PRIVACY AND CIVIL LIBERTIES**

**Sec.201. Limitation on retention of certain data.**

Requires the purging of communications determined not to contain foreign intelligence information within 90 days, absent a specific, individualized waiver by Director of NSA.

Requires the Director to include the number of times a waiver is used to preserve communications determined not to contain foreign intelligence information longer than 90 days in the semiannual report to the Committees on the Judiciary and Select Committees on Intelligence.

**Sec.202. Improvements to Privacy and Civil Liberties Oversight Board.**

Allows members of the Privacy and Civil Liberties Oversight Board to exercise authority of the Chair of the Board to hire new staff if the Chair remains vacant for more than one year.

Requires PCLOB to issue a report to the Committees on the Judiciary and Select Committees on Intelligence on: 1) how Section 702 is used to protect the United States, 2) how technological changes affect such protections, and 3) how privacy and civil liberties are affected, and whether race, religion, political affiliation, or First Amendment activities are determinative in 702 targeting or querying.



**Sec.203. Privacy and civil liberties officers.**

Requires the NSA, FBI, and CIA to each appoint an official for privacy and civil liberties issues.

**Sec.204. Whistleblower protections for contractors of the intelligence community.**

Provides whistleblower protections to IC contractors who report on waste, fraud, and abuse, or who report on the unauthorized disclosure of classified material. This includes FBI.

**TITLE III—EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS****Sec.301. Extension of title VII of FISA.**

Reauthorizes Title VII of FISA through September 30, 2023.

**Sec.302. Increased penalty for unauthorized removal and retention of classified documents or material.**

Increases the penalty for the intentional, unauthorized removal and retention of classified documents from a misdemeanor to a felony, punishable by one to five years.

**Sec.303. Comptroller General study on unauthorized disclosures and the classification system.**

Directs the Comptroller General to conduct a study on the unauthorized disclosure of classified information and the classification system of the United States, including how to reduce/avoid over-classification.

**Sec.304. Sense of Congress on information sharing among intelligence community to protect national security.**

Expresses the sense of Congress that the United States Government should ensure that the barriers to sharing vital national security information across the Intelligence Community are not re-imposed.

**Sec.305. Sense of Congress on combating terrorism.**

Expresses that sense of Congress that, when lawful and appropriate, the President should share 702-acquired communications with allies of the United States to protect the United States.

**Sec.306. Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review.**

Makes technical amendments, including amendments related to the appellate function of the Foreign Intelligence Surveillance Court of Review.

**Sec.307. Severability.**

Provides for severability of any section of the Act if found invalid.