

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 PURPOSES.—The contents of com-
8 munications acquired under subsection (a) and the
9 information relating to the dialing, routing, address-
10 ing, signaling, or other similar noncontents informa-
11 tion of such communications that are returned in re-
12 sponse to a query may be accessed only if the query
13 is reasonably designed to return foreign intelligence
14 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) such communications are
8 relevant to an authorized investigation
9 or assessment, provided that such in-
10 vestigation or assessment is not con-
11 ducted solely on the basis of activities
12 protected by the first amendment to
13 the Constitution of the United States;
14 and

15 “(III) any use of such commu-
16 nications pursuant to section 706 will
17 be carried out in accordance with such
18 section; and

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

21 “(B) ORDER.—

22 “(i) APPROVAL.—Upon an application
23 made under subparagraph (A), the Foreign
24 Intelligence Surveillance Court shall enter
25 an order as requested or as modified by

1 the Court approving the access or dissemi-
2 nation of contents of communications cov-
3 ered by the application if the Court deter-
4 mines that, based on an independent re-
5 view—

6 “(I) the application contains all
7 information required by clause (i) of
8 such subparagraph;

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

15 “(III) the minimization proce-
16 dures adopted pursuant to subsection
17 (e) will ensure compliance with sub-
18 paragraph (A)(i)(III).

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

22 “(C) RELEVANCE AND SUPERVISORY AP-
23 PROVAL TO ACCESS NONCONTENTS INFORMA-
24 TION.—Except as provided by subparagraph
25 (D), the information of communications ac-

1 required under subsection (a) relating to the dial-
2 ing, routing, addressing, signaling, or other
3 similar noncontents information may be
4 accessed or disseminated only—

5 “(i) with supervisory approval;

6 “(ii) if such information is not sought
7 solely on the basis of activities protected by
8 the first amendment to the Constitution of
9 the United States;

10 “(iii) if an order based on probable
11 cause would not be required by law to ob-
12 tain such information if requested as part
13 of an investigation of a Federal crime; and

14 “(iv) if any use of such communica-
15 tions pursuant to section 706 will be car-
16 ried out in accordance with such section.

17 “(D) EXCEPTIONS.—The requirement for
18 an order of a judge pursuant to subparagraph
19 (A) and the requirement for approval under
20 subparagraph (C), respectively, shall not apply
21 to accessing or disseminating communications
22 acquired under subsection (a) if one or more of
23 the following conditions are met:

24 “(i) Pursuant to the procedures
25 adopted under subsection (e)(3), the query

1 that returned such communications (or
2 other process that returned such commu-
3 nications) is reasonably designed for the
4 purpose of returning foreign intelligence
5 information, including information about
6 activity described in section 101(e) that
7 may otherwise constitute an offense under
8 title 18, United States Code.

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 ap-

1 proval required under subparagraph
2 (C), as the case may be, can with due
3 diligence be obtained;

4 “(II) reasonably believes that the
5 factual basis for the issuance of such
6 an order or such approval exists; and

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

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

17 “(bb) may not use such
18 communications pursuant to sec-
19 tion 706 if the Court finds that
20 the determination by the Attor-
21 ney General with respect to the
22 emergency situation was not ap-
23 propriate.

24 “(iv)(I) Subject to section 706(a)(2),
25 based on a review described in item (II),

1 the Attorney General reasonably deter-
2 mines that the person identified by the
3 queried term is, or is communicating
4 with—

5 “(aa) a person reasonably be-
6 lieved to be engaged in international
7 terrorism (as defined in section
8 101(c)) or activities in preparation
9 therefore; or

10 “(bb) a person reasonably be-
11 lieved to be acting for, or in further-
12 ance of, the goals or objectives of an
13 international terrorist or international
14 terrorist organization.

15 “(II) A review described in this item
16 is a review of information of communica-
17 tions acquired under subsection (a) relat-
18 ing to the dialing, routing, addressing, sig-
19 naling, or other similar noncontents infor-
20 mation, that causes the Attorney General
21 to reasonably suspect that—

22 “(aa) a person who is a party to
23 such communications is engaged in an
24 act of terrorism specified in clauses (i)
25 through (iii) of section

1 2332b(g)(5)(B) of title 18, United
2 States Code, or activities in prepara-
3 tion therefore; and

4 “(bb) a failure or delay in access-
5 ing or disseminating the contents of
6 such communications would result in
7 harm to the national security.

8 “(v) In the case of consent provided
9 pursuant to paragraph (5).

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 “(A) RECORDS.—The Attorney General
10 shall retain records of queries of a collection of
11 communications acquired under subsection (a).
12 The heads of elements of the intelligence com-
13 munity that are not components of the Depart-
14 ment of Justice shall retain records of queries
15 of a collection of communications acquired
16 under subsection (a) that use a term identifying
17 a United States person.

18 “(B) REQUIREMENTS.—Records retained
19 under subparagraph (A) shall—

20 “(i) include queries for not less than
21 5 years after the date on which the query
22 is made; and

23 “(ii) be maintained in a manner that
24 is auditable and available for congressional
25 oversight.

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

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

7 “(B) performing maintenance or testing of
8 information systems.

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

11 “(A) queries made using a term identifying
12 a person who is a party to the communications
13 acquired under subsection (a), or a person who
14 otherwise has lawful authority to provide con-
15 sent, and who consents to such queries; or

16 “(B) the accessing or the dissemination of
17 the contents of communications acquired under
18 subsection (a) of a person who is a party to the
19 communications, or a person who otherwise has
20 lawful authority to provide consent, and who
21 consents to such access or dissemination.”.

22 (b) PROCEDURES.—Subsection (e) of such section
23 (50 U.S.C. 1881a(e)) is amended by adding at the end
24 the following new paragraph:

1 “(3) CERTAIN PROCEDURES FOR QUERYING.—
2 The minimization procedures adopted in accordance
3 with paragraph (1) shall describe a query permitted
4 under subsection (j)(2)(D)(i).”.

5 (c) LIMITATION ON USE OF CERTAIN EXCEPTED
6 QUERIED INFORMATION.—Section 706(a) (50 U.S.C.
7 1881e(a)) is amended—

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

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

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

12 “(2) LIMITATION ON USE OF CERTAIN EX-
13 CEPTED QUERIED INFORMATION.—No information
14 accessed or disseminated pursuant to section
15 702(j)(2)(D)(iv), or evidence derived therefrom, may
16 be received in evidence or otherwise used pursuant
17 to paragraph (1), except—

18 “(A) with the prior approval of the Attor-
19 ney General; and

20 “(B) in a proceeding or investigation in
21 which the information or evidence is directly re-
22 lated to and necessary to address a specific
23 threat of—

24 “(i) an act of terrorism specified in
25 clauses (i) through (iii) of section

1 2332b(g)(5)(B) of title 18, United States
2 Code;

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

5 “(iii) proliferation or use of a weapon
6 of mass destruction (as defined in section
7 2332a(c) of title 18, United States Code);

8 “(iv) a cybersecurity threat (as de-
9 fined in section 101(5) of the
10 Cybersecurity Information Sharing Act of
11 2015 (6 U.S.C. 1501(5)) from a foreign
12 country;

13 “(v) incapacitation or destruction of
14 critical infrastructure (as defined in section
15 1016(e) of the USA PATRIOT Act (42
16 U.S.C. 5195c(e))); or

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

22 (d) CONFORMING AMENDMENT.—Subsection
23 (g)(2)(B) of such section (50 U.S.C. 1881a(g)(2)(B)) is
24 amended by striking “and (e)” and inserting “(e), and
25 (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.—

6 “(A) IN GENERAL.—During the period
7 preceding September 30, 2023, the procedures
8 adopted in accordance with paragraph (1) shall
9 require that the targeting of a person is limited
10 to communications to or from the targeted per-
11 son.

12 “(B) ANNUAL REPORT.—On an annual
13 basis during the period specified in subpara-
14 graph (A), the Attorney General shall submit to
15 the congressional intelligence committees and
16 the Committees on the Judiciary of the House
17 of Representatives and the Senate a report
18 on—

19 “(i) any difficulty relating to the limi-
20 tation under such subparagraph; and

21 “(ii) during the period of such limita-
22 tion, the technical feasibility of ensuring
23 that the handling of communications ac-
24 quired under subsection (a) with respect to
25 incidentally collected United States person

1 information complies with the minimization
2 procedures adopted under subsection (e).”.

3 (b) MINIMIZATION PROCEDURES.—Subsection (e) of
4 such section (50 U.S.C. 1881a(e)), as amended by section
5 101, is further amended—

6 (1) in paragraph (1), by inserting “, and the re-
7 quirements of this subsection” before the period at
8 the end; and

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

11 “(4) REQUESTS TO UNMASK INFORMATION.—
12 The procedures adopted under paragraph (1) shall
13 include specific procedures adopted by the Attorney
14 General for elements of the Federal Government to
15 submit requests to unmask information in dissemi-
16 nated intelligence reports. Such specific procedures
17 shall—

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

22 “(B) require the retention of the records of
23 each request, including—

24 “(i) a copy of the request;

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

3 “(iii) if the request is approved, the
4 name and position of the individual who
5 approved the request and the date of the
6 approval.”.

7 (c) UNMASK DEFINED.—Section 701(b) (50 U.S.C.
8 1881(b)) is amended by adding at the end the following
9 new paragraph:

10 “(6) UNMASK.—The term ‘unmask’ means,
11 with respect to a disseminated intelligence report
12 containing a reference to a United States person
13 that does not identify that person (including by
14 name or title), to disseminate the identity of the
15 United States person, including the name or title of
16 the person.”.

17 (d) CONSISTENT REQUIREMENTS TO RETAIN
18 RECORDS ON REQUESTS TO UNMASK INFORMATION.—
19 The Foreign Intelligence Surveillance Act of 1978 (50
20 U.S.C. 1801 et seq.) is amended as follows:

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

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

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

1 (C) by adding at the end the following new
2 paragraph:

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

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

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

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

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

12 “(E) specific procedures as described in
13 section 702(e)(4).”.

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

15 (A) by redesignating paragraph (2) as
16 paragraph (3); and

17 (B) by inserting after paragraph (1) the
18 following new paragraph (2):

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

23 (4) In section 501(g)(2) (50 U.S.C.
24 1861(g)(2))—

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

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

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

7 “(D) specific procedures as described in
8 section 702(e)(4).”.

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

17 (1) ensuring that incidentally collected commu-
18 nications of United States persons are properly
19 masked if masking is necessary; and

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

1 **SEC. 103. PUBLICATION OF MINIMIZATION PROCEDURES**
2 **UNDER SECTION 702.**

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

6 “(5) PUBLICATION.—The Director of National
7 Intelligence, in consultation with the Attorney Gen-
8 eral, shall—

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

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

17 **SEC. 104. APPOINTMENT OF AMICUS CURIAE FOR ANNUAL**
18 **CERTIFICATIONS.**

19 Section 103(i) (50 U.S.C. 1803(i)(2)) is amended—

20 (1) in paragraph (2)—

21 (A) in subparagraph (A), by striking “;
22 and” and inserting a semicolon;

23 (B) by redesignating subparagraph (B) as
24 subparagraph (C); and

25 (C) by inserting after subparagraph (A)
26 the following new subparagraph (B):

1 “(B) shall appoint an individual who has
2 been designated under paragraph (1) to serve
3 as amicus curiae to assist such court in the re-
4 view of a certification under section 702(i), un-
5 less the court issues a finding that such ap-
6 pointment is not necessary; and”;

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

10 **SEC. 105. INCREASED ACCOUNTABILITY ON INCIDENTALLY**
11 **COLLECTED COMMUNICATIONS.**

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

14 “(c) INCIDENTALLY COLLECTED COMMUNICATIONS
15 AND OTHER INFORMATION.—Together with the semi-
16 annual report submitted under subsection (a), the Direc-
17 tor of National Intelligence shall submit to the congres-
18 sional committees specified in such subsection a report on
19 incidentally collected communications and other informa-
20 tion regarding United States persons under section 702.
21 Each such report shall include, with respect to the 6-
22 month period covered by the report, the following:

23 “(1) Except as provided by paragraph (2), the
24 number, or a good faith estimate, of communications
25 acquired under subsection (a) of such section of

1 United States persons, including a description of any
2 efforts of the intelligence community to ascertain
3 such number or good faith estimate.

4 “(2) If the Director determines that the num-
5 ber, or a good faith estimate, under paragraph (1)
6 is not achievable, a detailed explanation for why
7 such number or good faith estimate is not achiev-
8 able.

9 “(3) The number of—

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

13 “(B) requests made by an element of the
14 Federal Government, listed by each such ele-
15 ment, to unmask information pursuant to such
16 subsection; and

17 “(C) requests that resulted in the dissemi-
18 nation of names, titles, or other identifiers po-
19 tentially associated with individuals pursuant to
20 such subsection, including the element of the in-
21 telligence community and position of the indi-
22 vidual making the request.

23 “(4) The number of disseminations of commu-
24 nications acquired under subsection (a) of section

1 702 to the Federal Bureau of Investigation for cases
2 unrelated to foreign intelligence.

3 “(5) The number of instances in which evidence
4 of a crime unrelated to foreign intelligence that was
5 identified in communications acquired under sub-
6 section (a) of section 702 was disseminated from the
7 national security branch of the Bureau to the crimi-
8 nal investigative division of the Bureau (or from
9 such successor branch to such successor division).

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

13 **SEC. 106. SEMIANNUAL REPORTS ON CERTAIN QUERIES BY**
14 **FEDERAL BUREAU OF INVESTIGATION.**

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

18 “(d) SEMIANNUAL FBI REPORTS.—Together with
19 the semiannual report submitted under subsection (a), the
20 Director of the Federal Bureau of Investigation shall sub-
21 mit to the congressional committees specified in such sub-
22 section, and make publicly available, a report containing,
23 with respect to the period covered by the report—

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

4 “(2) the number of such applications that were
5 approved and resulted in communications being
6 accessed or disseminated pursuant to such sub-
7 section; and

8 “(3) the number of supervisory approvals made
9 pursuant to subsection (j)(2)(C) of such section.”.

10 **SEC. 107. ADDITIONAL REPORTING REQUIREMENTS.**

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

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

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

18 “(1) the total number of applications made for
19 orders and extensions of orders approving electronic
20 surveillance under this title;

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

23 “(3) the total number of persons who were sub-
24 ject to electronic surveillance conducted under an
25 order or emergency authorization under this title,

1 rounded to the nearest 500, including the number of
2 such individuals who are United States persons, re-
3 ported to the nearest band of 500, starting with 0–
4 499.

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

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

12 (1) in subsection (b)—

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

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

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

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

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

4 “(B) of the number of United States per-
5 sons described in subparagraph (A), the num-
6 ber of persons whose information acquired pur-
7 suant to such order was reviewed or accessed by
8 a Federal officer, employee, or agent, reported
9 to the nearest band of 500, starting with 0–
10 499.”; and

11 (2) by adding at the end the following new sub-
12 section:

13 “(c) Each report under subsection (b) shall be sub-
14 mitted in unclassified form. Not later than 7 days after
15 the date on which the Attorney General submits such a
16 report, the Attorney General shall make such report pub-
17 licly available.”.

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

19 The amendments made by sections 101 and 102 of
20 the Foreign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1801 et seq.) shall apply with respect to applica-
22 tions, certifications, and procedures submitted to the For-
23 eign Intelligence Surveillance Court on or after the date
24 that is 120 days after the date of the enactment of this
25 Act.

1 **SEC. 109. SENSE OF CONGRESS ON PURPOSE OF SECTION**
2 **702 AND RESPECTING FOREIGN NATIONALS.**

3 It is the sense of Congress that—

4 (1) the acquisition of communications by the
5 National Security Agency under section 702 of the
6 Foreign Intelligence Surveillance Act (50 U.S.C.
7 1881a) should be conducted within the bounds of
8 treaties and agreements to which the United States
9 is a party, and there should be no targeting of non-
10 United States persons for any unfounded discrimina-
11 tory purpose or for the purpose of affording a com-
12 mercial competitive advantage to companies and
13 business sectors of the United States; and

14 (2) the authority to collect intelligence under
15 such section 702 is meant to shield the United
16 States, and by extension, the allies of the United
17 States, from security threats both at home and
18 abroad.

19 **TITLE II—SAFEGUARDS AND**
20 **OVERSIGHT OF PRIVACY AND**
21 **CIVIL LIBERTIES**

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

23 Subsection (m) of section 702 (50 U.S.C. 1881a), as
24 redesignated by section 101, is amended—

25 (1) by redesignating paragraphs (2) and (3) as
26 paragraphs (3) and (4); and

1 members of the Board, may exercise the authority of
2 the chairman under paragraph (1).”.

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

5 (1) by striking “The Board shall” and inserting
6 “The Board”;

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

9 (3) in paragraph (2)—

10 (A) by striking “hold public” and inserting
11 “shall hold public”; and

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

18 (c) REPORT ON SECTION 702 AND TERRORISM.—Not
19 later than 1 year after the date on which the Privacy and
20 Civil Liberties Oversight Board first achieves a quorum
21 following the date of the enactment of this Act, the Board
22 shall submit to the Committee on the Judiciary and the
23 Permanent Select Committee on Intelligence of the House
24 of Representatives and the Committee on the Judiciary

1 and the Select Committee on Intelligence of the Senate
2 a report assessing—

3 (1) how communications acquired under section
4 702 of the of the Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1881a) are used by the
6 United States to prevent or defend against ter-
7 rorism;

8 (2) whether technological challenges and
9 changes in technology affect the prevention of and
10 defense against terrorism, and how effectively the
11 foreign intelligence elements of the intelligence com-
12 munity have responded to those challenges; and

13 (3) how privacy and civil liberties are affected
14 by the actions identified under paragraph (1) and
15 the changes in technology identified under para-
16 graph (2), and whether race, religion, political affili-
17 ation, or activities protected by the First Amend-
18 ment are determinative in the targeting or querying
19 decisions made pursuant to such section 702.

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

21 (a) CODIFICATION OF CERTAIN OFFICERS.—Section
22 1062(a) of the Intelligence Reform and Terrorism Preven-
23 tion Act of 2004 (42 U.S.C. 2000ee–1(a)) is amended by
24 inserting “, the Director of the National Security Agency,

1 the Director of the Federal Bureau of Investigation” after
2 “the Director of the Central Intelligence Agency”.

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

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

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

11 (3) by adding at the end the following new
12 clause:

13 “(v) a review by the privacy and civil
14 liberties officer of the element of inciden-
15 tally collected communications of United
16 States persons to assess compliance with
17 the minimization procedures adopted under
18 subsection (e) and the effect of this section
19 on the privacy of United States persons.”.

20 **SEC. 204. WHISTLEBLOWER PROTECTIONS FOR CONTRAC-**
21 **TORS OF THE INTELLIGENCE COMMUNITY.**

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

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

3 “(4) CONTRACTOR EMPLOYEE.—The term ‘con-
4 tractor employee’ means an employee of a con-
5 tractor, subcontractor, grantee, subgrantee, or per-
6 sonal services contractor, of a covered intelligence
7 community element.”;

8 (2) by redesignating subsections (c) and (d) as
9 subsections (d) and (e), respectively;

10 (3) by inserting after subsection (b) the fol-
11 lowing new subsection (c):

12 “(c) CONTRACTOR EMPLOYEES.—(1) Any employee
13 of a contractor, subcontractor, grantee, subgrantee, or
14 personal services contractor, of a covered intelligence com-
15 munity element, or any employee of an agency, who has
16 authority to take, direct others to take, recommend, or ap-
17 prove any personnel action, shall not, with respect to such
18 authority, take or fail to take a personnel action with re-
19 spect to any contractor employee as a reprisal for a lawful
20 disclosure of information by the contractor employee to
21 the Director of National Intelligence (or an employee des-
22 igned by the Director of National Intelligence for such
23 purpose), the Inspector General of the Intelligence Com-
24 munity, the head of the contracting agency (or an em-
25 ployee designated by the head of that agency for such pur-

1 pose), the appropriate inspector general of the contracting
2 agency, a congressional intelligence committee, or a mem-
3 ber of a congressional intelligence committee, which the
4 contractor employee reasonably believes evidences—

5 “(A) a violation of any Federal law, rule, or
6 regulation (including with respect to evidence of an-
7 other employee or contractor employee accessing or
8 sharing classified information without authoriza-
9 tion); or

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

13 “(2) A personnel action under paragraph (1) is pro-
14 hibited even if the action is undertaken at the request of
15 an agency official, unless the request takes the form of
16 a nondiscretionary directive and is within the authority of
17 the agency official making the request.

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

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

23 (5) in subsection (e), as redesignated by para-
24 graph (2), by inserting “contractor employee,” after
25 “any employee,”.

1 (b) FEDERAL BUREAU OF INVESTIGATION.—

2 (1) IN GENERAL.—Any employee of a con-
3 tractor, subcontractor, grantee, subgrantee, or per-
4 sonal services contractor, of the Federal Bureau of
5 Investigation, or any employee of the Bureau, who
6 has authority to take, direct others to take, rec-
7 ommend, or approve any personnel action, shall not,
8 with respect to such authority, take or fail to take
9 a personnel action with respect to a contractor em-
10 ployee as a reprisal for a disclosure of information—

11 (A) made—

12 (i) to a supervisor in the direct chain
13 of command of the contractor employee, up
14 to and including the Director of the Fed-
15 eral Bureau of Investigation;

16 (ii) to the Inspector General;

17 (iii) to the Office of Professional Re-
18 sponsibility of the Department of Justice;

19 (iv) to the Office of Professional Re-
20 sponsibility of the Federal Bureau of In-
21 vestigation;

22 (v) to the Inspection Division of the
23 Federal Bureau of Investigation;

24 (vi) as described in section 7211 of
25 title 5, United States Code;

1 (vii) to the Office of Special Counsel;

2 or

3 (viii) to an employee designated by
4 any officer, employee, office, or division de-
5 scribed in clauses (i) through (vii) for the
6 purpose of receiving such disclosures; and

7 (B) which the contractor employee reason-
8 ably believes evidences—

9 (i) any violation of any law, rule, or
10 regulation (including with respect to evi-
11 dence of another employee or contractor
12 employee accessing or sharing classified in-
13 formation without authorization); or

14 (ii) gross mismanagement, a gross
15 waste of funds, an abuse of authority, or
16 a substantial and specific danger to public
17 health or safety.

18 (2) ACTIONS BY REQUEST.—A personnel action
19 under paragraph (1) is prohibited even if the action
20 is undertaken at the request of an official of the Bu-
21 reau, unless the request takes the form of a nondis-
22 cretionary directive and is within the authority of
23 the official making the request.

24 (3) VIOLATION.—A contractor employee may
25 raise a violation of paragraph (1) in any proceeding

1 to implement or challenge a personnel action de-
2 scribed in such paragraph.

3 (4) REGULATIONS.—The Attorney General shall
4 prescribe regulations to ensure that a personnel ac-
5 tion described in paragraph (1) shall not be taken
6 against a contractor employee of the Bureau as a re-
7 prisal for any disclosure of information described in
8 subparagraph (A) of such paragraph.

9 (5) ENFORCEMENT.—The President shall pro-
10 vide for the enforcement of this subsection in a man-
11 ner consistent with applicable provisions of sections
12 1214 and 1221 of title 5, United States Code.

13 (6) DEFINITIONS.—In this subsection:

14 (A) The term “contractor employee”
15 means an employee of a contractor, subcon-
16 tractor, grantee, subgrantee, or personal serv-
17 ices contractor, of the Federal Bureau of Inves-
18 tigation.

19 (B) The term “personnel action” means
20 any action described in clauses (i) through (x)
21 of section 2302(a)(2)(A) of title 5, United
22 States Code, with respect to a contractor em-
23 ployee.

24 (c) RETALIATORY REVOCATION OF SECURITY
25 CLEARANCES AND ACCESS DETERMINATIONS.—Section

1 3001(j) of the Intelligence Reform and Terrorism Preven-
2 tion Act of 2004 (50 U.S.C. 3341(j)) is amended by add-
3 ing at the end the following new paragraph:

4 “(8) INCLUSION OF CONTRACTOR EMPLOY-
5 EES.—In this subsection, the term ‘employee’ in-
6 cludes an employee of a contractor, subcontractor,
7 grantee, subgrantee, or personal services contractor,
8 of an agency. With respect to such employees, the
9 term ‘employing agency’ shall be deemed to be the
10 contracting agency.”

11 **TITLE III—EXTENSION OF AU-**
12 **THORITIES, INCREASED PEN-**
13 **ALTIES, REPORTS, AND**
14 **OTHER MATTERS**

15 **SEC. 301. EXTENSION OF TITLE VII OF FISA; EFFECTIVE**
16 **DATES.**

17 (a) EXTENSION.—Section 403(b) of the FISA
18 Amendments Act of 2008 (Public Law 110–261; 122 Stat.
19 2474) is amended—

20 (1) in paragraph (1)—

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

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

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

4 (b) CONFORMING AMENDMENTS.—Section 404(b) of
5 the FISA Amendments Act of 2008 (Public Law 110–261;
6 122 Stat. 2476) is amended—

7 (1) in paragraph (1)—

8 (A) in the heading, by striking “DECEM-
9 BER 31, 2017” and inserting “SEPTEMBER 30,
10 2023”; and

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

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

16 (3) in paragraph (4)—

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

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

22 (C) by inserting “and by the USA Liberty
23 Act of 2017” after “as amended by section
24 101(a)” both places it appears.

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

2 The amendments made to the FISA Amendments Act of
3 2008 (Public Law 110–261) by this section shall take ef-
4 fect on the earlier of the date of the enactment of this
5 Act or December 31, 2017.

6 **SEC. 302. INCREASED PENALTY FOR UNAUTHORIZED RE-**
7 **MOVAL AND RETENTION OF CLASSIFIED DOC-**
8 **UMENTS OR MATERIAL.**

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

12 **SEC. 303. COMPTROLLER GENERAL STUDY ON UNAUTHOR-**
13 **IZED DISCLOSURES AND THE CLASSIFICA-**
14 **TION SYSTEM.**

15 (a) STUDY.—The Comptroller General of the United
16 States shall conduct a study of the unauthorized disclosure
17 of classified information and the classification system of
18 the United States.

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

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

23 (2) The effect of modern technology on the un-
24 authorized disclosure of classified information, in-
25 cluding with respect to—

1 (A) using cloud storage for classified infor-
2 mation; and

3 (B) any technological means to prevent or
4 detect such unauthorized disclosure.

5 (3) The effect of overclassification on the unau-
6 thORIZED disclosure of classified information.

7 (4) Any ways to improve the classification sys-
8 tem of the United States, including with respect to
9 changing the levels of classification used in such sys-
10 tem and to reduce overclassification.

11 (5) How to improve the authorized sharing of
12 classified information, including with respect to sen-
13 sitive compartmented information.

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

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

19 (A) applies uniform standards in deter-
20 mining who is authorized to access classified in-
21 formation; and

22 (B) provides proper training with respect
23 to the handling of classified information and
24 the avoidance of overclassification.

1 (c) COOPERATION.—The heads of the intelligence
2 community shall provide to the Comptroller General infor-
3 mation the Comptroller General determines necessary to
4 carry out the study under subsection (a).

5 (d) REPORT.—Not later than 180 days after the date
6 of the enactment of this Act, the Comptroller General shall
7 submit to the Committee on the Judiciary and the Perma-
8 nent Select Committee on Intelligence of the House of
9 Representatives and the Committee on the Judiciary and
10 the Select Committee on Intelligence of the Senate a re-
11 port containing the study under subsection (a).

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

15 **SEC. 304. SENSE OF CONGRESS ON INFORMATION SHARING**
16 **AMONG INTELLIGENCE COMMUNITY TO PRO-**
17 **TECT NATIONAL SECURITY.**

18 It is the sense of Congress that, in carrying out sec-
19 tion 702 of the Foreign Intelligence Surveillance Act of
20 1978 (50 U.S.C. 1881a), as amended by this Act, the
21 United States Government should ensure that the bar-
22 riers, whether real or perceived, to sharing critical foreign
23 intelligence among the intelligence community that existed
24 before September 11, 2001, are not reimposed by sharing
25 information vital to national security among the intel-

1 lidence community in a manner that is consistent with
2 such section, applicable provisions of law, and the Con-
3 stitution of the United States.

4 **SEC. 305. SENSE OF CONGRESS ON COMBATING TER-**
5 **RORISM.**

6 It is the sense of Congress that, consistent with the
7 protection of sources and methods, when lawful and ap-
8 propriate, the President should share information learned
9 by acquiring communications under section 702 of the
10 Foreign Intelligence Surveillance Act (50 U.S.C. 1881a)
11 with allies of the United States to prevent and defend
12 against terrorism.

13 **SEC. 306. TECHNICAL AMENDMENTS AND AMENDMENTS TO**
14 **IMPROVE PROCEDURES OF THE FOREIGN IN-**
15 **TELLIGENCE SURVEILLANCE COURT OF RE-**
16 **VIEW.**

17 (a) TECHNICAL AMENDMENTS.—The Foreign Intel-
18 lidence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
19 is amended as follows:

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

23 (2) In section 302(a)(1)(A)(iii) (50 U.S.C.
24 1822(a)(1)(A)(iii)), by striking “paragraphs (1)

1 through (4)” and inserting “subparagraphs (A)
2 through (D)”.

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

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

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

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

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

12 (A) in subsection (a), by striking “The
13 terms” and inserting “In this title, the terms”;
14 and

15 (B) in subsection (b)—

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

18 (ii) in paragraph (5), by striking “(50
19 U.S.C. 401a(4))” and inserting “(50
20 U.S.C. 3003(4))”.

21 (6) In section 702(g)(2)(A)(i) (50 U.S.C.
22 1881a(g)(2)(A)(i)), by inserting “targeting” before
23 “procedures in place”.

1 (7) In section 801(7) (50 U.S.C. 1885(7)), by
2 striking “(50 U.S.C. 401a(4))” and inserting “(50
3 U.S.C. 3003(4))”.

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

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

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

10 (B) in subsection (h), by striking “the
11 court established under subsection (a)” and in-
12 serting “a court established under this section”.

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

15 “(4) A denial of the application made under section
16 104 may be reviewed as provided in section 103.”.

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

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

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

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

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

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

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

9 **SEC. 307. SEVERABILITY.**

10 If any provision of this Act, any amendment made
11 by this Act, or the application thereof to any person or
12 circumstances is held invalid, the validity of the remainder
13 of the Act, of any such amendments, and of the applica-
14 tion of such provisions to other persons and circumstances
15 shall not be affected thereby.

