

To better understand how the USA FREEDOM Act amends the Foreign Intelligence Surveillance Act of 1978 (FISA), the Westin Center created a redlined version of the FISA reflecting the FREEDOM Act's changes. Please note that the chart below does not include the entire FREEDOM Act – which is more than 100 pages long – or FISA, but rather the specific sections and provisions that are central for privacy professionals.

**Notes on how to read the chart:**

- **Bold and Underlined** = Title of the USA FREEDOM Act
- Plain black text = original FISA Language
- **Text in color(s)** = FREEDOM Act amendments to FISA. Each color reflects a different section of the FREEDOM Act, as designated under each corresponding title. Each title has its own section-color key.

## **USA FREEDOM Act Amendments to FISA**

### **Title I- FISA Business Records Reform**

**Sec. 101 Additional Requirements for Call Detail Records**

**Sec 103: Prohibition on Bulk Collection of Tangible Things**

**Sec 104: Judicial Review**

### **50 U.S.C § 1861 - Access to certain business records for foreign intelligence and international terrorism investigations**

#### **(a) Application for order; conduct of investigation generally**

**(1)** Subject to paragraph (3), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

**(2)** An investigation conducted under this section shall—

**(A)** be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

**(B)** not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

**(3)** In the case of an application for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, tax return records, educational records, or medical records containing information that would identify a person, the Director of the Federal Bureau of Investigation may delegate the authority to make such application to either the Deputy Director of the Federal Bureau of Investigation or the Executive Assistant Director for National Security (or any successor position). The Deputy Director or the Executive Assistant Director may not further delegate such authority.

**(b) Recipient and contents of application**

Each application under this section—

**(1) shall be made to—**

- (A)** a judge of the court established by section [1803 \(a\)](#) of this title; or
- (B)** a United States Magistrate Judge under chapter [43](#) of title [28](#), who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

**(2) shall include—**

**(A)** a specific selection term to be used as the basis for the production of tangible things sought;

~~**(A)-(B)**~~ a statement in the case of an application other than an application described in subparagraph (C) (including an application for the production of call detail records other than in the manner described in subparagraph (C)), a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to—

**(i)** a foreign power or an agent of a foreign power;

**(ii)** the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

**(iii)** an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; ~~and~~ ;

**(C)** in the case of an application for the production on an ongoing basis of call detail records created before, on, or after the date of the application relating to an authorized investigation (other than a threat assessment) conduct in accordance with subsection (a)(2) to protect against international terrorism, a statement of facts showing that—

**(i)** there are reasonable grounds to believe that the call detail records sought to be produced based on the specific selection term required under subparagraph (A) are relevant to such investigation; and

**(ii)** there is a reasonable, articulable suspicion that such specific selection term is associated with a foreign power engaged in international terrorism or activities in preparation therefor, or an agent of a foreign power engaged in international terrorism or activities in preparation therefor; and

~~**(B)**~~ **(D)** an enumeration of the minimization procedures adopted by the Attorney General under subsection (g) that are applicable to the retention and dissemination by the Federal Bureau of Investigation of any tangible things to be made available to the Federal Bureau of Investigation based on the order requested in such application.

**(c) Ex parte judicial order of approval**

**(1)** Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b) and that the minimization procedures submitted in accordance with subsection (b)(2)(D) meet the definition of minimization procedures under subsection (g), the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (g) be followed.

**(2)** An order under this subsection—

**(A)** shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified; ~~including each specific selection term to be used as the basis for the production;~~

**(B)** shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;

**(C)** shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);

**(D)** may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; ~~and~~ ;

**(E)** shall not disclose that such order is issued for purposes of an investigation described in subsection (a); ~~and~~

**(F)** in the case of an application described in subsection (b)(2)(C) shall—

**(i)** authorize the production on a daily basis of call detail records for a period not to exceed 180 days;

**(ii)** provide that an order for such production may be extended upon application under subsection (b) and the judicial finding under paragraph (1) of this subsection

**(iii)** provide that the Government may require the prompt production of a first set of call detail records using the specific selection term that satisfies the standard required under subsection (b)(2)(C)(ii);

**(iv)** provide that the Government may require prompt production of a second set of call detail records using session-identifying information or a telephone calling card number identified by the specific selection term used to produce call detail records under clause (iii)

**(v)** provide that, when produced, such records be in a form that will be useful to the Government;

**(vi)** direct each person the Government directs to produce call detail records under the order to furnish the Government forthwith all information, facilities, or technical assistance necessary to accomplish the production in such a manner as will protect the secrecy of the production and produce a minimum interference with the services that such person is providing to each subject of the production; and

**(vii)** direct the Government to—

**(I)** adopt minimization procedures that require the prompt

destruction of all call detail records produced under the order that the Government determines are not foreign intelligence information; and

(II) destroy all call detail records produced under the order as prescribed by such procedures

(3) No order issued under this subsection may authorize the collection of tangible things without the use of a specific selection term that meets the requirements of subsection (b)(2)

[§1861(d)-(f) excluded]

**(g) Minimization procedures**

**(1) In general**

~~Not later than 180 days after March 9, 2006, the~~The Attorney General shall adopt and update as appropriate specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this subchapter.

**(2) Defined**

In this section, the term “minimization procedures” means—

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section [1801 \(e\)\(1\)](#) of this title, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance; and

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.

**(3) RULE OF CONSTRUCTION.**—Nothing in this subsection shall limit the authority of the court established under section 103(a) to impose additional, particularized minimization procedures with regard to the production, retention, or dissemination of nonpublicly available information concerning unconsenting United States Persons, including additional, particularized procedures related to the destruction of information within a reasonable time period.

**Title IV- Foreign Intelligence Surveillance Court Reforms**

Sec. 401 FISA Amendments

Sec. 402 Declassification of Decisions, Orders, and Opinions

**Title VI- FISA Transparency and Reporting Requirements**

Sec. 601 Additional Reporting on Orders Requiring Production of Business Records; Business Records Compliance Reports to Congress

Sec. 602 Annual Reports by the Government

Sec. 603 Public Reporting by Persons Subject to FISA Orders

Sec. 604 Reporting Requirements for Decisions, Orders, and Opinions of the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review

#### **50 U.S.C § 1803 Designation of Judges**

##### **(a) Court to hear applications and grant orders; record of denial; transmittal to court of review**

**(1)** The Chief Justice of the United States shall publicly designate 11 district court judges from at least seven of the United States judicial circuits of whom no fewer than 3 shall reside within 20 miles of the District of Columbia who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter, except that no judge designated under this subsection (except when sitting en banc under paragraph (2)) shall hear the same application for electronic surveillance under this chapter which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this chapter, such judge shall provide immediately for the record a written statement of each reason of his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b) of this section.

##### **(2)**

**(A)** The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section [1861 \(f\)](#) of this title or paragraph (4) or (5) of section [1881a \(h\)](#) of this title, hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

**(i)** en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

**(ii)** the proceeding involves a question of exceptional importance.

**(B)** Any authority granted by this chapter to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this chapter on the exercise of such authority.

**(C)** For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.

##### **(b) Court of review; record, transmittal to Supreme Court**

The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this chapter. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

##### **(c) Expeditious conduct of proceedings; security measures for maintenance of records**

Proceedings under this chapter shall be conducted as expeditiously as possible. The record of proceedings under this chapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence.

**(d) Tenure**

Each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) of this section shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) of this section shall be designated for terms of three, five, and seven years.

**(e) Jurisdiction and procedures for review of petitions**

(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or, if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the presiding judge of such court, shall comprise a petition review pool which shall have jurisdiction to review petitions filed pursuant to section [1861 \(f\)\(1\)](#) or [1881a \(h\)\(4\)](#) of this title.

(2) Not later than 60 days after March 9, 2006, the court established under subsection (a) shall adopt and, consistent with the protection of national security, publish procedures for the review of petitions filed pursuant to section [1861 \(f\)\(1\)](#) or [1881a \(h\)\(4\)](#) of this title by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted in camera and shall also provide for the designation of an acting presiding judge.

**(f) Stay of order**

(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any subchapter of this chapter, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this chapter.

**(g) Establishment and transmittal of rules and procedures**

(1) The courts established pursuant to subsections (a) and (b) may establish such rules and procedures, and take such actions, as are reasonably necessary to administer their responsibilities under this chapter.

(2) The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded, and shall be transmitted to the following:

(A) All of the judges on the court established pursuant to subsection (a).

(B) All of the judges on the court of review established pursuant to subsection (b).

(C) The Chief Justice of the United States.

- (D) The Committee on the Judiciary of the Senate.
- (E) The Select Committee on Intelligence of the Senate.
- (F) The Committee on the Judiciary of the House of Representatives.
- (G) The Permanent Select Committee on Intelligence of the House of Representatives.

(3) The transmissions required by paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

**(h) Compliance with orders, rules, and procedures**

Nothing in this chapter shall be construed to reduce or contravene the inherent authority of the court established under subsection (a) to determine or enforce compliance with an order or a rule of such court or with a procedure approved by such court.

**(i) Amicus Curiae**

**(1) DESIGNATION.**—The presiding judges of the courts established under subsections (a) and (b) shall, not later than 180 days after the enactment of this subsection, jointly designate not fewer than 5 individuals to be eligible to serve as amicus curiae, who shall serve pursuant to rules the presiding judges may establish. In designating such individuals, the presiding judges may consider individuals recommended by any source, including members of the Privacy and Civil Liberties Oversight Board, the judges determine appropriate.

**(2) AUTHORIZATION.**—A court established under subsection (a) or (b), consistent with the requirement of subsection (c) and any other statutory requirement that the court act expeditiously or within a stated time—

(A) shall appoint an individual who has been designated under paragraph (1) to serve as amicus curiae to assist such court in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate; and

(B) may appoint an individual or organization to serve as amicus curiae, including to provide technical expertise, in any instance as such court deems appropriate or, upon motion, permit an individual or organization leave to file an amicus curiae brief.

**(3) QUALIFICATIONS OF AMICUS CURIAE.**—

(A) **EXPERTISE.**—Individuals designated under paragraph (1) shall be persons who possess expertise in privacy and civil liberties, intelligence collection, communications technology, or any other area that may lend legal or technical expertise to a court established under subsection (a) or (b).

(B) **SECURITY CLEARANCE.**—Individuals designated pursuant to paragraph (1) shall be persons who are determined to be eligible for access to classified information necessary to participate in matters before the courts. Amicus curiae appointed by the court pursuant to paragraph (2) shall be persons who are determined to be eligible for access to classified information, if such access is necessary to participate in the matters in which they may be appointed.

(4) **DUTIES.**—If a court established under subsection (a) or (b) appoints an amicus curiae under paragraph (2)(A), the amicus curiae shall provide to the court, as appropriate—

- (A) legal arguments that advance the protection of individual privacy and civil liberties;
- (B) information related to intelligence collection or communications technology; or
- (C) legal arguments or information regarding any other area relevant to the issue presented to the court.

(5) **ASSISTANCE.**—An amicus curiae appointed under paragraph (2)(A) may request that the court designate or appoint additional amici curiae pursuant to paragraph (1) or paragraph (2),

to be available to assist the amicus curiae.

**(6) ACCESS TO INFORMATION.—**

**(A) IN GENERAL.—**If a court established under subsection (a) or (b) appoints an amicus curiae under paragraph (2), the amicus curiae—

**(i)** shall have access to any legal precedent, application, certification, petition, motion, or such other materials that the court determines are relevant to the duties of the amicus curiae; and

**(ii)** may, if the court determines that it is relevant to the duties of the amicus curiae, consult with any other individuals designated pursuant to paragraph (1) regarding information relevant to any assigned proceeding.

**(B) BRIEFINGS.—**The Attorney General may periodically brief or provide relevant materials to individuals designated pursuant to paragraph (1) regarding constructions and interpretations of this Act and legal, technological, and other issues related to actions authorized by this Act.

**(C) CLASSIFIED INFORMATION.—**An amicus curiae designated or appointed by the court may have access to classified documents, information, and other materials or proceedings only if that individual is eligible for access to classified information and to the extent consistent with the national security of the United States.

**(D) RULE OF CONSTRUCTION.—**Nothing in this section shall be construed to require the Government to provide information to an amicus curiae appointed by the court that is privileged from disclosure.

**(7) NOTIFICATION.—**A presiding judge of a court established under subsection (a) or (b) shall notify the Attorney General of each exercise of the authority to appoint an individual to serve as amicus curiae under paragraph (2).

**(8) ASSISTANCE.—**A court established under subsection (a) or (b) may request and receive (including on a nonreimbursable basis) the assistance of the executive branch in the implementation of this subsection.

**(9) ADMINISTRATION.—**A court established under subsection (a) or (b) may provide for the designation, appointment, removal, training, or other support for an individual designated to serve as amicus curiae under paragraph (1) or appointed to serve as amicus curiae under paragraph (2) in a manner that is not inconsistent with this subsection.

**(10) RECEIPT OF INFORMATION.—**Nothing in this subsection shall limit the ability of a court established under subsection (a) or (b) to request or receive information or materials from, or otherwise communicate with, the Government or amicus curiae appointed under paragraph (2) on an ex parte basis, nor limit any special or heightened obligation in any ex parte communication or proceeding.

**(j) REVIEW OF FISA COURT DECISIONS.—**Following issuance of an order under this Act, a court established under subsection (a) shall certify for review to the court established under subsection (b) any question of law that may affect resolution of the matter in controversy that the court determines warrants such review because of a need for uniformity or because consideration by the court established under subsection (b) would serve the interests of justice. Upon certification of a question of law under this subsection, the court established under subsection (b) may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

**(k) REVIEW OF FISA COURT OF REVIEW DECISIONS.—**

**(1) CERTIFICATION.—**For purposes of section 1254(2) of title 28, United States Code, the court of review established under subsection (b) shall be considered to be a court of appeals.

**(2) AMICUS CURIAE BRIEFING.—**Upon certification of an application under paragraph (1), the Supreme Court of the United States may appoint an amicus curiae designated under



subsection (i)(1), or any other person, to provide briefing or other assistance.

**50 U.S.C. §1862. Congressional oversight**

**(a)** On a[n] annual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate concerning all requests for the production of tangible things under section 1861 of this title.

**(b)** In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year—

- (1) a summary of all compliance reviews conducted by the Government for the production of tangible things under section 501;
- (2) the total number of applications described in section 501(b)(2)(B) made for orders approving requests for the production of tangible things;
- (3) the total number of such orders either granted, modified, or denied;
- (4) the total number of applications described in section 501(b)(2)(C) made for orders approving requests for the production of call detail records;
- (5) the total number of such orders either granted, modified, or denied;
- ~~(1)~~ (6) the total number of applications made for orders approving requests for the production of tangible things under section 1861 of this title;
- ~~(2)~~ (7) the total number of such orders either granted, modified, or denied; and
- ~~(3)~~ (8) the number of such orders either granted, modified, or denied for the production of each of the following:

- (A) Library circulation records, library patron lists, book sales records, or book customer lists.
- (B) Firearms sales records.
- (C) Tax return records.
- (D) Educational records.
- (E) Medical records containing information that would identify a person.

(c)(1) In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—

- (A) the total number of applications made for orders approving requests for the production of tangible things under section 1861 of this title; ~~and~~
- (B) the total number of such orders either granted, modified, or denied-;
- (C) the total number of applications made for orders approving requests for the production of tangible things under section 501 in which the specific selection term does not specifically identify an individual, account, or personal device;
- (D) the total number of orders described in subparagraph (C) either granted, modified, or denied; and
- (E) with respect to orders described in subparagraph (D) that have been granted or modified, whether the court established under section 103 has directed additional, particularized minimization procedures beyond those adopted pursuant to section 501(g).”.

(2) Each report under this subsection shall be submitted in unclassified form.

**Subchapter V – Reporting Requirement Oversight**

**50 U.S.C §1871. Semiannual report of the Attorney General**

**(a) Report**

On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate, in a manner consistent with the protection of the national security, a report setting forth with respect to the preceding 6-month period—

- (1) the aggregate number of persons targeted for orders issued under this chapter, including a breakdown of those targeted for—
  - (A) electronic surveillance under section 1805 of this title;
  - (B) physical searches under section 1824 of this title;
  - (C) pen registers under section 1842 of this title;
  - (D) access to records under section 1861 of this title;
  - (E) acquisitions under section 1881b of this title; and
  - (F) acquisitions under section 1881c of this title;
- (2) the number of individuals covered by an order issued pursuant to section 1801(b)(1)(C) of this title;
- (3) the number of times that the Attorney General has authorized that information obtained under this chapter may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;
- (4) a summary of significant legal interpretations of this chapter involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and
- (5) copies of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this chapter.

**(b) Frequency**

The first report under this section shall be submitted not later than 6 months after December 17, 2004. Subsequent reports under this section shall be submitted semi-annually thereafter.

**(c) Submissions to Congress**

The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

- (1) ~~a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this chapter, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and not later than 45 days after the date on which the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review issues a decision, order, or opinion, including any denial or modification of an application under this Act, that includes significant construction or interpretation of any provision of law or results in a change of application of any provision of this Act or a novel application of any provision of this Act, a copy of such decision, order, or opinion and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion; and~~
- (2) a copy of each such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on July 10, 2008, and not previously submitted in a report under subsection (a).

**(d) Protection of national security**

The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.

**(e) Definitions**

In this section:

**(1) Foreign Intelligence Surveillance Court**

The term “Foreign Intelligence Surveillance Court” means the court established under section 1803(a) of this title.

**(2) Foreign Intelligence Surveillance Court of Review**

The term “Foreign Intelligence Surveillance Court of Review” means the court established under section 1803(b) of this title.

**Section 602. Declassification of Significant Decisions, Orders, and Opinions**

**a) Declassification Required.**—Subject to subsection (b), the Director of National Intelligence, in consultation with the Attorney General, shall conduct a declassification review of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review (as defined in section 601(e)) that includes a significant construction or interpretation of any provision of law, including any novel or significant construction or interpretation of the term ‘specific selection term’, and, consistent with that review, make publicly available to the greatest extent practicable each such decision, order, or opinion.

**(b) Redacted Form.**—The Director of National Intelligence, in consultation with the Attorney General, may satisfy the requirement under subsection (a) to make a decision, order, or opinion described in such subsection publicly available to the greatest extent practicable by making such decision, order, or opinion publicly available in redacted form.

**(c) National Security Waiver.**—The Director of National Intelligence, in consultation with the Attorney General, may waive the requirement to declassify and make publicly available a particular decision, order, or opinion under subsection (a), if—

- (1) the Director of National Intelligence, in consultation with the Attorney General, determines that a waiver of such requirement is necessary to protect the national security of the United States or properly classified intelligence sources or methods; and
- (2) the Director of National Intelligence makes publicly available an unclassified statement prepared by the Attorney General, in consultation with the Director of National Intelligence—
  - (A) summarizing the significant construction or interpretation of any provision of law, which shall include, to the extent consistent with national security, a description of the context in which the matter arises and any significant construction or interpretation of any statute, constitutional provision, or other legal authority relied on by the decision; and
  - (B) that specifies that the statement has been prepared by the Attorney General and constitutes no part of the opinion of the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review.

**Sec. 603 Annual Reports**

**(a) Report By Director Of The Administrative Office Of The United States Courts.—**

**(1) REPORT REQUIRED.**—The Director of the Administrative Office of the United States Courts shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate, subject to a declassification review by the Attorney General and the Director of National Intelligence, a report that includes—

- (A) the number of applications or certifications for orders submitted under each of sections 105, 304, 402, 501, 702, 703, and 704;
- (B) the number of such orders granted under each of those sections;
- (C) the number of orders modified under each of those sections;
- (D) the number of applications or certifications denied under each of those sections;
- (E) the number of appointments of an individual to serve as amicus curiae under section 103, including the name of each individual appointed to serve as amicus curiae; and
- (F) the number of findings issued under section 103(i) that such appointment is not appropriate and the text of any such findings.

**(2) PUBLICATION.**—The Director shall make the report required under paragraph (1) publicly available on an Internet Web site, except that the Director shall not make publicly available on an Internet Web site the findings described in subparagraph (F) of paragraph (1).

**(b) Mandatory Reporting By Director Of National Intelligence.**—Except as provided in subsection (d), the Director of National Intelligence shall annually make publicly available on an Internet Web site a report that identifies, for the preceding 12-month period—

- (1) the total number of orders issued pursuant to titles I and III and sections 703 and 704 and a good faith estimate of the number of targets of such orders;
- (2) the total number of orders issued pursuant to section 702 and a good faith estimate of—
  - (A) the number of search terms concerning a known United States person used to retrieve the unminimized contents of electronic communications or wire communications obtained through acquisitions authorized under such section, excluding the number of search terms used to prevent the return of information concerning a United States person; and
  - (B) the number of queries concerning a known United States person of unminimized noncontents information relating to electronic communications or wire communications obtained through acquisitions authorized under such section, excluding the number of queries containing information used to prevent the return of information concerning a United States person;
- (3) the total number of orders issued pursuant to title IV and a good faith estimate of—
  - (A) the number of targets of such orders; and
  - (B) the number of unique identifiers used to communicate information collected pursuant to such orders;
- (4) the total number of orders issued pursuant to applications made under section 501(b)(2)(B) and a good faith estimate of—
  - (A) the number of targets of such orders; and
  - (B) the number of unique identifiers used to communicate information collected pursuant to such orders;
- (5) the total number of orders issued pursuant to applications made under section 501(b)(2)(C) and a good faith estimate of—
  - (A) the number of targets of such orders;
  - (B) the number of unique identifiers used to communicate information collected pursuant to such orders; and
  - (C) the number of search terms that included information concerning a United States person that were used to query any database of call detail records obtained through the use of such orders; and
- (6) the total number of national security letters issued and the number of requests for information contained within such national security letters.

**(c) Timing.**—The annual reports required by subsections (a) and (b) shall be made publicly available during April of each year and include information relating to the previous calendar year.

**(d) Exceptions.**—

(1) STATEMENT OF NUMERICAL RANGE.—If a good faith estimate required to be reported under subparagraph (B) of any of paragraphs (3), (4), or (5) of subsection (b) is fewer than 500, it shall be expressed as a numerical range of ‘fewer than 500’ and shall not be expressed as an individual number.

(2) NONAPPLICABILITY TO CERTAIN INFORMATION.—

(A) FEDERAL BUREAU OF INVESTIGATION.—Paragraphs (2)(A), (2)(B), and (5)(C) of subsection (b) shall not apply to information or records held by, or queries conducted by, the Federal Bureau of Investigation.

(B) ELECTRONIC MAIL ADDRESS AND TELEPHONE NUMBERS.—Paragraph (3)(B) of subsection (b) shall not apply to orders resulting in the acquisition of information by the Federal Bureau of Investigation that does not include electronic mail addresses or telephone numbers.

(3) CERTIFICATION.—

(A) IN GENERAL.—If the Director of National Intelligence concludes that a good faith estimate required to be reported under subsection (b)(2)(B) cannot be determined accurately because some but not all of the relevant elements of the intelligence community are able to provide such good faith estimate, the Director shall—

- (i) certify that conclusion in writing to the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives;
- (ii) report the good faith estimate for those relevant elements able to provide such good faith estimate;
- (iii) explain when it is reasonably anticipated that such an estimate will be able to be determined fully and accurately; and
- (iv) make such certification publicly available on an Internet Web site.

(B) FORM.—A certification described in subparagraph (A) shall be prepared in unclassified form, but may contain a classified annex.

(C) TIMING.—If the Director of National Intelligence continues to conclude that the good faith estimates described in this paragraph cannot be determined accurately, the Director shall annually submit a certification in accordance with this paragraph.

**(e) Definitions.**—In this section:

(1) CONTENTS.—The term ‘contents’ has the meaning given that term under section 2510 of title 18, United States Code.

(2) ELECTRONIC COMMUNICATION.—The term ‘electronic communication’ has the meaning given that term under section 2510 of title 18, United States Code.

(3) NATIONAL SECURITY LETTER.—The term ‘national security letter’ means a request for a report, records, or other information under—

(A) section 2709 of title 18, United States Code;

(B) section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978 ([12 U.S.C. 3414\(a\)\(5\)\(A\)](#));

(C) subsection (a) or (b) of section 626 of the Fair Credit Reporting Act ([15 U.S.C. 1681u\(a\)](#), 1681u(b)); or

(D) section 627(a) of the Fair Credit Reporting Act ([15 U.S.C. 1681v\(a\)](#)).

(4) UNITED STATES PERSON.—The term ‘United States person’ means a citizen of the United

States or an alien lawfully admitted for permanent residence (as defined in section 101(a) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)](#))).

(5) WIRE COMMUNICATION.—The term ‘wire communication’ has the meaning given that term under section 2510 of title 18, United States Code.

#### **Sec. 604 Public Reporting by Persons Subject to Orders**

**(a) Reporting.**—A person subject to a nondisclosure requirement accompanying an order or directive under this Act or a national security letter may, with respect to such order, directive, or national security letter, publicly report the following information using one of the following structures:

- (1) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories of—
  - (A) the number of national security letters received, reported in bands of 1000 starting with 0–999;
  - (B) the number of customer selectors targeted by national security letters, reported in bands of 1000 starting with 0–999;
  - (C) the number of orders or directives received, combined, under this Act for contents, reported in bands of 1000 starting with 0–999;
  - (D) the number of customer selectors targeted under orders or directives received, combined, under this Act for contents reported in bands of 1000 starting with 0–999;
  - (E) the number of orders received under this Act for noncontents, reported in bands of 1000 starting with 0–999; and
  - (F) the number of customer selectors targeted under orders under this Act for noncontents, reported in bands of 1000 starting with 0–999, pursuant to—
    - (i) title IV;
    - (ii) title V with respect to applications described in section 501(b)(2)(B); and
    - (iii) title V with respect to applications described in section 501(b)(2)(C).
- (2) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories of—
  - (A) the number of national security letters received, reported in bands of 500 starting with 0–499;
  - (B) the number of customer selectors targeted by national security letters, reported in bands of 500 starting with 0–499;
  - (C) the number of orders or directives received, combined, under this Act for contents, reported in bands of 500 starting with 0–499;
  - (D) the number of customer selectors targeted under orders or directives received, combined, under this Act for contents, reported in bands of 500 starting with 0–499;
  - (E) the number of orders received under this Act for noncontents, reported in bands of 500 starting with 0–499; and
  - (F) the number of customer selectors targeted under orders received under this Act for noncontents, reported in bands of 500 starting with 0–499.
- (3) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply in the into separate categories of—
  - (A) the total number of all national security process received, including all national security letters, and orders or directives under this Act, combined, reported in bands of 250 starting with 0–249; and
  - (B) the total number of customer selectors targeted under all national security process received, including all national security letters, and orders or directives under this Act, combined, reported in bands of 250 starting with 0–249.
- (4) An annual report that aggregates the number of orders, directives, and national security

letters the person was required to comply with into separate categories of—

(A) the total number of all national security process received, including all national security letters, and orders or directives under this Act, combined, reported in bands of 100 starting with 0–99; and

(B) the total number of customer selectors targeted under all national security process received, including all national security letters, and orders or directives under this Act, combined, reported in bands of 100 starting with 0–99.

**(b) Period Of Time Covered By Reports.—**

(1) A report described in paragraph (1) or (2) of subsection (a) shall include only information—

(A) relating to national security letters for the previous 180 days; and

(B) relating to authorities under this Act for the 180-day period of time ending on the date that is not less than 180 days prior to the date of the publication of such report, except that with respect to a platform, product, or service for which a person did not previously receive an order or directive (not including an enhancement to or iteration of an existing publicly available platform, product, or service) such report shall not include any information relating to such new order or directive until 540 days after the date on which such new order or directive is received.

(2) A report described in paragraph (3) of subsection (a) shall include only information relating to the previous 180 days.

(3) A report described in paragraph (4) of subsection (a) shall include only information for the 1-year period of time ending on the date that is not less than 1 year prior to the date of the publication of such report.

**(c) Other Forms Of Agreed To Publication.—**Nothing in this section prohibits the Government and any person from jointly agreeing to the publication of information referred to in this subsection in a time, form, or manner other than as described in this section.

**(d) Definitions.—In this section:**

(1) CONTENTS.—The term ‘contents’ has the meaning given that term under section 2510 of title 18, United States Code.

(2) NATIONAL SECURITY LETTER.—The term ‘national security letter’ has the meaning given that term under section 603.

**Title VII- Enhanced National Security Provisions**

**Sec. 702 Preservation of Treatment of Non-United States Persons Traveling Outside the United States as Agents of Foreign Powers**

**Sec. 703 Improvement to Investigations of International Proliferation of Weapons of Mass Destruction**

**50 U.S.C. § 1801 - Definitions**

**(b) “Agent of a foreign power” means—**

**(1) any person other than a United States person, who—**

**(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section, *irrespective of whether the person is inside the United States*;**

**(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances *of such person’s presence in the United States* indicate that such person may engage in *such activities in the United States such activities*, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;**

**(C) engages in international terrorism or activities in preparation therefore;**

**(D)** engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

~~**(E)** engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor for or on behalf of a foreign power; or~~ engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power, or knowingly aids or abets any person in the conduct of such proliferation or activities in preparation therefor, or knowingly conspires with any person to engage in such proliferation or activities in preparation therefor; or

**(2)** any person who—

**(A)** knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

**(B)** pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

**(C)** knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

**(D)** knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

**(E)** knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).