AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3989
OFFERED BY Mr. Goodlatte of Virginia

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 “Uniting and Strengthening American Liberty Act of 2017” or the “USA Liberty Act of 2017”.

3 (b) Table of Contents.—The table of contents for 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.

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

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

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE AND ACCOUNTABILITY

SEC. 101. COURT ORDERS AND PROTECTION OF INCIDENTALLY COLLECTED UNITED STATES PERSON COMMUNICATIONS.

(a) In General.—Section 702 (50 U.S.C. 1881a) is amended—
(1) by redesignating subsections (j) through (l) as subsections (k) through (m), respectively; and

(2) by inserting after subsection (i) the following new subsection (j):

“(j) Requirements for Access and Dissemination of Collections of Communications.—

“(1) Query purposes.—The contents of communications acquired under subsection (a) and the information relating to the dialing, routing, addressing, signaling, or other similar noncontents information of such communications that are returned in response to a query may be accessed only if the query is reasonably designed to return foreign intelligence information or evidence of a crime.

“(2) Court orders and other requirements.—

“(A) Application to Court to Access Contents.—Except as provided by subparagraph (D), the contents of communications acquired under subsection (a) may be accessed or disseminated only upon—

“(i) an application by the Attorney General to a judge of the Foreign Intelligence Surveillance Court that describes
the determination of the Attorney General that—

“(I) there is probable cause to believe that such contents provide evidence of a crime specified in section 2516 of title 18, United States Code;

“(II) such communications are relevant to an authorized investigation or assessment, provided that such investigation or assessment is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and

“(III) any use of such communications pursuant to section 706 will be carried out in accordance with such section; and

“(ii) an order of the judge under subparagraph (B) approving such application.

“(B) ORDER.—

“(i) APPROVAL.—Upon an application made under subparagraph (A), the Foreign Intelligence Surveillance Court shall enter an order as requested or as modified by
the Court approving the access or dissemination of contents of communications covered by the application if the Court determines that, based on an independent review—

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

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

“(III) the minimization procedures adopted pursuant to subsection (e) will ensure compliance with subparagraph (A)(i)(III).

“(ii) REVIEW.—A denial of an application made under subparagraph (A) may be reviewed as provided in section 103.

“(C) RELEVANCE AND SUPERVISORY APPROVAL TO ACCESS NONCONTENTS INFORMATION.—Except as provided by subparagraph (D), the information of communications ac-
quired under subsection (a) relating to the dial-
ing, routing, addressing, signaling, or other
similar noncontents information may be
accessed or disseminated only—

“(i) with supervisory approval;

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

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

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

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

“(i) Pursuant to the procedures
adopted under subsection (e)(3), the query
that returned such communications (or
other process that returned such commu-
ications) is reasonably designed for the
purpose of returning foreign intelligence
information, including information about
activity described in section 101(e) that
may otherwise constitute an offense under
title 18, United States Code.

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

“(iii) The Attorney General—

“(I) reasonably determines that
an emergency situation requires the
accessing or dissemination of the com-
munications before an order pursuant
to subparagraph (A) authorizing such
access or dissemination, or before ap-
proval required under subparagraph (C), as the case may be, can with due diligence be obtained;

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

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

“(aa) informs the Court at the time the Attorney General requires the emergency access or dissemination that the decision has been made to employ the authority under this clause; and

“(bb) may not use such communications pursuant to section 706 if the Court finds that the determination by the Attorney General with respect to the emergency situation was not appropriate.

“(iv)(I) Subject to section 706(a)(2), based on a review described in item (II),
the Attorney General reasonably deter-
mines that the person identified by the 
queried term is, or is communicating 
with—

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

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

“(II) A review described in this item 
is a review of information of communica-
tions acquired under subsection (a) relat-
ing to the dialing, routing, addressing, sig-
"naling, or other similar noncontents inform-
ation, that causes the Attorney General 
to reasonably suspect that—

“(aa) a person who is a party to 
such communications is engaged in an 
act of terrorism specified in clauses (i) 
through (iii) of section
2332b(g)(5)(B) of title 18, United States Code, or activities in preparation therefore; and

“(bb) a failure or delay in accessing or disseminating the contents of such communications would result in harm to the national security.

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

“(E) LIMITATION ON ELECTRONIC SURVEILLANCE OF UNITED STATES PERSONS.—If the Attorney General determines that it is necessary to conduct electronic surveillance on a known United States person whose communications have been acquired under subsection (a), the Attorney General may only conduct such electronic surveillance using authority provided under other provisions of law.

“(F) SIMULTANEOUS QUERY OF FBI DATABASES.—Except as otherwise provided by law or applicable minimization procedures, the Director of the Federal Bureau of Investigation shall ensure that all available investigative or intelligence databases of the Federal Bureau of Investigation are simultaneously queried when
the Bureau properly uses an information system of the Bureau to determine whether information exists in such a database.

“(G) DELEGATION.—The Attorney General shall delegate the authority under this paragraph to the fewest number of officials that the Attorney General determines practicable.

“(3) RETENTION OF AUDITABLE RECORDS.—

“(A) RECORDS.—The Attorney General shall retain records of queries of a collection of communications acquired under subsection (a). The heads of elements of the intelligence community that are not components of the Department of Justice shall retain records of queries of a collection of communications acquired under subsection (a) that use a term identifying a United States person.

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

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

“(ii) be maintained in a manner that is auditable and available for congressional oversight.
“(4) Compliance and Maintenance.—The requirements of this subsection do not apply with respect to queries made for the purpose of—

“(A) submitting to Congress information required by this Act or otherwise ensuring compliance with the requirements of this section; or

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

“(5) Consent.—The requirements of this subsection do not apply with respect to—

“(A) queries made using a term identifying a person who is a party to the communications acquired under subsection (a), or a person who otherwise has lawful authority to provide consent, and who consents to such queries; or

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

(b) Procedures.—Subsection (e) of such section (50 U.S.C. 1881a(e)) is amended by adding at the end the following new paragraph:
“(3) Certain Procedures for Querying.—

The minimization procedures adopted in accordance with paragraph (1) shall describe a query permitted under subsection (j)(2)(D)(i).”.

(c) Limitation on Use of Certain Excepted Queried Information.—Section 706(a) (50 U.S.C. 1881e(a)) is amended—

(1) by striking “Information acquired” and inserting the following:

“(1) In General.—Information acquired”; and

(2) by adding at the end the following:

“(2) Limitation on Use of Certain Excepted Queried Information.—No information accessed or disseminated pursuant to section 702(j)(2)(D)(iv), or evidence derived therefrom, may be received in evidence or otherwise used pursuant to paragraph (1), except—

“(A) with the prior approval of the Attorney General; and

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

“(i) an act of terrorism specified in clauses (i) through (iii) of section
2332b(g)(5)(B) of title 18, United States Code;

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

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

“(iv) a cybersecurity threat (as defined in section 101(5) of the Cybersecurity Information Sharing Act of 2015 (6 U.S.C. 1501(5)) from a foreign country;

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

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

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

November 2, 2017 (5:01 p.m.)
SEC. 102. LIMITATION ON COLLECTION AND IMPROVEMENTS TO TARGETING PROCEDURES AND MINIMIZATION PROCEDURES.

(a) TARGETING PROCEDURES; LIMITATION ON COLLECTION.—Subsection (d) of section 702 (50 U.S.C. 1881a(d)) is amended—

(1) in paragraph (1), by striking “The Attorney General” and inserting “In accordance with paragraphs (3) and (4), the Attorney General”; and

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

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

“(A) making the determination based on the totality of the circumstances, including by, to the extent practicable, ensuring that any conflicting information regarding whether the person is reasonably believed to be located outside the United States or is a United States person is resolved before making such determination;

“(B) documenting the processes under subparagraph (A); and
“(C) documenting the rationale for why targeting such person will result in the acquisition of foreign intelligence information authorized by subsection (a).

“(4) LIMITATION.—

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

“(B) ANNUAL REPORT.—On an annual basis during the period specified in subparagraph (A), the Attorney General shall submit to the congressional intelligence committees and the Committees on the Judiciary of the House of Representatives and the Senate a report on—

“(i) any difficulty relating to the limitation under such subparagraph; and

“(ii) during the period of such limitation, the technical feasibility of ensuring that the handling of communications acquired under subsection (a) with respect to incidentally collected United States person
information complies with the minimization procedures adopted under subsection (e).”.

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

(1) in paragraph (1), by inserting “, and the requirements of this subsection” before the period at the end; and

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

“(4) REQUESTS TO UNMASK INFORMATION.—

The procedures adopted under paragraph (1) shall include specific procedures adopted by the Attorney General for elements of the Federal Government to submit requests to unmask information in disseminated intelligence reports. Such specific procedures shall—

“(A) require the documentation of the requesting individual that such request is for legitimate reasons authorized pursuant to paragraph (1); and

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

“(i) a copy of the request;
“(ii) the name and position of the individual who is making the request; and

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

(e) Unmask Defined.—Section 701(b) (50 U.S.C. 1881(b)) is amended by adding at the end the following new paragraph:

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

(d) Consistent Requirements to Retain Records on Requests to Unmask Information.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended as follows:

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

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

(B) in paragraph (4), by striking the period at the end and inserting “; and”; and
(C) by adding at the end the following new paragraph:

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

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

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

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

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

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

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

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

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

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

(4) In section 501(g)(2) (50 U.S.C. 1861(g)(2))—
(A) in subparagraph (B), by striking “; and” and inserting a semicolon;

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

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

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

(e) REPORT ON UNMASKING.—Not later than 90 days after the date of the enactment of this Act, the Director of National Intelligence 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 a report on the progress made by the Director with respect to—

(1) ensuring that incidentally collected communications of United States persons are properly masked if masking is necessary; and

(2) implementing procedures for requests to unmask information under section 702(e)(4) of such Act (50 U.S.C. 1881a(e)(4)), as added by subsection (e).
SEC. 103. PUBLICATION OF MINIMIZATION PROCEDURES UNDER SECTION 702. 

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

“(5) PUBLICATION.—The Director of National Intelligence, in consultation with the Attorney General, shall—

“(A) conduct a declassification review of any minimization procedures adopted or amended in accordance with paragraph (1); and

“(B) consistent with such review, and not later than 180 days after conducting such review, make such minimization procedures publicly available to the greatest extent practicable, which may be in redacted form.”.

SEC. 104. APPOINTMENT OF AMICUS CURIAE FOR ANNUAL CERTIFICATIONS. 

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

(1) in paragraph (2)—

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

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

(C) by inserting after subparagraph (A) the following new subparagraph (B):
“(B) shall appoint an individual who has been designated under paragraph (1) to serve as amicus curiae to assist such court in the review of a certification under section 702(i), unless the court issues a finding that such appointment is not necessary; and”; and

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

SEC. 105. INCREASED ACCOUNTABILITY ON INCIDENTALLY COLLECTED COMMUNICATIONS.

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

“(c) INCIDENTALLY COLLECTED COMMUNICATIONS AND OTHER INFORMATION.—Together with the semiannual report submitted under subsection (a), the Director of National Intelligence shall submit to the congressional committees specified in such subsection a report on incidentally collected communications and other information regarding United States persons under section 702. Each such report shall include, with respect to the 6-month period covered by the report, the following:

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

“(2) If the Director determines that the number, or a good faith estimate, under paragraph (1) is not achievable, a detailed explanation for why such number or good faith estimate is not achievable.

“(3) The number of—

“(A) United States persons whose information is unmasked pursuant to the procedures adopted under subsection (e)(4) of such section;

“(B) requests made by an element of the Federal Government, listed by each such element, to unmask information pursuant to such subsection; and

“(C) requests that resulted in the dissemination of names, titles, or other identifiers potentially associated with individuals pursuant to such subsection, including the element of the intelligence community and position of the individual making the request.

“(4) The number of disseminations of communications acquired under subsection (a) of section
702 to the Federal Bureau of Investigation for cases unrelated to foreign intelligence.

“(5) The number of instances in which evidence of a crime unrelated to foreign intelligence that was identified in communications acquired under subsection (a) of section 702 was disseminated from the national security branch of the Bureau to the criminal investigative division of the Bureau (or from such successor branch to such successor division).

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

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

Section 707 (50 U.S.C. 1881f), as amended by section 105, is further amended by adding at the end the following new subsection:

“(d) SEMIANNUAL FBI REPORTS.—Together with the semiannual report submitted under subsection (a), the Director of the Federal Bureau of Investigation shall submit to the congressional committees specified in such subsection, and make publicly available, a report containing, with respect to the period covered by the report—
“(1) the number of applications made by the Federal Bureau of Investigation described in subsection (j)(2)(A) of section 702;

“(2) the number of such applications that were approved and resulted in communications being accessed or disseminated pursuant to such subsection; and

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

SEC. 107. ADDITIONAL REPORTING REQUIREMENTS.

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

“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.

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

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

“(2) the total number of such orders and extensions either granted, modified, or denied; and

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

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

(b) Pen Registers and Trap and Trace De-
vices.—Section 406 (50 U.S.C. 1846) is amended—

(1) in subsection (b)—

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

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

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

“(6) a good faith estimate of the total number
of subjects who were targeted by the installation and
use of a pen register or trap and trace device under
an order or emergency authorization issued under
this title, rounded to the nearest 500, including—
“(A) the number of such subjects who are
United States persons, reported to the nearest
band of 500, starting with 0–499; and
“(B) of the number of United States per-
sons described in subparagraph (A), the num-
ber of persons whose information acquired pur-
suant to such order was reviewed or accessed by
a Federal officer, employee, or agent, reported
to the nearest band of 500, starting with 0–
499.”; and
(2) by adding at the end the following new sub-
section:
“(c) Each report under subsection (b) shall be sub-
mitted in unclassified form. Not later than 7 days after
the date on which the Attorney General submits such a
report, the Attorney General shall make such report pub-
licly available.”.

SEC. 108. APPLICATION OF CERTAIN AMENDMENTS.
The amendments made by sections 101 and 102 of
the Foreign Intelligence Surveillance Act of 1978 (50
U.S.C. 1801 et seq.) shall apply with respect to applica-
tions, certifications, and procedures submitted to the For-
egn Intelligence Surveillance Court on or after the date
that is 120 days after the date of the enactment of this
Act.
SEC. 109. SENSE OF CONGRESS ON PURPOSE OF SECTION 702 AND RESPECTING FOREIGN NATIONALS.

It is the sense of Congress that—

(1) the acquisition of communications by the National Security Agency under section 702 of the Foreign Intelligence Surveillance Act (50 U.S.C. 1881a) should be conducted within the bounds of treaties and agreements to which the United States is a party, and there should be no targeting of non-United States persons for any unfounded discriminatory purpose or for the purpose of affording a commercial competitive advantage to companies and business sectors of the United States; and

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

TITLE II—SAFEGUARDS AND OVERSIGHT OF PRIVACY AND CIVIL LIBERTIES

SEC. 201. LIMITATION ON RETENTION OF CERTAIN DATA.

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

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and
(2) by inserting after paragraph (1) the following new paragraph (2):

“(2) AFFIDAVIT ON DELETION INCLUDED IN SEMIANNUAL ASSESSMENT TO FISC AND CONGRESS.—Each semiannual assessment under paragraph (1) shall include, with respect to the 6-month period covered by the assessment, an affidavit by the Director of the National Security Agency, without delegation, that communications acquired under subsection (a) determined not to contain foreign intelligence information, if any, were deleted.”.

SEC. 202. IMPROVEMENTS TO PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) APPOINTMENT OF STAFF.—Subsection (j) of section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

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

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

“(2) APPOINTMENT IN ABSENCE OF CHAIRMAN.—If the position of chairman of the Board is vacant, during the period of the vacancy, the Board, at the direction of the unanimous vote of the serving
members of the Board, may exercise the authority of
the chairman under paragraph (1).”.

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

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

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

(3) in paragraph (2)—

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

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

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

(1) how communications acquired under section 702 of the of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a) are used by the United States to prevent or defend against terrorism;

(2) whether technological challenges and changes in technology affect the prevention of and defense against terrorism, and how effectively the foreign intelligence elements of the intelligence community have responded to those challenges; and

(3) how privacy and civil liberties are affected by the actions identified under paragraph (1) and the changes in technology identified under paragraph (2), and whether race, religion, political affiliation, or activities protected by the First Amendment are determinative in the targeting or querying decisions made pursuant to such section 702.

SEC. 203. PRIVACY AND CIVIL LIBERTIES OFFICERS.

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

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

(1) in clause (iii), by striking “; and” and inserting a semicolon;

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

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

“(v) a review by the privacy and civil liberties officer of the element of incidentally collected communications of United States persons to assess compliance with the minimization procedures adopted under subsection (c) and the effect of this section on the privacy of United States persons.”.

SEC. 204. WHISTLEBLOWER PROTECTIONS FOR CONTRACTORS OF THE INTELLIGENCE COMMUNITY.

(a) PROHIBITED PERSONNEL PRACTICES IN THE INTELLIGENCE COMMUNITY.—Section 1104 of the National Security Act of 1947 (50 U.S.C. 3234) is amended—
(1) in subsection (a), by adding at the end the following new paragraph:

“(4) CONTRACTOR EMPLOYEE.—The term ‘contractor employee’ means an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of a covered intelligence community element.”;

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

(3) by inserting after subsection (b) the following new subsection (c):

“(c) CONTRACTOR EMPLOYEES.—(1) Any employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of a covered intelligence community element, or any employee of an agency, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any contractor employee as a reprisal for a lawful disclosure of information by the contractor employee to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose), the Inspector General of the Intelligence Community, the head of the contracting agency (or an employee designated by the head of that agency for such pur-
pose), the appropriate inspector general of the contracting agency, a congressional intelligence committee, or a member of a congressional intelligence committee, which the contractor employee reasonably believes evidences—

“(A) a violation of any Federal law, rule, or regulation (including with respect to evidence of another employee or contractor employee accessing or sharing classified information without authorization); or

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

“(2) A personnel action under paragraph (1) is prohibited even if the action is undertaken at the request of an agency official, unless the request takes the form of a nondiscretionary directive and is within the authority of the agency official making the request.

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

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

(5) in subsection (e), as redesignated by paragraph (2), by inserting “contractor employee,” after “any employee,”.
(b) FEDERAL BUREAU OF INVESTIGATION.—

(1) IN GENERAL.—Any employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of the Federal Bureau of Investigation, or any employee of the Bureau, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to a contractor employee as a reprisal for a disclosure of information—

(A) made—

(i) to a supervisor in the direct chain of command of the contractor employee, up to and including the Director of the Federal Bureau of Investigation;

(ii) to the Inspector General;

(iii) to the Office of Professional Responsibility of the Department of Justice;

(iv) to the Office of Professional Responsibility of the Federal Bureau of Investigation;

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

(vi) as described in section 7211 of title 5, United States Code;
(vii) to the Office of Special Counsel;

or

(viii) to an employee designated by

any officer, employee, office, or division de-

dscribed in clauses (i) through (vii) for the

purpose of receiving such disclosures; and

(B) which the contractor employee reason-

ably believes evidences—

(i) any violation of any law, rule, or

regulation (including with respect to evi-

dence of another employee or contractor

employee accessing or sharing classified in-

formation without authorization); or

(ii) gross mismanagement, a gross

waste of funds, an abuse of authority, or

a substantial and specific danger to public

health or safety.

(2) ACTIONS BY REQUEST.—A personnel action

under paragraph (1) is prohibited even if the action

is undertaken at the request of an official of the Bu-

reau, unless the request takes the form of a nondis-

cretionary directive and is within the authority of

the official making the request.

(3) VIOLATION.—A contractor employee may

raise a violation of paragraph (1) in any proceeding
to implement or challenge a personnel action described in such paragraph.

(4) REGULATIONS.—The Attorney General shall prescribe regulations to ensure that a personnel action described in paragraph (1) shall not be taken against a contractor employee of the Bureau as a reprisal for any disclosure of information described in subparagraph (A) of such paragraph.

(5) ENFORCEMENT.—The President shall provide for the enforcement of this subsection in a manner consistent with applicable provisions of sections 1214 and 1221 of title 5, United States Code.

(6) DEFINITIONS.—In this subsection:

(A) The term “contractor employee” means an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of the Federal Bureau of Investigation.

(B) The term “personnel action” means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of title 5, United States Code, with respect to a contractor employee.

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

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

TITLE III—EXTENSION OF AU-
THORITIES, INCREASED PEN-
ALTIES, REPORTS, AND
OTHER MATTERS

SEC. 301. EXTENSION OF TITLE VII OF FISA; EFFECTIVE
DATES.

(a) EXTENSION.—Section 403(b) of the FISA
2474) is amended—

(1) in paragraph (1)—

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

(B) by inserting “and by the USA Liberty
Act of 2017” after “section 101(a)” ; and
(2) in paragraph (2) in the matter preceding subparagraph (A), by striking “December 31, 2017” and inserting “September 30, 2023”.

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

(1) in paragraph (1)—

(A) in the heading, by striking “DECEMBER 31, 2017” and inserting “SEPTEMBER 30, 2023”; and

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

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

and

(3) in paragraph (4)—

(A) by striking “702(l)” each place it appears and inserting “702(m)”;

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

(C) by inserting “and by the USA Liberty Act of 2017” after “as amended by section 101(a)” both places it appears.
(c) **Effective Date of Amendments to FAA.**—

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

**SEC. 302. INCREASED PENALTY FOR UNAUTHORIZED REMOVAL AND RETENTION OF CLASSIFIED DOCUMENTS OR MATERIAL.**

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

**SEC. 303. COMPTROLLER GENERAL STUDY ON UNAUTHORIZED DISCLOSURES AND THE CLASSIFICATION SYSTEM.**

(a) **Study.**—The Comptroller General of the United States shall conduct a study of the unauthorized disclosure of classified information and the classification system of the United States.

(b) **Matters Included.**—The study under subsection (a) shall address the following:

1. Insider threat risks to the unauthorized disclosure of classified information.

2. The effect of modern technology on the unauthorized disclosure of classified information, including with respect to—
(A) using cloud storage for classified information; and

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

(3) The effect of overclassification on the unauthorized disclosure of classified information.

(4) Any ways to improve the classification system of the United States, including with respect to changing the levels of classification used in such system and to reduce overclassification.

(5) How to improve the authorized sharing of classified information, including with respect to sensitive compartmented information.

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

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

(A) applies uniform standards in determining who is authorized to access classified information; and

(B) provides proper training with respect to the handling of classified information and the avoidance of overclassification.
(c) COOPERATION.—The heads of the intelligence community shall provide to the Comptroller General information the Comptroller General determines necessary to carry out the study under subsection (a).

(d) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the study under subsection (a).

(e) FORM.—The report under subsection (d) shall be submitted in unclassified form, but may include a classified annex.

SEC. 304. SENSE OF CONGRESS ON INFORMATION SHARING AMONG INTELLIGENCE COMMUNITY TO PROTECT NATIONAL SECURITY.

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

SEC. 305. SENSE OF CONGRESS ON COMBATING TERRORISM.

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

SEC. 306. TECHNICAL AMENDMENTS AND AMENDMENTS TO IMPROVE PROCEDURES OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.

(a) Technical Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended as follows:

(1) In section 103(b) (50 U.S.C. 1803(b)), by striking “designate as the” and inserting “designated as the”.

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

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

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

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

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

(5) In section 701 (50 U.S.C. 1881)—

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

(B) in subsection (b)—

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

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

(6) In section 702(g)(2)(A)(i) (50 U.S.C.
1881a(g)(2)(A)(i)), by inserting “targeting” before
“procedures in place”.
(7) In section 801(7) (50 U.S.C. 1885(7)), by striking “(50 U.S.C. 401a(4))” and inserting “(50 U.S.C. 3003(4))”.

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

(1) In section 103 (50 U.S.C. 1803)—

(A) in subsection (b), by striking “immediately”; and

(B) in subsection (h), by striking “the court established under subsection (a)” and inserting “a court established under this section”.

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

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

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

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

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

(5) In section 403(e) (50 U.S.C. 1843(e)), by adding at the end the following new paragraph:
“(3) A denial of the application made under subsection (a)(2) may be reviewed as provided in section 103.”.

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

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

SEC. 307. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.