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12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**  
 14 **SAN FRANCISCO DIVISION**

15 \_\_\_\_\_ )  
 CAROLYN JEWEL, *et al.*, )

16 Plaintiffs, )

17 v. )

18 NATIONAL SECURITY AGENCY, )  
 19 *et al.*, )

20 Defendants. )  
 21 )  
 22 )  
 23 )  
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 26 )  
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Case No. 3:08-cv-04373-JSW

**EXHIBITS ACCOMPANYING  
 GOVERNMENT DEFENDANTS’  
 MOTION TO DISMISS AND FOR  
 SUMMARY JUDGMENT;  
 OPPOSITION TO PLAINTIFFS’  
 MOTION FOR PARTIAL SUMMARY  
 JUDGMENT**

Date: November 2, 2012  
 Time: 9:00 a.m.  
 Courtroom: 11 – 19th Floor  
 Judge Jeffrey S. White

EXHIBIT 1 – SECTION 223 OF THE PATRIOT ACT

H. R. 3162

# One Hundred Seventh Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Wednesday,  
the third day of January, two thousand and one*

## An Act

To deter and punish terrorist acts in the United States and around the world,  
to enhance law enforcement investigatory tools, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Construction; severability.

#### TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM

- Sec. 101. Counterterrorism fund.
- Sec. 102. Sense of Congress condemning discrimination against Arab and Muslim Americans.
- Sec. 103. Increased funding for the technical support center at the Federal Bureau of Investigation.
- Sec. 104. Requests for military assistance to enforce prohibition in certain emergencies.
- Sec. 105. Expansion of National Electronic Crime Task Force Initiative.
- Sec. 106. Presidential authority.

#### TITLE II—ENHANCED SURVEILLANCE PROCEDURES

- Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism.
- Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.
- Sec. 203. Authority to share criminal investigative information.
- Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.
- Sec. 205. Employment of translators by the Federal Bureau of Investigation.
- Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power.
- Sec. 208. Designation of judges.
- Sec. 209. Seizure of voice-mail messages pursuant to warrants.
- Sec. 210. Scope of subpoenas for records of electronic communications.
- Sec. 211. Clarification of scope.
- Sec. 212. Emergency disclosure of electronic communications to protect life and limb.
- Sec. 213. Authority for delaying notice of the execution of a warrant.
- Sec. 214. Pen register and trap and trace authority under FISA.
- Sec. 215. Access to records and other items under the Foreign Intelligence Surveillance Act.
- Sec. 216. Modification of authorities relating to use of pen registers and trap and trace devices.

## H. R. 3162—22

landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to section 216 shall be reasonably compensated for such reasonable expenditures incurred in providing such facilities or assistance.

**SEC. 223. CIVIL LIABILITY FOR CERTAIN UNAUTHORIZED DISCLOSURES.**

(a) Section 2520 of title 18, United States Code, is amended—

(1) in subsection (a), after “entity”, by inserting “, other than the United States,”;

(2) by adding at the end the following:

“(f) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.”; and

(3) by adding a new subsection (g), as follows:

“(g) IMPROPER DISCLOSURE IS VIOLATION.—Any willful disclosure or use by an investigative or law enforcement officer or governmental entity of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).”.

(b) Section 2707 of title 18, United States Code, is amended—

(1) in subsection (a), after “entity”, by inserting “, other than the United States,”;

(2) by striking subsection (d) and inserting the following:

“(d) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.”; and

(3) by adding a new subsection (g), as follows:

“(g) IMPROPER DISCLOSURE.—Any willful disclosure of a ‘record’, as that term is defined in section 552a(a) of title 5, United States Code, obtained by an investigative or law enforcement officer, or a governmental entity, pursuant to section 2703 of this title, or

## H. R. 3162—23

from a device installed pursuant to section 3123 or 3125 of this title, that is not a disclosure made in the proper performance of the official functions of the officer or governmental entity making the disclosure, is a violation of this chapter. This provision shall not apply to information previously lawfully disclosed (prior to the commencement of any civil or administrative proceeding under this chapter) to the public by a Federal, State, or local governmental entity or by the plaintiff in a civil action under this chapter.”.

(c)(1) Chapter 121 of title 18, United States Code, is amended by adding at the end the following:

**“§ 2712. Civil actions against the United States**

“(a) IN GENERAL.—Any person who is aggrieved by any willful violation of this chapter or of chapter 119 of this title or of sections 106(a), 305(a), or 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) may commence an action in United States District Court against the United States to recover money damages. In any such action, if a person who is aggrieved successfully establishes such a violation of this chapter or of chapter 119 of this title or of the above specific provisions of title 50, the Court may assess as damages—

“(1) actual damages, but not less than \$10,000, whichever amount is greater; and

“(2) litigation costs, reasonably incurred.

“(b) PROCEDURES.—(1) Any action against the United States under this section may be commenced only after a claim is presented to the appropriate department or agency under the procedures of the Federal Tort Claims Act, as set forth in title 28, United States Code.

“(2) Any action against the United States under this section shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. The claim shall accrue on the date upon which the claimant first has a reasonable opportunity to discover the violation.

“(3) Any action under this section shall be tried to the court without a jury.

“(4) Notwithstanding any other provision of law, the procedures set forth in section 106(f), 305(g), or 405(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which materials governed by those sections may be reviewed.

“(5) An amount equal to any award against the United States under this section shall be reimbursed by the department or agency concerned to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, fund, or account that is available for the enforcement of any Federal law) that is available for the operating expenses of the department or agency concerned.

“(c) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United

## H. R. 3162—24

States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

“(d) EXCLUSIVE REMEDY.—Any action against the United States under this subsection shall be the exclusive remedy against the United States for any claims within the purview of this section.

“(e) STAY OF PROCEEDINGS.—(1) Upon the motion of the United States, the court shall stay any action commenced under this section if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related investigation or the prosecution of a related criminal case. Such a stay shall toll the limitations periods of paragraph (2) of subsection (b).

“(2) In this subsection, the terms ‘related criminal case’ and ‘related investigation’ mean an actual prosecution or investigation in progress at the time at which the request for the stay or any subsequent motion to lift the stay is made. In determining whether an investigation or a criminal case is related to an action commenced under this section, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring that any one or more factors be identical.

“(3) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect a related investigation or a related criminal case. If the Government makes such an ex parte submission, the plaintiff shall be given an opportunity to make a submission to the court, not ex parte, and the court may, in its discretion, request further information from either party.”

(2) The table of sections at the beginning of chapter 121 is amended to read as follows:

“2712. Civil action against the United States.”.

**SEC. 224. SUNSET.**

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title (other than sections 203(a), 203(c), 205, 208, 210, 211, 213, 216, 219, 221, and 222, and the amendments made by those sections) shall cease to have effect on December 31, 2005.

(b) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in subsection (a) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.

**SEC. 225. IMMUNITY FOR COMPLIANCE WITH FISA WIRETAP.**

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended by inserting after subsection (g) the following:

EXHIBIT 2

Administration's Draft Anti-Terrorism Act of 2001: Hearing Before the H. Comm. on the  
Judiciary, 107th Cong. 17 (2001)

# ADMINISTRATION'S DRAFT ANTI-TERRORISM ACT OF 2001

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTH CONGRESS FIRST SESSION

SEPTEMBER 24, 2001

**Serial No. 39**

Printed for the use of the Committee on the Judiciary

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assets, not just to freeze them, not just to curtail activity, but to take those assets.

Number two, you mentioned if someone thinks they're giving to a charity, I think this is a serious question, but for individuals, in our proposal, who know or should know, in other words, the evidence is clear, and there's reason to know that this is not really a charity, that this is a front organization, then the responsibility would attach to such individuals.

So we're concerned on two fronts that what the President now has the capacity to do is to freeze the assets. We think that capacity should be elevated to the way the law enforcement deals with the assets of drug dealers and the like, to seize the assets. And secondly, we think the standards should be actual knowledge or should have known. That's a pretty high standard, but we don't want people to be responsible if they actually thought they were giving—appropriately thought they were giving to a charity.

Mr. GEKAS. But if they did know or had reason to know, then we would—

Attorney General ASHCROFT. We should act against them.

Mr. GEKAS. That deportability enters into the picture?

Attorney General ASHCROFT. Yes.

Mr. GEKAS. Sanctions.

Attorney General ASHCROFT. Yes.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. GEKAS. Can I inquire of the Chair how much time—

Chairman SENSENBRENNER. Well, we're operating under—you know, yielding of time equally on each side until the Attorney General departs.

Mr. GEKAS. Yes.

Chairman SENSENBRENNER. The gentleman from Michigan, to whom do you yield time?

Mr. CONYERS. Thank you, Mr. Chairman. I yield now to the senior Member of the Committee, the gentleman from Massachusetts, Mr. Barney Frank.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. FRANK. General, on one the procedural point, you submitted legislation, I guess, last week, which represented your best effort. And no one's good will is in question here. We're all trying very hard to do jobs that, frankly, none of us feel fairly adequate to do. This is a terrible task that none of us ever contemplated having to do when we got here, and we're doing our best. And I think it's a time when the collective wisdom is very likely to be better by far than what any one of us could do. I certainly benefited from that.

The only point I would make is this: You have agreed, and the Majority and Minority have agreed to several changes that have, in my judgment, greatly improved the bill, A very effective law enforcement effort, while diminishing some of the concerns we would have had, and we've been able to do that by working together between Thursday and today. Another week would make it do even better.

It's no criticism of your work product to know that no one can excogitate the perfect bill here, and working together helped. We've already been able to make some improvements and enhance the area of agreement. I would ask urgently for another week to be

able to do more of that rather than have us rush to a premature markup tomorrow.

And now let me just ask you a couple of substantive questions. I think it is essential that we upgrade our law enforcement capacity. Technology has changed, and we have a set of fiendishly skillful set of opponents, and we have to arm law enforcement. But we are aware of our own fallibility. I think every time we increase law enforcement's efficacy, as I want to do in many cases, we need to make sure the safeguards are there for those cases when we can make the mistakes.

First, with regard to increased surveillance, and I'm going to support increased surveillance to keep up with new electronic deals, but one of the problems we've seen historically is the inappropriate release of information garnered by surveillance, and one of the worst instances in history was the savage campaign of defamation waged by J. Edgar Hoover as head of the FBI against Dr. Martin Luther King, taking information he gained from surveillance; having found nothing criminal, nothing subversive, nothing incriminating, he released inappropriately personal and intimate information.

I hope we will have in this bill a right for any individual about whom such information is released in a context other than the criminal or intelligence investigation, the right to go into Federal court under the Federal Tort Claims Act before a Federal judge and get damages from the Federal Government. We have got to build into this a bureaucratic departmental incentive to crack down on this kind of leaking, and I think if we are able to ensure people that we have done the maximum to prevent the inappropriate disclosure of this information, there is less concern about being gathered.

Similarly, with regard to asset forfeiture, yes, there will be times when we've got to get the assets. I hope we will have in this bill procedures that are as prompt and people whose assets were being taken having a chance to get them back, because we're never going to do it perfectly. You know we're going to take some assets we shouldn't take, and the former Chairman of this Committee, the gentleman from Georgia, the gentleman from Michigan and I collaborated on a bill dealing with asset forfeiture in general. So in both cases, if you're going to get increased surveillance, you're going to get it, let's do the maximum. And I don't want to say, oh, it's a criminal offense only if someone leaks, because the likelihood of that criminal prosecution being successful against the law enforcement person before a jury probably isn't that great. I want a citizen to be able to go under the Federal Tort Claims Act against the Federal entity that had that information and sue and get damages fairly easily, because we've got to get that disincentive along with other factors.

Secondly, I want there to be in areas, for instance, such asset procedure, as promptly as you can seize the assets, equally promptly an individual who has reason to argue that he was inappropriately the victim of that ought to be able to come back in. And, frankly, it's to be able to work these out to our mutual satisfaction if we have an agreement, But I think we need more time. I'd be glad to get a response.

Attorney General ASHCROFT. Well, in regard to the asset seizure, I believe all the safeguards that you sought to—and put into the law last year would apply in settings like this. So to the extent that those are effective and work as well as we worked to develop those, they would operate in this setting.

Mr. FRANK. What about the release of information, because that's really been where we've had historically a pattern of abuse in the past, information gained for investigative purposes or intelligence purposes being inappropriately disclosed by our law enforcement people.

Attorney General ASHCROFT. I think the inappropriate leakage of classified information and information that is the product of these kinds of endeavors is a crime, and I know that there haven't been a lot of prosecutions in that respect, but that's—this proposal does not include private cause of action.

Mr. FRANK. Well, I would say, yes, it's been a crime. As you know, the Administration has been talking about and others have been talking about broadening that for information in general.

I will close with this. I don't want to broaden it for information in general, but—

Chairman SENSENBRENNER. At the suggestion of the gentleman from Michigan, the gentleman from Massachusetts' time is expired.

Mr. FRANK. I want to say the individual ought to get that protection.

Chairman SENSENBRENNER. The gentleman from North Carolina Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

General, two quick questions. The Administration's bill includes provisions for the prosecution of certain computer crimes as terrorist offenses. What about this type of offense that makes it necessary to include them in the definition of terrorism, A? And, B, Mr. Attorney General, hypothetical question applying hindsight. Is it your belief that we could have possibly prevented this—these events of September 11 if the government had the authority that the Administration is requesting in this legislation?

Attorney General ASHCROFT. Well, I thank the Congressman.

First, to the question as to whether computer crimes could rise to the level of or could be categorized as terrorist acts, when you think about the utilization of computers in terms of air traffic control, you can imagine the chaos that could come from the disruption of that system if we had an assault launched through a computer virus or some other infection in the computer infrastructure, not to mention other very serious controls in our culture that relate to other infrastructure, whether it be power grids, power generation supplies and the like.

Mr. COBLE. Yeah. I wanted that on the record, General, because some folks might think that was too far-reaching. I just wanted it on the record.

Attorney General ASHCROFT. Well, you and I obviously are on the same page. We understand that these kinds of crimes can threaten the lives and well-being of multitudes of individuals, and they are far above the garden variety crime of—and I don't mean to say there's something easy about car theft or personal assault, but

EXHIBIT 3  
H.R. REP. NO. 107-236(I) (2001)

107TH CONGRESS }  
*1st Session* }

HOUSE OF REPRESENTATIVES

{ REPT. 107-236  
Part 1 }

PROVIDE APPROPRIATE TOOLS REQUIRED TO  
INTERCEPT AND OBSTRUCT TERRORISM  
(PATRIOT) ACT OF 2001

---

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 2975

together with

ADDITIONAL VIEWS



OCTOBER 11, 2001.—Ordered to be printed

- (i) an individual who performs security services, full or part time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes whose primary duty is to perform security services, or
  - (ii) an individual who is an employee of an electronic security system company who is engaged in one or more of the following activities in the State: burglar alarm technician, fire alarm technician, closed circuit television technician, access control technician, or security system monitor; but
- (B) does not include—
- (i) sworn police officers who have law enforcement powers in the State,
  - (ii) attorneys, accountants, and other professionals who are otherwise licensed in the State,
  - (iii) employees whose duties are primarily internal audit or credit functions,
  - (iv) persons whose duties may incidentally include the reporting or apprehension of shoplifters or trespassers, or
  - (v) an individual on active duty in the military service;
- (4) the term “certificate of registration” means a license, permit, certificate, registration card, or other formal written permission from the State for the person to engage in providing security services;
- (5) the term “security services” means the performance of one or more of the following:
- (A) the observation or reporting of intrusion, larceny, vandalism, fire or trespass;
  - (B) the deterrence of theft or misappropriation of any goods, money, or other item of value;
  - (C) the observation or reporting of any unlawful activity;
  - (D) the protection of individuals or property, including proprietary information, from harm or misappropriation;
  - (E) the control of access to premises being protected;
  - (F) the secure movement of prisoners;
  - (G) the maintenance of order and safety at athletic, entertainment, or other public activities;
  - (H) the provision of canine services for protecting premises or for the detection of any unlawful device or substance; and
  - (I) the transportation of money or other valuables by armored vehicle;
- and
- (6) the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

#### PURPOSE AND SUMMARY

H.R. 2975, the “Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001,” provides enhanced investigative tools and improves information sharing for the law enforcement and intelligence communities to combat terrorism and terrorist-related crimes. The enhanced law enforcement tools and information sharing-provisions will assist in the prevention of future terrorist activities and the preliminary acts and crimes which further such activities. To protect the delicate balance between law enforcement and civil liberties, the bill provides additional government reporting requirements, disciplinary actions for abuse, and civil penalties.

#### BACKGROUND AND NEED FOR THE LEGISLATION

On September 11, 2001, the United States was attacked by terrorist. After the attacks the country became aware of the need to better defend and protect the nation, liberty and citizens within our own borders. There are several key legislative changes needed to mobilize the nation against terrorism and to assist law enforcement and the intelligence community to determine who carried out the

horrific acts of Tuesday, September 11, 2001, and to bring our criminal investigative capabilities to prevent future attacks.

#### HEARINGS

On September 24, 2001, the Committee on the Judiciary held one hearing on the Administration's proposed legislation the "Mobilization Against Terrorism Act of 2001," which formed the basis of H.R. 2975, the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001." Testimony was received from four witnesses, representing the Department of Justice. The witnesses were: The Honorable John Aschroft, Attorney General; Honorable Michael Chertoff, Assistant Attorney General for the Criminal Division; Honorable Larry Thompson, Deputy Attorney General; and Honorable Viet Dinh, Assistant Attorney General for Legal Policy.

#### COMMITTEE CONSIDERATION

On October 3, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 2975, as amended, by a 36-0 vote, a quorum being present.

#### VOTES OF THE COMMITTEE

(1) An amendment was offered by Mr. Boucher (for himself, Mr. Goodlatte, and Mr. Cannon) to insert language at the end of title I that states "Nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities, services or technical assistance." The amendment passed by voice vote.

(2) An amendment was offered by Mr. Frank to provide increased civil liability for unlawful disclosures of information obtained by wire or electronic interception, access to electronically-stored communications, pen register and trap trace, or the Foreign Intelligence Surveillance Act of 1978 (FISA) intelligence gathering and to provide administrative discipline for intentional violations and to provide procedures for actions against the United States. The amendment passed by voice vote.

(3) An amendment was offered by Mr. Berman to sections 103 and 154, clarifying that the term "foreign intelligence information" is the same term that is defined under section 1801(e) of title 50, the Foreign Intelligence Surveillance Act. The amendment passed by voice vote.

(4) Amendments were offered en bloc by Mr. Sensenbrenner (for himself, Mr. Conyers, Mr. Hyde, and Mr. Berman) to, among other things, clarify that upon request, those being served with the generic pen/trap order created under this section shall receive written or electronic certification that the assistance provided related to the order; to authorize five million dollars to be appropriated for antidrug training for South and Central Asia police; to establish a feasibility study on the use of a biometric identifier scanning system with access to the FBI Integrated Automated Fingerprint Identification system at overseas consular posts and points of entry to the United States; to clarify that a court of competent jurisdiction for nationwide search warrants must have jurisdiction over the offense being investigated; and to modify the current designation

EXHIBIT 4  
H.R. REP. NO. 109-174(I) (2005)



109TH CONGRESS }  
*1st Session* }

HOUSE OF REPRESENTATIVES

{ REPT. 109-174  
Part 1 }

USA PATRIOT AND TERRORISM PREVENTION  
REAUTHORIZATION ACT OF 2005

—  
R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 3199

together with

DISSENTING VIEWS



JULY 18, 2005.—Ordered to be printed

39. Nadler and Scott Amendment—Description of Amendment: This amendment amends the National Security Letter statutes to allow recipients to challenge them in court. It also requires pen register and trap-and-trace orders under Section 214 to be limited to terrorism or espionage investigations.

*Vote on Amendment:* This amendment was defeated on a voice vote.

## VII. CONCLUSION

There is no more difficult task we have as legislators than balancing our nation's need for security against our citizens' civil liberties. By passing this bill which largely ignores the most serious abuses of the PATRIOT Act, ignores the unilateral misuse of power by the Administration, and fails to provide adequate resources and funding to those on the "front line" in the fight against terrorism, we believe we will be failing in our task.

If we are serious about combating terror in the 21st century, we must move beyond symbolic gestures and begin to make the hard choices needed to protect our nation. Unfortunately, this legislation does not make those choices. The lessons of September 11 are that if we allow law enforcement to do their work free of political interference, if we give them adequate resources and modern technologies, we can protect our citizens without intruding on their liberties.

The bill before us today does not meet this test. It is our hope that we can come together on the House Floor and in conference and craft a bill that fights terrorism the right way, consistent with our constitution and our values, and in a manner that serves as a model for the rest of the world. For all of the aforementioned reasons, we respectfully dissent.

### APPENDIX A, SECTION-BY-SECTION SUMMARY OF THE USA PATRIOT ACT OF 2001, H.R. 3162

#### TITLE I: ENHANCING DOMESTIC SECURITY

*Section 101: Counterterrorism fund*—Establishes a counterterrorism fund to rebuild any Justice Department component that has been damaged or destroyed as a result of a terrorism incident; provide support for investigations and to pay terrorism-related rewards; and conduct terrorism threat assessments.

*Section 102: Sense of Congress condemning discrimination against Arab and Muslim Americans.*

*Section 103: Increased funding for the FBI's technical support center*—Authorizes \$200 million for each of FY 2002, 2003, and 2004 for the technical support center.

*Section 104: Requests for military assistance to enforce prohibition in certain emergencies*—Allows military to assist state and local law enforcement with domestic chemical weapons emergencies.

*Section 105: Expansion of National Electronic Crime Task Force Initiative*—Directs the Secret Service to develop a national network with electronic crime task forces based on the New York Electronic Crime Task Force model.

*Section 217: Interception of Computer Trespasser Communications*—Allows persons “acting under color of law” to intercept communications if the owner of a computer authorizes it, and the person acting under color of law is acting pursuant to a lawful investigation. Section 815 also excludes service provider subscribers from definition of trespasser, limits interception authority to only those communications through the computer in question.

*Section 218: Foreign Intelligence Information*—Permits FISA surveillance and search requests if they are for a “significant” intelligence gathering purpose (rather than “the” purpose under current law).

*Section 219: Single Jurisdiction Search Warrants for Terrorism*—Permits Federal judges to issue search warrants having nationwide effect for investigations involving terrorism.

*Section 220: Nationwide Service of Search Warrants for Electronic Evidence*—Permits a single court having jurisdiction over the offense to issue a search warrant for e-mail that would be valid in anywhere in the United States.

*Section 221: Trade Sanctions (IR Committee)*—Adds Taliban to list of entities potentially subject to sanctions and retains congressional oversight in current law.

*Section 222: Assistance to Law Enforcement Agencies*—Prohibits technology mandates on entities to comply with this Act. Provides for cost reimbursement of entities assisting law enforcement with title III pen trap orders.

*Section 223: Civil Liability for Certain Unauthorized Disclosures*—Increases civil liability for unauthorized disclosure of pen trap, wiretap, stored communications or FISA information. Also requires administrative discipline of officials who engage in such unauthorized disclosures.

*Section 224: Sunset*—201, 202, 203(b), 204, 206, 207, 209, 212, 214, 215, 217, 218, 220, will sunset in four years—at the end December 31, 2005. Conference agreement to narrow those investigations that survive sunset to particular investigations based on offenses occurring prior to sunset.

*Section 225: Immunity for Compliance with FISA Wiretap*—Provides immunity for civil liability from subscribers, tenants, etc. for entities that comply with FISA wiretap orders—dropped Administration proposal allowing FBI to use wiretap information on U.S. citizens it obtained overseas in violation of the Fourth Amendment.

#### TITLE III: FINANCIAL INFRASTRUCTURE

Other provisions to be supplied by Financial Services conference. Provisions below from House Judiciary Committee bill.

*Section 301: Laundering The Proceeds of Terrorism*—Expands the scope of predicate offenses for laundering the proceeds of terrorism to include “providing material support or resources to terrorist organizations,” as that crime is defined in 18 U.S.C. §2339B of the criminal code.

*Section 302: Extraterritorial Jurisdiction [International Relations Committee]*—Applies the financial crimes prohibitions to conduct committed abroad in situations where the tools or proceeds of the offense pass through or are in the United States.

EXHIBIT 5  
50 U.S.C. § 1806

**Effective: July 10, 2008**

United States Code Annotated [Currentness](#)

Title 50. War and National Defense ([Refs & Annos](#))

▣ [Chapter 36](#). Foreign Intelligence Surveillance ([Refs & Annos](#))

▣ [Subchapter I](#). Electronic Surveillance ([Refs & Annos](#))

→ **50 U.S.C. § 1806. Use of information**

(a) Compliance with minimization procedures; privileged communications; lawful purposes

Information acquired from an electronic surveillance conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Statement for disclosure

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification by United States

Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that

aggrieved person pursuant to the authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Notification by States or political subdivisions

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that--

- (1) the information was unlawfully acquired; or
- (2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) In camera and ex parte review by district court

Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, or whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (f) of this section determines that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Finality of orders

Orders granting motions or requests under subsection (g) of this section, decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting

disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

If an emergency employment of electronic surveillance is authorized under [section 1805\(e\)](#) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of--

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.



(k) Consultation with Federal law enforcement officer

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by [section 1804\(a\)\(7\)\(B\)](#) of this title or the entry of an order under [section 1805](#) of this title.

CREDIT(S)

([Pub.L. 95-511, Title I, § 106](#), Oct. 25, 1978, 92 Stat. 1793; [Pub.L. 107-56, Title V, § 504\(a\)](#), Oct. 26, 2001, 115 Stat. 364; [Pub.L. 107-296, Title VIII, § 898](#), Nov. 25, 2002, 116 Stat. 2258; [Pub.L. 110-261, Title I, §§ 106](#), 110(b)(1), July 10, 2008, 122 Stat. 2462, 2466.)

2002 Acts. Amendment to this section by Pub.L. 107-296 effective 60 days after Nov. 25, 2002, see Pub.L. 107-296, § 4, set out as a note under 6 U.S.C.A. § 101.

Current through P.L. 112-20 approved 6-24-11

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