

112TH CONGRESS
1ST SESSION

S. 1070

To modify the Foreign Intelligence Surveillance Act of 1978 and to require judicial review of National Security Letters and Suspicious Activity Reports to prevent unreasonable searches and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2011

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To modify the Foreign Intelligence Surveillance Act of 1978 and to require judicial review of National Security Letters and Suspicious Activity Reports to prevent unreasonable searches and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fourth Amendment
5 Restoration Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Fourth Amendment of the United
2 States Constitution states “The right of the people
3 to be secure in their persons, houses, papers, and ef-
4 fects, against unreasonable searches and seizures,
5 shall not be violated, and no Warrants shall issue,
6 but upon probable cause, supported by Oath or affir-
7 mation, and particularly describing the place to be
8 searched, and the persons or things to be seized.”.

9 (2) Prior to the American Revolution, American
10 colonists objected to the issuance of writs of assist-
11 ance, which were general warrants that did not
12 specify either the place or goods to be searched.

13 (3) Writs of assistance played an important role
14 in the events that led to the American Revolution.

15 (4) The Fourth Amendment of the United
16 States Constitution was intended to protect against
17 the issuance of general warrants, and to guarantee
18 that only judges, not soldiers or police officers, are
19 able to issue warrants.

20 (5) Various provisions of the USA PATRIOT
21 Act (Public Law 107–56; 115 Stat. 272) expressly
22 violate the original intent of the Fourth Amendment
23 of the United States Constitution.

1 **SEC. 3. LIMITATIONS ON ROVING WIRETAPS.**

2 Section 105(c) of the Foreign Intelligence Surveil-
3 lance Act of 1978 (50 U.S.C. 1805(c)) is amended—

4 (1) in paragraph (1), by striking subparagraphs
5 (A) and (B) and inserting the following:

6 “(A)(i) the identity of the target of the elec-
7 tronic surveillance, if known; or

8 “(ii) if the identity of the target is not known,
9 a description of the specific target and the nature
10 and location of the facilities and places at which the
11 electronic surveillance will be directed;

12 “(B)(i) the nature and location of each of the
13 facilities or places at which the electronic surveil-
14 lance will be directed, if known; or

15 “(ii) if any of the facilities or places are not
16 known, the identity of the target;” and

17 (2) in paragraph (2)—

18 (A) by redesignating subparagraphs (B)
19 through (D) as subparagraphs (C) through (E),
20 respectively; and

21 (B) by inserting after subparagraph (A)
22 the following:

23 “(B) in cases where the facility or place at
24 which the electronic surveillance will be directed
25 is not known at the time the order is issued,
26 that the electronic surveillance be conducted

1 only for such time as it is reasonable to pre-
 2 sume that the target of the surveillance is or
 3 was reasonably proximate to the particular fa-
 4 cility or place;”.

5 **SEC. 4. SUNSETS ON ROVING WIRETAP AUTHORITY AND AC-**
 6 **CESS TO BUSINESS RECORDS.**

7 Section 102(b)(1) of the USA PATRIOT Improve-
 8 ment and Reauthorization Act of 2005 (Public Law 109–
 9 177; 50 U.S.C. 1805 note, 50 U.S.C. 1861 note, and 50
 10 U.S.C. 1862 note) is amended to read as follows:

11 “(1) IN GENERAL.—

12 “(A) SECTION 206.—Effective December
 13 31, 2013, the Foreign Intelligence Surveillance
 14 Act of 1978 is amended so that section
 15 105(c)(2) (50 U.S.C. 1805(c)(2)) read as such
 16 section read on October 25, 2001.

17 “(B) SECTION 215.—Effective February
 18 28, 2011, the Foreign Intelligence Surveillance
 19 Act of 1978 is amended so that sections 501
 20 and 502 (50 U.S.C. 1861 and 1862) read as
 21 such sections read on October 25, 2001.”.

22 **SEC. 5. MINIMIZATION PROCEDURES.**

23 (a) IN GENERAL.—Not later than 180 days after the
 24 date of enactment of this Act, the Attorney General shall
 25 establish minimization and destruction procedures gov-

1 urning the acquisition, retention, and dissemination by the
2 Federal Bureau of Investigation of any records received
3 by the Federal Bureau of Investigation—

4 (1) in response to a National Security Letter
5 issued under section 2709 of title 18, United States
6 Code, section 626 or 627 of the Fair Credit Report-
7 ing Act (15 U.S.C. 1681u and 1681v), section 1114
8 of the Right to Financial Privacy Act of 1978 (12
9 U.S.C. 3414), or section 802(a) of the National Se-
10 curity Act of 1947 (50 U.S.C. 436(a)); or

11 (2) pursuant to title V of the Foreign Intel-
12 ligence Surveillance Act of 1978 (50 U.S.C. 1861 et
13 seq.).

14 (b) MINIMIZATION AND DESTRUCTION PROCEDURES
15 DEFINED.—In this section, the term “minimization and
16 destruction procedures” means—

17 (1) specific procedures that are reasonably de-
18 signed in light of the purpose and technique of a
19 National Security Letter or a request for tangible
20 things for an investigation to obtain foreign intel-
21 ligence information, as appropriate, to minimize the
22 acquisition and retention, and prohibit the dissemi-
23 nation, of nonpublicly available information con-
24 cerning unconsenting United States persons con-
25 sistent with the need of the United States to obtain,

1 produce, and disseminate foreign intelligence infor-
2 mation, including procedures to ensure that informa-
3 tion obtained that is outside the scope of such Na-
4 tional Security Letter or request, is returned or de-
5 stroyed;

6 (2) procedures that require that nonpublicly
7 available information, which is not foreign intel-
8 ligence information (as defined in section 101(e)(1)
9 of the Foreign Intelligence Surveillance Act of 1978
10 (50 U.S.C. 1801(e)(1))) shall not be disseminated in
11 a manner that identifies any United States person,
12 without the consent of the United States person, un-
13 less the identity of the United States person is nec-
14 essary to understand foreign intelligence information
15 or assess its importance; and

16 (3) notwithstanding paragraphs (1) and (2),
17 procedures that allow for the retention and dissemi-
18 nation of information that is evidence of a crime
19 which has been, is being, or is about to be com-
20 mitted and that is to be retained or disseminated for
21 law enforcement purposes.

22 **SEC. 6. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
23 **TERS.**

24 Section 3511 of title 18, United States Code, is
25 amended by adding at the end the following:

1 “(f) NATIONAL SECURITY LETTERS.—An officer or
 2 employee of the United States may not issue a National
 3 Security Letter under section 270 of title 18, United
 4 States Code, section 626 or 627 of the Fair Credit Report-
 5 ing Act (15 U.S.C. 1681u and 1681v), section 1114 of
 6 the Right to Financial Privacy Act of 1978 (12 U.S.C.
 7 3414), or section 802(a) of the National Security Act of
 8 1947 (50 U.S.C. 436(a)) unless—

9 “(1) the National Security Letter is submitted
 10 to a judge of the court established under section
 11 103(a) of the Foreign Intelligence Surveillance Act
 12 of 1978 (50 U.S.C. 1803); and

13 “(2) such judge issues an order finding that a
 14 warrant could be issued under rule 41 of the Federal
 15 Rules of Criminal Procedure to search for and seize
 16 the information sought to be obtained in the Na-
 17 tional Security Letter.”.

18 **SEC. 7. JUDICIAL REVIEW OF SUSPICIOUS ACTIVITY RE-**

19 **PORTS.**

20 Section 5318(g) of title 31, United States Code, is
 21 amended—

22 (1) in paragraph (1), by inserting before the pe-
 23 riod at the end “, subject to judicial review under
 24 paragraph (5)”; and

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

1 “(5) JUDICIAL REVIEW.—The Secretary may
2 not, under this section or the rules issued under this
3 section, or under any other provision of law, require
4 any financial institution, director, officer, employee,
5 or agent of any financial institution, or any other
6 entity that is otherwise subject to regulation or over-
7 sight by the Secretary or pursuant to the securities
8 laws (as that term is defined under section 3 of the
9 Securities Exchange Act of 1934) to report any
10 transaction under this section or its equivalent under
11 such provision of law, unless the appropriate district
12 court of the United States issues an order finding
13 that a warrant could be issued under rule 41 of the
14 Federal Rules of Criminal Procedure for the infor-
15 mation sought to be obtained by the Secretary.”.

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