

**AMENDMENTS OFFERED BY HOUSE PERMANENT SELECT  
COMMITTEE ON INTELLIGENCE DEMOCRATS  
DURING MARK-UP OF  
H.R. 3199 (PATRIOT ACT REAUTHORIZATION)  
JULY 13, 2005**

**AMENDMENT TO H.R. 3199**

**OFFERED BY MS. HARMAN OF CALIFORNIA (Defeated)**

Strike subsection (a) of section 8 (page 4, line 20 through page 5, line 4) and insert the following new subsection:

(a) **SPECIFIC AND ARTICULABLE FACTS.**—Subsection (b) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861), is amended—

(1) in paragraph (1), by striking “and” at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(3) shall assert that there are specific and articulable facts giving reason to believe that the records sought relate to a foreign power or an agent of a foreign power; and

“(4) shall include an explanation that supports the assertion that such facts exist.”.

At the end of section 8 (page 9, line 11), add the following new subsection:

(e) **PROTECTION OF LIBRARY AND BOOKSELLER RECORDS.**—Subsection (a)(1) of section 501 of the Foreign Intelligence Surveillance Act (50 U.S.C. 1861) is amended by inserting “but excluding library circulation records, library patron lists, book sales records, or book customer lists” after “and other items”.

Add at the end the following new sections:

**SEC. 9. MODIFICATION OF ROVING SURVEILLANCE AUTHORITY UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) **REQUIREMENT FOR INCLUSION OF SUFFICIENT SPECIFICITY IN DESCRIPTIONS OF TARGETS OF ELECTRONIC SURVEILLANCE.**—Subsection (c)(1)(A) of section 105 of the Foreign Intelligence Surveillance Act (50

U.S.C. 1805) is amended by inserting before the semicolon at the end the following: “, and, in the case of a description of the target, include sufficient specificity for the Court to find probable cause to believe the target is a foreign power or an agent of a foreign power”.

(b) **REQUIREMENT FOR REASONABLE TIME LIMIT FOR SURVEILLANCE.**—Subsection (c)(1)(E) of such section is amended by inserting before the semicolon at the end the following: “, such period limited to a period of time that is reasonable to presume that the target of the electronic surveillance is or was reasonably proximate to the instrument or device through which the communication is, was, or will be transmitted”.

(c) **NOTICE IN CASES WHERE SURVEILLANCE IS DIRECTED AT A NEW FACILITY OR PLACE.**—Subsection (c)(2) of such section is amended—

(1) by striking “and” at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting “; and”; and

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

“(E) that, in cases where the facility or place at which surveillance will be directed is not known at the time the order is issued, the applicant shall notify a judge having jurisdiction under section 103 within a reasonable period of time, as determined by the court, after surveillance begins to be directed at a new facility or place, and that such notice shall contain a statement of the facts and circumstances relied upon by the applicant to justify the belief that the facility or place at which the electronic surveillance was directed is being used, or is about to be used, by the target of the electronic surveillance.”.

**SEC. 10. MODIFICATION OF AUTHORITIES ON REVIEW OF MOTIONS TO DISCOVER MATERIALS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) **ELECTRONIC SURVEILLANCE.**—Section 106(f) of

the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(f)) is amended—

(1) in the first sentence, by striking “shall,” and inserting “may,”; and

(2) by striking the last sentence and inserting the following new sentence: “In making this determination, the court shall disclose, if otherwise discoverable, to the aggrieved person, the counsel of the aggrieved person, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.), portions of the application, order, or other materials relating to the surveillance unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case.”.

(b) PHYSICAL SEARCHES.—Section 305(g) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825(g)) is amended—

(1) in the first sentence, by striking “shall,” and inserting “may,”; and

(2) by striking the last sentence and inserting the following new sentence: “In making this determination, the court shall disclose, if otherwise discoverable, to the aggrieved person, the counsel of the aggrieved person, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.), portions of the application, order, or other materials relating to the physical search, or may require the Attorney General to provide to the aggrieved person, the counsel of the aggrieved person, or both a summary of such materials unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case.”.

(c) PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 405(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1845(f)) is amended by striking paragraph (2) and inserting the following:

“(2) Unless the court finds that such disclosure would not assist in determining any legal or factual

issue pertinent to the case, the court shall disclose, if otherwise discoverable, to the aggrieved person, the counsel of the aggrieved person, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.), portions of the application, order, or other materials relating to the use of the pen register or trap and trace device, as the case may be, or evidence or information obtained or derived from the use of a pen register or trap and trace device, as the case may be.”.

(d) **DISCLOSURE OF CERTAIN BUSINESS RECORDS.**—(1) Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended—

(A) by redesignating section 502 as section 503; and

(B) by inserting after section 501 the following new section:

“DISCLOSURE OF CERTAIN BUSINESS RECORDS AND ITEMS GOVERNED BY THE CLASSIFIED INFORMATION PROCEDURES ACT

“SEC. 502. Any disclosure of applications, information, or items submitted or acquired pursuant to an order issued under section 501, if such information is otherwise discoverable, shall be conducted under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.).”.

(2) The table of sections for that Act is amended—

(A) by redesignating the item relating to section 502 as an item relating to section 503; and

(B) inserting after the item relating to section 501 the following new item:

“502. Disclosure of certain business records and items governed by the Classified Information Procedures Act.”.

**SEC. 11. NOTICE OF SEARCH OR SURVEILLANCE IF SUBJECT OF SUCH SEARCH OR SURVEILLANCE IS A UNITED STATES PERSON THAT IS NOT AN AGENT OF A FOREIGN POWER.**

(a) **ELECTRONIC SURVEILLANCE.**—Section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by adding at the end the fol-

lowing new subsection:

“(l) Where an electronic surveillance authorized and conducted pursuant to section 105 involves a United States person, and, at any time after the electronic surveillance the Attorney General determines the person is not an agent of a foreign power and that disclosure of the fact of such electronic surveillance will not compromise an ongoing investigation, the Attorney General shall provide notice to the United States person of the fact of the electronic surveillance conducted pursuant to this Act.”.

(b) PHYSICAL SEARCH.—Section 305(b) of such Act (50 U.S.C. 1825(b)) is amended to read as follows:

“(b) Where a physical search authorized and conducted pursuant to section 105 involves a United States person, and, at any time after the physical search the Attorney General determines the person is not an agent of a foreign power and that disclosure of the fact of such physical search will not compromise an ongoing investigation, the Attorney General shall provide notice to the United States person of the fact of the physical search conducted pursuant to this Act.”.

(c) PEN REGISTERS, TRAP AND TRACE DEVICES.—

Section 405 of such Act (50 U.S.C. 1845) is amended by adding at the end the following new subsection:

“(i) Where the use of a pen register or trap and trace device authorized and conducted pursuant to this title involves a United States person, and, at any time after the use of the pen register or trap and trace device the Attorney General determines the person is not an agent of a foreign power and that disclosure of the use of such pen register or trap and trace device will not compromise an ongoing investigation, the Attorney General shall provide notice to the United States person of the use of the pen register or trap and trace device conducted pursuant to this Act.”.

**SEC. 12. SPECIFIC AND ARTICULABLE FACTS REQUIRED FOR PEN REGISTER OR TRAP AND TRACE DEVICE.**

Subsection (c) of section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842), is amended—

(1) in paragraph (1), by striking “and” at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(3) shall assert that there are specific and articulable facts giving reason to believe that the information sought relates to a foreign power or an agent of a foreign power; and

“(4) shall include an explanation that supports the assertion that such facts exist.”.

**AMENDMENT TO H.R. 3199**

**OFFERED BY MR. RUPPERSBERGER (Defeated)**

Amend section 4 to read as follows:

**SEC. 4. EXTENSION OF CERTAIN USA PATRIOT ACT SUNSET PROVISIONS.**

(a) INTELLIGENCE-RELATED PROVISIONS.—Title II of the USA PATRIOT ACT is amended by adding at the end the following new section:

“SEC. 226. SUNSET OF CERTAIN PROVISIONS.

“(a) IN GENERAL.—Except as provided in subsection (b), the following provisions of this title and the amendments made by those provisions shall cease to have effect on December 31, 2009:

“(1) Subsections (b) and (d) of section 203.

“(2) Sections 204, 206, 207, 214, 215, 218, 225.

“(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.”.

(b) CONFORMING AMENDMENT TO LONE WOLF SUNSET.—Subsection (b) of section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3742) is amended by striking “section 224” each place it appears and inserting “section 226”.

**AMENDMENT TO H.R. 3199**

**OFFERED BY MS. ESHOO (Defeated)**

At the end of section 8, add the following new subsection:

(e) PROTECTION OF LIBRARY AND BOOKSELLER

RECORDS.—Subsection (a)(1) of section 501 of the Foreign Intelligence Surveillance Act (50 U.S.C. 1861) is amended by inserting “but excluding library circulation records, library patron lists, book sales records, or book customer lists” after “and other items”.

**AMENDMENT TO H.R. 3199**

**OFFERED BY MR. BOSWELL (Passed )**

Add at the end the following new section:

**SEC. 9. MODIFICATION OF SURVEILLANCE AUTHORITY  
UNDER THE FOREIGN INTELLIGENCE SUR-  
VEILLANCE ACT OF 1978.**

Subsection (c)(2) of section 105 of the Foreign Intel-  
ligence Surveillance Act (50 U.S.C. 1805) is amended—

(1) by striking “and” at the end of subpara-  
graph (C);

(2) by striking the period at the end of sub-  
paragraph (D) and inserting “; and”; and

(3) by adding at the end the following new sub-  
paragraph:

“(E) that, in cases where the facility or  
place at which surveillance will be directed is  
not known at the time the order is issued, the  
applicant shall notify a judge having jurisdic-  
tion under section 103 within a reasonable pe-  
riod of time, as determined by the court, after  
surveillance begins to be directed at a new facil-  
ity or place, and that such notice shall contain  
a statement of the facts and circumstances re-  
lied upon by the applicant to justify the belief  
that the facility or place at which the electronic  
surveillance was directed is being used, or is  
about to be used, by the target of the electronic  
surveillance.”.

**AMENDMENT TO H.R. 3199**

**OFFERED BY MR. ALCEE HASTINGS (Passed)**

Amend section 4 to read as follows:

**SEC. 4. EXTENSION OF SUNSET PROVISION RELATING TO  
INDIVIDUAL TERRORISTS AS AGENTS OF  
FOREIGN POWERS.**

Subsection (b) of section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3742) is amended to read as follows:

“(b) SUNSET.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall cease to have effect on December 31, 2010.

“(2) With respect to any particular foreign intelligence investigation that began before the date on which the amendment made by subsection (a) ceases to have effect, such amendment shall continue in effect.