

[DISCUSSION DRAFT]115TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Foreign Intelligence Surveillance Act of 1978 to clarify and improve the procedures and accountability for authorizing certain acquisitions of foreign intelligence, to extend title VII of such Act, to ensure that the barriers to sharing critical foreign intelligence among the intelligence community that existed before September 11, 2001, are not reimposed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to clarify and improve the procedures and accountability for authorizing certain acquisitions of foreign intelligence, to extend title VII of such Act, to ensure that the barriers to sharing critical foreign intelligence among the intelligence community that existed before September 11, 2001, are not reimposed, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Uniting and Strengthening American Liberty Act of
4 2017” or the “USA Liberty Act of 2017”.

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

Sec. 1. Short title; table of contents.

**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 Inves-
tigation.

Sec. 107. Additional reporting requirements.

Sec. 108. 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 commu-
nity.

**TITLE III—EXTENSION OF AUTHORITIES, INCREASED
PENALTIES, REPORTS, AND OTHER MATTERS**

Sec. 301. Extension of title VII of FISA.

Sec. 302. Penalties for unauthorized removal and retention of classified docu-
ments or material.

Sec. 303. Comptroller General study on unauthorized disclosures and the classi-
fication system.

Sec. 304. Sense of Congress on information sharing among intelligence commu-
nity to protect national security.

Sec. 305. Sense of Congress on combating terrorism.

Sec. 306. Technical amendments.

Sec. 307. Severability.

1 **TITLE I—FOREIGN INTEL-**
2 **LIGENCE SURVEILLANCE AND**
3 **ACCOUNTABILITY**

4 **SEC. 101. COURT ORDERS AND PROTECTION OF INCIDENT-**
5 **TALLY COLLECTED UNITED STATES PERSON**
6 **COMMUNICATIONS.**

7 (a) IN GENERAL.—Section 702 of the Foreign Intel-
8 ligence Surveillance Act of 1978 (50 U.S.C. 1881a) is
9 amended—

10 (1) by redesignating subsections (j) through (l)
11 as subsections (k) through (m), respectively; and

12 (2) by inserting after subsection (i) the fol-
13 lowing new subsection (j):

14 “(j) REQUIREMENTS FOR ACCESS AND DISSEMINA-
15 TION OF COLLECTIONS OF COMMUNICATIONS.—

16 “(1) COURT ORDERS AND OTHER REQUIRE-
17 MENTS.—

18 “(A) COURT ORDERS TO ACCESS CON-
19 TENTS.—Except as provided by subparagraph
20 (C), in response to a query for evidence of a
21 crime, the contents of queried communications
22 acquired under subsection (a) may be accessed
23 or disseminated only upon—

24 “(i) an application by the Attorney
25 General to a judge of the Foreign Intel-

1 ligence Surveillance Court that describes
2 the determination of the Attorney General
3 that—

4 “(I) there is probable cause to
5 believe that such contents may provide
6 evidence of a crime specified in sec-
7 tion 2516 of title 18, United States
8 Code (including crimes covered by
9 paragraph (2) of such section);

10 “(II) noncontents information
11 accessed or disseminated pursuant to
12 subparagraph (B) is not the sole basis
13 for such probable cause;

14 “(III) such queried communica-
15 tions are relevant to an authorized in-
16 vestigation or assessment, provided
17 that such investigation or assessment
18 is not conducted solely on the basis of
19 activities protected by the first
20 amendment to the Constitution of the
21 United States; and

22 “(IV) any use of such queried
23 communications pursuant to section
24 706 will be carried out in accordance
25 with such section; and

1 “(ii) an order of the judge approving
2 such application.

3 “(B) RELEVANCE AND SUPERVISORY AP-
4 PROVAL TO ACCESS NONCONTENTS INFORMA-
5 TION.—Except as provided by subparagraph
6 (C), in response to a query for evidence of a
7 crime, the information of queried communica-
8 tions acquired under subsection (a) relating to
9 the dialing, routing, addressing, signaling, or
10 other similar noncontents information may be
11 accessed or disseminated only upon a deter-
12 mination by the Attorney General that—

13 “(i) such queried communications are
14 relevant to an authorized investigation or
15 assessment, provided that such investiga-
16 tion or assessment is not conducted solely
17 on the basis of activities protected by the
18 first amendment to the Constitution of the
19 United States; and

20 “(ii) any use of such queried commu-
21 nications pursuant to section 706 will be
22 carried out in accordance with such sec-
23 tion.

24 “(C) EXCEPTIONS.—The requirement for
25 an order of a judge pursuant to subparagraph

1 (A) and the requirement for a determination by
2 the Attorney General under subparagraph (B),
3 respectively, shall not apply to accessing or dis-
4 seminating queried communications acquired
5 under subsection (a) if one or more of the fol-
6 lowing conditions are met:

7 “(i) Such query is reasonably designed
8 for the primary purpose of returning for-
9 eign intelligence information.

10 “(ii) The Attorney General makes the
11 determination described in subparagraph
12 (A)(i) and—

13 “(I) the person related to the
14 queried term is the subject of an
15 order or emergency authorization that
16 authorizes electronic surveillance or
17 physical search under this Act or title
18 18, United States Code; or

19 “(II) the Attorney General has a
20 reasonable belief that the life or safety
21 of a person is threatened and such
22 contents are sought for the purpose of
23 assisting that person.

1 “(iii) Pursuant to paragraph (5), the
2 person related to the queried term consents
3 to such access or dissemination.

4 “(D) LIMITATION ON ELECTRONIC SUR-
5 VEILLANCE OF UNITED STATES PERSONS.—If
6 the Attorney General determines that it is nec-
7 essary to conduct electronic surveillance on a
8 known United States person who is related to
9 a term used in a query of communications ac-
10 quired under subsection (a), the Attorney Gen-
11 eral may only conduct such electronic surveil-
12 lance using authority provided under other pro-
13 visions of law.

14 “(E) SIMULTANEOUS ACCESS OF FBI
15 DATABASES.—The Director of the Federal Bu-
16 reau of Investigation shall ensure that all avail-
17 able investigative or intelligence databases of
18 the Federal Bureau of Investigation are simul-
19 taneously accessed when the Bureau properly
20 uses an information system of the Bureau to
21 determine whether information exists in such a
22 database. Regardless of any positive result that
23 may be returned pursuant to such access, the
24 requirements of this subsection shall apply.

1 “(F) DELEGATION.—The Attorney General
2 shall delegate the authority under this para-
3 graph to the fewest number of officials that the
4 Attorney General determines practicable.

5 “(2) AUTHORIZED PURPOSES FOR QUERIES.—A
6 collection of communications acquired under sub-
7 section (a) may only be queried for legitimate na-
8 tional security purposes or legitimate law enforce-
9 ment purposes.

10 “(3) RETENTION OF AUDITABLE RECORDS.—
11 The Attorney General and each Director concerned
12 shall retain records of queries that return a positive
13 result from a collection of communications acquired
14 under subsection (a). Such records shall—

15 “(A) include such queries for not less than
16 5 years after the date on which the query is
17 made; and

18 “(B) be maintained in a manner that is
19 auditable and available for congressional over-
20 sight.

21 “(4) COMPLIANCE AND MAINTENANCE.—The
22 requirements of this subsection do not apply with re-
23 spect to queries made for the purpose of—

1 “(A) submitting to Congress information
2 required by this Act or otherwise ensuring com-
3 pliance with the requirements of this section; or

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

6 “(5) CONSENT.—The requirements of this sub-
7 section do not apply with respect to—

8 “(A) queries made using a term relating to
9 a person who consents to such queries; or

10 “(B) the accessing or the dissemination of
11 the contents of queried communications of a
12 person who consents to such access or dissemi-
13 nation.

14 “(6) DIRECTOR CONCERNED.—In this sub-
15 section, the term ‘Director concerned’ means the fol-
16 lowing:

17 “(A) The Director of the National Security
18 Agency, with respect to matters concerning the
19 National Security Agency.

20 “(B) The Director of the Federal Bureau
21 of Investigation, with respect to matters con-
22 cerning the Federal Bureau of Investigation.

23 “(C) The Director of the Central Intel-
24 ligence Agency, with respect to matters con-
25 cerning the Central Intelligence Agency.

1 “(D) The Director of the National
2 Counterterrorism Center, with respect to mat-
3 ters concerning the National Counterterrorism
4 Center.”.

5 (b) PROCEDURES.—Subsection (e) of such section
6 (50 U.S.C. 1881a(e)) is amended by adding at the end
7 the following new paragraph:

8 “(3) CERTAIN PROCEDURES FOR QUERYING.—
9 The minimization procedures adopted in accordance
10 with paragraph (1) shall describe a query reasonably
11 designed for the primary purpose of returning for-
12 eign intelligence information pursuant to subsection
13 (j)(1)(C)(i).”.

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

18 **SEC. 102. LIMITATION ON COLLECTION AND IMPROVE-**
19 **MENTS TO TARGETING PROCEDURES AND**
20 **MINIMIZATION PROCEDURES.**

21 (a) TARGETING PROCEDURES; LIMITATION ON COL-
22 LECTION.—Subsection (d) of section 702 of the Foreign
23 Intelligence Surveillance Act of 1978 (50 U.S.C.
24 1881a(d)) is amended—

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

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

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

11 “(A) making the determination based on
12 the totality of the circumstances, including by,
13 to the extent practicable, ensuring that any con-
14 flicting information regarding whether the per-
15 son is reasonably believed to be located outside
16 the United States or is a United States person
17 is resolved before making such determination;

18 “(B) documenting the processes under sub-
19 paragraph (A); and

20 “(C) documenting the rationale for why
21 targeting such person will result in the acqui-
22 sition of foreign intelligence information author-
23 ized by subsection (a).

24 “(4) LIMITATION.—During the period pre-
25 ceding September 30, 2023, the procedures adopted

1 in accordance with paragraph (1) shall require that
2 the targeting of a person is limited to communica-
3 tions to or from the targeted person.”.

4 (b) MINIMIZATION PROCEDURES.—Subsection (e) of
5 such section (50 U.S.C. 1881a(e)), as amended by section
6 101, is further amended—

7 (1) in paragraph (1), by inserting “, and the re-
8 quirements of this subsection” before the period at
9 the end; and

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

12 “(4) REQUESTS TO UNMASK INFORMATION.—
13 The procedures adopted under paragraph (1) shall
14 include specific procedures adopted by the Attorney
15 General for elements of the Federal Government to
16 submit requests to unmask information in dissemi-
17 nated intelligence reports. Such specific procedures
18 shall—

19 “(A) require that an individual who is
20 making the request documents the rationale
21 that such request is for legitimate reasons au-
22 thorized pursuant to paragraph (1); and

23 “(B) require the requesting element of the
24 Federal Government to retain records of each
25 request, including—

1 “(i) a copy of the request;
2 “(ii) the name and position of the in-
3 dividual who is making the request; and
4 “(iii) if the request is approved, the
5 name and position of the individual who
6 approved the request and the date of the
7 approval.”.

8 (c) UNMASK DEFINED.—Section 701(b) of such Act
9 (50 U.S.C. 1881(b)) is amended by adding at the end the
10 following new paragraph:

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

18 (d) CONSISTENT REQUIREMENTS TO RETAIN
19 RECORDS ON REQUESTS TO UNMASK INFORMATION.—
20 The Foreign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1801 et seq.) is amended as follows:

22 (1) In section 101(h) (50 U.S.C. 1801(h))—
23 (A) in paragraph (3), by striking “; and”
24 and inserting a semicolon;

1 (B) in paragraph (4), by striking the pe-
2 riod at the end and inserting “; and”; and

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

5 “(5) specific procedures as described in section
6 702(e)(4).”.

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

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

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

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

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

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

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

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

21 “(2) REQUESTS FOR NONPUBLICLY AVAILABLE
22 INFORMATION.—The policies and procedures adopt-
23 ed under paragraph (1) shall include specific proce-
24 dures as described in section 702(e)(4).”.

1 (4) In section 501(g)(2) (50 U.S.C.
2 1861(g)(2))—

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

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

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

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

11 (e) REPORT ON UNMASKING.—Not later than 90
12 days after the date of the enactment of this Act, the Direc-
13 tor of National Intelligence shall submit to the Permanent
14 Select Committee on Intelligence of the House of Rep-
15 resentatives, the Select Committee on Intelligence of the
16 Senate, and the Committees on the Judiciary of the House
17 of Representatives and the Senate a report on the progress
18 made by the Director with respect to—

19 (1) ensuring that incidentally collected commu-
20 nications of United States persons are properly
21 masked if masking is necessary; and

22 (2) implementing procedures for requests to
23 unmask information under section 702(e)(4) of such
24 Act (50 U.S.C. 1881a(e)(4)), as added by subsection
25 (c).

1 **SEC. 103. PUBLICATION OF MINIMIZATION PROCEDURES**
2 **UNDER SECTION 702.**

3 Subsection (e) of section 702 of the Foreign Intel-
4 ligence Surveillance Act of 1978 (50 U.S.C. 1881a(e)), as
5 amended by sections 101 and 102, is further amended by
6 adding at the end the following new paragraph:

7 “(5) PUBLICATION.—The Director of National
8 Intelligence, in consultation with the Attorney Gen-
9 eral, shall—

10 “(A) conduct a declassification review of
11 any minimization procedures adopted or amend-
12 ed in accordance with paragraph (1); and

13 “(B) consistent with such review, make
14 such minimization procedures publicly available
15 to the greatest extent practicable, which may be
16 in redacted form.”.

17 **SEC. 104. APPOINTMENT OF AMICUS CURIAE FOR ANNUAL**
18 **CERTIFICATIONS.**

19 Section 103(i) of the Foreign Intelligence Surveil-
20 lance Act of 1978 (50 U.S.C. 1803(i)(2)) is amended—

21 (1) in paragraph (2)—

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

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

1 (C) by inserting after subparagraph (A)
2 the following new subparagraph (B):

3 “(B) shall appoint an individual who has
4 been designated under paragraph (1) to serve
5 as amicus curiae to assist such court in the re-
6 view of a certification under section 702(i), un-
7 less the court issues a finding that such ap-
8 pointment is not appropriate; and”;
9 (2) in paragraphs (4) and (5), by striking
10 “paragraph (2)(A)” both places it appears and in-
11 serting “subparagraph (A) or (B) of paragraph (2)”.

12 **SEC. 105. INCREASED ACCOUNTABILITY ON INCIDENTALLY**
13 **COLLECTED COMMUNICATIONS.**

14 Section 707 of such Act (50 U.S.C. 1881f) is amend-
15 ed by adding at the end the following new subsection:

16 “(c) INCIDENTALLY COLLECTED COMMUNICATIONS
17 AND OTHER INFORMATION.—Together with the semi-
18 annual report submitted under subsection (a), the Direc-
19 tor of National Intelligence shall submit to the congres-
20 sional committees specified in such subsection a report on
21 incidentally collected communications and other informa-
22 tion regarding United States persons under section 702.
23 Each such report shall include, with respect to the 6-
24 month period covered by the report, the following:

1 “(1) Except as provided by paragraph (2), the
2 number, or a good faith estimate, of communications
3 acquired under subsection (a) of such section of
4 known United States persons that the National Se-
5 curity Agency positively identifies as such in the or-
6 dinary course of its business, including a description
7 of any efforts of the intelligence community to ascer-
8 tain such number or good faith estimate.

9 “(2) If the Director determines that calculating
10 the number, or a good faith estimate, under para-
11 graph (1) is not achievable, a detailed explanation
12 for why such calculation is not achievable.

13 “(3) The number of—

14 “(A) United States persons whose informa-
15 tion is unmasked pursuant to subsection (e)(4)
16 of such section;

17 “(B) requests made by an element of the
18 Federal Government, listed by each such ele-
19 ment, to unmask information pursuant to such
20 subsection; and

21 “(C) requests that resulted in the dissemi-
22 nation of names, titles, or other identifiers po-
23 tentially associated with individuals pursuant to
24 such subsection, including the element of the in-

1 intelligence community and position of the indi-
2 vidual making the request.

3 “(4) The number of disseminations of commu-
4 nications acquired under subsection (a) of section
5 702 to the Federal Bureau of Investigation for cases
6 not pertaining to national security or foreign intel-
7 ligence.

8 “(5) The number of instances in which evidence
9 of a crime not pertaining to national security or for-
10 eign intelligence that was identified in communica-
11 tions acquired under subsection (a) of section 702
12 was disseminated from the national security branch
13 of the Bureau to the criminal investigative division
14 of the Bureau (or from such successor branch to
15 such successor division).”.

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

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

21 “(d) SEMIANNUAL FBI REPORTS.—Together with
22 the semiannual report submitted under subsection (a), the
23 Director of the Federal Bureau of Investigation shall sub-
24 mit to the congressional committees specified in such sub-
25 section, and make publicly available, a report containing,

1 with respect to the period covered by the report, the num-
2 ber of queries made by the Federal Bureau of Investiga-
3 tion described in subsection (j)(1) of section 702 that re-
4 sulted in communications being accessed or disseminated
5 pursuant to such subsection.”.

6 **SEC. 107. ADDITIONAL REPORTING REQUIREMENTS.**

7 (a) **ELECTRONIC SURVEILLANCE.**—Section 107 of
8 such Act (50 U.S.C. 1807) is amended to read as follows:

9 **“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.**

10 “(a) **ANNUAL REPORT.**—In April of each year, the
11 Attorney General shall transmit to the Administrative Of-
12 fice of the United States Courts and to Congress a report
13 setting forth with respect to the preceding calendar year—

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

17 “(2) the total number of such orders and exten-
18 sions either granted, modified, or denied; and

19 “(3) the total number of persons who were sub-
20 ject to electronic surveillance conducted under an
21 order or emergency authorization under this title,
22 rounded to the nearest 500, including the number of
23 such individuals who are United States persons, re-
24 ported to the nearest band of 500, starting with 0–
25 499.

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

6 (b) PEN REGISTERS AND TRAP AND TRACE DE-
7 VICES.—Section 406 of such Act (50 U.S.C. 1846) is
8 amended—

9 (1) in subsection (b)—

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

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

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

16 “(6) a good faith estimate of the total number
17 of persons who were targeted by the installation and
18 use of a pen register or trap and trace device under
19 an order or emergency authorization issued under
20 this title, rounded to the nearest 500, including—

21 “(A) the number of such persons who are
22 United States persons, reported to the nearest
23 band of 500, starting with 0–499; and

24 “(B) of the number of United States per-
25 sons described in subparagraph (A), the num-

1 ber of persons whose information acquired pur-
2 suant to such order was reviewed or accessed by
3 a Federal officer, employee, or agent, reported
4 to the nearest band of 500, starting with 0–
5 499.”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(c) Each report under subsection (b) shall be sub-
9 mitted in unclassified form. Not later than 7 days after
10 the date on which the Attorney General submits such a
11 report, the Attorney General shall make such report pub-
12 licly available.”.

13 **SEC. 108. SENSE OF CONGRESS ON PURPOSE OF SECTION**
14 **702 AND RESPECTING FOREIGN NATIONALS.**

15 It is the sense of Congress that—

16 (1) the acquisition of communications by the
17 National Security Agency under section 702 of the
18 Foreign Intelligence Surveillance Act (50 U.S.C.
19 1881a) should respect the norms of international
20 comity by avoiding, both in actuality and appear-
21 ance, targeting of foreign individuals based on un-
22 founded discrimination or for the purpose of afford-
23 ing a commercial competitive advantage to compa-
24 nies and business sectors of the United States; and

1 (2) the collection of intelligence under such sec-
2 tion 702 is meant to shield the United States, and
3 by extension, the allies of the United States, from
4 foreign security threats.

5 **TITLE II—SAFEGUARDS AND**
6 **OVERSIGHT OF PRIVACY AND**
7 **CIVIL LIBERTIES**

8 **SEC. 201. LIMITATION ON RETENTION OF CERTAIN DATA.**

9 (a) REQUIRED PURGING.—Subsection (e) of section
10 702 of the of the Foreign Intelligence Surveillance Act of
11 1978 (50 U.S.C. 1881a(e)), as amended by title I, is fur-
12 ther amended by adding at the end the following new para-
13 graph:

14 “(6) LIMITATION ON RETENTION.—

15 “(A) PERIOD OF RETENTION AND RE-
16 QUIREMENT FOR PURGING.—Notwithstanding
17 section 309 of the Intelligence Authorization
18 Act for Fiscal Year 2015 (50 U.S.C. 1813), ex-
19 cept as provided by subparagraph (B), the pro-
20 cedures adopted under paragraph (1) shall en-
21 sure that any communications that do not con-
22 tain foreign intelligence information are purged
23 by not later than 90 days after the date on
24 which the communications are determined to
25 not contain foreign intelligence information.

1 “(B) WAIVER.—The Director of the Na-
2 tional Security Agency may waive the require-
3 ments of subparagraph (A), on an individual-
4 ized and specific basis, if the Director deter-
5 mines that such waiver is necessary to protect
6 the national security of the United States.”.

7 (b) SEMIANNUAL ASSESSMENT.—Subsection (m) of
8 such section, as redesignated by section 101, is amend-
9 ed—

10 (1) by redesignating paragraphs (2) and (3) as
11 paragraphs (3) and (4); and

12 (2) by inserting after paragraph (1) the fol-
13 lowing new paragraph (2):

14 “(2) MATTERS INCLUDED IN SEMIANNUAL AS-
15 SESSMENT TO FISC AND CONGRESS.—Each semi-
16 annual assessment under paragraph (1) shall in-
17 clude, with respect to the 6-month period covered by
18 the assessment, the following:

19 “(A) An affidavit by the Director of the
20 National Security Agency, without delegation,
21 that communications described in subsection
22 (e)(6)(A) were purged pursuant to such sub-
23 section.

1 “(B) The number of waivers made under
2 subsection (e)(6)(B), including a description of
3 the purpose for each such waiver.”.

4 **SEC. 202. IMPROVEMENTS TO PRIVACY AND CIVIL LIB-**
5 **ERTIES OVERSIGHT BOARD.**

6 (a) APPOINTMENT OF STAFF.—Subsection (j) of sec-
7 tion 1061 of the Intelligence Reform and Terrorism Pre-
8 vention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

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

11 (2) by inserting after paragraph (1) the fol-
12 lowing new paragraph:

13 “(2) APPOINTMENT IN ABSENCE OF CHAIR-
14 MAN.—If the position of chairman of the Board is
15 vacant, during the period of the vacancy, the Board,
16 at the direction of the unanimous vote of the serving
17 members of the Board, may exercise the authority of
18 the chairman under paragraph (1).”.

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

21 (1) by striking “The Board shall” and inserting
22 “‘The Board’”;

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

25 (3) in paragraph (2)—

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

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

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

18 (1) how communications acquired under section
19 702 of the of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1881a) are used by the
21 United States to prevent or defend against ter-
22 rorism;

23 (2) how technological challenges and changes in
24 technology affect such prevention and defense; and

1 tally collected communications of known
2 United States persons.”.

3 **SEC. 204. WHISTLEBLOWER PROTECTIONS FOR CONTRAC-**
4 **TORS OF THE INTELLIGENCE COMMUNITY.**

5 (a) PROHIBITED PERSONNEL PRACTICES IN THE IN-
6 TELLIGENCE COMMUNITY.—Section 1104 of the National
7 Security Act of 1947 (50 U.S.C. 3234) is amended—

8 (1) in subsection (a), by adding at the end the
9 following new paragraph:

10 “(4) CONTRACTOR EMPLOYEE.—The term ‘con-
11 tractor employee’ means an employee of a con-
12 tractor, subcontractor, grantee, subgrantee, or per-
13 sonal services contractor, of a covered intelligence
14 community element.”;

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

17 (3) by inserting after subsection (b) the fol-
18 lowing new subsection (c):

19 “(c) CONTRACTOR EMPLOYEES.—(1) Any employee
20 of an agency who has authority to take, direct others to
21 take, recommend, or approve any personnel action, shall
22 not, with respect to such authority, take or fail to take
23 a personnel action with respect to any contractor employee
24 as a reprisal for a lawful disclosure of information by the
25 contractor employee to the Director of National Intel-

1 ligen­ce (or an employee designated by the Director of Na-
2 tional Intelligence for such purpose), the Inspector Gen-
3 eral of the Intelligence Community, the head of the con-
4 tracting agency (or an employee designated by the head
5 of that agency for such purpose), the appropriate inspec-
6 tor general of the contracting agency, a congressional in-
7 telligence committee, or a member of a congressional intel-
8 ligence committee, which the contractor employee reason-
9 ably believes evidences—

10 “(A) a violation of any Federal law, rule,
11 or regulation (including with respect to evidence
12 of another employee or contractor employee ac-
13 cessing or sharing classified information with-
14 out authorization); or

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

18 “(2) A personnel action under paragraph (1) is pro-
19 hibited even if the action is undertaken at the request of
20 an agency official, unless the request takes the form of
21 a nondiscretionary directive and is within the authority of
22 the agency official making the request.”;

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

1 (5) in subsection (e), as redesignated by para-
2 graph (2), by inserting “contractor employee,” after
3 “any employee,”.

4 (b) FEDERAL BUREAU OF INVESTIGATION.—

5 (1) IN GENERAL.—Any employee of the Federal
6 Bureau of Investigation who has authority to take,
7 direct others to take, recommend, or approve any
8 personnel action, shall not, with respect to such au-
9 thority, take or fail to take a personnel action with
10 respect to a contractor employee as a reprisal for a
11 disclosure of information—

12 (A) made—

13 (i) to a supervisor in the direct chain
14 of command of the contractor employee, up
15 to and including the Director of the Fed-
16 eral Bureau of Investigation;

17 (ii) to the Inspector General;

18 (iii) to the Office of Professional Re-
19 sponsibility of the Department of Justice;

20 (iv) to the Office of Professional Re-
21 sponsibility of the Federal Bureau of In-
22 vestigation;

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

1 (vi) as described in section 7211 of
2 title 5, United States Code;

3 (vii) to the Office of Special Counsel;

4 or

5 (viii) to an employee designated by
6 any officer, employee, office, or division de-
7 scribed in clauses (i) through (vii) for the
8 purpose of receiving such disclosures; and

9 (B) which the contractor employee reason-
10 ably believes evidences—

11 (i) any violation of any law, rule, or
12 regulation (including with respect to evi-
13 dence of another employee or contractor
14 employee accessing or sharing classified in-
15 formation without authorization); or

16 (ii) gross mismanagement, a gross
17 waste of funds, an abuse of authority, or
18 a substantial and specific danger to public
19 health or safety.

20 (2) ACTIONS BY REQUEST.—A personnel action
21 under paragraph (1) is prohibited even if the action
22 is undertaken at the request of an official of the Bu-
23 reau, unless the request takes the form of a nondis-
24 cretionary directive and is within the authority of
25 the official making the request.

1 (3) REGULATIONS.—The Attorney General shall
2 prescribe regulations to ensure that a personnel ac-
3 tion described in paragraph (1) shall not be taken
4 against a contractor employee of the Bureau as a re-
5 prisal for any disclosure of information described in
6 subparagraph (A) of such paragraph.

7 (4) ENFORCEMENT.—The President shall pro-
8 vide for the enforcement of this subsection in a man-
9 ner consistent with applicable provisions of sections
10 1214 and 1221 of title 5, United States Code.

11 (5) DEFINITIONS.—In this subsection:

12 (A) The term “contractor employee”
13 means an employee of a contractor, subcon-
14 tractor, grantee, subgrantee, or personal serv-
15 ices contractor, of the Federal Bureau of Inves-
16 tigation.

17 (B) The term “personnel action” means
18 any action described in clauses (i) through (x)
19 of section 2302(a)(2)(A) of title 5, United
20 States Code, with respect to a contractor em-
21 ployee.

22 (c) RETALIATORY REVOCATION OF SECURITY
23 CLEARANCES AND ACCESS DETERMINATIONS.—Section
24 3001(j) of the Intelligence Reform and Terrorism Preven-

1 tion Act of 2004 (50 U.S.C. 3341(j)) is amended by add-
2 ing at the end the following new paragraph:

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

10 **TITLE III—EXTENSION OF AU-**
11 **THORITIES, INCREASED PEN-**
12 **ALTIES, REPORTS, AND**
13 **OTHER MATTERS**

14 **SEC. 301. EXTENSION OF TITLE VII OF FISA.**

15 (a) EXTENSION.—Section 403(b) of the FISA
16 Amendments Act of 2008 (Public Law 110–261; 122 Stat.
17 2474) is amended—

18 (1) in paragraph (1)—

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

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

23 (2) in paragraph (2) in the matter preceding
24 subparagraph (A), by striking “December 31, 2017”
25 and inserting “September 30, 2023”.

1 (b) CONFORMING AMENDMENTS.—Section 404(b) of
2 the FISA Amendments Act of 2008 (Public Law 110–261;
3 122 Stat. 2476) is amended—

4 (1) in paragraph (1)—

5 (A) in the heading, by striking “DECEM-
6 BER 31, 2017” and inserting “SEPTEMBER 30,
7 2023”; and

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

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

13 (3) in paragraph (4)—

14 (A) by striking “702(l)” each place it ap-
15 pears and inserting “702(m)”;

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

19 (C) by inserting “and by the USA Liberty
20 Act of 2017” after “as amended by section
21 101(a)” both places it appears.

22 (c) EFFECTIVE DATE OF AMENDMENTS TO FISA
23 AND FAA.—The amendments made to the FISA Amend-
24 ments Act of 2008 (Public Law 110–261) by subsections
25 (a) and (b) and to the Foreign Intelligence Surveillance

1 Act of 1978 (50 U.S.C. 1801 et seq.) by titles I and II
2 shall take effect on the earlier of the date of the enactment
3 of this Act or December 31, 2017.

4 **SEC. 302. PENALTIES FOR UNAUTHORIZED REMOVAL AND**
5 **RETENTION OF CLASSIFIED DOCUMENTS OR**
6 **MATERIAL.**

7 Section 1924 of title 18, United States Code, is
8 amended—

9 (1) in subsection (a), by striking “one year”
10 and inserting “five years”;

11 (2) by redesignating subsections (b) and (c) as
12 subsections (c) and (d), respectively; and

13 (3) by inserting after subsection (a) the fol-
14 lowing new subsection (b):

15 “(b) Whoever, being an officer, employee, contractor,
16 or consultant of the United States, and, by virtue of his
17 office, employment, position, or contract, becomes pos-
18 sessed of documents or materials containing classified in-
19 formation of the United States, negligently removes such
20 documents or materials without authority and knowingly
21 retains such documents or materials at an unauthorized
22 location shall be fined under this title or imprisoned for
23 not more than one year, or both.”.

1 **SEC. 303. COMPTROLLER GENERAL STUDY ON UNAUTHOR-**
2 **IZED DISCLOSURES AND THE CLASSIFICA-**
3 **TION SYSTEM.**

4 (a) STUDY.—The Comptroller General of the United
5 States shall conduct a study of the unauthorized disclosure
6 of classified information and the classification system of
7 the United States.

8 (b) MATTERS INCLUDED.—The study under sub-
9 section (a) shall address the following:

10 (1) Insider threat risks to the unauthorized dis-
11 closure of classified information.

12 (2) The effect of modern technology on the un-
13 authorized disclosure of classified information, in-
14 cluding with respect to—

15 (A) using cloud storage for classified infor-
16 mation; and

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

19 (3) The effect of overclassification on the unau-
20 thorized disclosure of classified information.

21 (4) Any ways to improve the classification sys-
22 tem of the United States, including with respect to
23 changing the levels of classification used in such sys-
24 tem.

1 (5) How to improve the authorized sharing of
2 classified information, including with respect to sen-
3 sitive compartmented information.

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

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

9 (A) applies uniform standards in deter-
10 mining who is authorized to access classified in-
11 formation; and

12 (B) provides proper training with respect
13 to the handling of classified information.

14 (c) COOPERATION.—The heads of the intelligence
15 community shall provide to the Comptroller General infor-
16 mation the Comptroller General determines necessary to
17 carry out the study under subsection (a).

18 (d) REPORT.—Not later than 180 days after the date
19 of the enactment of this Act, the Comptroller General shall
20 submit to the Committee on the Judiciary and the Perma-
21 nent Select Committee on Intelligence of the House of
22 Representatives and the Committee on the Judiciary and
23 the Select Committee on Intelligence of the Senate a re-
24 port containing the study under subsection (a).

1 (e) FORM.—The report under subsection (d) shall be
2 submitted in unclassified form, but may include a classi-
3 fied annex.

4 **SEC. 304. SENSE OF CONGRESS ON INFORMATION SHARING**
5 **AMONG INTELLIGENCE COMMUNITY TO PRO-**
6 **TECT NATIONAL SECURITY.**

7 It is the sense of Congress that, in carrying out sec-
8 tion 702 of the Foreign Intelligence Surveillance Act of
9 1978 (50 U.S.C. 1881a), as amended by this Act, the
10 United States Government should ensure that the bar-
11 riers, whether real or perceived, to sharing critical foreign
12 intelligence among the intelligence community that existed
13 before September 11, 2001, are not reimposed by sharing
14 information vital to national security among the intel-
15 ligence community in a manner that is consistent with
16 such section, applicable provisions of law, and the Con-
17 stitution of the United States.

18 **SEC. 305. SENSE OF CONGRESS ON COMBATING TER-**
19 **RORISM.**

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

1 **SEC. 306. TECHNICAL AMENDMENTS.**

2 The Foreign Intelligence Surveillance Act of 1978
3 (50 U.S.C. 1801 et seq.) is amended as follows:

4 (1) In section 302(a)(1)(A)(iii) (50 U.S.C.
5 1822(a)(1)(A)(iii)), by striking “paragraphs (1)
6 through (4)” and inserting “subparagraphs (A)
7 through (D)”.

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

11 (3) In section 604(a)(3) (50 U.S.C.
12 1874(a)(3)), by striking “comply in the into” and
13 inserting “comply into”.

14 (4) In section 701—

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

18 (B) in subsection (b)—

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

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

24 (5) In section 702(g)(2)(A)(i) (50 U.S.C.
25 1881a(g)(2)(A)(i)), by inserting “targeting” before
26 “procedures in place”.

1 (6) In section 801(7) (50 U.S.C. 1885(7)), by
2 striking “(50 U.S.C. 401a(4))” and inserting “(50
3 U.S.C. 3003(4))”.

4 **SEC. 307. SEVERABILITY.**

5 If any provision of this Act, any amendment made
6 by this Act, or the application thereof to any person or
7 circumstances is held invalid, the validity of the remainder
8 of the Act, of any such amendments, and of the applica-
9 tion of such provisions to other persons and circumstances
10 shall not be affected thereby.

H.R. ____, Uniting and Strengthening American (USA) Liberty Act of 2017
Section-by-Section

This discussion draft of the USA Liberty Act of 2017 preserves the core purpose of Section 702: the collection of electronic communications for use in our nation's defense. Nothing in this bill undermines the ability of the Intelligence Community to gather foreign intelligence information or detect threats to the homeland. Recognizing the sheer amount of information collected under Section 702, however, the bill also creates a new framework of protections and transparency requirements to ensure that the government's use of Section 702 accords with principles of privacy and due process.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE AND ACCOUNTABILITY

Sec.101. Court orders and protection of incidentally collected United States person communications.

Prohibits the government from accessing or disseminating Section 702 content to advance a criminal investigation without a probable cause order from the FISA Court.

Includes exceptions for emergencies, consent, and for cases where a probable cause-based order or warrant already exists on the target. Does not apply to searches designed to return foreign intelligence information.

Prohibits a government agent/analyst from accessing or disseminating non-content information derived from Section 702 unless the access has been approved by a supervisor and the information is shown to be relevant to an authorized investigation.

Amends minimization procedures to require the government to define the phrase "query designed for the primary purpose of returning foreign intelligence information."

Sec.102. Limitation on collection and improvements to targeting procedures and minimization procedures.

Codifies due diligence procedures used by the government to determine whether or not a target of Section 702 surveillance is believed to be a non-United States person located outside of the United States.

Ends so-called "about" collection by ensuring that the government may only target communications that are to or from the targeted person.

Reforms "unmasking" procedures. Requires officials to document unmasking requests that are auditable by Congress and to certify that unmaking requests are made only for legitimate reasons. Requires a report on unmasking by the Director of National Intelligence to the Committees on the Judiciary and the Select Committees on Intelligence.

Sec.103. Publication of minimization procedures under section 702.

The DNI, in consultation with the AG, shall conduct a declassification review of a minimization procedures, and to the extent practicable, make such review publicly available in redacted form.

Sec.104. Appointment of amicus curiae for annual certifications.

Appoints an amicus curiae to the FISA Court by default. The amicus will review minimization and targeting procedures. The Court may decline to appoint an amicus, but must document its reasons for doing so.

Sec.105. Increased accountability on incidentally collected communications.

Requires the DNI to report on known incidentally collected US-person communications and other information of US persons acquired under Section 702 including: the number of US-persons positively identified by NSA, and the number of US-persons whose information is unmasked, the number of requests made by the federal government to unmask information, the number of disseminations of communications to the FBI for non-national security or foreign intelligence cases, and the number of times that communications containing evidence of a crime were disseminated from FBI National Security Branch to FBI Criminal Investigative Division.

Sec.106. Semiannual reports on certain queries by Federal Bureau of Investigation.

Requires the FBI to report semiannually on its use of the new probable cause construct in Section 101.

Sec.107. Additional reporting requirements.

Requires the AG to submit an annual report on the government's use of FISA, detailing: the total number of applications made for orders and extension of orders; the total number of orders and extensions approving surveillance granted, modified, or denied; and, the total number of persons subject to surveillance conducted under an order or emergency authorization.

Requires the AG to provide a good faith estimate of the total number of persons targeted by the installation and use of a pen register or trap and trace device under emergency authorization.

Sec.108. Sense of Congress on purpose of section 702 and respecting foreign nationals.

Expresses the sense of Congress that Section 702 surveillance respects the norms of international comity by avoiding the targeting of foreign individuals based on unfounded discrimination and by avoiding the targeting of foreign entities in order to provide commercial competitive advantages to U.S. businesses.

TITLE II—SAFEGUARDS AND OVERSIGHT OF PRIVACY AND CIVIL LIBERTIES

Sec.201. Limitation on retention of certain data.

Requires the purging of communications determined not to contain foreign intelligence information within 90 days, absent a specific, individualized waiver by Director of NSA.

Requires the Director to include the number of times a waiver is used to preserve communications determined not to contain foreign intelligence information longer than 90 days in the semiannual report to the Committees on the Judiciary and Select Committees on Intelligence.

Sec.202. Improvements to Privacy and Civil Liberties Oversight Board.

Allows members of the Privacy and Civil Liberties Oversight Board to exercise authority of the Chair of the Board to hire new staff if the Chair remains vacant for more than one year.

Requires PCLOB to issue a report to the Committees on the Judiciary and Select Committees on Intelligence on: 1) how Section 702 is used to protect the United States, 2) how technological changes affect such protections, and 3) how privacy and civil liberties are affected.

Sec.203. Privacy and civil liberties officers.

Requires the NSA, FBI, and CIA to each appoint an official for privacy and civil liberties issues.

Sec.204. Whistleblower protections for contractors of the intelligence community.

Provides whistleblower protections to IC contractors who report on waste, fraud, and abuse, or who report on the unauthorized disclosure of classified material. This includes FBI.

TITLE III—EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS

Sec.301. Extension of title VII of FISA.

Reauthorizes Title VII of FISA for six years, through September 30, 2023.

Sec.302. Penalties for unauthorized removal and retention of classified documents or material.

Increases the penalty for the intentional, unauthorized removal and retention of classified documents from one to five years; creates a penalty of not more than one year and/or a fine in cases where the removal was negligent and the retention was intentional.

Sec.303. Comptroller General study on unauthorized disclosures and the classification system.

Directs the Comptroller General to conduct a study on the unauthorized disclosure of classified information and the classification system of the United States.

Sec.304. Sense of Congress on information sharing among intelligence community to protect national security.

Expresses the sense of Congress that the United States Government should ensure that the barriers to sharing vital national security information across the Intelligence Community are not re-imposed.

Sec.305. Sense of Congress on combating terrorism.

Expresses that sense of Congress that the President should share 702-acquired communications with allies of the United States to protect the United States.

Sec.306. Technical amendments.

Makes technical amendments.

Sec.307. Severability.

Provides for severability of any section of the Act if found invalid.