

116TH CONGRESS
2D SESSION

S. 3420

To extend surveillance authorities and expand amicus curiae protections under the Foreign Intelligence Surveillance Act of 1978.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2020

Mr. LEAHY (for himself and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To extend surveillance authorities and expand amicus curiae protections under the Foreign Intelligence Surveillance Act of 1978.

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 “USA FREEDOM Ex-
5 tension and Amici Curiae Reform Act of 2020”.

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

8 Except as otherwise expressly provided, whenever in
9 this Act an amendment or repeal is expressed in terms
10 of an amendment to, or a repeal of, a section or other

1 provision, the reference shall be considered to be made to
 2 a section or other provision of the Foreign Intelligence
 3 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

4 **SEC. 3. APPOINTMENT OF AMICI CURIAE AND ACCESS TO**
 5 **INFORMATION.**

6 (a) EXPANSION OF APPOINTMENT AUTHORITY.—

7 (1) IN GENERAL.—Section 103(i)(2) (50 U.S.C.
 8 1803(i)(2)) is amended by striking subparagraph
 9 (A) and inserting the following:

10 “(A) shall appoint an individual who has
 11 been designated under paragraph (1) and who
 12 possesses expertise in privacy and civil liberties
 13 to serve as amicus curiae to assist such court
 14 in the consideration of any application for an
 15 order or review that, in the opinion of the
 16 court—

17 “(i) presents a novel or significant in-
 18 terpretation of the law, unless the court
 19 issues a finding that such appointment is
 20 not appropriate;

21 “(ii) presents significant concerns
 22 with respect to the activities of a United
 23 States person that are protected by the
 24 first amendment to the Constitution of the
 25 United States, unless the court issues a

1 finding that such appointment is not ap-
 2 propriate;

3 “(iii) presents or involves a sensitive
 4 investigative matter, unless the court
 5 issues a finding that such appointment is
 6 not appropriate;

7 “(iv) presents a request for approval
 8 of a new program, a new technology, or a
 9 new use of existing technology, unless the
 10 court issues a finding that such appoint-
 11 ment is not appropriate;

12 “(v) presents a request for reauthor-
 13 ization of programmatic surveillance, un-
 14 less the court issues a finding that such
 15 appointment is not appropriate; or

16 “(vi) otherwise presents civil liberties
 17 issues, unless the court issues a finding
 18 that such appointment is not appropriate;
 19 and”.

20 (2) DEFINITION OF SENSITIVE INVESTIGATIVE
 21 MATTER.—Section 103(i) (50 U.S.C. 1803(i)) is
 22 amended by adding at the end the following:

23 “(12) DEFINITION.—In this subsection, the
 24 term ‘sensitive investigative matter’ means—

1 “(A) an investigative matter involving the
2 activities of—

3 “(i) a domestic public official or polit-
4 ical candidate;

5 “(ii) a domestic religious or political
6 organization, or an individual prominent in
7 such an organization; or

8 “(iii) the domestic news media; or

9 “(B) any other investigative matter that,
10 in the judgment of the applicable court estab-
11 lished under subsection (a) or (b), is as sen-
12 sitive as an investigative matter described in
13 subparagraph (A).”.

14 (b) AUTHORITY TO SEEK REVIEW.—Section 103(i)
15 (50 U.S.C. 1803(i)), as amended by subsection (a) of this
16 section, is amended—

17 (1) in paragraph (4)—

18 (A) in the paragraph heading, by inserting
19 “; AUTHORITY” after “DUTIES”;

20 (B) by redesignating subparagraphs (A),
21 (B), and (C) as clauses (i), (ii), and (iii), re-
22 spectively, and adjusting the margins accord-
23 ingly;

24 (C) in the matter preceding clause (i), as
25 so designated, by striking “the amicus curiae

1 shall” and inserting the following: “the amicus
2 curiae—

3 “(A) shall”;

4 (D) in subparagraph (A)(i), as so des-
5 ignated, by inserting before the semicolon at the
6 end the following: “, including legal arguments
7 regarding any colorable privacy or civil liberties
8 interest of any aggrieved United States per-
9 son”; and

10 (E) by striking the period at the end and
11 inserting the following: “; and

12 “(B) may raise any issue with the court at
13 any time, regardless of whether the court has
14 requested assistance on that issue.”;

15 (2) by redesignating paragraphs (7) through
16 (12) as paragraphs (8) through (13), respectively;
17 and

18 (3) by inserting after paragraph (6) the fol-
19 lowing:

20 “(7) AUTHORITY TO SEEK REVIEW OF DECI-
21 SIONS.—

22 “(A) FISA COURT DECISIONS.—

23 “(i) PETITION.—Following issuance of
24 an order under this Act by the Foreign In-
25 telligence Surveillance Court, an amicus

1 curiae appointed under paragraph (2) may
2 petition the court to certify for review to
3 the Foreign Intelligence Surveillance Court
4 of Review a question of law pursuant to
5 subsection (j).

6 “(ii) APPOINTMENT.—Upon certifi-
7 cation of any question of law pursuant to
8 this subparagraph, the Court of Review
9 shall appoint the amicus curiae to assist
10 the Court of Review in its consideration of
11 the certified question, unless the Court of
12 Review issues a finding that such appoint-
13 ment is not appropriate.

14 “(B) FISA COURT OF REVIEW DECI-
15 SIONS.—An amicus curiae appointed under
16 paragraph (2) may file a petition for a writ of
17 certiorari from the Supreme Court of the
18 United States for review of any decision by the
19 Foreign Intelligence Surveillance Court of Re-
20 view.

21 “(C) DECLASSIFICATION OF REFER-
22 RALS.—For purposes of section 602, a petition
23 filed under subparagraph (A) or (B) of this
24 paragraph and all of its content shall be consid-
25 ered a decision, order, or opinion issued by the

1 Foreign Intelligence Surveillance Court or the
2 Foreign Intelligence Surveillance Court of Re-
3 view described in paragraph (2) of section
4 602(a).”.

5 (c) ACCESS TO INFORMATION.—

6 (1) APPLICATION AND MATERIALS.—Section
7 103(i)(6)(A) (50 U.S.C. 1803(i)(6)(A)) is amended
8 by striking clauses (i) and (ii) and inserting the fol-
9 lowing:

10 “(i) shall have access to—

11 “(I) the application, certification,
12 petition, motion, and other informa-
13 tion and supporting materials, sub-
14 mitted to the Foreign Intelligence
15 Surveillance Court in connection with
16 the matter in which the amicus curiae
17 has been appointed, including access
18 to any relevant legal precedent (in-
19 cluding any such precedent that is
20 cited by the Government, including in
21 such an application);

22 “(II) any other information or
23 materials that the court determines is
24 relevant to the duties of the amicus
25 curiae; and

“(III) an unredacted copy of each relevant decision made by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review in which the court decides a question of law, without regard to whether the decision is classified; and

“(ii) may make a submission to the court requesting access to any particular materials or information (or category of materials or information) that the amicus curiae believes to be relevant to the duties of the amicus curiae.”.

(2) CLARIFICATION OF ACCESS TO CERTAIN INFORMATION.—Section 103(i)(6) (50 U.S.C. 1803(i)(6)) is amended—

(A) in subparagraph (B), by striking “may” and inserting “shall”; and

(B) by striking subparagraph (C) and inserting the following:

“(C) CLASSIFIED INFORMATION.—An amicus curiae designated or appointed by the court shall have access to unredacted copies of each opinion, order, transcript, pleading, or other

document of the Foreign Intelligence Surveil-
 lance Court and the Foreign Intelligence Sur-
 veillance Court of Review, including, if the indi-
 vidual is eligible for access to classified informa-
 tion, any classified documents, information, and
 other materials or proceedings.”.

(3) CONSULTATION AMONG AMICI CURIAE.—

Section 103(i)(6) (50 U.S.C. 1803(i)(6)), as amend-
 ed by paragraphs (1) and (2) of this subsection, is
 amended—

(A) by redesignating subparagraphs (B),
 (C), and (D) as subparagraphs (C), (D), and
 (E), respectively; and

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

“(B) CONSULTATION.—If the Foreign In-
 telligence Surveillance Court or the Foreign In-
 telligence Surveillance Court of Review deter-
 mines that it is relevant to the duties of an
 amicus curiae appointed under paragraph (2),
 the amicus curiae may consult with one or more
 of the other individuals designated by the court
 to serve as amicus curiae pursuant to para-
 graph (1) regarding any of the information rel-
 evant to any assigned proceeding.”.

1 **SEC. 4. SUNSETS.**

2 (a) USA PATRIOT IMPROVEMENT AND REAUTHOR-
3 IZATION ACT OF 2005.—Section 102(b)(1) of the USA
4 PATRIOT Improvement and Reauthorization Act of 2005
5 (50 U.S.C. 1805 note) is amended by striking “March 15,
6 2020” and inserting “June 19, 2020”.

7 (b) INTELLIGENCE REFORM AND TERRORISM PRE-
8 VENTION ACT OF 2004.—Section 6001(b)(1) of the Intel-
9 ligence Reform and Terrorism Prevention Act of 2004 (50
10 U.S.C. 1801 note) is amended by striking “March 15,
11 2020” and inserting “June 19, 2020”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the earlier of the date of
14 the enactment of this Act or March 15, 2020.

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