

AMENDMENT TO H.R. 3845
OFFERED BY MR. CONYERS OF MICHIGAN

Strike section 101 (page 2, line 3 through line 7 on page 3) and insert the following:

1 SEC. 101. ROVING WIRETAPS.

2 Section 105(c)(2)(B) of the Foreign Intelligence Sur-
3 veillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amend-
4 ed by striking “finds, based upon specific facts” and in-
5 serting “finds—

6 “(i) that the target of the application
7 is a foreign power, as defined in para-
8 graphs (1), (2), (3), and (6) of section
9 101(a), an agent of such a foreign power,
10 or a specific individual; and

11 “(ii) based upon specific facts”.

Page 6, strike line 21 and all that follows through line 19 on page 8 and insert the following:

12 (d) REQUIREMENTS FOR ORDERS FOR CERTAIN
13 RECORDS FROM LIBRARIES.—Section 501 of the Foreign
14 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is
15 amended—

16 (1) in subsection (b)(2)—

1 (A) in subparagraph (A)(iii), by striking “;
2 and” and inserting “;”;

3 (B) by redesignating subparagraph (B) as
4 subparagraph (C); and

5 (C) by inserting after subparagraph (A)
6 the following new subparagraph:

7 “(B) if the records sought contain book-
8 seller information, or are from a library (as de-
9 fined in section 213(1) of the Library Services
10 and Technology Act (20 U.S.C. 9122(1))) and
11 contain personally identifiable information
12 about a patron of such library, a statement of
13 specific and articulable facts showing that there
14 are reasonable grounds to believe that the
15 records sought—

16 “(i) are relevant to an authorized in-
17 vestigation (other than a threat assess-
18 ment) conducted in accordance with sub-
19 section (a)(2) to obtain foreign intelligence
20 information not concerning a United
21 States person or to protect against inter-
22 national terrorism or clandestine intel-
23 ligence activities; and

24 “(ii)(I) pertain to a foreign power or
25 an agent of a foreign power;

1 “(II) are relevant to the activities of
2 a suspected agent of a foreign power who
3 is the subject of such authorized investiga-
4 tion; or

5 “(III) pertain to an individual in con-
6 tact with, or known to, a suspected agent
7 of a foreign power who is the subject of
8 such authorized investigation; and”;

9 (2) by adding at the end the following new sub-
10 section:

11 “(i) BOOKSELLER INFORMATION DEFINED.—In this
12 section, the term ‘bookseller information’ means person-
13 ally identifiable information concerning the purchase (in-
14 cluding subscription purchases) or rental of books, jour-
15 nals, or magazines, whether in print or digitally.”.

 Page 20, line 10, insert “(a) IN GENERAL.—” be-
 fore “Section 3122(b)(2)”.

 Page 20, after line 16, insert the following:

16 (b) CONFORMING AMENDMENTS.—Section 3123(a)
17 of title 18, United States Code, is amended—

18 (1) in the first sentence of paragraph (1), by
19 striking “finds that” and all that follows through
20 the end of the sentence and inserting “finds that the
21 facts presented in the statement under section

1 3122(b)(2) justify the applicant's belief that infor-
2 mation likely to be obtained is relevant to an ongo-
3 ing criminal investigation being conducted the appli-
4 cant's agency."; and

5 (2) in paragraph (2), by striking "finds that"
6 and all that follows through the end of the para-
7 graph and inserting "finds that the facts presented
8 in the statement under section 3122(b)(2) justify
9 the applicant's belief that information likely to be
10 obtained is relevant to an ongoing criminal investiga-
11 tion being conducted the applicant's agency."

Page 21, strike line 11 and all that follows through
line 23 on page 24 and insert the following:

12 (b) MINIMIZATION.—

13 (1) DEFINITION.—Section 401 of the Foreign
14 Intelligence Surveillance Act of 1978 (50 U.S.C.
15 1841) is amended by adding at the end the fol-
16 lowing:

17 "(4) The term 'minimization procedures'
18 means—

19 "(A) specific procedures, that are reason-
20 ably designed in light of the purpose and tech-
21 nique of an order for the installation and use
22 of a pen register or trap and trace device, to
23 minimize the retention, and prohibit the dis-

1 semination, of nonpublicly available information
2 known to concern unconsenting United States
3 persons consistent with the need of the United
4 States to obtain, produce, and disseminate for-
5 eign intelligence information;

6 “(B) procedures that require that nonpub-
7 licly available information, which is not foreign
8 intelligence information shall not be dissemi-
9 nated in a manner that identifies any United
10 States person, without such person’s consent,
11 unless such person’s identity is necessary to un-
12 derstand foreign intelligence information or as-
13 sess its importance; and

14 “(C) notwithstanding subparagraphs (A)
15 and (B), procedures that allow for the retention
16 and dissemination of information that is evi-
17 dence of a crime which has been, is being, or
18 is about to be committed and that is to be re-
19 tained or disseminated for law enforcement pur-
20 poses.”.

21 (2) PEN REGISTERS AND TRAP AND TRACE DE-
22 VICES.—Section 402 of the Foreign Intelligence Sur-
23 veillance Act of 1978 (50 U.S.C. 1842) is amend-
24 ed—

25 (A) in subsection (d)(2)—

1 (i) in subparagraph (C)(i)(VII), by
2 striking “; and” and inserting “;”;

3 (ii) in subparagraph (C)(ii)(IV), by
4 striking the period at the end and inserting
5 “; and”; and

6 (iii) by adding at the end the fol-
7 lowing new subparagraph:

8 “(D) shall, if the judge finds that there are
9 exceptional circumstances, direct that minimiza-
10 tion procedures be followed.”;

11 (B) by adding at the end the following:

12 “(h) At or before the end of the period of time for
13 which the installation and use of a pen register or trap
14 and trace device is approved under an order or an exten-
15 sion under this section, the judge may assess compliance
16 with any applicable minimization procedures by reviewing
17 the circumstances under which information concerning
18 United States persons was retained or disseminated.”.

19 (3) EMERGENCIES.—Section 403 of the For-
20 eign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1843) is amended—

22 (A) by redesignating subsection (c) as sub-
23 section (d); and

24 (B) by inserting after subsection (b) the
25 following:

1 “(c) If the Attorney General authorizes the emer-
2 gency installation and use of a pen register or trap and
3 trace device under this section, the Attorney General shall
4 require that minimization procedures be followed, if appro-
5 priate.”.

6 (4) USE OF INFORMATION.—Section 405(a)(1)
7 of the Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1845(a)(1)) is amended by inserting
9 “and the minimization procedures under this title, if
10 required” after “provisions of this section”.

Strike section 204 (page 27, line 22 through line 5
on page 28) and insert the following:

11 **SEC. 204. MODIFICATION OF STANDARD.**

12 (a) IN GENERAL.—A national security letter may not
13 be issued unless the official having authority under law
14 to issue that letter documents in a separate writing spe-
15 cific and articulable facts showing that there are reason-
16 able grounds to believe that the information sought—

17 (1) pertains to a foreign power or an agent of
18 a foreign power;

19 (2) is relevant to the activities of a suspected
20 agent of a foreign power who is the subject of such
21 authorized investigation; or

22 (3) pertains to an individual in contact with, or
23 personally known to, a suspected agent of a foreign

1 power who is the subject of such authorized inves-
2 tigation.

3 (b) MAINTENANCE.—The agency under whose au-
4 thority a national security letter is issued shall maintain
5 a copy of a separate writing required under subsection (a).

6 (c) DEFINITIONS.—In this section, the terms “for-
7 eign power” and “agent of a foreign power” have the
8 meaning given such terms in section 101 of the Foreign
9 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

Page 28, line 20, strike “, or any information de-
rived therefrom,”.

Page 28, line 22, insert “, or a designee of the At-
torney General at a level not lower than Section Chief of
a division of the Department of Justice” after “Attorney
General”.

Page 32, strike line 9 and all that follows through
line 21 on page 33 and insert the following:

10 **SEC. 12. MINIMIZATION.**

11 (a) IN GENERAL.—Not later than 180 days after the
12 date of enactment of this Act, the Attorney General
13 shall—

14 (1) establish minimization procedures governing
15 the acquisition, retention, and dissemination by the
16 Federal Bureau of Investigation of any records re-

1 received by the Federal Bureau of Investigation in re-
2 sponse to a national security letter; and

3 (2) submit to the Committee on the Judiciary
4 and the Select Committee on Intelligence of the Sen-
5 ate and the Committee on the Judiciary and the
6 Permanent Select Committee on Intelligence of the
7 House of Representatives a copy of the minimization
8 procedures established under paragraph (1).

9 (b) DEFINITIONS.—In this section—

10 (1) the term “minimization procedures”
11 means—

12 (A) specific procedures that are reasonably
13 designed in light of the purpose and technique
14 of a national security letter, to minimize the ac-
15 quisition and retention, and prohibit the dis-
16 semination, of nonpublicly available information
17 concerning unconsenting United States persons
18 (as defined in section 101 of the Foreign Intel-
19 ligence Surveillance Act of 1978 (50 U.S.C.
20 1801)) consistent with the need of the United
21 States to obtain, produce, and disseminate for-
22 eign intelligence information;

23 (B) procedures that require that nonpub-
24 licly available information, which is not foreign
25 intelligence information (as defined in section

1 101(e)(1) of the Foreign Intelligence Surveil-
2 lance Act of 1978 (50 U.S.C. 1801(e)(1))) shall
3 not be disseminated in a manner that identifies
4 any United States person, without the consent
5 of the United States person, unless the identity
6 of the United States person is necessary to un-
7 derstand foreign intelligence information or as-
8 sess its importance; and

9 (C) notwithstanding subparagraphs (A)
10 and (B), procedures that allow for the retention
11 and dissemination of information that is evi-
12 dence of a crime which has been, is being, or
13 is about to be committed and that is to be re-
14 tained or disseminated for law enforcement pur-
15 poses; and

16 (2) the term "national security letter" means a
17 request for information issued under section 2709 of
18 title 18, United States Code, section 1114(a)(5) of
19 the Right to Financial Privacy Act of 1978 (12
20 U.S.C. 3414(5)), subsection (a) or (b) of section 626
21 of the Fair Credit Reporting Act (15 U.S.C. 1681u),
22 or section 627 of the Fair Credit Reporting Act (15
23 U.S.C. 1681v).

At the end of the bill, add the following new section:

1 **SEC. ____ . PUBLIC REPORTING ON NATIONAL SECURITY**
2 **LETTERS.**

3 Section 118(c) of the USA PATRIOT Improvement
4 and Reauthorization Act of 2005 (18 U.S.C. 3511 note)
5 is amended—

6 (1) in paragraph (1)—

7 (A) in the matter preceding subparagraph
8 (A), by striking “concerning different United
9 States persons”; and

10 (B) in subparagraph (A), by striking “, ex-
11 cluding the number of requests for subscriber
12 information”;

13 (2) by redesignating paragraph (2) as para-
14 graph (3); and

15 (3) by inserting after paragraph (1) the fol-
16 lowing:

17 “(2) CONTENT.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), each report required under
20 this subsection shall include the total number of
21 requests described in paragraph (1) requiring
22 disclosure of information concerning—

23 “(i) United States persons;

24 “(ii) persons who are not United
25 States persons;

1 “(iii) persons who are the subjects of
2 authorized national security investigations;
3 or

4 “(iv) persons who are not the subjects
5 of authorized national security investiga-
6 tions.

7 “(B) EXCEPTION.—With respect to the
8 number of requests for subscriber information
9 under section 2709 of title 18, United States
10 Code, a report required under this subsection
11 need not provide information separated into
12 each of the categories described in subpara-
13 graph (A).”.

