

S 1123

USA FREEDOM Act of 2015

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Chamber: Senate

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Sponsor

Name: Sen. Lee, Mike [R-UT]

Party: Republican • **State:** UT • **Chamber:** Senate

Cosponsors (18 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Blumenthal, Richard [D-CT]	D · CT		Apr 28, 2015
Sen. Cruz, Ted [R-TX]	R · TX		Apr 28, 2015
Sen. Daines, Steve [R-MT]	R · MT		Apr 28, 2015
Sen. Durbin, Richard J. [D-IL]	D · IL		Apr 28, 2015
Sen. Franken, Al [D-MN]	D · MN		Apr 28, 2015
Sen. Heller, Dean [R-NV]	R · NV		Apr 28, 2015
Sen. Leahy, Patrick J. [D-VT]	D · VT		Apr 28, 2015
Sen. Murkowski, Lisa [R-AK]	R · AK		Apr 28, 2015
Sen. Schumer, Charles E. [D-NY]	D · NY		Apr 28, 2015
Sen. Booker, Cory A. [D-NJ]	D · NJ		May 19, 2015
Sen. Boxer, Barbara [D-CA]	D · CA		May 19, 2015
Sen. Brown, Sherrod [D-OH]	D · OH		May 19, 2015
Sen. Coons, Christopher A. [D-DE]	D · DE		May 19, 2015
Sen. Heinrich, Martin [D-NM]	D · NM		May 19, 2015
Sen. Hirono, Mazie K. [D-HI]	D · HI		May 19, 2015
Sen. Klobuchar, Amy [D-MN]	D · MN		May 19, 2015
Sen. Markey, Edward J. [D-MA]	D · MA		May 19, 2015
Sen. Menendez, Robert [D-NJ]	D · NJ		May 20, 2015

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Referred To	Apr 28, 2015

Subjects & Policy Tags

Policy Area:

Armed Forces and National Security

Related Bills

Bill	Relationship	Last Action
114 S 1318	Related bill	Dec 15, 2015: Placed on Senate Legislative Calendar under General Orders. Calendar No. 326.
114 HR 2048	Identical bill	Jun 2, 2015: Became Public Law No: 114-23.
114 S 1469	Related bill	May 23, 2015: Read twice and referred to the Committee on the Judiciary.
114 HR 1056	Related bill	Mar 16, 2015: Referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations.

Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015 or the USA FREEDOM Act of 2015

TITLE I--FISA BUSINESS RECORDS REFORMS

Amends the Foreign Intelligence Surveillance Act of 1978 (FISA) to establish a new process to be followed when the Federal Bureau of Investigation (FBI) submits an application to a FISA court for an order requiring the production of business records or other tangible things for an investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities.

Prohibits the FBI from applying for a tangible thing production order, and prohibits a court from authorizing the collection of tangible things, unless a specific selection term is used as the basis for the production. Maintains limitations under current law that prohibit the FBI from applying for tangible thing production orders for threat assessments.

Establishes two separate frameworks for the production of tangible things with different standards that apply based on whether the FBI's application seeks:

- production on an ongoing basis of call detail records created before, on, or after the date of the application relating to an authorized investigation to protect against international terrorism, in which case the specific selection term must specifically identify an individual, account, or personal device; or
- production of call detail records or other tangible things in any other manner, in which case the selection term must specifically identify an individual, a federal officer or employee, a group, an entity, an association, a corporation, a foreign power, an account, a physical or an electronic address, a personal device, or any other specific identifier but is prohibited from including, when not used as part of a specific identifier, a broad geographic region (including the United States, a city, county, state, zip code, or area code) or an electronic communication or remote computing service provider, unless the provider is itself a subject of an authorized investigation.

Defines "call detail record" as session identifying information (including an originating or terminating telephone number, an International Mobile Subscriber Identity number, or an International Mobile Station Equipment Identity number), a telephone calling card number, or the time or duration of a call. Excludes from such definition: (1) the contents of any communication; (2) the name, address, or financial information of a subscriber or customer; or (3) cell site location or global positioning system information.

Requires the FBI, in applications for ongoing production of call detail records for investigations to protect against international terrorism, to show: (1) reasonable grounds to believe that the call detail records are relevant to such investigation; and (2) a reasonable, articulable suspicion that the specific selection term is associated with a foreign power or an agent of a foreign power engaged in international terrorism or activities in preparation for such terrorism.

Requires a judge approving such an ongoing release of call detail records for an investigation to protect against international terrorism to:

- limit such production to a period not to exceed 180 days but allow such orders to be extended upon application, with judicial approval;
- permit the government to require the production of an initial set of call records using the reasonable, articulable suspicion standard that the term is associated with a foreign power or an agent of a foreign power and then a

subsequent set of call records using session-identifying information or a telephone calling card number identified by the specific selection term that was used to produce the initial set of records (thus limiting the government to what is commonly referred to as two "hops" of call records); and

- direct the government to adopt minimization procedures requiring prompt destruction of produced call records that are not foreign intelligence information.

Allows a FISA court to approve other categories of FBI requests for the production of call detail records or tangible things (i.e., FBI call detail record and tangible thing applications that do not seek ongoing production of call detail records created before, on, or after the date of an application relating to an authorized investigation to protect against international terrorism) without subjecting the production to: (1) the reasonable, articulable suspicion standard for an association with a foreign power or an agent of a foreign power; (2) the 180-day or the two-hop limitation; or (3) the special minimization procedures that require prompt destruction of produced records only if the order approves an ongoing production of call detail records for investigations to protect against international terrorism.

Authorizes the Attorney General to require the emergency production of tangible things without first obtaining a court order if the Attorney General: (1) reasonably determines that an emergency situation requires the production of tangible things before an order authorizing production can be obtained with due diligence, (2) reasonably determines that a factual basis exists for the issuance of such a production order, (3) informs a FISA judge of the decision to require such production at the time the emergency decision is made, and (4) makes an application to a FISA judge within seven days after the Attorney General requires such emergency production.

Terminates the authority for such emergency production of tangible things when the information sought is obtained, when the application for the order is denied, or after the expiration of seven days from the time the Attorney General begins requiring such emergency production, whichever is earliest.

Prohibits information obtained or evidence derived from such an emergency production from being received in evidence or disclosed in any proceeding in or before any court, grand jury, agency, legislative committee, or other authority of the United States, any state, or any political subdivision if: (1) the subsequent application for court approval is denied, or (2) the production is terminated and no order is issued approving the production. Bars information concerning any U.S. person acquired from such production from being used or disclosed in any other manner by federal officers or employees without the consent of such person, except with approval of the Attorney General if the information indicates a threat of death or serious bodily harm.

Requires a FISA court, as a condition to approving an application for a tangible thing production order, to find that the minimization procedures submitted with the application meet applicable FISA standards. Authorizes the court to impose additional minimization procedures.

Allows a nondisclosure order imposed in connection with a tangible thing production order to be challenged immediately by filing a petition for judicial review. Removes a requirement that a judge considering a petition to modify or set aside a nondisclosure order treat as conclusive a certification by the Attorney General, the Deputy Attorney General, an Assistant Attorney General, or the FBI Director that disclosure may endanger national security or interfere with diplomatic relations.

Extends liability protections to persons who provide information, facilities, or technical assistance for the production of tangible things. Requires the government to compensate a person for reasonable expenses incurred in producing tangible things or providing technical assistance to the government to implement production procedures.

Prohibits this Act from being construed to authorize the production of the contents of any electronic communication from

an electronic communication service provider under such tangible thing requirements.

TITLE II--FISA PEN REGISTER AND TRAP AND TRACE DEVICE REFORM

Requires the government's FISA applications for orders approving pen registers or trap and trace devices to include a specific selection term as the basis for the use of the register or device. Prohibits broad geographic regions or an identification of an electronic communications service or a remote computing service from serving as such selection term.

Directs the Attorney General to ensure that appropriate privacy procedures are in place for the collection, retention, and use of nonpublicly available information concerning U.S. persons that is collected through a pen register or trap and trace device installed with FISA court approval.

TITLE III--FISA ACQUISITIONS TARGETING PERSONS OUTSIDE THE UNITED STATES REFORMS

Limits the government's use of information obtained through an authorization by the Attorney General and the Director of National Intelligence (DNI) to target non-U.S. persons outside the United States if a FISA court later determines that certain targeting or minimization procedures certified to the court are unlawful.

Prohibits information obtained or evidence derived from an acquisition pursuant to a part of a targeting certification or a related minimization procedure that the court has identified as deficient concerning a U.S. person from being received in evidence or otherwise disclosed in any proceeding in or before any court, grand jury, agency, legislative committee, or other authority of the United States, any state, or any political subdivision.

Bars information concerning any U.S. person acquired pursuant to a deficient part of a certification from being used or disclosed subsequently in any other manner by federal officers or employees without the consent of the U.S. person, except with approval of the Attorney General if the information indicates a threat of death or serious bodily harm.

Allows a FISA court, if the government corrects the deficiency, to permit the use or disclosure of information obtained before the date of the correction.

TITLE IV--FOREIGN INTELLIGENCE SURVEILLANCE COURT REFORMS

Directs the presiding judges of the FISA court and the FISA court of review to jointly designate at least five individuals to serve as amicus curiae to assist in the consideration of any application for an order or review that presents a novel or significant interpretation of the law, unless the court finds that such appointment is not appropriate.

Permits FISA courts to appoint an individual or organization to serve as amicus curiae in other instances, including to provide technical expertise. Requires such amicus curiae to provide: (1) legal arguments that advance protection of individual privacy and civil liberties, or (2) other legal arguments or information related to intelligence collection or communications technology.

Allows the FISA court of review to certify a question of law to be reviewed by the Supreme Court. Permits the Supreme Court to appoint FISA amicus curiae or other persons to provide briefings or other assistance upon such a certification.

Requires the DNI to: (1) conduct a declassification review of each decision, order, or opinion issued by the FISA court or the FISA court of review that includes a significant construction or interpretation of any provision of law, including any novel or significant construction or interpretation of "specific selection term" as defined in this Act; and (2) make such decisions, orders, or opinions publicly available to the greatest extent practicable, subject to permissible redactions.

Authorizes the DNI to waive such review and public availability requirements if: (1) a waiver is necessary to protect the national security of the United States or properly classified intelligence sources or methods, and (2) an unclassified statement prepared by the Attorney General is made publicly available to summarize the significant construction or interpretation of law.

TITLE V--NATIONAL SECURITY LETTER REFORM

Amends the federal criminal code, the Right to Financial Privacy Act of 1978, and the Fair Credit Reporting Act to require the FBI and other government agencies to use a specific selection term as the basis for national security letters that request information from wire or electronic communication service providers, financial institutions, or consumer reporting agencies. Requires the government to identify: (1) a person, entity, telephone number, or account for requests for telephone toll and transactional records; (2) a customer, entity, or account when requesting financial records for certain intelligence or protective functions; or (3) a consumer or account when requesting consumer reports for counterintelligence or counterterrorism purposes.

Revises standards under which the government can prohibit recipients of national security letters from disclosing to anyone that the government has sought or obtained access to the requested information.

Directs the Attorney General to adopt procedures for imposed nondisclosure requirements, including requirements under the National Security Act of 1947, to be reviewed at appropriate intervals and terminated if facts no longer support nondisclosure.

Allows national security letter recipients to challenge national security letter requests or nondisclosure requirements under modified procedures for filing a petition for judicial review. Removes a requirement that the court treat as conclusive a certification by the Attorney General, the Deputy Attorney General, an Assistant Attorney General, or the FBI Director that disclosure may endanger U.S. national security or interfere with diplomatic relations.

TITLE VI--FISA TRANSPARENCY AND REPORTING REQUIREMENTS

Requires the Attorney General to expand an annual report to Congress regarding tangible thing applications to include a summary of compliance reviews and the total number of: (1) applications made for the daily production of call detail records created before, on, or after the date of an application relating to an authorized investigation to protect against international terrorism; and (2) orders approving such requests.

Directs the Attorney General to report to Congress annually regarding tangible things applications and orders in which the specific selection term does not specifically identify an individual, account, or personal device. Requires the report to indicate whether the court approving such orders has directed additional, particularized minimization procedures beyond those adopted by the Attorney General.

Directs the Administrative Office of the U.S. Courts to submit annually to Congress the number of: (1) FISA applications submitted and orders granted, modified, or denied under specified FISA authorities; and (2) appointments of an individual to serve as amicus curiae for FISA courts, including the name of each appointed individual, as well as any findings that such an appointment is not appropriate. Makes the report subject to a declassification review by the Attorney General and the DNI.

Directs the DNI to make available publicly a report that identifies, for the preceding 12-month period, the total number of: (1) FISA court orders issued for electronic surveillance, physical searches, the targeting of persons outside the United

States, pen registers and trap and trace devices, call detail records, and other tangible things; and (2) national security letters issued.

Requires the DNI's reports to include the estimated number of: (1) targets of certain FISA orders; (2) search terms and queries concerning U.S. persons when the government retrieves information from electronic or wire communications obtained by targeting non-U.S. persons outside the United States; (3) unique identifiers used to communicate certain collected information; and (4) search terms concerning U.S. persons used to query a database of call detail records. Exempts certain queries by the FBI from such estimates.

Permits a person who is subject to a nondisclosure requirement accompanying a FISA order, directive, or national security letter to choose one of four methods to report publicly, on a semiannual or annual basis, the aggregate number of orders, directives, or letters with which the person was required to comply. Specifies the categories of orders, directives, and letters to be itemized or combined, the details authorized to be included with respect to contents or noncontents orders and the number of customer selectors targeted, and the ranges within which the number of orders, directives, or letters received may be reported aggregate in bands under each permitted method.

Expands the categories of FISA court decisions, orders, or opinions that the Attorney General is required to submit to Congress within 45 days after issuance of the decision to include: (1) a denial or modification of an application under FISA; and (2) a change of the application, or a novel application, of any FISA provision.

Revises reporting requirements regarding electronic surveillance, physical searches, and tangible things to include the House Judiciary Committee as a recipient of such reports.

Requires the Attorney General to identify in an existing semiannual report each agency on behalf of which the government has applied for orders authorizing or approving the installation and use of pen registers or trap and trace devices under FISA.

TITLE VII--ENHANCED NATIONAL SECURITY PROVISIONS

Establishes procedures for a lawfully authorized targeting of a non-U.S. person previously believed to be located outside the United States to continue for a period not to exceed 72 hours from the time that the non-U.S. person is reasonably believed to be located inside the United States. Requires an element of the intelligence community, as a condition to exercising such authority, to: (1) determine that a lapse in the targeting poses a threat of death or serious bodily harm; (2) notify the Attorney General; and (3) request, as soon as practicable, the employment of emergency electronic surveillance or emergency physical search under appropriate FISA standards.

Expands the definition of "agent of a foreign power" to include a non-U.S. person who: (1) acts in the United States for or on behalf of a foreign power engaged in clandestine intelligence activities in the United States contrary to U.S. interests or as an officer, employee, or member of a foreign power, irrespective of whether the person is inside the United States; or (2) knowingly aids, abets, or conspires with any person engaging in an international proliferation of weapons of mass destruction on behalf of a foreign power or conducting activities in preparation for such proliferation.

Increases from 15 to 20 years the maximum penalty of imprisonment for providing material support or resources to a foreign terrorist organization in cases where the support does not result in the death of any person.

Amends the USA PATRIOT Improvement and Reauthorization Act of 2005 and the Intelligence Reform and Terrorism Prevention Act of 2004 to extend until December 15, 2019, FISA authorities concerning: (1) the production of business

records, including call detail records and other tangible things; (2) roving electronic surveillance orders; and (3) a revised definition of "agent of a foreign power" that includes any non-U.S. persons who engage in international terrorism or preparatory activities (commonly referred to as the "lone wolf" provision).

TITLE VIII--SAFETY OF MARITIME NAVIGATION AND NUCLEAR TERRORISM CONVENTIONS IMPLEMENTATION

Amends the federal criminal code to provide that existing prohibitions against conduct that endangers the safe navigation of a ship: (1) shall apply to conduct that is committed against or on board a U.S. vessel or a vessel subject to U.S. jurisdiction, in U.S. territorial seas, or by a U.S. corporation or legal entity; and (2) shall not apply to activities of armed forces during an armed conflict or in the exercise of official duties.

Sets forth procedures regarding the delivery of a person who is suspected of committing a maritime navigation or fixed platform offense to the authorities of a country that is a party to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

Subjects property used or intended to be used to commit or to facilitate the commission of a maritime navigation offense to civil forfeiture.

Prohibits: (1) using in or on a ship or a maritime fixed platform any explosive or radioactive material, biological, chemical, or nuclear weapon, or other nuclear explosive device in a manner likely to cause death or serious injury or damage when the purpose is to intimidate a population or to compel a government or international organization to act or abstain from acting; (2) transporting on board a ship such material or device (or certain related material or technology) that is intended for such use, with specified exceptions; (3) transporting on board a ship a person known to have committed a maritime navigation offense intending to assist such person to evade prosecution; (4) injuring or killing any person in connection with such an offense; or (5) conspiring, attempting, or threatening to commit such an offense. Sets forth: (1) the circumstances in which the United States can exercise jurisdiction over such offenses, and (2) exceptions applicable to activities of the armed forces. Provides for civil forfeiture of property used to commit or to facilitate a violation.

Prohibits anyone, knowingly, unlawfully, and with intent to cause death, serious bodily injury, or substantial damage to property or the environment, from: (1) possessing radioactive material or making or possessing a nuclear explosive device or a radioactive material dispersal or radiation-emitting device; (2) using radioactive material or a device, using, damaging, or interfering with the operation of a nuclear facility in a manner that causes or increases the risk of the release of radioactive material, or causing radioactive contamination or exposure to radiation; or (3) threatening, attempting, or conspiring to commit such an offense. Sets forth: (1) the circumstances in which the United States can exercise jurisdiction over such offenses, and (2) exceptions applicable to activities of the armed forces.

Modifies the definition of "federal crime of terrorism" to include such offenses.

Amends provisions prohibiting transactions involving nuclear materials to: (1) prohibit, intentionally and without lawful authority, carrying, sending, or moving nuclear material into or out of a country; and (2) establish an exception for activities of the armed forces.

Actions Timeline

- **Apr 28, 2015:** Introduced in Senate
- **Apr 28, 2015:** Read twice and referred to the Committee on the Judiciary. (Sponsor introductory remarks on measure: CR S2772-2773)