

Union Calendar No. 109

109TH CONGRESS
1ST SESSION

H. R. 3199

[Report No. 109–174, Parts I and II]

To extend and modify authorities needed to combat terrorism, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2005

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 18, 2005

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 18, 2005

Reported from the Permanent Select Committee on Intelligence with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in **boldface roman**]

[For text of introduced bill, see copy of bill as introduced on July 11, 2005]

A BILL

To extend and modify authorities needed to combat terrorism, 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “USA PATRIOT and*
5 *Terrorism Prevention Reauthorization Act of 2005”.*

6 **SEC. 2. REFERENCES TO USA PATRIOT ACT.**

7 *A reference in this Act to the USA PATRIOT ACT*
8 *shall be deemed a reference to the Uniting and Strength-*
9 *ening America by Providing Appropriate Tools Required*
10 *to Intercept and Obstruct Terrorism (USA PATRIOT ACT)*
11 *Act of 2001.*

12 **SEC. 3. USA PATRIOT ACT SUNSET PROVISIONS.**

13 *(a) IN GENERAL.—Section 224 of the USA PATRIOT*
14 *ACT is repealed.*

15 *(b) SECTIONS 206 AND 215 SUNSET.—Effective De-*
16 *cember 31, 2015, the Foreign Intelligence Surveillance Act*
17 *of 1978 is amended so that sections 501, 502, and 105(c)(2)*
18 *read as they read on October 25, 2001.*

19 **SEC. 4. REPEAL OF SUNSET PROVISION RELATING TO INDI-**
20 **VIDUAL TERRORISTS AS AGENTS OF FOREIGN**
21 **POWERS.**

22 *Section 6001 of the Intelligence Reform and Terrorism*
23 *Prevention Act of 2004 (Public Law 108–458; 118 Stat.*
24 *3742) is amended by—*

25 *(1) striking subsection (b); and*

1 (2) striking “(a)” and all that follows through
2 “Section” and inserting “Section”.

3 **SEC. 5. REPEAL OF SUNSET PROVISION RELATING TO SEC-**
4 **TION 2332B AND THE MATERIAL SUPPORT**
5 **SECTIONS OF TITLE 18, UNITED STATES**
6 **CODE.**

7 Section 6603 of the Intelligence Reform and Terrorism
8 Prevention Act of 2004 (Public Law 108–458; 118 Stat.
9 3762) is amended by striking subsection (g).

10 **SEC. 6. SHARING OF ELECTRONIC, WIRE, AND ORAL INTER-**
11 **CEPTION INFORMATION UNDER SECTION**
12 **203(B) OF THE USA PATRIOT ACT.**

13 Section 2517(6) of title 18, United States Code, is
14 amended by adding at the end the following: “Within a rea-
15 sonable time after a disclosure of the contents of a commu-
16 nication under this subsection, an attorney for the Govern-
17 ment shall file, under seal, a notice with a judge whose order
18 authorized or approved the interception of that communica-
19 tion, stating the fact that such contents were disclosed and
20 the departments, agencies, or entities to which the disclosure
21 was made.”.

1 **SEC. 7. DURATION OF FISA SURVEILLANCE OF NON-UNITED**
2 **STATES PERSONS UNDER SECTION 207 OF**
3 **THE USA PATRIOT ACT.**

4 (a) *ELECTRONIC SURVEILLANCE.*—Section 105(e) of
5 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
6 1805(e)) is amended—

7 (1) in paragraph (1)(B), by striking “, as de-
8 fined in section 101(b)(1)(A)” and inserting “who is
9 not a United States person”; and

10 (2) in subsection (2)(B), by striking “as defined
11 in section 101(b)(1)(A)” and inserting “who is not a
12 United States person”.

13 (b) *PHYSICAL SEARCH.*—Section 304(d) of such Act
14 (50 U.S.C. 1824(d)) is amended—

15 (1) in paragraph (1)(B), by striking “as defined
16 in section 101(b)(1)(A)” and inserting “who is not a
17 United States person”; and

18 (2) in paragraph (2), by striking “as defined in
19 section 101(b)(1)(A)” and inserting “who is not a
20 United States person”.

21 (c) *PEN REGISTERS, TRAP AND TRACE DEVICES.*—
22 Section 402(e) of such Act (50 U.S.C. 1842(e)) is amend-
23 ed—

24 (1) by striking “(e) An” and inserting “(e)(1)
25 Except as provided in paragraph (2), an”; and

1 (2) *by adding at the end the following new para-*
2 *graph:*

3 “(2) *In the case of an application under subsection (c)*
4 *where the applicant has certified that the information likely*
5 *to be obtained is foreign intelligence information not con-*
6 *cerning a United States person, an order, or an extension*
7 *of an order, under this section may be for a period not to*
8 *exceed one year.”.*

9 **SEC. 8. ACCESS TO CERTAIN BUSINESS RECORDS UNDER**
10 **SECTION 215 OF THE USA PATRIOT ACT.**

11 (a) *ESTABLISHMENT OF RELEVANCE STANDARD.—*
12 *Subsection (b)(2) of section 501 of the Foreign Intelligence*
13 *Surveillance Act of 1978 (50 U.S.C. 1861) is amended by*
14 *striking “to obtain” and all that follows and inserting “and*
15 *that the information likely to be obtained from the tangible*
16 *things is reasonably expected to be (A) foreign intelligence*
17 *information not concerning a United States person, or (B)*
18 *relevant to an ongoing investigation to protect against*
19 *international terrorism or clandestine intelligence activi-*
20 *ties.”.*

21 (b) *CLARIFICATION OF JUDICIAL DISCRETION.—Sub-*
22 *section (c)(1) of such section is amended to read as follows:*

23 “(c)(1) *Upon an application made pursuant to this*
24 *section, if the judge finds that the application meets the re-*
25 *quirements of subsections (a) and (b), the judge shall enter*

1 *an ex parte order as requested, or as modified, approving*
2 *the release of records.”.*

3 (c) *AUTHORITY TO DISCLOSE TO ATTORNEY.*—Sub-
4 *section (d) of such section is amended to read as follows:*

5 “(d)(1) *No person shall disclose to any person (other*
6 *than a qualified person) that the United States has sought*
7 *or obtained tangible things under this section.*

8 “(2) *An order under this section shall notify the person*
9 *to whom the order is directed of the nondisclosure require-*
10 *ment under paragraph (1).*

11 “(3) *Any person to whom an order is directed under*
12 *this section who discloses that the United States has sought*
13 *to obtain tangible things under this section to a qualified*
14 *person with respect to the order shall inform such qualified*
15 *person of the nondisclosure requirement under paragraph*
16 *(1) and that such qualified person is also subject to such*
17 *nondisclosure requirement.*

18 “(4) *A qualified person shall be subject to any non-*
19 *disclosure requirement applicable to a person to whom an*
20 *order is directed under this section in the same manner as*
21 *such person.*

22 “(5) *In this subsection, the term ‘qualified person’*
23 *means—*

1 “(A) any person necessary to produce the tan-
2 gible things pursuant to an order under this section;
3 or

4 “(B) an attorney to obtain legal advice with re-
5 spect to an order under this section.”.

6 (d) *JUDICIAL REVIEW.*—

7 (1) *PETITION REVIEW PANEL.*—Section 103 of
8 the Foreign Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1803) is amended by adding at the end the fol-
10 lowing new subsection:

11 “(e)(1) Three judges designated under subsection (a)
12 who reside within 20 miles of the District of Columbia, or
13 if all of such judges are unavailable, other judges of the
14 court established under subsection (a) as may be designated
15 by the Presiding Judge of such court (who is designated
16 by the Chief Justice of the United States from among the
17 judges of the court), shall comprise a petition review panel
18 which shall have jurisdiction to review petitions filed pur-
19 suant to section 501(f)(1).

20 “(2) Not later than 60 days after the date of the enact-
21 ment of the USA PATRIOT and Terrorism Prevention Re-
22 authorization Act of 2005, the court established under sub-
23 section (a) shall develop and issue procedures for the review
24 of petitions filed pursuant to section 501(f)(1) by the panel
25 established under paragraph (1). Such procedures shall pro-

1 *vide that review of a petition shall be conducted ex parte*
2 *and in camera and shall also provide for the designation*
3 *of an Acting Presiding Judge.”.*

4 (2) *PROCEEDINGS.—Section 501 of the Foreign*
5 *Intelligence Surveillance Act of 1978 (50 U.S.C.*
6 *1861) is further amended by adding at the end the*
7 *following new subsection:*

8 “(f)(1) *A person receiving an order to produce any*
9 *tangible thing under this section may challenge the legality*
10 *of that order by filing a petition in the panel established*
11 *by section 103(e)(1). The Presiding Judge shall conduct an*
12 *initial review of the petition. If the Presiding Judge deter-*
13 *mines that the petition is frivolous, the Presiding Judge*
14 *shall immediately deny the petition and promptly provide*
15 *a written statement of the reasons for the determination for*
16 *the record. If the Presiding Judge determines that the peti-*
17 *tion is not frivolous, the Presiding Judge shall immediately*
18 *assign the petition to one of the judges serving on such*
19 *panel. The assigned judge shall promptly consider the peti-*
20 *tion in accordance with procedures developed and issued*
21 *pursuant to section 103(e)(2). The judge considering the pe-*
22 *tition may modify or set aside the order only if the judge*
23 *finds that the order does not meet the requirements of this*
24 *section or is otherwise unlawful. If the judge does not mod-*
25 *ify or set aside the order, the judge shall immediately affirm*

1 *the order and order the recipient to comply therewith. A*
2 *petition for review of a decision to affirm, modify, or set*
3 *aside an order by the United States or any person receiving*
4 *such order shall be to the court of review established under*
5 *section 103(b), which shall have jurisdiction to consider*
6 *such petitions. The court of review shall immediately pro-*
7 *vide for the record a written statement of the reasons for*
8 *its decision and, on petition of the United States or any*
9 *person receiving such order for writ of certiorari, the record*
10 *shall be transmitted under seal to the Supreme Court, which*
11 *shall have jurisdiction to review such decision.*

12 “(2) *Judicial proceedings under this subsection shall*
13 *be concluded as expeditiously as possible. The judge consid-*
14 *ering a petition filed under this subsection shall provide*
15 *for the record a written statement of the reasons for the deci-*
16 *sion. The record of proceedings, including petitions filed,*
17 *orders granted, and statements of reasons for decision, shall*
18 *be maintained under security measures established by the*
19 *Chief Justice of the United States in consultation with the*
20 *Attorney General and the Director of National Intelligence.*

21 “(3) *All petitions under this subsection shall be filed*
22 *under seal, and the court, upon the government’s request,*
23 *shall review any government submission, which may in-*
24 *clude classified information, as well as the government’s ap-*
25 *plication and related materials, ex parte and in camera.”.*

1 **SEC. 9. REPORT ON EMERGENCY DISCLOSURES UNDER**
2 **SECTION 212 OF THE USA PATRIOT ACT.**

3 *Section 2702 of title 18, United States Code, is amend-*
4 *ed by adding at the end the following:*

5 “(d) *REPORT.*—*On an annual basis, the Attorney Gen-*
6 *eral shall submit to the Committees on the Judiciary of the*
7 *House and the Senate a report containing—*

8 “(1) *the number of accounts from which the De-*
9 *partment of Justice has received voluntary disclosures*
10 *under subsection (b)(8); and*

11 “(2) *a summary of the basis for disclosure in*
12 *those instances where—*

13 “(A) *voluntary disclosure under subsection*
14 *(b)(8) was made to the Department of Justice;*
15 *and*

16 “(B) *the investigation pertaining to those*
17 *disclosures was closed without the filing of crimi-*
18 *nal charges.”.*

19 **SEC. 10. SPECIFICITY AND NOTIFICATION FOR ROVING SUR-**
20 **VEILLANCE AUTHORITY UNDER SECTION 206**
21 **OF THE USA PATRIOT ACT.**

22 (a) *INCLUSION OF SPECIFIC FACTS IN APPLICATION.*—
23 *Section 105(c)(2)(B) of the Foreign Intelligence Surveil-*
24 *lance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by*
25 *striking “where the Court finds” and inserting “where the*

1 *Court finds, based upon specific facts provided in the appli-*
2 *cation,”.*

3 *(b) NOTIFICATION OF SURVEILLANCE OF NEW FACIL-*
4 *ITY OR PLACE.—Section 105(c)(2) of such Act is amend-*
5 *ed—*

6 *(1) in subparagraph (C), by striking “and” at*
7 *the end;*

8 *(2) in subparagraph (D), by striking the period*
9 *at the end and inserting “; and”; and*

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

12 *“(E) that, in the case of electronic surveil-*
13 *lance directed at a facility or place that is not*
14 *known at the time the order is issued, the appli-*
15 *cant shall notify a judge having jurisdiction*
16 *under section 103 within 10 days after electronic*
17 *surveillance begins to be directed at a new facil-*
18 *ity or place, and such notice shall contain a*
19 *statement of the facts and circumstances relied*
20 *upon by the applicant to justify the belief that*
21 *the facility or place at which the electronic sur-*
22 *veillance is or was directed is being used, or is*
23 *about to be used, by the target of electronic sur-*
24 *veillance.”.*

1 **SEC. 11. PROHIBITION ON PLANNING TERRORIST ATTACKS**
2 **ON MASS TRANSPORTATION.**

3 *Section 1993(a) of title 18, United States Code, is*
4 *amended—*

5 *(1) by striking “or” at the end of paragraph (7);*

6 *(2) by redesignating paragraph (8) as para-*
7 *graph (9); and*

8 *(3) by inserting after paragraph (7) the fol-*
9 *lowing:*

10 *“(8) surveils, photographs, videotapes, diagrams,*
11 *or otherwise collects information with the intent to*
12 *plan or assist in planning any of the acts described*
13 *in the paragraphs (1) through (7); or”.*

14 **SEC. 12. ENHANCED REVIEW OF DETENTIONS.**

15 *Section 1001 of the USA PATRIOT ACT is amended*
16 *by—*

17 *(1) inserting “(A)” after “(1)”;* and

18 *(2) inserting after “Department of Justice” the*
19 *following: “, and (B) review detentions of persons*
20 *under section 3144 of title 18, United States Code, in-*
21 *cluding their length, conditions of access to counsel,*
22 *frequency of access to counsel, offense at issue, and*
23 *frequency of appearance before a grand jury”.*

24 **SEC. 13. FORFEITURE.**

25 *Section 981(a)(1)(B)(i) of title 18, United States Code,*
26 *is amended by inserting “trafficking in nuclear, chemical,*

1 *biological, or radiological weapons technology or material,*
2 *or” after “involves”.*

3 **SEC. 14. ADDING OFFENSES TO THE DEFINITION OF FED-**
4 **ERAL CRIME OF TERRORISM.**

5 *Section 2332b(g)(5)(B)(i) of title 18, United States*
6 *Code, is amended—*

7 *(1) by inserting “, 2339D (relating to military-*
8 *type training from a foreign terrorist organization)”*
9 *before “, or 2340A” ; and*

10 *(2) by inserting “832 (relating to nuclear and*
11 *weapons of mass destruction threats),” after “831 (re-*
12 *lating to nuclear materials),”.*

13 **SEC. 15. AMENDMENTS TO SECTION 2516(1) OF TITLE 18,**
14 **UNITED STATES CODE.**

15 *(a) PARAGRAPH (c) AMENDMENT.—Section 2516(1)(c)*
16 *of title 18, United States Code, is amended—*

17 *(1) by inserting “section 37 (relating to violence*
18 *at international airports), section 175b (relating to*
19 *biological agents or toxins)” after “the following sec-*
20 *tions of this title:”;*

21 *(2) by inserting “section 832 (relating to nuclear*
22 *and weapons of mass destruction threats), section 842*
23 *(relating to explosive materials), section 930 (relating*
24 *to possession of weapons in Federal facilities),” after*
25 *“section 751 (relating to escape),”;*

1 (3) by inserting “section 1114 (relating to offi-
2 cers and employees of the United States), section 1116
3 (relating to protection of foreign officials), sections
4 1361–1363 (relating to damage to government build-
5 ings and communications), section 1366 (relating to
6 destruction of an energy facility),” after “section
7 1014 (relating to loans and credit applications gen-
8 erally; renewals and discounts),”;

9 (4) by inserting “section 1993 (relating to ter-
10 rorist attacks against mass transportation), sections
11 2155 and 2156 (relating to national-defense utilities),
12 sections 2280 and 2281 (relating to violence against
13 maritime navigation),” after “section 1344 (relating
14 to bank fraud),”; and

15 (5) by inserting “section 2340A (relating to tor-
16 ture),” after “section 2321 (relating to trafficking in
17 certain motor vehicles or motor vehicle parts),”.

18 (b) PARAGRAPH (p) AMENDMENT.—Section 2516(1)(p)
19 is amended by inserting “, section 1028A (relating to aggra-
20 vated identity theft)” after “other documents”.

21 (c) PARAGRAPH (q) AMENDMENT.—Section 2516(1)(q)
22 of title 18, United States Code is amended—

23 (1) by inserting “2339,” after “2332h,”; and

24 (2) by striking “or 2339C” and inserting
25 “2339C, or 2339D”.

1 **SEC. 16. DEFINITION OF PERIOD OF REASONABLE DELAY**
2 **UNDER SECTION 213 OF THE USA PATRIOT**
3 **ACT.**

4 *Section 3103a(b)(3) of title 18, United States Code, is*
5 *amended—*

6 *(1) by striking “of its” and inserting “, which*
7 *shall not be more than 180 days, after its”; and*

8 *(2) by inserting “for additional periods of not*
9 *more than 90 days each” after “may thereafter be ex-*
10 *tended”.*

11 **SECTION 1. SHORT TITLE.**

12 **This Act may be cited as the “USA PA-**
13 **TRIBUT and Terrorism Prevention Reauthor-**
14 **ization Act of 2005”.**

15 **SEC. 2. REFERENCES TO USA PATRIOT ACT.**

16 **A reference in this Act to the USA PA-**
17 **TRIBUT ACT shall be deemed a reference to**
18 **the Uniting and Strengthening America by**
19 **Providing Appropriate Tools Required to**
20 **Intercept and Obstruct Terrorism (USA PA-**
21 **TRIBUT ACT) Act of 2001.**

22 **SEC. 3. REPEAL OF USA PATRIOT ACT SUNSET PROVISION.**

23 **Section 224 of the USA PATRIOT ACT is**
24 **repealed.**

1 SEC. 4. EXTENSION OF SUNSET PROVISION RELATING TO
2 INDIVIDUAL TERRORISTS AS AGENTS OF
3 FOREIGN POWERS.

4 Subsection (b) of section 6001 of the Intel-
5 ligence Reform and Terrorism Prevention Act
6 of 2004 (Public Law 108–458; 118 Stat. 3742) is
7 amended to read as follows:

8 “(b) SUNSET.—(1) Except as provided in
9 paragraph (2), the amendment made by sub-
10 section (a) shall cease to have effect on De-
11 cember 31, 2010.

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

17 SEC. 5. REPEAL OF SUNSET PROVISION RELATING TO SEC-
18 TION 2332B AND THE MATERIAL SUPPORT
19 SECTIONS OF TITLE 18, UNITED STATES
20 CODE.

21 Section 6603 of the Intelligence Reform
22 and Terrorism Prevention Act of 2004 (Public
23 Law 108–458; 118 Stat. 3762) is amended by
24 striking subsection (g).

1 SEC. 6. SHARING OF ELECTRONIC, WIRE, AND ORAL INTER-
2 CEPTION INFORMATION UNDER SECTION
3 203(B) OF THE USA PATRIOT ACT.

4 Section 2517(6) of title 18, United States
5 Code, is amended by adding at the end the fol-
6 lowing: “Within a reasonable time after a dis-
7 closure of the contents of a communication
8 under this subsection, an attorney for the
9 Government shall file, under seal, a notice
10 with a judge whose order authorized or ap-
11 proved the interception of that communica-
12 tion, stating the fact that such contents were
13 disclosed and the departments, agencies, or
14 entities to which the disclosure was made.”.

15 SEC. 7. DURATION OF FISA SURVEILLANCE OF NON-UNITED
16 STATES PERSONS UNDER SECTION 207 OF
17 THE USA PATRIOT ACT.

18 (a) ELECTRONIC SURVEILLANCE.—Section
19 105(e) of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1805(e)), is amended—

21 (1) in paragraph (1)(B), by striking “,
22 as defined in section 101(b)(1)(A)” and in-
23 sserting “who is not a United States per-
24 son”; and

25 (2) in subsection (2)(B), by striking
26 “as defined in section 101(b)(1)(A)” and

1 **inserting “who is not a United States per-**
2 **son”.**

3 **(b) PHYSICAL SEARCH.—Section 304(d) of**
4 **such Act (50 U.S.C. 1824(d)) is amended—**

5 **(1) in paragraph (1)(B), by striking**
6 **“as defined in section 101(b)(1)(A)” and**
7 **inserting “who is not a United States per-**
8 **son”;** and

9 **(2) in paragraph (2), by striking “as**
10 **defined in section 101(b)(1)(A)” and in-**
11 **serting “who is not a United States per-**
12 **son”.**

13 **(c) PEN REGISTERS, TRAP AND TRACE DE-**
14 **VICES.—Section 402(e) of such Act (50 U.S.C.**
15 **1842(e)) is amended—**

16 **(1) by striking “(e) An” and inserting**
17 **“(e)(1) Except as provided in paragraph**
18 **(2), an”;** and

19 **(2) by adding at the end the following**
20 **new paragraph:**

21 **“(2) In the case of an application under**
22 **subsection (c) where the applicant has cer-**
23 **tified that the information likely to be ob-**
24 **tained is foreign intelligence information not**
25 **concerning a United States person, an order,**

1 or an extension of an order, under this section
2 may be for a period not to exceed one year.”.

3 SEC. 8. ACCESS TO CERTAIN BUSINESS RECORDS UNDER
4 SECTION 501 OF FISA UNDER SECTION 215 OF
5 THE USA PATRIOT ACT.

6 (a) ESTABLISHMENT OF RELEVANCE STAND-
7 ARD.—Subsection (b)(2) of section 501 of the
8 Foreign Intelligence Surveillance Act of 1978
9 (50 U.S.C. 1861), is amended by striking “to ob-
10 tain” and all that follows and inserting “and
11 that the information likely to be obtained
12 from the tangible things is reasonably ex-
13 pected to be (A) foreign intelligence informa-
14 tion not concerning a United States person, or
15 (B) relevant to an ongoing investigation to
16 protect against international terrorism or
17 clandestine intelligence activities.”.

18 (b) CLARIFICATION OF JUDICIAL DISCRE-
19 TION.—Subsection (c)(1) of such section is
20 amended to read as follows:

21 “(c)(1) Upon an application made pursu-
22 ant to this section, if the judge finds that the
23 application meets the requirements of sub-
24 sections (a) and (b), the judge shall enter an

1 **ex parte order as requested, or as modified,**
2 **approving the release of records.”.**

3 **(c) AUTHORITY TO DISCLOSE TO ATTORNEY.—**
4 **Subsection (d) of such section is amended to**
5 **read as follows:**

6 **“(d)(1) No person shall disclose to any per-**
7 **son (other than a qualified person) that the**
8 **United States has sought or obtained tangible**
9 **things under this section.**

10 **“(2) An order under this section shall no-**
11 **tify the person to whom the order is directed**
12 **of the nondisclosure requirement under para-**
13 **graph (1).**

14 **“(3) Any person to whom an order is di-**
15 **rected under this section who discloses that**
16 **the United States has sought to obtain tan-**
17 **gible things under this section to a qualified**
18 **person in response to the order shall inform**
19 **such qualified person of the nondisclosure re-**
20 **quirement under paragraph (1) and that such**
21 **qualified person is also subject to such non-**
22 **disclosure requirement.**

23 **“(4) A qualified person shall be subject to**
24 **any nondisclosure requirement applicable to**
25 **a person to whom an order is directed under**

1 **this section in the same manner as such per-**
2 **son.**

3 **“(5) In this subsection, the term ‘qualified**
4 **person’ means—**

5 **“(A) any person necessary to produce**
6 **the tangible things pursuant to an order**
7 **under this section; or**

8 **“(B) an attorney to obtain legal ad-**
9 **vice in response to an order under this**
10 **section.”.**

11 **(d) JUDICIAL REVIEW.—**

12 **(1) PETITION REVIEW PANEL.—Section**
13 **103 of the Foreign Intelligence Surveil-**
14 **lance Act of 1978 (50 U.S.C. 1803) is**
15 **amended by adding at the end the fol-**
16 **lowing new subsection:**

17 **“(e)(1) Three judges designated under sub-**
18 **section (a) who reside within 20 miles of the**
19 **District of Columbia, or if all of such judges**
20 **are unavailable, other judges of the court es-**
21 **tablished under subsection (a) as may be des-**
22 **ignated by the Presiding Judge of such court**
23 **(who is designated by the Chief Justice of the**
24 **United States from among the judges of the**
25 **court), shall comprise a petition review panel**

1 which shall have jurisdiction to review peti-
2 tions filed pursuant to section 501(f)(1).

3 “(2) Not later than 60 days after the date
4 of the enactment of the USA PATRIOT and
5 Terrorism Prevention Reauthorization Act of
6 2005, the court established under subsection
7 (a) shall develop and issue procedures for the
8 review of petitions filed pursuant to section
9 501(f)(1) by the panel established under para-
10 graph (1). Such procedures shall provide that
11 review of a petition shall be conducted ex
12 parte and in camera and shall also provide for
13 the designation of an Acting Presiding
14 Judge.”.

15 (2) PROCEEDINGS.—Section 501 of the
16 Foreign Intelligence Surveillance Act of
17 1978 (50 U.S.C. 1861) is further amended
18 by adding at the end the following new
19 subsection:

20 “(f)(1) A person receiving an order to
21 produce any tangible thing under this section
22 may challenge the legality of that order by fil-
23 ing a petition in the panel established by sec-
24 tion 103(e)(1). The Presiding Judge shall con-
25 duct an initial review of the petition. If the

1 **Presiding Judge determines that the petition**
2 **is frivolous, the Presiding Judge shall imme-**
3 **diately deny the petition and promptly pro-**
4 **vide a written statement of the reasons for the**
5 **determination for the record. If the Presiding**
6 **Judge determines that the petition is not friv-**
7 **olous, the Presiding Judge shall immediately**
8 **assign the petition to one of the judges serv-**
9 **ing on such panel. The assigned judge shall**
10 **promptly consider the petition in accordance**
11 **with procedures developed and issued pursu-**
12 **ant to section 103(e)(2). The judge considering**
13 **the petition may modify or set aside the order**
14 **only if the judge finds that the order does not**
15 **meet the requirements of this section or is**
16 **otherwise unlawful. If the judge does not**
17 **modify or set aside the order, the judge shall**
18 **immediately affirm the order and order the**
19 **recipient to comply therewith. A petition for**
20 **review of a decision to affirm, modify, or set**
21 **aside an order by the United States or any**
22 **person receiving such order shall be to the**
23 **court of review established under section**
24 **103(b), which shall have jurisdiction to con-**
25 **sider such petitions. The court of review shall**

1 immediately provide for the record a written
2 statement of the reasons for its decision and,
3 on petition of the United States or any person
4 receiving such order for writ of certiorari, the
5 record shall be transmitted under seal to the
6 Supreme Court, which shall have jurisdiction
7 to review such decision.

8 “(2) Judicial proceedings under this sub-
9 section shall be concluded as expeditiously as
10 possible. The judge considering a petition
11 filed under this subsection shall provide for
12 the record a written statement of the reasons
13 for the decision. The record of proceedings,
14 including petitions filed, orders granted, and
15 statements of reasons for decision, shall be
16 maintained under security measures estab-
17 lished by the Chief Justice of the United
18 States in consultation with the Attorney Gen-
19 eral and the Director of National Intelligence.

20 “(3) All petitions under this subsection
21 shall be filed under seal, and the court, upon
22 the government’s request, shall review any
23 government submission, which may include
24 classified information, as well as the govern-

1 ment's application and related materials, ex
2 parte and in camera.”.

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

6 Subsection (c)(2) of section 105 of the For-
7 eign Intelligence Surveillance Act of 1978 (50
8 U.S.C. 1805) is amended—

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

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

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

16 “(E) that, in cases where the facil-
17 ity or place at which surveillance will
18 be directed is not known at the time
19 the order is issued, the applicant
20 shall notify a judge having jurisdic-
21 tion under section 103 within a rea-
22 sonable period of time, as determined
23 by the court, after surveillance begins
24 to be directed at a new facility or
25 place, and that such notice shall con-

1 **tain a statement of the facts and cir-**
2 **cumstances relied upon by the appli-**
3 **cant to justify the belief that the facil-**
4 **ity or place at which the electronic**
5 **surveillance was directed is being**
6 **used, or is about to be used, by the**
7 **target of the electronic surveillance.”.**

Union Calendar No. 109

109TH CONGRESS
1ST Session

H. R. 3199

[Report No. 109-174, Parts I and II]

A BILL

To extend and modify authorities needed to combat terrorism, and for other purposes.

JULY 18, 2005

Reported from the Committee on the Judiciary with an amendment

JULY 18, 2005

Reported from the Permanent Select Committee on Intelligence with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed