

108TH CONGRESS
2D SESSION

H. R. 4591

To restore civil liberties under the First Amendment, the Immigration and Nationality Act, and the Foreign Intelligence Surveillance Act.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2004

Mr. BERMAN (for himself and Mr. DELAHUNT) 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

A BILL

To restore civil liberties under the First Amendment, the Immigration and Nationality Act, and the Foreign Intelligence Surveillance Act.

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 “Civil Liberties Restora-
5 tion Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Fighting terrorism is a priority for our Na-
2 tion.

3 (2) As Federal, State, and local law enforce-
4 ment work tirelessly every day to prevent another
5 terrorist attack, our Nation must continue to work
6 to ensure that law enforcement have the legal tools
7 and resources to do their job.

8 (3) At the same time, steps that are taken to
9 protect the United States from terrorism should not
10 undermine constitutional rights and protections.

11 (4) Some of the steps taken by the Administra-
12 tion since September 11, 2001, however, have under-
13 mined constitutional rights and protections.

14 (5) Our nation must strive for both freedom
15 and security.

16 (6) This Act seeks to restore essential rights
17 and protections without compromising our Nation's
18 safety.

19 **TITLE I—RESTORING FIRST**
20 **AMENDMENT RIGHTS**

21 **SEC. 101. LIMITATION ON CLOSED IMMIGRATION HEAR-**
22 **INGS.**

23 (a) IN GENERAL.—Section 240 of the Immigration
24 and Nationality Act (8 U.S.C. 1229a) is amended—

1 (1) by redesignating subsection (e) as sub-
2 section (f); and

3 (2) by inserting after subsection (d) the fol-
4 lowing new subsection:

5 “(e) STANDARDS FOR CLOSING REMOVAL HEAR-
6 INGS.—

7 “(1) IN GENERAL.—Subject to paragraph (2), a
8 removal proceeding held pursuant to this section
9 shall be open to the public.

10 “(2) EXCEPTIONS.—Portions of a removal pro-
11 ceeding held pursuant to this section may be closed
12 to the public by an immigration judge on a case by
13 case basis, when necessary—

14 “(A) to preserve the confidentiality of ap-
15 plications for asylum, withholding of removal,
16 relief under the Convention Against Torture
17 and Other Cruel, Inhuman or Degrading Treat-
18 ment or Punishment, the Violence Against
19 Women Act of 1994 (Public Law 103–322; 108
20 Stat. 1902), or the Victims of Trafficking and
21 Violence Prevention Act of 2000 (Public Law
22 106–386; 114 Stat. 1464), or other applications
23 for relief involving confidential personal infor-
24 mation or where portions of the removal hear-

1 ing involve minors or issues relating to domestic
2 violence, all with the consent of the alien;

3 “(B) to prevent the disclosure of classified
4 information that threatens the national security
5 of the United States and the safety of the
6 American people; or

7 “(C) to prevent the disclosure of the iden-
8 tity of a confidential informant.

9 “(3) COMPELLING GOVERNMENT INTEREST.—
10 In order for portions of removal proceedings to be
11 closed to the public in accordance with this sub-
12 section, the government must show that such closing
13 of the proceedings is necessitated by a compelling
14 governmental interest and is narrowly tailored to
15 serve that interest.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
17 Section 240(b) of the Immigration and Nationality Act (8
18 U.S.C. 1229a(b)) is amended—

19 (1) in paragraph (5)(C)(i), by striking “sub-
20 section (e)(1)” and inserting “subsection (f)(1)”;
21 and

22 (2) in paragraph (7), by striking “subsection
23 (e)(1)” and inserting “subsection (f)(1)”.

1 **TITLE II—PROVIDING DUE**
2 **PROCESS FOR INDIVIDUALS**

3 **SEC. 201. TIMELY SERVICE OF NOTICE.**

4 (a) IN GENERAL.—Section 236 of the Immigration
5 and Nationality Act (8 U.S.C. 1226) is amended by add-
6 ing at the end the following:

7 “(f) NOTICE OF CHARGES.—The Secretary of Home-
8 land Security shall serve a notice to appear on every alien
9 arrested or detained under this Act, except those certified
10 under section 236A(a)(3), within 48 hours of the arrest
11 or detention of such alien. Any alien, except those certified
12 under section 236A(a)(3), held for more than 48 hours
13 shall be brought before an immigration judge within 72
14 hours of the arrest or detention of such alien. The Sec-
15 retary of Homeland Security shall—

16 “(1) document when a notice to appear is
17 served on a detainee in order to determine compli-
18 ance by the Department of Homeland Security with
19 the 48-hour notice requirement; and

20 “(2) submit to the Committees on the Judiciary
21 of the Senate and the House of Representatives an
22 annual report concerning the Department of Home-
23 land Security’s compliance with such notice require-
24 ment.”.

1 (b) APPLICABILITY OF OTHER LAW.—Nothing in
2 section 236(f) of the Immigration and Nationality Act, as
3 added by subsection (a), shall be construed to repeal sec-
4 tion 236A of such Act (8 U.S.C. 1226a).

5 **SEC. 202. INDIVIDUALIZED BOND DETERMINATIONS.**

6 (a) IN GENERAL.—Section 236(a) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1226(a)) is amended—

8 (1) by striking “On a warrant” and inserting
9 the following:

10 “(1) IN GENERAL.—On a warrant”;

11 (2) by striking “Except as provided” and all
12 that follows through the end and inserting the fol-
13 lowing: “This subsection shall apply to all aliens de-
14 tained pending a decision on their removal or admis-
15 sion, regardless of whether or not they have been ad-
16 mitted to the United States, including any alien
17 found to have a credible fear of persecution under
18 section 235(b)(1)(B) or any alien admitted or seek-
19 ing admission under the visa waiver program pursu-
20 ant to section 217. Except as provided in subsection
21 (c) and pending such decision, the Secretary of
22 Homeland Security shall—

23 “(A) make an individualized determination
24 as to whether the alien should be released pend-
25 ing administrative and judicial review, to in-

1 clude a determination of whether the alien
2 poses a danger to the safety of other persons or
3 property and is likely to appear for future
4 scheduled proceedings; and

5 “(B) grant the alien release pending ad-
6 ministrative and judicial review under reason-
7 able bond or other conditions, including condi-
8 tional parole, that will reasonably assure the
9 presence of the alien at all future proceedings,
10 unless the Secretary of Homeland Security de-
11 termines under subparagraph (A) that the alien
12 poses a danger to the safety of other persons or
13 property or is unlikely to appear for future pro-
14 ceedings.

15 “(2) INDIVIDUALIZED DETERMINATIONS.—An
16 individualized determination made by the Secretary
17 of Homeland Security pursuant to paragraph (1)(A)
18 shall be reviewable at a hearing held before an immi-
19 gration judge pursuant to section 240. An immigra-
20 tion judge who reviews an initial bond determination
21 by the Secretary of Homeland Security, or who
22 makes a bond determination prior to a decision by
23 the Secretary of Homeland Security, shall apply the
24 same standards set forth in subparagraphs (A) and
25 (B) of paragraph (1).”.

1 (b) REVOCATION OF BOND OR PAROLE.—Section
2 236(b) of the Immigration and Nationality Act (8 U.S.C.
3 1226(b)) is amended by striking “The Attorney General”
4 and all that follows through the period and inserting the
5 following: “The bond or parole determination made pursu-
6 ant to subsection (a)(1)(B) may be revoked or modified
7 only by an immigration judge in proceedings held pursu-
8 ant to section 240, and only if the party seeking to revoke
9 or modify the bond or parole determination can establish
10 a change in circumstances. The administrative decision
11 finding the alien removable does not, in and of itself, con-
12 stitute a change in circumstances. At such a hearing, if
13 changed circumstances are established, the immigration
14 judge shall make a new individualized determination in the
15 manner described in subsection (a).”.

16 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
17 Section 236 of the Immigration and Nationality Act (8
18 U.S.C. 1226) is amended—

19 (1) by striking “Attorney General” each place
20 that term appears and inserting “Secretary of
21 Homeland Security”; and

22 (2) in subsection (e), by striking “Attorney
23 General’s” and inserting “Secretary of Homeland
24 Security’s”.

1 **SEC. 203. LIMITATION ON STAY OF A BOND.**

2 Section 236 of the Immigration and Nationality Act
3 (8 U.S.C. 1226), as amended by section 201, is further
4 amended by adding at the end the following:

5 “(g) STAY OF A BOND DETERMINATION.—An order
6 issued by an immigration judge to release an alien may
7 be stayed by the Board of Immigration Review, for not
8 more than 30 days, only if the Government dem-
9 onstrates—

10 “(1) the likelihood of success on the merits;

11 “(2) irreparable harm to the Government if a
12 stay is not granted;

13 “(3) that the potential harm to the Government
14 outweighs potential harm to alien; and

15 “(4) that the grant of a stay is in the interest
16 of the public.”.

17 **SEC. 204. IMMIGRATION REVIEW COMMISSION.**

18 (a) ESTABLISHMENT OF COMMISSION.—

19 (1) IN GENERAL.—There is established within
20 the Department of Justice an independent regu-
21 latory agency to be known as the Immigration Re-
22 view Commission (referred to in this section as the
23 “Commission”). The Executive Office of Immigra-
24 tion Review is hereby abolished and replaced with
25 such Commission.

1 (2) TRANSFER OF AUTHORITY.—The Commis-
2 sion shall perform all administrative, appellate, and
3 adjudicatory functions that were, prior to the date of
4 enactment of this Act, the functions of the Executive
5 Office of Immigration Review or were performed by
6 any officer or employee of the Executive Office of
7 Immigration Review in the capacity of such officer
8 or employee. Such functions shall not include the
9 policy-making, policy-implementation, investigatory,
10 or prosecutorial functions of the Department of
11 Homeland Security.

12 (3) ORGANIZATION.—The Commission shall
13 consist of:

14 (A) The Office of the Director.

15 (B) The Board of Immigration Review.

16 (C) The Office of the Chief Immigration
17 Judge.

18 (D) The Office of the Chief Administrative
19 Hearing Officer.

20 (b) OFFICE OF THE DIRECTOR.—

21 (1) APPOINTMENT.—There shall be as the head
22 of the Commission, a Director who shall be ap-
23 pointed by the President with the advice and consent
24 of the Senate.

1 (2) TRANSFER OF OFFICES.—The following of-
2 ficers shall be transferred from the Executive Office
3 for Immigration Review to the Office of the Director
4 for the Commission:

5 (A) Deputy Director.

6 (B) General Counsel.

7 (C) Pro Bono Coordinator.

8 (D) Public Affairs.

9 (E) Assistant Director of Management
10 Programs.

11 (F) Equal Employment Opportunity.

12 (3) RESPONSIBILITIES.—

13 (A) The Director shall oversee the admin-
14 istration of the Commission, and the creation of
15 rules and regulations affecting the administra-
16 tion of the courts.

17 (B) The Director shall appoint a Deputy
18 Director to assist with the duties of the Direc-
19 tor and shall have the power to appoint such
20 administrative assistants, attorneys, clerks, and
21 other personnel as may be needed.

22 (c) BOARD OF IMMIGRATION REVIEW.—

23 (1) IN GENERAL.—The Board of Immigration
24 Review (referred to in this section as the “Board”)

1 shall perform the appellate functions of the Commis-
2 sion.

3 (2) APPOINTMENT.—The Board shall be com-
4 posed of a Chairperson and not less than 14 other
5 immigration appeals judges, appointed by the Presi-
6 dent, in consultation with the Director. The term of
7 office of each member of the Board shall be 6 years.

8 (3) CURRENT MEMBERS.—Each individual who
9 is serving as a member of the Board on the date of
10 enactment of this Act shall be appointed to the
11 Board utilizing a system of staggered terms of ap-
12 pointment based on seniority.

13 (4) MEMBERS.—The Chairperson and each
14 other member of the Board shall be an attorney in
15 good standing of a bar of a State or the District of
16 Columbia and shall have at least 7 years of profes-
17 sional, legal expertise in immigration and nationality
18 law.

19 (5) CHAIRPERSON DUTIES.—The Chairperson
20 shall—

21 (A) be responsible, on behalf of the Board,
22 for the administrative operations of the Board
23 and shall have the power to appoint such ad-
24 ministrative assistants, attorneys, clerks, and

1 other personnel as may be needed for that pur-
2 pose;

3 (B) direct, supervise, and establish internal
4 operating procedures and policies of the Board;
5 and

6 (C) designate a member of the Board to
7 act as Chairperson in the Chairperson's absence
8 or unavailability.

9 (6) BOARD MEMBERS DUTIES.—In deciding the
10 cases before the Board, the Board shall exercise its
11 independent judgment and discretion and may take
12 any action, consistent with its authorities under this
13 section and regulations established in accordance
14 with this section, that is appropriate and necessary
15 for the disposition of such cases.

16 (7) JURISDICTION.—The Board shall have—

17 (A) such jurisdiction as was, prior to the
18 date of enactment of this Act, provided by stat-
19 ute or regulation to the Board of Immigration
20 Appeals;

21 (B) de novo review of any decision by an
22 immigration judge, and any final order of re-
23 moval; and

24 (C) retention of jurisdiction over any case
25 of an alien removed by the United States if the

1 alien's case was pending for consideration be-
2 fore the Board prior to removal of the alien.

3 (8) ACTING IN PANELS.—

4 (A) IN GENERAL.—All cases shall be sub-
5 ject to review by a 3 member panel. The Chair-
6 person shall divide the Board into 3 member
7 panels and designate a presiding member of
8 each panel such that—

9 (i) a majority of the number of Board
10 members authorized to constitute a panel
11 shall constitute a quorum for such panel;
12 and

13 (ii) each panel may exercise the ap-
14 propriate authority of the Board that is
15 necessary for the adjudication of cases be-
16 fore it.

17 (B) FINAL DECISION.—A final decision of
18 a panel shall be considered to be a final deci-
19 sion of the Board.

20 (9) EN BANC PROCESS.—

21 (A) IN GENERAL.—The Board may on its
22 own motion, by a majority vote of the Board
23 members, or by direction of the Chairperson,
24 consider any case as the full Board en banc, or
25 reconsider as the full Board en banc any case

1 that has been considered or decided by a 3-
2 member panel or by a limited en banc panel.

3 (B) QUORUM.—A majority of the Board
4 members shall constitute a quorum of the
5 Board sitting en banc.

6 (10) DECISIONS OF THE BOARD.—

7 (A) IN GENERAL.—The decisions of the
8 Board shall constitute final agency action. The
9 precedent decisions of the Board shall be bind-
10 ing on the Department of Homeland Security
11 and the immigration judges.

12 (B) AFFIRMANCE WITHOUT OPINION.—
13 Upon individualized review of a case, the Board
14 may affirm the decision of an immigration
15 judge without opinion only if the decision of the
16 immigration judge resolved all issues in the
17 case. An affirmance without opinion signifies
18 the Board’s adoption of the immigration judge’s
19 findings and conclusion in total.

20 (C) NOTICE OF APPEAL.—The decision by
21 the Board shall include notice to the alien of
22 the alien’s right to file a petition for review in
23 the court of appeals within 30 days of the date
24 of the decision.

25 (d) OFFICE OF THE CHIEF IMMIGRATION JUDGE.—

1 (1) ESTABLISHMENT OF OFFICE.—There is es-
2 tablished within the Commission an Office of the
3 Chief Immigration Judge to oversee all the immigra-
4 tion courts and their proceedings throughout the
5 United States. The head of the office shall be the
6 Chief Immigration Judge who shall be appointed by
7 the Director.

8 (2) DUTIES OF THE CHIEF IMMIGRATION
9 JUDGE.—The Chief Immigration Judge shall be re-
10 sponsible for the general supervision, direction, and
11 procurement of resources and facilities, and for the
12 coordination of the schedules of immigration judges
13 to enable the judges to conduct the various pro-
14 grams assigned to them. The Chief Immigration
15 Judge may be assisted by a Deputy Chief Immigra-
16 tion Judge and Assistant Chief Immigration Judge.

17 (3) APPOINTMENT OF IMMIGRATION JUDGES.—

18 (A) IN GENERAL.—Immigration judges
19 shall be appointed by the Director, in consulta-
20 tion with the Chief Immigration Judge and the
21 Chair of the Board of Immigration Review. The
22 term of each immigration judge shall be 12
23 years.

24 (B) QUALIFICATIONS.—Each immigration
25 judge, including the Chief Immigration Judge,

1 shall be an attorney in good standing of a bar
2 of a State or the District of Columbia and shall
3 have at least 7 years of professional, legal ex-
4 pertise in immigration and nationality law.

5 (C) CURRENT MEMBERS.—Each individual
6 who is serving as an immigration judge on the
7 date of enactment of this Act shall be appointed
8 as an immigration judge utilizing a system of
9 staggered terms of appointment based on se-
10 niority.

11 (4) DUTIES OF IMMIGRATION JUDGES.—In de-
12 ciding the cases before them, immigration judges
13 shall exercise their independent judgment and dis-
14 cretion and may take any action, consistent with
15 their authorities under this section and regulations
16 established in accordance with this section, that is
17 appropriate and necessary for the disposition of such
18 cases.

19 (5) JURISDICTION AND AUTHORITY OF IMMI-
20 GRATION COURTS.—The Immigration Courts shall
21 have such jurisdiction as was, prior to the date of
22 enactment of this Act, provided by statute or regula-
23 tion to the Immigration Courts within the Executive
24 Office for Immigration Review.

1 (6) CONTEMPT AUTHORITY.—The contempt au-
2 thority provided to immigration judges under section
3 240(b)(1) of the Immigration and Nationality Act (8
4 U.S.C. 1229a(b)(1)) shall—

5 (A) be implemented by regulation not later
6 than 120 days after the date of enactment of
7 this Act;

8 (B) provide that any contempt sanctions,
9 including any civil money penalty, shall be ap-
10 plicable to all parties appearing before the im-
11 migration judge and shall be imposed by a sin-
12 gle process applicable to all parties.

13 (e) OFFICE OF THE CHIEF ADMINISTRATIVE HEAR-
14 ING OFFICER.—

15 (1) IN GENERAL.—The Office of the Chief Ad-
16 ministrative Hearing Officer shall be headed by a
17 Chief Administrative Hearing Officer who shall be
18 appointed by the Director.

19 (2) DUTIES AND RESPONSIBILITIES.—The du-
20 ties and responsibilities of the current Office of the
21 Chief Administrative Hearing Officer shall be trans-
22 ferred to the Commission.

23 (f) REMOVAL AND REVIEW OF JUDGES.—

1 (1) IN GENERAL.—Immigration judges and
2 members of the Board of Immigration Review may
3 be removed from office only for good cause—

4 (A) by the Director, in consultation with
5 the Chair of the Board, in the case of the re-
6 moval of a member of the Board; or

7 (B) by the Director, in consultation with
8 the Chief Immigration Judge, in the case of the
9 removal of an immigration judge.

10 (2) INDEPENDENT JUDGMENT.—No immigra-
11 tion judge or member of the Board shall be removed
12 or otherwise subject to disciplinary or adverse action
13 for their exercise of independent judgment and dis-
14 cretion as prescribed by subsections (c)(6) and
15 (d)(4).

16 (g) REGULATIONS.—Not later than 180 days after
17 the date of enactment of this Act, the Director shall issue
18 regulations to implement this section.

19 **TITLE III—EFFECTIVE LAW** 20 **ENFORCEMENT**

21 **SEC. 301. TERMINATION OF THE NSEERS PROGRAM; ESTAB-** 22 **LISHMENT OF REASONABLE PENALTIES FOR** 23 **FAILURE TO REGISTER.**

24 (a) TERMINATION OF NSEERS.—

1 (1) IN GENERAL.—The National Security
2 Entry-Exit Registration System (NSEERS) pro-
3 gram administered by the Secretary of Homeland
4 Security is hereby terminated.

5 (2) INTEGRATED ENTRY AND EXIT DATA SYS-
6 TEM.—Nothing in this section shall amend the Inte-
7 grated Entry and Exit Data System established in
8 accordance with section 110 of the Illegal Immigra-
9 tion Reform and Immigrant Responsibility Act of
10 1996 (8 U.S.C. 1365a).

11 (3) ADMINISTRATIVE CLOSURE OF REMOVAL
12 PROCEEDINGS.—

13 (A) IN GENERAL.—All removal proceedings
14 initiated against any alien as a result of the
15 NSEERS program shall be administratively
16 closed. This paragraph shall apply to all aliens
17 who were—

18 (i) placed in removal proceedings sole-
19 ly for failure to comply with the require-
20 ments of the NSEERS program; or

21 (ii) placed in removal proceedings
22 while complying with the requirements of
23 the NSEERS program and—

24 (I) had a pending application be-
25 fore the Department of Labor or the

1 Department of Homeland Security for
2 which there is a visa available;

3 (II) did not have a pending appli-
4 cation before the Department of
5 Labor or the Department of Home-
6 land Security for which there is a visa
7 available but were eligible for an im-
8 migration benefit; or

9 (III) were eligible to apply for
10 other forms of relief from removal.

11 (B) EXCEPTIONS.—This paragraph shall
12 not apply in cases in which the aliens are re-
13 movable under—

14 (i) section 212(a)(3) of the Immigra-
15 tion and Nationality Act (8 U.S.C.
16 1182(a)(3)); or

17 (ii) paragraph (2) or (4) of section
18 237(a) of that Act (8 U.S.C. 1227(a)(2) or
19 (4)).

20 (4) MOTIONS TO REOPEN.—Notwithstanding
21 any limitations imposed by law on motions to reopen
22 removal proceedings, any alien who received a final
23 order of removal as a result of the NSEERS pro-
24 gram shall be eligible to file a motion to reopen the

1 removal proceeding and apply for any relief from re-
2 moval that such alien may be eligible to receive.

3 **SEC. 302. EXERCISE OF PROSECUTORIAL DISCRETION.**

4 (a) SENSE OF CONGRESS REGARDING PROSECU-
5 TORIAL DISCRETION.—

6 (1) FINDINGS.—Congress finds the following:

7 (A) Exercising prosecutorial discretion is
8 not an invitation to violate or ignore the law,
9 rather it is a means by which the resources of
10 the Secretary of Homeland Security may be
11 used to best accomplish the mission of the De-
12 partment of Homeland Security in admin-
13 istering and enforcing the immigration laws of
14 the United States.

15 (B) Although a favorable exercise of dis-
16 cretion by any office within the Department of
17 Homeland Security should be respected by
18 other offices of such Department, unless the
19 facts and circumstances in a specific case have
20 changed, the exercise of prosecutorial discretion
21 does not grant lawful status under the immigra-
22 tion laws, and there is no legally enforceable
23 right to the exercise of prosecutorial discretion.

24 (2) SENSE OF CONGRESS.—It is the sense of
25 Congress that the exercise of prosecutorial discretion

1 does not lessen the commitment of the Secretary of
2 Homeland Security to enforce the immigration laws
3 to the best of the Secretary's ability.

4 (b) PROSECUTORIAL DISCRETION.—The Secretary of
5 Homeland Security shall exercise prosecutorial discretion
6 in deciding whether to exercise its enforcement powers
7 against an alien. This discretion includes—

8 (1) focusing investigative resources on par-
9 ticular offenses or conduct;

10 (2) deciding whom to stop, question, and arrest;

11 (3) deciding whether to detain certain aliens
12 who are in custody;

13 (4) settling or dismissing a removal proceeding;

14 (5) granting deferred action or staying a final
15 removal order;

16 (6) agreeing to voluntary departure, permitting
17 withdrawal of an application for admission, or tak-
18 ing other action in lieu of removing an alien;

19 (7) pursuing an appeal; or

20 (8) executing a removal order.

21 (c) FACTORS FOR CONSIDERATION.—The factors
22 that shall be taken into account in deciding whether to
23 exercise prosecutorial discretion favorably toward an alien
24 include—

25 (1) the immigration status of the alien;

1 (2) the length of residence in the United States
2 of the alien;

3 (3) the criminal history of the alien;

4 (4) humanitarian concerns;

5 (5) the immigration history of the alien;

6 (6) the likelihood of ultimately removing the
7 alien;

8 (7) the likelihood of achieving the enforcement
9 goal by other means;

10 (8) whether the alien is eligible or is likely to
11 become eligible for other relief;

12 (9) the effect of such action on the future ad-
13 missibility of the alien;

14 (10) current or past cooperation by the alien
15 with law enforcement authorities;

16 (11) honorable service by the alien in the
17 United States military;

18 (12) community attention; and

19 (13) resources available to the Department of
20 Homeland Security.

21 **SEC. 303. CIVIL PENALTIES FOR TECHNICAL VIOLATIONS**

22 **OF REGISTRATION REQUIREMENTS.**

23 (a) **REGISTRATION PENALTIES.**—Section 266(a) of
24 the Immigration and Nationality Act (8 U.S.C. 1306(a))
25 is amended by striking “Any alien” and all that follows

1 through the period and inserting the following: “(1) A civil
2 penalty shall be imposed, in accordance with paragraph
3 (2), on any alien who is required to apply for registration
4 and be fingerprinted under section 262 or 263, who will-
5 fully fails or refuses to make such application or be
6 fingerprinted, and any parent or legal guardian required
7 to apply for the registration of any alien who willfully fails
8 or refuses to file application for the registration of such
9 alien as required by such section.

10 “(2) The Secretary of Homeland Security may
11 levy a civil monetary penalty of up to—

12 “(A) \$100 for a first violation of section
13 262 or 263;

14 “(B) \$500 for a second violation of section
15 262 or 263; and

16 “(C) \$1,000 for each subsequent violation
17 of section 262 or 263 after the second viola-
18 tion.”.

19 (b) OTHER PENALTIES.—Section 266(b) of the Im-
20 migration and Nationality Act (8 U.S.C. 1306(b)) is
21 amended to read as follows:

22 “(b)(1) A penalty shall be imposed, in accordance
23 with paragraph (2), on any alien or the parent or legal
24 guardian in the United States of any alien who fails to
25 submit written notice to the Secretary of Homeland Secu-

1 rity as required by section 265. No penalty shall be im-
2 posed with respect to a failure to submit such notice if
3 the alien establishes that such failure was reasonably ex-
4 cusable or was not willful.

5 “(2) Except as provided in paragraphs (4) and (5),
6 the Secretary of Homeland Security shall levy a civil mon-
7 etary penalty of—

8 “(A) up to \$100 against an alien who fails
9 to submit written notice in compliance with sec-
10 tion 265;

11 “(B) up to \$500 against an alien for a sec-
12 ond violation of section 265; and

13 “(C) up to \$1,000 for each subsequent vio-
14 lation of section 265 after the second violation.

15 “(3) Notwithstanding any other provision of this Act,
16 no change of immigration status shall result from failure
17 to submit written notice as required by section 265.

18 “(4) During the transition period, a failure to comply
19 with section 265 shall not result in a penalty or a change
20 in immigration status. At the conclusion of the transition
21 period, the Secretary of Homeland Security shall collect
22 and maintain statistics concerning all enforcement actions
23 related to this subsection.

24 “(5) The penalties imposed under this subsection
25 shall not apply to an alien who previously failed to submit

1 a change of address prior to the date of enactment of the
2 Civil Liberties Restoration Act of 2004 or the end of the
3 transition period if the alien submits a change of address
4 within 6 months after the end of the transition period.
5 A penalty shall be imposed, in accordance with paragraph
6 (2), on any alien who fails to submit a change of address
7 within the 6-month period following the transition period.

8 “(6) In this subsection, the term ‘transition period’
9 means the period beginning on the date of enactment of
10 the Civil Liberties Restoration Act of 2004 and ending 1
11 year after the date of enactment of such Act, at which
12 time the Secretary of Homeland Security shall implement
13 a system to record and preserve on a timely basis address-
14 es provided under section 265.”.

15 **SEC. 304. NCIC COMPLIANCE WITH THE PRIVACY ACT.**

16 Data entered into the National Crime Information
17 Center database must meet the accuracy requirements of
18 section 552a of title 5, United States Code (commonly re-
19 ferred to as the “Privacy Act”).

1 **TITLE IV—PROTECTING PRI-**
2 **VACY AND ENSURING DUE**
3 **PROCESS FOR TARGETS OF**
4 **SURVEILLANCE**

5 **SEC. 401. MODIFICATION OF AUTHORITIES ON REVIEW OF**
6 **MOTIONS TO DISCOVER MATERIALS UNDER**
7 **FOREIGN INTELLIGENCE SURVEILLANCE ACT**
8 **OF 1978.**

9 (a) **ELECTRONIC SURVEILLANCE.**—Section 106(f) of
10 the Foreign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1806(f)) is amended—

12 (1) in the first sentence, by striking “shall,”
13 and inserting “may,”; and

14 (2) by striking the last sentence and inserting
15 the following new sentence: “In making this deter-
16 mination, the court shall disclose, if otherwise dis-
17 coverable, to the aggrieved person, the counsel of the
18 aggrieved person, or both, under the procedures and
19 standards provided in the Classified Information
20 Procedures Act (18 U.S.C. App.), portions of the ap-
21 plication, order, or other materials relating to the
22 surveillance unless the court finds that such disclo-
23 sure would not assist in determining any legal or
24 factual issue pertinent to the case.”.

1 (b) PHYSICAL SEARCHES.—Section 305(g) of the
2 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
3 1825(g)) is amended—

4 (1) in the first sentence, by striking “shall,”
5 and inserting “may,”; and

6 (2) by striking the last sentence and inserting
7 the following new sentence: “In making this deter-
8 mination, the court shall disclose, if otherwise dis-
9 coverable, to the aggrieved person, the counsel of the
10 aggrieved person, or both, under the procedures and
11 standards provided in the Classified Information
12 Procedures Act (18 U.S.C. App.), portions of the ap-
13 plication, order, or other materials relating to the
14 physical search, or may require the Attorney General
15 to provide to the aggrieved person, the counsel of the
16 aggrieved person, or both a summary of such mate-
17 rials unless the court finds that such disclosure
18 would not assist in determining any legal or factual
19 issue pertinent to the case.”.

20 (c) PEN REGISTERS AND TRAP AND TRACE DE-
21 VICES.—Section 405(f) of the Foreign Intelligence Sur-
22 veillance Act of 1978 (50 U.S.C. 1845(f)) is amended by
23 striking paragraph (2) and inserting the following:

24 “(2) Unless the court finds that such disclosure
25 would not assist in determining any legal or factual

1 issue pertinent to the case, the court shall disclose,
2 if otherwise discoverable, to the aggrieved person,
3 the counsel of the aggrieved person, or both, under
4 the procedures and standards provided in the Classi-
5 fied Information Procedures Act (18 U.S.C. App.),
6 portions of the application, order, or other materials
7 relating to the use of the pen register or trap and
8 trace device, as the case may be, or evidence or in-
9 formation obtained or derived from the use of a pen
10 register or trap and trace device, as the case may
11 be.”.

12 (d) DISCLOSURE OF CERTAIN BUSINESS
13 RECORDS.—(1) Title V of the Foreign Intelligence Sur-
14 veillance Act of 1978 (50 U.S.C. 1861 et seq.) is amend-
15 ed—

16 (A) by redesignating section 502 as section
17 503; and

18 (B) by inserting after section 501 the fol-
19 lowing new section:

20 “DISCLOSURE OF CERTAIN BUSINESS RECORDS AND
21 ITEMS GOVERNED BY THE CLASSIFIED INFORMA-
22 TION PROCEDURES ACT

23 “SEC. 502. Any disclosure of applications, informa-
24 tion, or items submitted or acquired pursuant to an order
25 issued under section 501, if such information is otherwise
26 discoverable, shall be conducted under the procedures and

1 standards provided in the Classified Information Proce-
2 dures Act (18 U.S.C. App.).”.

3 (2) The table of sections for that Act is amend-
4 ed—

5 (A) by redesignating the item relating to
6 section 502 as an item relating to section 503;
7 and

8 (B) inserting after the item relating to sec-
9 tion 501 the following new item:

“502. Disclosure of certain business records and items governed by the Classi-
fied Information Procedures Act.”.

10 **SEC. 402. DATA-MINING REPORT.**

11 (a) DEFINITIONS.—In this section:

12 (1) DATA-MINING.—The term “data-mining”
13 means a query or search or other analysis of 1 or
14 more electronic databases, where—

15 (A) at least 1 of the databases was ob-
16 tained from or remains under the control of a
17 non-Federal entity, or the information was ac-
18 quired initially by another department or agen-
19 cy of the Federal Government for purposes
20 other than intelligence or law enforcement;

21 (B) the search does not use a specific indi-
22 vidual’s personal identifiers to acquire informa-
23 tion concerning that individual; and

1 (C) a department or agency of the Federal
2 Government is conducting the query or search
3 or other analysis to find a pattern indicating
4 terrorist or other criminal activity.

5 (2) DATABASE.—The term “database” does not
6 include telephone directories, information publicly
7 available via the Internet or available by any other
8 means to any member of the public without payment
9 of a fee, or databases of judicial and administrative
10 opinions.

11 (b) REPORTS ON DATA-MINING ACTIVITIES.—

12 (1) REQUIREMENT FOR REPORT.—The head of
13 each department or agency of the Federal Govern-
14 ment that is engaged in any activity to use or de-
15 velop data-mining technology shall each submit a
16 public report to Congress on all such activities of the
17 department or agency under the jurisdiction of that
18 official.

19 (2) CONTENT OF REPORT.—A report submitted
20 under paragraph (1) shall include, for each activity
21 to use or develop data-mining technology that is re-
22 quired to be covered by the report, the following in-
23 formation:

1 (A) A thorough description of the data-
2 mining technology and the data that will be
3 used.

4 (B) A thorough discussion of the plans for
5 the use of such technology and the target dates
6 for the deployment of the data-mining tech-
7 nology.

8 (C) An assessment of the likely efficacy of
9 the data-mining technology in providing accu-
10 rate and valuable information consistent with
11 the stated plans for the use of the technology.

12 (D) An assessment of the likely impact of
13 the implementation of the data-mining tech-
14 nology on privacy and civil liberties.

15 (E) A list and analysis of the laws and
16 regulations that govern the information to be
17 collected, reviewed, gathered, and analyzed with
18 the data-mining technology and a description of
19 any modifications of such laws that will be re-
20 quired to use the information in the manner
21 proposed under such program.

22 (F) A thorough discussion of the policies,
23 procedures, and guidelines that are to be devel-
24 oped and applied in the use of such technology
25 for data-mining in order to—

1 (i) protect the privacy and due process
2 rights of individuals; and

3 (ii) ensure that only accurate informa-
4 tion is collected and used.

5 (G) A thorough discussion of the proce-
6 dures allowing individuals whose personal infor-
7 mation will be used in the data-mining tech-
8 nology to be informed of the use of their per-
9 sonal information and what procedures are in
10 place to allow for individuals to opt out of the
11 technology. If no such procedures are in place,
12 a thorough explanation as to why not.

13 (H) Any necessary classified information in
14 an annex that shall be available to the Com-
15 mittee on Governmental Affairs, the Committee
16 on the Judiciary, and the Committee on Appro-
17 priations of the Senate and the Committee on
18 Homeland Security, the Committee on the Judi-
19 ciary, and the Committee on Appropriations of
20 the House of Representatives.

21 (3) TIME FOR REPORT.—Each report required
22 under paragraph (1) shall be—

23 (A) submitted not later than 90 days after
24 the date of enactment of this Act; and

1 (B) updated once a year and include any
2 new data-mining technologies.

3 **SEC. 403. PRIVACY PROTECTIONS ON GOVERNMENT AC-**
4 **CESS TO LIBRARY, BOOKSELLER, AND OTHER**
5 **PERSONAL RECORDS UNDER FOREIGN IN-**
6 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

7 (a) APPLICATIONS FOR ORDERS.—Subsection (b) of
8 section 501 of the Foreign Intelligence Surveillance Act
9 of 1978 (50 U.S.C. 1861) is amended—

10 (1) in paragraph (1), by striking “and” at the
11 end;

12 (2) in paragraph (2), by striking the period at
13 the end and inserting “; and”; and

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

16 “(3) shall specify that there are specific and
17 articulable facts giving reason to believe that the
18 person to whom the records pertain is a foreign
19 power or an agent of a foreign power.”.

20 (b) ORDERS.—Subsection (c)(1) of that section is
21 amended by striking “finds” and all that follows and in-
22 serting “finds that—

23 “(A) there are specific and articulable
24 facts giving reason to believe that the person to

1 whom the records pertain is a foreign power or
2 an agent of a foreign power; and

3 “(B) the application meets the other re-
4 quirements of this section.”.

5 (c) OVERSIGHT OF REQUESTS FOR PRODUCTION OF
6 RECORDS.—Section 502 of that Act (50 U.S.C. 1862) is
7 amended—

8 (1) in subsection (a), by striking “the Perma-
9 nent” and all that follows through “the Senate” and
10 inserting “the Permanent Select Committee on Intel-
11 ligence and the Committee on the Judiciary of the
12 House of Representatives and the Select Committee
13 on Intelligence and the Committee on the Judiciary
14 of the Senate”; and

15 (2) in subsection (b), by striking “On a semi-
16 annual basis,” and all that follows through “a report
17 setting forth” and inserting “The report of the At-
18 torney General to the Committees on the Judiciary
19 of the House of Representatives and the Senate
20 under subsection (a) shall set forth”.

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