

.....
(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R.

To establish reasonable procedural protections for the use of national security letters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NADLER of New York introduced the following bill; which was referred to the Committee on _____

A BILL

To establish reasonable procedural protections for the use of national security letters, 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 “National Security Let-
5 ters Reform Act of 2009”.

6 **SEC. 2. NATIONAL SECURITY LETTER DEFINED.**

7 In this Act, the term “national security letter” means
8 a request for information under one of the following provi-
9 sions of law:

1 (1) Section 2709(a) of title 18, United States
2 Code (to access certain communication service pro-
3 vider records).

4 (2) Section 1114(a)(5)(A) of the Right to Fi-
5 nancial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to
6 obtain financial institution customer records).

7 (3) Section 626 of the Fair Credit Reporting
8 Act (15 U.S.C. 1681u) (to obtain certain financial
9 information and consumer reports).

10 (4) Section 627 of the Fair Credit Reporting
11 Act (15 U.S.C. 1681v) (to obtain credit agency con-
12 sumer records for counterterrorism investigations).

13 **SEC. 3. PROCEDURAL PROTECTIONS FOR NATIONAL SECU-**
14 **RITY LETTERS.**

15 (a) STANDARD.—A national security letter may not
16 be issued unless the official having authority under law
17 to issue such a letter certifies that there are specific and
18 articulable facts giving reason to believe that the informa-
19 tion or records sought by that letter pertain to a foreign
20 power or agent of a foreign power.

21 (b) LIMITATION REGARDING FIRST AMENDMENT AC-
22 TIVITIES.—A national security letter may not be issued
23 in connection with an investigation of a United States per-
24 son solely upon the basis of activities protected by the first
25 amendment to the Constitution of the United States in

1 accordance with the Attorney General's Guidelines on
2 General Crimes, Racketeering Enterprise and Terrorism
3 Enterprise Investigations.

4 (c) OTHER LIMITATIONS.—

5 (1) LETTER MAY NOT CONTAIN UNREASONABLE
6 REQUIREMENTS OR REQUIRE PRIVILEGED MAT-
7 TER.—A national security letter may not—

8 (A) contain any requirement which would
9 be held to be unreasonable if contained in a
10 subpoena duces tecum issued by a court of the
11 United States in aid of a grand jury investiga-
12 tion of espionage or international terrorism; or

13 (B) require the production of any docu-
14 mentary evidence which would be privileged
15 from disclosure if demanded by a subpoena
16 duces tecum issued by a court of the United
17 States in aid of a grand jury investigation of es-
18 pionage or international terrorism.

19 (2) NOTICE OF RIGHTS.—A national security
20 letter shall provide notice of the recipient's right to
21 seek judicial review and explain the procedures for
22 doing so.

23 (d) NONDISCLOSURE.—

24 (1) IN GENERAL.—No recipient, or officer, em-
25 ployee, or agent thereof, shall disclose to any person

1 that the Federal Bureau of Investigation has sought
2 or obtained access to information or records under
3 a national security letter for 30 days after receipt of
4 such request from the Bureau.

5 (2) EXCEPTION.—A recipient, or officer, em-
6 ployee, or agent thereof, of a national security letter
7 may disclose that the Federal Bureau of Investiga-
8 tion has sought or obtained access to information or
9 records under this section to—

10 (A) those persons to whom disclosure is
11 necessary in order to comply with an order
12 under this section; or

13 (B) an attorney in order to obtain legal ad-
14 vice regarding such order.

15 (3) EXTENSION.—The Director of the Federal
16 Bureau of Investigation, or the Director's designee
17 in a position not lower than Deputy Assistant Direc-
18 tor at Bureau headquarters or a Special Agent in
19 Charge of a Bureau field office designated by the
20 Director, may apply for an order prohibiting disclo-
21 sure that the Federal Bureau of Investigation has
22 sought or obtained access to information or records
23 under this section for not more than 180 days after
24 the order is issued.

1 (4) JURISDICTION.—An application for an
2 order pursuant to this subsection shall be filed in
3 the district court of the United States in any district
4 within which the authorized investigation that is the
5 basis for a request pursuant to this section is being
6 conducted.

7 (5) APPLICATION CONTENTS.—An application
8 for an order pursuant to this subsection must state
9 specific and articulable facts giving the applicant
10 reason to believe that disclosure that the Federal
11 Bureau of Investigation has sought or obtained ac-
12 cess to information or records under this section will
13 result in—

14 (A) endangering the life or physical safety
15 of any person;

16 (B) flight from prosecution;

17 (C) destruction of or tampering with evi-
18 dence;

19 (D) intimidation of potential witnesses; or

20 (E) otherwise seriously endangering the
21 national security of the United States by alert-
22 ing a target, a target's associates, or the for-
23 eign power of which the target is an agent, of
24 the Government's interest in the target.

1 (6) STANDARD.—The court may issue an ex
2 parte order in response to an application under
3 paragraph (3) if the court determines that the order
4 is narrowly tailored to meet a compelling interest
5 and that there is reason to believe that disclosure
6 that the Federal Bureau of Investigation has sought
7 or obtained access to information or records under
8 this section will have one of the results described in
9 paragraph (5).

10 (7) RENEWAL.—An order under this subsection
11 may be renewed for additional periods of not more
12 than 180 days upon another application meeting the
13 requirements of paragraph (5) and a determination
14 by the court that the standard of paragraph (6) con-
15 tinues to be met.

16 (8) CONFORMING AMENDMENTS.—

17 (A) Section 2709 of title 18, United States
18 Code, is amended by striking subsection (e).

19 (B) Section 1114(a)(5) of the Right to Fi-
20 nancial Privacy Act of 1978 (12 U.S.C.
21 3414(a)(5)) is amended by striking subpara-
22 graph (D).

23 (C) Section 626 of the Fair Credit Report-
24 ing Act (15 U.S.C. 1681u) is amended by strik-
25 ing subsection (d).

1 (D) Section 627 of the Fair Credit Report-
2 ing Act (15 U.S.C. 1681v) is amended by strik-
3 ing subsection (c).

4 (e) JUDICIAL REVIEW.—

5 (1) PETITION.—Not later than 20 days after
6 any person receives a national security, or at any
7 time before the return date specified in the letter,
8 whichever period is longer, such person may file, in
9 the district court of the United States for the judi-
10 cial district within which such person resides, is
11 found, or transacts business, a petition for such
12 court to modify or set aside such letter. The time al-
13 lowed for compliance with the letter in whole or in
14 part as deemed proper and ordered by the court
15 shall not run while the petition is pending in the
16 court. The petition shall specify each ground upon
17 which the petitioner relies in seeking relief, and may
18 be based upon any failure of the letter to comply
19 with this section or upon any constitutional or other
20 legal right or privilege of such person.

21 (2) NONDISCLOSURE.—

22 (A) IN GENERAL.—A person prohibited by
23 law from disclosing information about the na-
24 tional security letter may file, in the district
25 court of the United States for the judicial dis-

1 trict within which such person resides, is found,
2 or transacts business, a petition for the court to
3 set aside the nondisclosure requirement. Such
4 petition shall specify each ground upon which
5 the petitioner relies in seeking relief, and may
6 be based upon any failure of the nondisclosure
7 requirement to comply with this section or upon
8 any constitutional or other legal right or privi-
9 lege of such person.

10 (B) STANDARD.—The court shall set aside
11 the nondisclosure requirement unless the court
12 determines that the nondisclosure requirement
13 complies with this section and does not violate
14 any constitutional or other legal right or privi-
15 lege of such person.

16 (3) DISCLOSURE OF CLASSIFIED MATERIAL.—
17 In making a determination under this subsection,
18 unless the court finds that such disclosure would not
19 assist in determining any legal or factual issue perti-
20 nent to the case, the court shall disclose to the peti-
21 tioner, the counsel of the petitioner, or both, under
22 the procedures and standards provided in the Classi-
23 fied Information Procedures Act (18 U.S.C. App.),
24 any classified portions of the application, order, or
25 other related materials.

1 (f) USE OF INFORMATION.—

2 (1) IN GENERAL.—

3 (A) CONSENT.—Information acquired from
4 a national security letter concerning any United
5 States person may be used and disclosed by
6 Federal officers and employees without the con-
7 sent of the United States person only in accord-
8 ance with this subsection.

9 (B) LAWFUL PURPOSE.—No information
10 acquired by a national security letter may be
11 used or disclosed by Federal officers or employ-
12 ees except for lawful purposes.

13 (2) DISCLOSURE FOR LAW ENFORCEMENT PUR-
14 POSES.—No information acquired by a national se-
15 curity letter shall be disclosed for law enforcement
16 purposes unless such disclosure is accompanied by a
17 statement that such information, or any information
18 derived therefrom, may only be used in a criminal
19 proceeding with the advance authorization of the At-
20 torney General.

21 (3) NOTIFICATION OF INTENDED DISCLOSURE
22 BY THE UNITED STATES.—Whenever the United
23 States intends to enter into evidence or otherwise
24 use or disclose in any trial, hearing, or other pro-
25 ceeding in or before any court, department, officer,

1 agency, regulatory body, or other authority of the
2 United States against an aggrieved person any infor-
3 mation obtained by or derived from a national secu-
4 rity letter, the United States shall, before the trial,
5 hearing, or other proceeding or at a reasonable time
6 before an effort to so disclose or so use this informa-
7 tion or submit it in evidence, notify the aggrieved
8 person and the court or other authority in which the
9 information is to be disclosed or used that the
10 United States intends to so disclose or so use such
11 information.

12 (4) NOTIFICATION OF INTENDED DISCLOSURE
13 BY STATE OR POLITICAL SUBDIVISION.—Whenever a
14 State or political subdivision of a State intends to
15 enter into evidence or otherwise use or disclose in
16 any trial, hearing, or other proceeding in or before
17 any court, department, officer, agency, regulatory
18 body, or other authority of the State or political sub-
19 division against an aggrieved person any information
20 obtained or derived from a request pursuant to this
21 section, the State or political subdivision thereof
22 shall notify the aggrieved person, the court or other
23 authority in which the information is to be disclosed
24 or used, and the Attorney General that the State or

1 political subdivision thereof intends to so disclose or
2 so use such information.

3 (5) MOTION TO SUPPRESS.—

4 (A) IN GENERAL.—Any aggrieved person
5 against whom evidence obtained or derived from
6 a national security letter is to be, or has been,
7 introduced or otherwise used or disclosed in any
8 trial, hearing, or other proceeding in or before
9 any court, department, officer, agency, regu-
10 latory body, or other authority of the United
11 States, or a State or political subdivision there-
12 of, may move to suppress the evidence obtained
13 or derived from the request, as the case may be,
14 on the grounds that—

15 (i) the information was acquired in
16 violation of the Constitution or laws of the
17 United States; or

18 (ii) the request was not in conformity
19 with the requirements of this section.

20 (B) TIMING.—A motion under subpara-
21 graph (A) shall be made before the trial, hear-
22 ing, or other proceeding unless there was no op-
23 portunity to make such a motion or the ag-
24 grieved person concerned was not aware of the
25 grounds of the motion.

1 (6) JUDICIAL REVIEW.—

2 (A) IN GENERAL.—Whenever—

3 (i) a court or other authority is noti-
4 fied pursuant to paragraph (3) or (4);

5 (ii) a motion is made pursuant to
6 paragraph (5); or

7 (iii) any motion or request is made by
8 an aggrieved person pursuant to any other
9 statute or rule of the United States or any
10 State before any court or other authority
11 of the United States or any State to—

12 (I) discover or obtain materials
13 relating to a request issued pursuant
14 to this section; or

15 (II) discover, obtain, or suppress
16 evidence or information obtained or
17 derived from a request issued pursu-
18 ant to this section;

19 the United States district court or, where
20 the motion is made before another author-
21 ity, the United States district court in the
22 same district as the authority shall, not-
23 withstanding any other provision of law
24 and if the Attorney General files an affi-
25 davit under oath that disclosure would

1 harm the national security of the United
2 States, review in camera the materials as
3 may be necessary to determine whether the
4 request was lawful.

5 (B) DISCLOSURE.—In making a deter-
6 mination under subparagraph (A), unless the
7 court finds that such disclosure would not assist
8 in determining any legal or factual issue perti-
9 nent to the case, the court shall disclose to the
10 aggrieved person, the counsel of the aggrieved
11 person, or both, under the procedures and
12 standards provided in the Classified Informa-
13 tion Procedures Act (18 U.S.C. App.), any clas-
14 sified portions of the application, order, or
15 other related materials, or evidence or informa-
16 tion obtained or derived from the order.

17 (7) EFFECT OF DETERMINATION OF LAWFUL-
18 NESS.—

19 (A) UNLAWFUL ORDERS.—If the United
20 States district court determines pursuant to
21 paragraph (6) that the national security letter
22 was not in compliance with the Constitution or
23 laws of the United States, the court may, in ac-
24 cordance with the requirements of law, suppress
25 the evidence which was unlawfully obtained or

1 derived from the request or otherwise grant the
2 motion of the aggrieved person.

3 (B) **LAWFUL ORDERS.**—If the court deter-
4 mines that the request was lawful, it may deny
5 the motion of the aggrieved person except to
6 the extent that due process requires discovery
7 or disclosure.

8 (8) **BINDING FINAL ORDERS.**—Orders granting
9 motions or requests under paragraph (6), decisions
10 under this section that a national security letter was
11 not lawful, and orders of the United States district
12 court requiring review or granting disclosure of ap-
13 plications, orders, or other related materials shall be
14 final orders and binding upon all courts of the
15 United States and the several States except a
16 United States court of appeals or the Supreme
17 Court.

18 (g) **DEFINITIONS.**—In this Act and in each provision
19 of law authorizing national security letters—

20 (1) the term “agent of a foreign power” has the
21 meaning given such term by section 101(b) of the
22 Foreign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1801(b));

24 (2) the term “aggrieved person” means a per-
25 son whose name, address, length of service, or local

1 or long distance toll records were sought or obtained
2 under this section; and

3 (3) the term “foreign power” has the meaning
4 given such term by section 101(a) of the Foreign In-
5 telligence Surveillance Act of 1978 (50 U.S.C.
6 1801(a)).

7 **SEC. 4. CAUSE OF ACTION FOR MISUSE OF NATIONAL SECU-
8 RITY LETTERS.**

9 A person to whom records requested by a national
10 security letter pertains may, in a civil action against any
11 person issuing or obtaining the issuing of such letter, ob-
12 tain money damages equal to the greater of the actual
13 damages or \$50,000, if the national security letter was
14 issued contrary to law or the certification on which is was
15 based was without factual foundation.

16 **SEC. 5. SUNSET OF PATRIOT ACT CHANGES TO NATIONAL
17 SECURITY LETTER AUTHORITY.**

18 (a) IN GENERAL.—The authority to issue national
19 security letters shall revert 5 years after the date of the
20 enactment of this Act to that provided by law on October
21 25, 2001.

22 (b) REPORT.—Not later than the date on which the
23 authority to issue national security letters ceases under
24 this Act, the Attorney General shall report to Congress
25 on whether, and if so, how, the authority to issue national

1 security letters furthered investigations as compared to al-
2 ternative methods for obtaining relevant information.

3 **SEC. 6. MINIMIZATION PROCEDURES, DISPOSAL OF**
4 **WRONGLY ACQUIRED INFORMATION, AND**
5 **CONGRESSIONAL REPORTING.**

6 (a) MINIMIZATION PROCEDURES.—The Attorney
7 General shall establish minimization and destruction pro-
8 cedures to ensure that information obtained pursuant to
9 a national security letter regarding persons that are no
10 longer of interest in an authorized investigation is de-
11 stroyed. Such procedures shall be transmitted to the Per-
12 manent Select Committee on Intelligence and the Com-
13 mittee on the Judiciary of the House of Representatives
14 and the Select Committee on Intelligence and the Com-
15 mittee on the Judiciary of the Senate in unclassified for-
16 mat within 3 months of passage, and shall include—

17 (1) specific procedures, that are reasonably de-
18 signed in light of the purpose and technique of the
19 particular surveillance, to minimize the acquisition
20 and retention, and prohibit the dissemination, of
21 nonpublicly available information concerning
22 unconsenting United States persons consistent with
23 the need of the United States to obtain, produce,
24 and disseminate foreign intelligence information;

1 (2) procedures that provide for the destruction
2 of information relating to United States persons that
3 do not reflect activity that would lead a reasonable
4 agent or analyst to believe that the person is an
5 agent of a foreign power as defined in 50 U.S.C.
6 1801(b);

7 (3) procedures for identifying whether the infor-
8 mation returned in response to a national security
9 letter exceeds the scope of the original request and
10 further procedures for returning or destroying the
11 superfluous information as soon as possible and be-
12 fore it is entered into any database or used in any
13 way; and

14 (4) deadlines for destruction, minimization, or
15 return of information described in paragraphs (1)
16 through (3), that require such destruction, mini-
17 mization, or return as soon as possible.

18 (b) DISPOSAL OF WRONGLY ACQUIRED INFORMA-
19 TION.—Each authority of the Government shall have the
20 duty to dispose of all private information obtained without
21 legal authority under color of a national security letter.

22 (c) REPORT.—The Attorney General shall, semiannu-
23 ally, submit to the Permanent Select Committee on Intel-
24 ligence and the Committee on the Judiciary of the House
25 of Representatives and the Select Committee on Intel-

1 ligenca and the Committee on the Judiciary of the Senate
2 a unclassified report containing—

3 (1) the total number of national security letters
4 issued during the preceding six months, in unclassi-
5 fied form;

6 (2) for each of the laws authorizing national se-
7 curity letters, the total number of national security
8 letters issued during the preceding six months under
9 the authority of that law;

10 (3) for each of the laws authorizing national se-
11 curity letters, the total number of national security
12 letters issued during the preceding six months under
13 the authority of that law for United States persons;

14 (4) for each of the laws authorizing national se-
15 curity letters, the total number of national security
16 letters issued during the preceding six months under
17 the authority of each such subparagraph for non-
18 United States persons;

19 (5) a description of the minimization procedures
20 adopted by the Attorney General pursuant to sub-
21 section (c), including any changes to minimization
22 procedures previously adopted by the Attorney Gen-
23 eral;

24 (6) a summary of the challenges made by re-
25 cipients of national security letters in court;

1 (7) a description of the extent to which infor-
2 mation obtained with national security letters has
3 aided investigations and an explanation of how such
4 information has aided such investigations; and

5 (8) a description of the extent to which infor-
6 mation obtained with national security letters has
7 aided prosecutions and an explanation of how such
8 information has been used in or aided such prosecu-
9 tions.

10 **SEC. 7. REQUIREMENTS RELATING TO CLAIMS OF EMER-**
11 **GENCY IN CONNECTION WITH CERTAIN NA-**
12 **TIONAL SECURITY LETTERS.**

13 Section 2702 of title 18, United States Code, is
14 amended—

15 (1) in subsection (b), so that paragraph (8)
16 reads as follows:

17 “(8) to a governmental entity, if the provider
18 reasonably believes that an emergency involving im-
19 mediate danger of death or serious physical injury to
20 any person justifies disclosure of the information;”;

21 (2) in subsection (c), so that paragraph (4)
22 reads as follows:

23 “(4) to a governmental entity if the provider
24 has a reasonable belief that an emergency involving
25 the imminent danger of death or serious physical in-

1 jury to any person requires disclosure without delay
2 of information relating to the emergency;” and

3 (3) so that subsection (d) reads as follows:

4 “(d) REPORTING OF EMERGENCY DISCLOSURES.—

5 On a semiannual basis the Attorney General shall submit
6 to the Committee on the Judiciary of the House of Rep-
7 resentatives and the Committee on the Judiciary of the
8 Senate a report containing—

9 “(1) the number of accounts from which the
10 Department of Justice has received voluntary disclo-
11 sures under subsection (b)(8), and a summary of the
12 factual basis for each emergency disclosure; and

13 “(2) the number and type of communications
14 the Department of Justice has received by voluntary
15 disclosure under subsection (c) (4) , and a summary
16 of the factual basis for each emergency disclosure.”.