

Fact Sheet JUSTICE Act Of 2009

Provided by Senator Jeff Bingaman and Senator Tom Udall

The Judicious Use of Surveillance Tools In Counterterrorism Efforts (JUSTICE) Act would reform the USA PATRIOT Act, the FISA Amendments Act and other surveillance authorities to protect the constitutional rights of Americans while ensuring the government has the powers it needs to fight terrorism and collect intelligence.

Title I – Reasonable Safeguards to Protect the Privacy of Americans’ Records

Sections 101-106 – National Security Letters

The bill rewrites the National Security Letter (NSL) statutes to ensure the FBI can obtain basic information without a court order, but also adds reasonable safeguards to ensure NSLs are only used to obtain records of people who have some connection to terrorism or espionage, and to provide meaningful, constitutionally sound judicial review of NSLs and associated gag orders.

Section 107 – Section 215 Orders

The bill would reauthorize the use of Section 215 business records orders under FISA, but with additional checks and balances to ensure these orders are only used to obtain records of people who have some connection to terrorism or espionage, and to provide meaningful, constitutionally sound judicial review of Section 215 orders and associated gag orders.

Title II – Reasonable Safeguards to Protect the Privacy of Americans’ Homes

Section 201 – “Sneak & Peek” Searches

The bill would retain the Patriot Act’s authorization of “sneak and peek” criminal searches but eliminate the overbroad catch-all provision that allows these secret searches in virtually any criminal case. It would shorten the presumptive time limits for notification, and create a statutory exclusionary rule.

Title III – Reasonable Safeguards to Protect the Privacy of Americans’ Communications

Section 301 – FISA Roving Wiretaps

The bill would reauthorize roving FISA wiretaps, but eliminate the possibility of “John Doe” roving wiretaps that identify neither the person nor the phone to be wiretapped. It would require agents to ascertain the presence of the target of a roving wiretap before beginning surveillance.

Section 302 – Pen Registers and Trap and Trace Devices

The bill would retain the Patriot Act's expansion of the FISA and criminal pen/trap authorities to cover electronic communications, but would allow pen/traps to be used only to obtain information about people who have some connection to terrorism or espionage. It would impose additional procedural safeguards to serve as a check on these authorities.

Section 303 – Telecommunications Immunity

The bill would repeal the retroactive immunity provision in the FISA Amendments Act.

Section 304 – Bulk Collection

The bill retains the new warrantless authorities in the FISA Amendments Act but would prevent the government from using that law to conduct "bulk collection" of the contents of communications, including all communications between the United States and the rest of the world.

Section 305 – Reverse Targeting

The bill would ensure that the overseas warrantless collection authorities of the FISA Amendments Act are not used as a pretext to target Americans in the U.S.

Section 306 – Use of Unlawfully Obtained Information

The bill would limit the government's use of information about Americans obtained under FISA Amendments Act procedures that the FISA Court later determines to be unlawful, while giving the court flexibility to allow such information to be used in appropriate cases.

Section 307 – Protections for International Communications of Americans

The bill would amend the FISA Amendments Act to create safeguards for communications not related to terrorism that the government knows have one end in the United States.

Section 308 – Computer Trespass

The bill would guard against abuse of a warrantless surveillance authority in the Patriot Act that allows computer owners who are subject to denial of service attacks or other episodes of hacking to give the government permission to monitor trespassers on their systems.

Title IV – Improvements to Further Congressional and Judicial Oversight

Section 401 – FISA Public Reporting

The bill would require limited additional public reporting on the use of FISA.

Section 402 – Use of FISA Evidence

The bill would apply the Classified Information Procedures Act to the use of FISA evidence in criminal cases, and allow the use of protective orders and other security measures in civil cases, to ensure that courts have discretion to allow litigants access to information where appropriate while still protecting sensitive information.

Section 403 – Nationwide Court Orders

The bill would permit a recipient of a nationwide court order to challenge it either in the district where it was issued or in the district where the recipient is located.

Title V – Improvements to Further Effective, Focused Investigations

Section 501 – Domestic Terrorism

The Patriot Act's overbroad definition of domestic terrorism could cover acts of civil disobedience by political organizations. The bill would limit the qualifying offenses for domestic terrorism to those that constitute a federal crime of terrorism.

Section 502 – Material Support

The bill would amend the overly broad criminal definition of material support for terrorism by specifying that a person must know or intend the support provided will be used for terrorist activity.