



	Current Law	S. 1692, Leahy-Feinstein substitute as amended on 10/1/09	S. 1686, Feingold-Durbin JUSTICE Act
<b>Provisions due</b>	<b>To Sunset in 2009</b>		
Roving John Doe Wiretaps (FISA wiretaps)	Sunsets 12/31/09. Permits roving intelligence wiretaps that do not specify a target.	Reauthorized to 2013 without amendment.	Permanent with the requirement that roving wiretap orders include a description of the target.
Lone Wolf (definition of person who can be searched or surveilled under FISA)	Sunsets 12/31/09. Permits FISA to be used to search and tap individuals who are not part of a foreign organization such as a foreign government; company or terrorist group.	Reauthorize to 2013 without amendment.	Let sunset.
Section 215 (any tangible thing by FISA court order)	Sunsets 12/31/09. Obtain any tangible thing with a statement of facts showing relevance to a terrorism investigation with the following things presumptively relevant: things that pertain to <ul style="list-style-type: none"> <li>• terrorists or spies,</li> <li>• terrorist or spy activities,</li> <li>• people in contact with a terrorist or spy.</li> </ul>	Sunsets 12/31/13. Obtain any tangible thing with a statement of facts and circumstances giving reasonable grounds to believe things sought are relevant to a terrorist investigation.	Permanent. Obtain any tangible thing with specific and articulable facts giving reasonable grounds to believe things sought are relevant to a terrorist investigation and pertain to <ul style="list-style-type: none"> <li>• terrorists or spies,</li> <li>• terrorist or spy activities,</li> <li>• people in contact with a terrorist or spy.</li> </ul>

	<p><u>Gag</u>: Recipient may only challenge a gag one year after its issuance. Burden is on recipient to challenge and court must find that there is no reason to believe that disclosure would endanger the national security of the US, interfere with a criminal or terrorism investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. Certifications that disclosure would harm national security or diplomatic relations are conclusive unless the government is acting in bad faith.</p> <p>No minimization requirements.</p> <p>No library provision.</p>	<p><u>Gag</u>: Strikes one year ban on challenge to gag order. Preserves list of enumerated harms but strikes mandatory presumption that government certification that danger to national security or diplomatic relations will result is conclusive.</p> <p>Requires minimization procedures.</p> <p><u>Libraries</u>: To obtain library records and patron lists, require a statement of facts showing relevance to a terrorism investigation and that the things sought pertain to</p> <ul style="list-style-type: none"> <li>• terrorists or spies,</li> <li>• terrorist or spy activities,</li> <li>• people in contact with a terrorist or spy.</li> </ul>	<p><u>Gag</u>: Party seeking to lift gag must notify government within 21 days of wish to challenge nondisclosure order. Court shall set aside gag if there is reason to believe that disclosure will result in enumerated harms. Removes catch all harm of endangering national security and replaces it with alerting a target or witness that he is subject to investigation, intimidation of potential witnesses or destruction of our tampering with evidence. Gag must be narrowly tailored to address the specific harm.</p> <p>Requires minimization procedures.</p> <p>No library provision.</p>
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<b>Provisions not</b>	<b>Subject to sunset</b>		
<p>National security letters (FBI orders for telecommunication, credit and financial information)</p>	<p>Permanent</p> <p>Certification that the records are relevant to a terrorism investigation.</p> <p><u>Gag</u> : Recipient may challenge gag in federal court but court may only set aside gag if it finds that there is no reason to believe a disclosure may endanger the national security of the US, interfere with criminal or counterterrorism investigations, interfere with diplomatic relations or endanger the life or safety of any person. Certifications that disclosure would harm national security or diplomatic relations are conclusive unless the government is acting in bad faith.</p>	<p>Creates 2013 sunset.</p> <p>Require specific and articulable facts that there is reasonable grounds to believe records are relevant to a terrorism investigation.</p> <p><u>Gag</u>: If recipient wishes to challenge gag, government must initiate court proceedings. Burden is on government to file a statement of specific and articulable facts that demonstrate that one of the enumerated harms may, and the court must find, will result. (See list in current law). Gags are indefinite. Gags naturally expire and the recipient must be notified when the harm justifying the nondisclosure order no longer exists.</p>	<p>Permanent</p> <p>Require specific and articulable facts that information is relevant to a terrorism investigation and pertains to</p> <ul style="list-style-type: none"> <li>• terrorists or spies,</li> <li>• terrorist or spy activities,</li> <li>• people in contact with a terrorist or spy.</li> </ul> <p><u>Gag</u>: If recipient wishes to challenge gag, government must initiate court proceedings. Burden is on the government to file a statement of specific and articulable facts that demonstrate that one of the enumerated harms will result. Gag issued by court must be narrowly tailored to prevent harm. Removes catch all harm of “endangering national security” and replaces it with alerting a target or witness that he is subject to investigation, intimidation of potential witnesses or destruction of our tampering with evidence. Gags are presumably for one year (but can be longer). Gags naturally expire and</p>

	No minimization procedures required (procedures governing the collection, use and retention of information obtained).	No minimization procedures.	the recipient must be notified when the harm justifying the nondisclosure order no longer exists.  Requires AG to promulgate minimization procedures.
FISA Pen Register / Trap and Trace (live time capture of incoming and outgoing communication records)	Certification that records sought are relevant to a terrorism investigation.	Statement of facts and circumstances giving reasonable grounds to believe things sought are relevant to a terrorism investigation.  Mandatory minimization procedures.	Specific and articulable facts that there are reasonable grounds to believe records are relevant to terrorism investigation and pertain to <ul style="list-style-type: none"> <li>• terrorists or spies,</li> <li>• terrorist or spy activities,</li> <li>• people in contact with a terrorist or spy.</li> </ul> Mandatory minimization procedures.
“Sneak and Peek “ search warrants (delayed notice search warrants)	Authorizes delayed notice criminal search warrants when contemporaneous notice would seriously jeopardize an investigation. Initial delays presumptively for 30 days and extension for 90, although within court’s discretion to be longer.	Shortens initial delay from 30 to seven days and extensions from 90 days to 30 days.	Deletes “seriously jeopardize an investigation” rationale; but leaves flight from prosecution, destruction of evidence, etc., as bases for delaying notice. Shortens initial delay from 30 to seven days and extensions from 90 days to 30 days.
Audits	No further audits required.	Continue annual audits for 215 and NSLs, and add new audit for Pen Register/Trap and Trace (live time collection of phone calls dialed/received)	No change to current law.
<b>Further Key</b>	<b>Provisions Only in</b>	<b>JUSTICE Act</b>	

Material support for designated terrorist groups	Criminalizes giving anything of value to a government-designated terrorist organization, even if those things were intended or in fact used for non-terrorist activities such as humanitarian aid.	No change to current law.	Prevents criminal prosecution unless the government can show that the individual intended to further the terrorist goals of the organization.
Nation-wide court orders	allowing the government to obtain court orders for stored communications and records from any court with jurisdiction over the crime being committed, rather than requiring the government to go to the court district where the company holding the records resides.	No change to current law.	Would allow recipient to challenge order in the district in which it resides in addition in the court where the order originated.
FISA Amendments Act of 2008 (FAA) – Ban on bulk collection	After obtaining an annual programmatic order, the FAA permits the government to collect all international communications in a dragnet fashion as long as Americans are not individually targeted.	No change to current law.	Would permit annual order process to continue, but would require the government to use the authority to target that power on individuals or facilities and prohibit “bulk” collection.
FAA – minimization of use of communications of people in the US	Limits on the collection and use of communications of people in the US under the FAA are governed by secret guidelines approved by the FISA Court.	No change to current law.	Creates statutory requirements that limit the collection, access to and dissemination of communications of people in the US. Access, etc. granted only when the communication concerns international terrorist activities, there is probable cause that the target is an agent of a foreign power or to prevent death or serious bodily harm.