

**Calendar No. 132**109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**S. 1266****[Report No. 109–85]**

To permanently authorize certain provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, to reauthorize a provision of the Intelligence Reform and Terrorism Prevention Act of 2004, to clarify certain definitions in the Foreign Intelligence Surveillance Act of 1978, to provide additional investigative tools necessary to protect the national security, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

JUNE 16, 2005

Mr. ROBERTS, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

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**A BILL**

To permanently authorize certain provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, to reauthorize a provision of the Intelligence Reform and Terrorism Prevention Act of 2004, to clarify certain definitions in the Foreign Intelligence Surveillance Act of 1978, to provide additional investigative tools necessary to protect the national security, 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 **TITLE I—REPEAL AND EXTEN-**  
 4 **SION OF SUNSET ON CERTAIN**  
 5 **AUTHORITIES**

6 **SEC. 101. EXPANSION OF ENHANCED SURVEILLANCE PRO-**  
 7 **CEDURES NOT SUBJECT TO SUNSET UNDER**  
 8 **USA PATRIOT ACT.**

9 Section 224(a) of the USA PATRIOT Act of 2001  
 10 (Public Law 107–56; 115 Stat. 295; 18 U.S.C. 2510 note)  
 11 is amended—

- 12 (1) by striking “203(a), 203(c)” and inserting  
 13 “203, 204”;  
 14 (2) by inserting “206, 207,” after “205,”;  
 15 (3) by inserting “214, 215,” after “213,”;  
 16 (4) by inserting “218,” after “216,”; and  
 17 (5) by striking “and 222” and inserting “222,  
 18 and 225”.

19 **SEC. 102. EXTENSION OF SUNSET OF TREATMENT OF INDI-**  
 20 **VIDUAL TERRORISTS AS AGENTS OF FOR-**  
 21 **EIGN POWERS.**

22 Subsection (b) of section 6001 of the Intelligence Re-  
 23 form and Terrorism Prevention Act of 2004 (Public Law  
 24 108–458; 118 Stat. 3742) is amended to read as follows:

1       “(b) SUNSET.—(1) Except as provided in paragraph  
2 (2), the amendment made by subsection (a) shall cease  
3 to have effect on December 31, 2009.

4       “(2) With respect to any particular foreign intel-  
5 ligence investigation that began before the date on which  
6 the amendment made by subsection (a) ceases to have ef-  
7 fect, section 101(b)(1) of the Foreign Intelligence Surveil-  
8 lance Act of 1978, as amended by subsection (a), shall  
9 continue in effect.”.

10 **TITLE       II—FOREIGN       INTEL-**  
11 **LIGENCE        SURVEILLANCE**  
12 **MATTERS**

13 **Subtitle A—Definitional Matters**

14 **SEC. 201. CLARIFICATION OF CONTENTS OF COMMUNICA-**  
15 **TIONS FOR PURPOSES OF FOREIGN INTEL-**  
16 **LIGENCE SURVEILLANCE ACT OF 1978.**

17       Subsection (n) of section 101 of the Foreign Intel-  
18 ligence Surveillance Act of 1978 (50 U.S.C. 1801) is  
19 amended to read as follows:

20       “(n) ‘Contents’, when used with respect to a commu-  
21 nication, includes any information concerning the sub-  
22 stance, purport, or meaning of such communication.”.

1 **SEC. 202. CLARIFICATION OF FOREIGN INTELLIGENCE IN-**  
 2 **FORMATION FOR PURPOSES OF FOREIGN IN-**  
 3 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

4 Section 101(e)(1) of the Foreign Intelligence Surveil-  
 5 lance Act of 1978 (50 U.S.C. 1801(e)(1)) is amended in  
 6 the matter preceding subparagraph (A) by inserting “(in-  
 7 cluding protection by use of law enforcement methods such  
 8 as criminal prosecution)” after “protect”.

9 **Subtitle B—Other Matters**

10 **SEC. 211. ACCESS TO BUSINESS RECORDS FOR INVESTIGA-**  
 11 **TIONS UNDER FOREIGN INTELLIGENCE SUR-**  
 12 **VEILLANCE ACT OF 1978.**

13 (a) CLARIFICATION OF ACCESS.—(1) Subsection  
 14 (a)(1) of section 501 of the Foreign Intelligence Surveil-  
 15 lance Act of 1978 (50 U.S.C. 1861) is amended—

16 (A) by striking “items) for” and inserting  
 17 “items) relevant to”; and

18 (B) by striking “clandestine intelligence activi-  
 19 ties,” and all that follows through the period and in-  
 20 serting “clandestine intelligence activities.”.

21 (2) Subsection (b)(2) of such section is amended by  
 22 striking “sought for” and inserting “relevant to”.

23 (b) LIMITATIONS ON DISCLOSURE.—Such section is  
 24 further amended by striking subsection (d) and inserting  
 25 the following new subsection (d):

1 “(d)(1) No person shall disclose to any other person  
2 that the Federal Bureau of Investigation has sought or  
3 obtained tangible things pursuant to an order under this  
4 section other than to—

5 “(A) those persons to whom such disclosure is  
6 necessary to comply with such order;

7 “(B) an attorney to obtain legal advice or as-  
8 sistance with respect to the production of things in  
9 response to the order; or

10 “(C) other persons as permitted by the Director  
11 of the Federal Bureau of Investigation or the des-  
12 ignee of the Director.

13 “(2)(A) Any person having received a disclosure  
14 under subparagraph (A), (B), or (C) of paragraph (1)  
15 shall be subject to the prohibitions on disclosure under  
16 that paragraph.

17 “(B) Any person making a further disclosure author-  
18 ized by subparagraph (A), (B), or (C) of paragraph (1)  
19 shall notify the person to whom the disclosure is made  
20 of the prohibitions on disclosure under this subsection.

21 “(3) An order under this section shall notify, in writ-  
22 ing, the person to whom the order is directed of the non-  
23 disclosure requirements under this subsection.”.

24 (c) MINIMIZATION OF RETENTION AND DISSEMINA-  
25 TION OF TANGIBLE THINGS.—Such section is further

1 amended by adding at the end the following new sub-  
2 section:

3 “(f) The Attorney General shall adopt minimization  
4 procedures governing the retention and dissemination by  
5 the Federal Bureau of Investigation of any tangible things  
6 received by the Bureau in response to an order under this  
7 section.”.

8 (d) JUDICIAL REVIEW.—Such section is further  
9 amended by adding at the end the following new sub-  
10 section:

11 “(g)(1) Following the receipt of an order under this  
12 section, but before the production of tangible things under  
13 the order, the person charged with production of such tan-  
14 gible things may, in the Foreign Intelligence Surveillance  
15 Court, petition to modify or set aside the order. Such peti-  
16 tion shall be filed in a manner consistent with paragraph  
17 (2).

18 “(2)(A) All proceedings under this subsection shall  
19 be closed consistent with the requirements of subsection  
20 (d) and subject to any right to an open hearing in a crimi-  
21 nal proceeding.

22 “(B) All petitions, filings, records, orders, and sub-  
23 poenas with respect to any proceedings under this sub-  
24 section shall be filed and maintained under seal.

1           “(3)(A) In any proceedings under this subsection, the  
2 Foreign Intelligence Surveillance Court shall, upon re-  
3 quest of the Federal Government, review any submission,  
4 or portion thereof, of the Federal Government containing  
5 classified information, or other sensitive information the  
6 disclosure of which would harm national security, *ex parte*  
7 and *in camera*.

8           “(B) If the Court reviews any submission of the Fed-  
9 eral Government under subparagraph (A) *ex parte* and *in*  
10 *camera*, the Court may disclose the information subject  
11 to such review to the person filing the petition concerned,  
12 under appropriate security procedures and protective or-  
13 ders, only where such disclosure is necessary to make an  
14 accurate determination for purposes of paragraph (5).

15           “(4) The Foreign Intelligence Surveillance Court may  
16 modify or set aside a nondisclosure requirement imposed  
17 under subsection (d) at the request of the person charged  
18 with production of tangible things pursuant to an order  
19 under this section, unless the Director of the Federal Bu-  
20 reau of Investigation certifies to the Court that disclosure  
21 may result in a danger to the national security of the  
22 United States.

23           “(5) The Foreign Intelligence Surveillance Court may  
24 modify or set aside an order under this section if compli-  
25 ance with the order would be unreasonable or oppressive.

1       “(6) The Foreign Intelligence Surveillance Court  
2 shall adopt and publish procedures governing petitions  
3 filed under this subsection.

4       “(7) In this subsection, the term ‘Foreign Intelligence  
5 Surveillance Court’ means the court established by section  
6 103(a).”.

7       (e) CONGRESSIONAL OVERSIGHT.—Section 502(b) of  
8 such Act (50 U.S.C. 1862(b)) is amended—

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

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

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

15           “(3) the total number of applications made for  
16 orders approving requests for the production of tan-  
17 gible things under section 501, and the total number  
18 of orders either granted, modified, or denied, when  
19 the application or order involved each of the fol-  
20 lowing:

21           “(A) The production of tangible things  
22 from a library, as defined in section 213(2) of  
23 the Library Services and Technology Act (20  
24 U.S.C. 9122(2)).



1           “(B) The production of tangible things  
2           from a person or entity primarily engaged in  
3           the sale, rental, or delivery of books, journals,  
4           magazines, or other similar forms of commu-  
5           nication whether in print or digitally.

6           “(C) The production of records related to  
7           the purchase of a firearm, as defined in section  
8           921(a)(3) of title 18, United States Code.

9           “(D) The production of health information,  
10          as defined in section 1171(4) of the Social Se-  
11          curity Act (42 U.S.C. 1320d(4)).

12          “(E) The production of taxpayer return in-  
13          formation, return, or return information, as de-  
14          fined in section 6103(b) of the Internal Rev-  
15          enue Code of 1986 (26 U.S.C. 6103(b)).”.

16 **SEC. 212. NATIONAL SECURITY MAIL COVERS.**

17          (a) IN GENERAL.—The Foreign Intelligence Surveil-  
18          lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

19                 (1) by striking title VII; and

20                 (2) by adding at the end the following new title

21          VII:

22                 “TITLE VII—NATIONAL SECURITY MAIL  
23                                 COVERS

24                                 “DEFINITIONS

25                                 “SEC. 701. In this title:

1           “(1) The terms ‘foreign intelligence informa-  
2           tion’, ‘foreign power’, ‘international terrorism’, and  
3           ‘United States person’ have the meaning given such  
4           terms in section 101.

5           “(2)(A) The term ‘mail cover’ means the proc-  
6           ess by which—

7                   “(i) a nonconsensual record is made of any  
8                   data appearing on the outside cover of any  
9                   sealed mail or unsealed mail delivered to an ad-  
10                  dress, forwarding address, or Post Office box;  
11                  or

12                  “(ii) a record is made of the contents of  
13                  any unsealed mail as authorized by law.

14           “(B) The term does not include any tran-  
15           scription, photograph, photocopy, or any other fac-  
16           simile of the image of the contents of any sealed  
17           mail.

18           “(C) The term also does not include the making  
19           of a record of the data appearing on the outside  
20           cover of any sealed mail or unsealed mail, or the  
21           contents of any unsealed mail, mailed between the  
22           target and the target’s known attorney.

23           “(3) The term ‘record’ means—

24                   “(A) in the case of any mail, a tran-  
25                   scription, photograph, photocopy, or other fac-

1 simile of the image of the outside contents,  
2 cover, envelope, or wrapper of such mail; and

3 “(B) in the case of unsealed mail, a tran-  
4 scription, photograph, photocopy, or other fac-  
5 simile of the image of the contents of such mail.

6 “(4) The term ‘sealed mail’ means mail on  
7 which appropriate postage is paid, and which under  
8 postal laws and regulations is included within a class  
9 of mail maintained by the United States Postal  
10 Service for the transmission of mail sealed against  
11 inspection, including first class mail, express mail,  
12 international letter mail, and mailgram messages.

13 “(5) The term ‘unsealed mail’ means mail on  
14 which appropriate postage for sealed mail has not  
15 been paid and which under postal laws or regula-  
16 tions is not included within a class of mail main-  
17 tained by the United States Postal Service for the  
18 transmission of mail sealed against inspection, in-  
19 cluding second class mail, third class mail, and  
20 fourth class mail, and international parcel post mail.

21 “NATIONAL SECURITY MAIL COVERS

22 “SEC. 702. (a) DUTY TO PROVIDE.—(1) The United  
23 States Postal Service shall comply with each request for  
24 mail covers made under subsection (b).

25 “(2) In complying under paragraph (1) with a re-  
26 quest for mail covers with respect to a target specified in

1 the request, the United States Postal Service shall provide  
2 available records of all mail matter specified in the request  
3 that is delivered to the address, forwarding address, or  
4 Post Office box of the target as specified in the request.

5 “(3) In complying under paragraph (1) with a re-  
6 quest for mail covers with respect to a target specified in  
7 the request, the United States Postal Service shall, if re-  
8 quested, provide available records of all outgoing mail  
9 matter from such target.

10 “(4) Mechanical reproduction shall be used to make  
11 records under this subsection, unless circumstances render  
12 such reproduction impracticable.

13 “(b) REQUESTS FOR MAIL COVERS.—(1) The Direc-  
14 tor of the Federal Bureau of Investigation, or a designee  
15 of the Director in a position not lower than Deputy Assist-  
16 ant Director at Bureau headquarters or Special Agent in  
17 Charge (including an ‘acting’ Special Agent in Charge) in  
18 a Bureau field office designated by the Director, may re-  
19 quest mail covers under subsection (a) if the Director or  
20 such designee certifies in writing to the United States  
21 Postal Service that such mail covers are relevant to an  
22 authorized investigation to obtain foreign intelligence in-  
23 formation not concerning a United States person or to  
24 protect against international terrorism or clandestine in-  
25 telligence activities.

1       “(2) The Postmaster General shall designate officers  
2 and employees of the United States Postal Service who  
3 are eligible to receive requests under paragraph (1).

4       “(3) An investigation conducted under this section  
5 shall—

6           “(A) be conducted under guidelines approved by  
7 the Attorney General under Executive Order 12333  
8 (or a successor order); and

9           “(B) not be conducted concerning a United  
10 States person solely on the basis of activities pro-  
11 tected by the first amendment to the Constitution of  
12 the United States.

13       “(c) CONTENTS OF REQUEST.—In addition to the  
14 certification required under subsection (b) with respect to  
15 a request for mail covers described in that subsection, a  
16 request for mail covers under subsection (b) shall speci-  
17 fy—

18           “(1) the name and address of the Federal Bu-  
19 reau of Investigation official making the request;

20           “(2) the authority of such official to make the  
21 request;

22           “(3) the name, if known, of the target of the  
23 request;

24           “(4) the name, if known, of the known attorney  
25 of the target;

1           “(5) at least one, and any additional (if  
2           known), of the address, forwarding address, or Post  
3           Office box of the target;

4           “(6) the classes of mail to be covered by the re-  
5           quest;

6           “(7) whether incoming mail, outgoing mail, or  
7           both are to be covered by the request;

8           “(8) the duration of the request; and

9           “(9) the name and phone number of a local of-  
10          ficial of the Bureau who will facilitate the collection  
11          of the records produced in response to the request.

12          “(d) DURATION.—(1) Except as provided in para-  
13          graph (2), no request for mail covers under subsection (b)  
14          shall remain in force longer than 120 consecutive days.

15          “(2) In the case of a request for mail covers under  
16          subsection (b) targeted against a foreign power, the re-  
17          quest shall remain in force for the lesser of—

18                  “(A) the period specified in the request; or

19                  “(B) one year.

20          “(3)(A) A request under subsection (b) may be ex-  
21          tended, but only upon submittal of a new request under  
22          this section.

23          “(B) Except as provided in subparagraph (C), the pe-  
24          riod of extension under this paragraph of a request for  
25          mail covers shall not be more than 120 days.

1       “(C) The period of extension under this paragraph  
2 of a request for mail covers targeted against a foreign  
3 power or an agent of a foreign power (as defined in section  
4 101(b)(1)(A)) shall be for the lesser of—

5               “(i) the period specified in the request for ex-  
6       tension under this paragraph; or

7               “(ii) one year.

8       “(e) MINIMIZATION.—The Attorney General shall  
9 adopt minimization procedures governing the retention  
10 and dissemination by the Federal Bureau of Investigation  
11 of any records received by the Bureau in response to a  
12 request under subsection (b).

13       “(f) NONDISCLOSURE REQUIREMENTS.—(1) No offi-  
14 cer or employee of the United States Postal Service, or  
15 agent thereof, shall disclose to any person that the Federal  
16 Bureau of Investigation has sought or received records  
17 under a request under subsection (b) other than to—

18               “(A) those persons to whom such disclosure is  
19       necessary to comply with the request;

20               “(B) an attorney, who shall be an officer or em-  
21       ployee of the United States Postal Service, to obtain  
22       legal advice or assistance with respect to the produc-  
23       tion of records in response to the request; or

1           “(C) other persons as permitted by the Director  
2           of the Federal Bureau of Investigation or a designee  
3           of the Director under subsection (b).

4           “(2)(A) Any person having received a disclosure  
5           under subparagraph (A), (B), or (C) of paragraph (1)  
6           shall be subject to the prohibitions on disclosure under  
7           that paragraph.

8           “(B) Any person making a further disclosure author-  
9           ized by subparagraph (A), (B), or (C) of paragraph (1)  
10          shall notify the person to whom the disclosure is made  
11          of the prohibitions on disclosure under this subsection.

12          “(3) A request under subsection (b) shall notify, in  
13          writing, the person to whom the request is directed of the  
14          nondisclosure requirements under this subsection.

15                                “CONGRESSIONAL OVERSIGHT

16          “SEC. 703. (a) SEMIANNUAL NOTICE ON USE OF  
17          MAIL COVERS.—On a semiannual basis, the Attorney  
18          General shall fully inform the Select Committee on Intel-  
19          ligence of the Senate and the Permanent Select Committee  
20          on Intelligence of the House of Representatives concerning  
21          all requests for, and use of, national security mail covers  
22          pursuant to this title.

23          “(b) SEMIANNUAL REPORT ON MAIL COVERS RE-  
24          QUESTED.—On a semiannual basis, the Attorney General  
25          shall submit to the committees of Congress referred to in  
26          subsection (a) and to the Committees on the Judiciary of



1 the Senate and the House of Representatives a report set-  
 2 ting forth, with respect to the preceding six-month period,  
 3 the total number of national security mail covers requested  
 4 under this title.”.

5 (b) CLERICAL AMENDMENT.—The table of contents  
 6 for that Act is amended by striking the items relating to  
 7 title VII and section 701 and inserting the following new  
 8 items:

“TITLE VII—NATIONAL SECURITY MAIL COVERS

“Sec. 701. Definitions.

“Sec. 702. National security mail covers.

“Sec. 703. Congressional oversight.”.

9 **SEC. 213. ADMINISTRATIVE SUBPOENAS IN NATIONAL SE-**  
 10 **CURITY INVESTIGATIONS.**

11 (a) IN GENERAL.—The Foreign Intelligence Surveil-  
 12 lance Act of 1978, as amended by section 212(a) of this  
 13 Act, is further amended by adding at the end the following  
 14 new title:

15 “TITLE VIII—ADMINISTRATIVE SUBPOENAS IN  
 16 NATIONAL SECURITY INVESTIGATIONS

17 “DEFINITIONS

18 “SEC. 801. In this title:

19 “(1) The terms ‘international terrorism’, ‘for-  
 20 eign intelligence information’, ‘Attorney General’,  
 21 and ‘United States person’ have the meaning given  
 22 such terms in section 101.

1           “(2) The term ‘Foreign Intelligence Surveil-  
2           lance Court’ means the court established by section  
3           103(a).

4                           “AUTHORIZATION TO ISSUE

5           “SEC. 802. (a) AUTHORIZATION TO ISSUE.—

6                   “(1) IN GENERAL.—The Attorney General, or a  
7           designee of the Attorney General under paragraph  
8           (2), may issue in writing and caused to be served a  
9           subpoena requiring—

10                           “(A) the production of any records or  
11           other materials that are relevant to an author-  
12           ized investigation—

13                                   “(i) to obtain foreign intelligence in-  
14           formation not concerning a United States  
15           person; or

16                                   “(ii) to protect against international  
17           terrorism or clandestine intelligence activi-  
18           ties; and

19                           “(B) a certification by the custodian of  
20           such records or other materials concerning the  
21           production and authentication of such records  
22           or other materials.

23                   “(2) DESIGNEES.—A designee of the Attorney  
24           General under this paragraph is any official des-  
25           ignated by the Attorney General from officials as  
26           follows:

1           “(A) Any official of the Department of  
2 Justice in a position not lower than Assistant  
3 Attorney General which position has responsi-  
4 bility for national security investigations.

5           “(B) Any United States Attorney.

6           “(C) Any Assistant United States Attorney  
7 with responsibility for national security inves-  
8 tigations.

9           “(D) The Director of the Federal Bureau  
10 of Investigation.

11           “(E) Any official of the Federal Bureau of  
12 Investigation in a position not lower than Dep-  
13 uty Assistant Director, at Bureau headquarters,  
14 or a Special Agent in Charge (including an ‘act-  
15 ing’ Special Agent in Charge), at a Bureau field  
16 office.

17           “(b) GOVERNING AUTHORITIES.—An investigation  
18 conducted under this section shall—

19           “(1) be conducted under guidelines approved by  
20 the Attorney General under Executive Order 12333  
21 (or a successor order); and

22           “(2) not be conducted concerning a United  
23 States person solely upon the basis of activities pro-  
24 tected by the first amendment to the Constitution of  
25 the United States.

1       “(c) RECORDS NOT SUBJECT TO PRODUCTION.—  
2 Any documentary evidence that would be privileged from  
3 disclosure if demanded by a subpoena duces tecum issued  
4 by a court of the United States in aid of a grand jury  
5 investigation of espionage or international terrorism shall  
6 be privileged from disclosure if demanded by a subpoena  
7 issued under this section.

8                       “CONTENTS OF SUBPOENAS

9       “SEC. 803. A subpoena issued under section 802  
10 shall describe the records or items required to be produced  
11 and prescribe a return date within a reasonable period of  
12 time within which such records or items can be assembled  
13 and made available and at a location not more than 500  
14 miles distant from the place where the subpoena was  
15 served.

16                       “PRODUCTION OF RECORDS

17       “SEC. 804. The production of records under a sub-  
18 poena issued under section 802 may be required from any  
19 place in any State, or in any territory or other place sub-  
20 ject to the jurisdiction of the United States.

21                       “SERVICE

22       “SEC. 805. (a) IN GENERAL.—A subpoena issued  
23 under section 802 may be served by any person designated  
24 in the subpoena as the agent of service.

25       “(b) SERVICE OF SUBPOENA.—

1           “(1) NATURAL PERSON.—Service of a subpoena  
2 upon a natural person may be made by personal de-  
3 livery of the subpoena to that person, or by certified  
4 mail with return receipt requested.

5           “(2) BUSINESS ENTITIES AND ASSOCIATIONS.—  
6 Service of a subpoena may be made upon a domestic  
7 or foreign corporation, or upon a partnership or  
8 other unincorporated association that is subject to  
9 suit under a common name, by delivering the sub-  
10 poena to an officer, to a managing or general agent,  
11 or to any other agent authorized by appointment or  
12 by law to receive service of process.

13           “(3) PROOF OF SERVICE.—The affidavit of the  
14 person serving the subpoena entered by that person  
15 on a true copy thereof shall be sufficient proof of  
16 service.

17   “ENFORCEMENT

18           “SEC. 806. (a) ENFORCEMENT.—

19           “(1) IN GENERAL.—In the case of a failure or  
20 refusal to obey a subpoena issued under section 802  
21 to any person or entity, the Attorney General may  
22 invoke the aid of the Foreign Intelligence Surveil-  
23 lance Court or any court of the United States within  
24 the jurisdiction of which the investigation concerned  
25 is carried on, or the subpoenaed person resides, car-

1       ries on business, or may be found, to compel compli-  
2       ance with the subpoena.

3               “(2) VENUE FOR PROCEEDINGS.—If a person  
4       or entity files, in a court other than the court in  
5       which the Government files for enforcement pro-  
6       ceedings under paragraph (1), a petition under sec-  
7       tion 808 for judicial review of a subpoena issued  
8       under section 802 before the Government files for  
9       such enforcement proceedings under paragraph (1),  
10      the court in which such enforcement proceedings are  
11      initiated under paragraph (1) shall dismiss, without  
12      prejudice, such enforcement proceedings or transfer  
13      further proceedings under this section to the court  
14      in which such judicial review proceedings have been  
15      initiated.

16              “(b) ORDER.—A court of the United States referred  
17      to in subsection (a) may issue an order requiring the sub-  
18      poenaed person to produce records or items in accordance  
19      with the subpoena, to appear, or to give testimony relating  
20      to compliance with the subpoena. Any failure to obey the  
21      order of the court may be punished by the court as con-  
22      tempt thereof.

23              “(c) SERVICE OF PROCESS.—Any process under this  
24      subsection may be served in any judicial district in which  
25      the person may be found.

1 “NONDISCLOSURE REQUIREMENTS

2 “SEC. 807. (a) IN GENERAL.—If the Attorney Gen-  
3 eral, or a designee of the Attorney General under section  
4 802, certifies that a danger to the national security of the  
5 United States may result, no person shall disclose to any  
6 other person that a subpoena was received or records were  
7 provided pursuant to this title, other than to—

8 “(1) those persons to whom such disclosure is  
9 necessary to comply with the subpoena;

10 “(2) an attorney to obtain legal advice or as-  
11 sistance with respect to the production of records in  
12 response to the subpoena; or

13 “(3) other persons as permitted by the Attorney  
14 General or the designee of the Attorney General.

15 “(b) NOTICE OF NONDISCLOSURE REQUIRE-  
16 MENTS.—

17 “(1) IN GENERAL.—A subpoena under section  
18 802 shall notify, in writing, the person to whom the  
19 subpoena is directed of the nondisclosure require-  
20 ments under subsection (a).

21 “(2) NOTICE UNDER FURTHER DISCLOSURES.—  
22 Any person making a further disclosure authorized  
23 by paragraph (1), (2), or (3) of subsection (a) shall  
24 notify the person to whom the disclosure is made of  
25 the prohibitions on disclosure under this section.

1       “(c) FURTHER APPLICABILITY OF NONDISCLOSURE  
2 REQUIREMENTS.—Any person who receives a disclosure  
3 under this section shall be subject to the prohibitions on  
4 disclosure under subsection (a).

5       “(d) ENFORCEMENT OF NONDISCLOSURE REQUIRE-  
6 MENTS.—Whoever knowingly violates subsection (a) or (c)  
7 shall be imprisoned for not more than 1 year, fined not  
8 more than \$10,000, or both, and if the violation is com-  
9 mitted with the intent to obstruct an investigation de-  
10 scribed in section 802(a)(1), shall be imprisoned for not  
11 more than 5 years, fined not more than \$50,000, or both.

12       “(e) TERMINATION OF NONDISCLOSURE REQUIRE-  
13 MENTS.—If the Attorney General, or a designee of the At-  
14 torney General under section 802, concludes with respect  
15 to any subpoena issued under section 802 and for which  
16 a certification has been made under subsection (a) that  
17 nondisclosure is no longer justified by a danger to the na-  
18 tional security of the United States—

19               “(1) the provisions of subsections (a) through  
20 (d) of this section shall no longer apply with respect  
21 to such subpoena; and

22               “(2) an officer, employee, or agency of the  
23 United States shall notify the relevant person that  
24 such provisions shall no longer apply with respect to  
25 such subpoena.



1 “JUDICIAL REVIEW

2 “SEC. 808. (a) JUDICIAL REVIEW.—

3 “(1) IN GENERAL.—At any time before the re-  
4 turn date specified in a subpoena issued under sec-  
5 tion 802, the person or entity subpoenaed may, in  
6 the Foreign Intelligence Surveillance Court or the  
7 district court for the district in which that person or  
8 entity does business or resides, petition for an order  
9 modifying or setting aside the subpoena. Such peti-  
10 tion shall be filed in a manner consistent with para-  
11 graph (3).

12 “(2) VENUE FOR PROCEEDINGS.—If the Gov-  
13 ernment files, in a court other than the court in  
14 which judicial review proceedings are initiated under  
15 paragraph (1), an enforcement action under section  
16 806 before a petition for judicial review proceedings  
17 is filed under paragraph (1), the court in which such  
18 petition is filed under paragraph (1) shall dismiss,  
19 without prejudice, such judicial review proceedings  
20 or transfer further proceedings under this section to  
21 the court in which such enforcement proceedings  
22 have been initiated.

23 “(3) CLOSED PROCEEDINGS.—If a certification  
24 has been made under section 807(a) with respect to  
25 a subpoena, and the nondisclosure requirements of

1 section 807 continue to apply with respect to such  
2 subpoena—

3 “(A) all proceedings under this section  
4 shall be closed to the extent necessary to ensure  
5 nondisclosure of the issuance of the subpoena,  
6 subject to any right to an open hearing in a  
7 criminal proceeding; and

8 “(B) all petitions, filings, records, orders,  
9 and subpoenas with respect to such proceedings  
10 shall be filed and maintained under seal.

11 “(b) REVIEW OF GOVERNMENT SUBMISSIONS.—

12 “(1) REQUIREMENTS REGARDING CERTAIN IN-  
13 FORMATION.—In all proceedings under this section,  
14 the court shall, upon request of the Federal Govern-  
15 ment, review any submission of the Federal Govern-  
16 ment, or portion thereof, containing classified infor-  
17 mation, or other sensitive information the disclosure  
18 of which would harm national security, ex parte and  
19 in camera.

20 “(2) LIMITED AUTHORITY TO DISCLOSE.—If  
21 the court reviews any submission of the Federal  
22 Government under paragraph (1) ex parte and in  
23 camera, the court may disclose the information sub-  
24 ject to such review to the person filing the petition  
25 concerned, under appropriate security procedures

1 and protective orders, only where such disclosure is  
2 necessary to make an accurate determination for  
3 purposes of subsection (d).

4 “(c) MODIFICATION OF NONDISCLOSURE REQUIRE-  
5 MENTS.—A court may modify or set aside a nondisclosure  
6 requirement imposed under section 807 at the request of  
7 a person to whom a subpoena has been directed under sec-  
8 tion 802, unless the Attorney General or the Director of  
9 the Federal Bureau of Investigation certifies to the court  
10 that disclosure may result in a danger to the national se-  
11 curity of the United States.

12 “(d) STANDARD OF REVIEW.—A court may modify  
13 or set aside a subpoena under this section if compliance  
14 with the subpoena would be unreasonable or oppressive.

15 “IMMUNITY FROM CIVIL LIABILITY

16 “SEC. 809. Any person, including any officer, agent, or  
17 employee of a non-natural person, who in good faith pro-  
18 duces the records or items requested in a subpoena issued  
19 under section 802 shall not be liable in any court of the  
20 United States or any State to any customer or other per-  
21 son for such production, or for nondisclosure of that pro-  
22 duction to the customer or other person.

23 “GUIDELINES AND PROCEDURES

24 “SEC. 810. (a) IN GENERAL.—The Attorney General,  
25 in consultation with the Director of the Federal Bureau  
26 of Investigation, shall, by regulation, establish such guide-

1 lines as are necessary to ensure the effective implementa-  
2 tion of this title.

3 “(b) MINIMIZATION.—The Attorney General shall  
4 adopt specific minimization procedures governing the re-  
5 tention and dissemination by the Federal Bureau of Inves-  
6 tigation of any records received by the Bureau in response  
7 to a subpoena under this title.

8 “(c) PROCEDURES.—The Foreign Intelligence Sur-  
9 veillance Court shall adopt and publish procedures gov-  
10 erning the enforcement, under section 806, and judicial  
11 review, under section 808, of subpoenas under this title.

12 “CONGRESSIONAL OVERSIGHT

13 “SEC. 811. (a) SEMIANNUAL NOTICE ON USE OF AD-  
14 MINISTRATIVE SUBPOENAS.—On a semiannual basis, the  
15 Attorney General shall fully inform the Select Committee  
16 on Intelligence of the Senate and the Permanent Select  
17 Committee on Intelligence of the House of Representatives  
18 concerning all requests for, and uses of, administrative  
19 subpoenas pursuant to this title.

20 “(b) SEMIANNUAL REPORT ON ADMINISTRATIVE  
21 SUBPOENAS REQUESTED.—On a semiannual basis, the  
22 Attorney General shall submit to the committees of Con-  
23 gress referred to in subsection (a) and to the Committees  
24 on the Judiciary of the Senate and the House of Rep-  
25 resentatives a report setting forth, with respect to the pre-  
26 ceding six-month period—

1           “(1) the total number of administrative sub-  
2           poenas issued under this title;

3           “(2) the total number of certifications under  
4           section 807(a);

5           “(3) the total number of petitions filed under  
6           section 808;

7           “(4) the total number of petitions modified or  
8           set aside pursuant to section 808(a); and

9           “(5) the total number of administrative sub-  
10          poenas issued under this title requiring the produc-  
11          tion of any records or other materials from or with  
12          respect to each of the following:

13                 “(A) From a library, as defined in section  
14                 213(2) of the Library Services and Technology  
15                 Act (20 U.S.C. 9122(2)).

16                 “(B) From a person or entity primarily en-  
17                 gaged in the sale, rental, or delivery of books,  
18                 journals, magazines, or other similar forms of  
19                 communication whether in print or digitally.

20                 “(C) With respect to the purchase of a  
21                 firearm, as defined in section 921(a)(3) of title  
22                 18, United States Code.

23                 “(D) With respect to health information,  
24                 as defined in section 1171 of the Social Secu-  
25                 rity Act (42 U.S.C. 1320d(4)).

1           “(E) With respect to taxpayer return in-  
 2           formation, return, or return information, as de-  
 3           fined in section 6103(b) of the Internal Rev-  
 4           enue Code of 1986 (26 U.S.C. 6103(b)).”.

5           (b) CLERICAL AMENDMENT.—The table of contents  
 6 for that Act, as amended by section 212(b) of this Act,  
 7 is further amended adding at the end the following new  
 8 items:

“TITLE VIII—ADMINISTRATIVE SUBPOENAS IN NATIONAL  
 SECURITY INVESTIGATIONS

- “Sec. 801. Definitions.
- “Sec. 802. Authorization to issue.
- “Sec. 803. Contents of subpoena.
- “Sec. 804. Production of records.
- “Sec. 805. Service.
- “Sec. 806. Enforcement.
- “Sec. 807. Nondisclosure requirements.
- “Sec. 808. Judicial review.
- “Sec. 809. Immunity from civil liability.
- “Sec. 810. Guidelines and procedures.
- “Sec. 811. Congressional oversight.”.

9           (c) IMPLEMENTATION.—(1) The Attorney General  
 10 shall issue the guidelines required by section 810(a) of the  
 11 Foreign Intelligence Surveillance Act of 1978, as added  
 12 by subsection (a), not later than 180 days after the date  
 13 of the enactment of this Act.

14           (2) Not later than 180 days after the date of the  
 15 issuance of the guidelines described in paragraph (1), the  
 16 Federal Bureau of Investigation shall use the authority  
 17 for administrative subpoenas provided in title VIII of the

1 Foreign Intelligence Surveillance Act of 1978, as so  
2 added—

3 (A) to access certain communication service  
4 provider records in lieu of the authority in section  
5 2709 of title 18, United States Code;

6 (B) to obtain financial institution customer  
7 records in lieu of the authority in section 1114 of  
8 the Right to Financial Privacy Act (12 U.S.C.  
9 3414);

10 (C) to obtain financial information, records,  
11 and consumer reports in lieu of the authority in sec-  
12 tion 802 of the National Security Act of 1947 (50  
13 U.S.C. 436);

14 (D) to obtain certain financial information and  
15 consumer reports in lieu of the authority in section  
16 625 of the Fair Credit Reporting Act (15 U.S.C.  
17 1681u); and

18 (E) to obtain credit agency consumer records  
19 for counterterrorism investigations in lieu of the au-  
20 thority in section 627 of the Fair Credit Reporting  
21 Act (15 U.S.C. 1681v).

22 (d) REPORT.—(1) The Attorney General and Direc-  
23 tor of National Intelligence shall, in consultation with the  
24 heads of other affected departments and agencies of the  
25 United States Government, examine the continuing need

1 for the authority in title V of the Foreign Intelligence Sur-  
2 veillance Act of 1978 (50 U.S.C. 1861 et seq.), and the  
3 authority to utilize so-called “national security letters”  
4 (including requests under the authorities referred to in  
5 subparagraphs (A) through (E) of subsection (c)(2)), in  
6 light of the amendments made by this section.

7 (2) Not later than one year after the date of the en-  
8 actment of this Act, the Attorney General and the Direc-  
9 tor shall jointly submit to the appropriate committees of  
10 Congress a report on the examination conducted under  
11 paragraph (1). The report shall be submitted in unclassi-  
12 fied form, but may include a classified annex.

13 (3) In this subsection, the term “appropriate commit-  
14 tees of Congress” means—

15 (A) the Select Committee on Intelligence and  
16 the Committee on the Judiciary of the Senate; and

17 (B) the Permanent Select Committee on Intel-  
18 ligence and the Committee on the Judiciary of the  
19 House of Representatives.

20 (e) SUNSET.—(1) Except as provided in paragraph  
21 (2), this section, and the amendments made by this sec-  
22 tion, shall cease to have effect on December 31, 2009.

23 (2) With respect to any particular foreign intelligence  
24 investigation that began before the date on which the pro-



1 visions referred to in paragraph (1) cease to have effect,  
 2 such provisions shall continue in effect.

3 **SEC. 214. MODIFICATION OF SEMIANNUAL REPORT RE-**  
 4 **QUIREMENT ON ACTIVITIES UNDER FOREIGN**  
 5 **INTELLIGENCE SURVEILLANCE ACT OF 1978.**

6 Paragraph (2) of section 108(a) of the Foreign Intel-  
 7 ligence Surveillance Act of 1978 (50 U.S.C. 1808(a)) is  
 8 amended to read as follows:

9 “(2) Each report under the first sentence of para-  
 10 graph (1) shall include a description of each criminal case  
 11 in which information acquired under this Act has been au-  
 12 thorized for use at trial during the period covered by such  
 13 report.”.

14 **SEC. 215. AUTHORITY FOR DISCLOSURE OF ADDITIONAL IN-**  
 15 **FORMATION IN CONNECTION WITH ORDERS**  
 16 **FOR PEN REGISTERS OR TRAP AND TRACE**  
 17 **DEVICES UNDER FOREIGN INTELLIGENCE**  
 18 **SURVEILLANCE ACT OF 1978.**

19 Section 402(d)(2) of the Foreign Intelligence Surveil-  
 20 lance Act of 1978 (50 U.S.C. 1842(d)(2)) is amended—

21 (1) in subparagraph (A)—

22 (A) in clause (ii), by adding “and” at the  
 23 end; and

24 (B) in clause (iii), by striking the period at  
 25 the end and inserting a semicolon; and

1           (2) in subparagraph (B)(iii), by striking the pe-  
2           riod at the end and inserting “; and”; and

3           (3) by adding at the end the following new sub-  
4           paragraph:

5           “(C) shall direct that, upon the request of the  
6           applicant, the provider of a wire or electronic com-  
7           munication service shall disclose to the Federal offi-  
8           cer using the pen register or trap and trace device  
9           covered by the order—

10           “(i) in the case of the customer or sub-  
11           scriber using the service covered by the order  
12           (for the period specified by the order)—

13           “(I) the name of the customer or sub-  
14           scriber;

15           “(II) the address of the customer or  
16           subscriber;

17           “(III) the telephone or instrument  
18           number, or other subscriber number or  
19           identifier, of the customer or subscriber,  
20           including any temporarily assigned net-  
21           work address or associated routing or  
22           transmission information;

23           “(IV) the length of the provision of  
24           service by such provider to the customer or

1 subscriber and the types of services utilized  
2 by the customer or subscriber;

3 “(V) in the case of a provider of local  
4 or long distance telephone service, any  
5 local or long distance telephone records of  
6 the customer or subscriber;

7 “(VI) if applicable, any records re-  
8 flecting period of usage (or sessions) by  
9 the customer or subscriber; and

10 “(VII) any mechanisms and sources  
11 of payment for such service, including the  
12 number of any credit card or bank account  
13 utilized for payment for such service; and

14 “(ii) if available, with respect to any cus-  
15 tomer or subscriber of incoming or outgoing  
16 communications to or from the service covered  
17 by the order—

18 “(I) the name of such customer or  
19 subscriber;

20 “(II) the address of such customer or  
21 subscriber;

22 “(III) the telephone or instrument  
23 number, or other subscriber number or  
24 identifier, of such customer or subscriber,  
25 including any temporarily assigned net-

1 work address or associated routing or  
2 transmission information; and

3 “(IV) the length of the provision of  
4 service by such provider to such customer  
5 or subscriber and the types of services uti-  
6 lized by such customer or subscriber.”.

7 **SEC. 216. SURVEILLANCE OF CERTAIN NON-UNITED STATES**  
8 **PERSONS UNDER FOREIGN INTELLIGENCE**  
9 **SURVEILLANCE ACT OF 1978.**

10 (a) TREATMENT AS AGENT OF FOREIGN POWER OF  
11 NON-UNITED STATES PERSONS WHO AID OR ABET CER-  
12 TAIN TERRORISTS AND SABOTEURS.—Section  
13 101(b)(1)(A) of the Foreign Intelligence Surveillance Act  
14 of 1978 (50 U.S.C. 1801(b)(1)(A)) is amended by insert-  
15 ing “, knowingly aids or abets any person in the conduct  
16 of activities described in paragraph (2)(C) for or on behalf  
17 of a foreign power, as defined in subsection (a)(4), or  
18 knowingly conspires with any person engaged in activities  
19 described in paragraph (2)(C) for or on behalf of a foreign  
20 power, as defined in subsection (a)(4)” before the semi-  
21 colon.

22 (b) DURATION OF PEN REGISTERS AND TRAP AND  
23 TRACE DEVICES.—Subsection (e) of section 402 of such  
24 Act (50 U.S.C. 1842) is amended to read as follows:

1       “(e)(1)(A) Except as provided in subparagraphs (B)  
2 and (C), an order issued under this section shall authorize  
3 the installation and use of a pen register or trap and trace  
4 device for a period not to exceed 90 days.

5       “(B) In any case in which the applicant for an order  
6 under this section certifies that the information likely to  
7 be obtained is foreign intelligence information concerning  
8 a foreign power (as defined in paragraph (1), (2), or (3)  
9 of section 101(a)), the order may be for the period speci-  
10 fied in the application or for one year, whichever is less.

11       “(C) In any case in which the applicant for an order  
12 under this section certifies that the information likely to  
13 be obtained is foreign intelligence information concerning  
14 an agent of a foreign power (as defined in section  
15 101(b)(1)(A)), the order may be for the period specified  
16 in the application or for 120 days, whichever is less.

17       “(2)(A) Extensions of an order under this section  
18 may be granted, but only upon application for an order  
19 under this section and upon the judicial finding required  
20 by subsection (d).

21       “(B) Except as provided in subparagraph (C), an ex-  
22 tension under this paragraph of an order under this sec-  
23 tion shall be for a period not to exceed 90 days.

24       “(C) In any case in which the applicant for an exten-  
25 sion under this paragraph certifies that the information

1 likely to be obtained is foreign intelligence information  
 2 concerning a foreign power (as defined in paragraph (1),  
 3 (2), or (3) of section 101(a)) or an agent of a foreign  
 4 power (as defined in section 101(b)(1)(A)), the extension  
 5 may be for a period not to exceed one year.”.

6 **SEC. 217. ADDITIONAL INFORMATION IN APPLICATIONS**  
 7 **FOR ORDERS FOR PEN REGISTERS AND TRAP**  
 8 **AND TRACE DEVICES AND BUSINESS**  
 9 **RECORDS UNDER FOREIGN INTELLIGENCE**  
 10 **SURVEILLANCE ACT OF 1978.**

11 (a) ORDERS FOR PEN REGISTERS AND TRAP AND  
 12 TRACE DEVICES.—Section 402(c) of the Foreign Intel-  
 13 ligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is  
 14 amended—

15 (1) in paragraph (1), by striking “and” at the  
 16 end;

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

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

21 “(3) an explanation by the applicant that sup-  
 22 ports the assertion of relevance under paragraph  
 23 (2).”.

1 (b) ORDERS FOR BUSINESS RECORDS.—Subsection  
 2 (b) of section 501 of such Act, as amended by section  
 3 211(a)(2) of this Act, is further amended—

4 (1) in paragraph (1)(B), by striking “and” at  
 5 the end;

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

8 (3) by adding at the end the following new  
 9 paragraph:

10 “(3) shall include an explanation by the appli-  
 11 cant that supports the assertion of relevance under  
 12 paragraph (2).”.

13 **SEC. 218. FORM OF SEMIANNUAL REPORTS ON ACCESS TO**  
 14 **BUSINESS RECORDS UNDER FOREIGN INTEL-**  
 15 **LIGENCE SURVEILLANCE ACT OF 1978.**

16 Section 502(b) of the Foreign Intelligence Surveil-  
 17 lance Act of 1978 (50 U.S.C. 1862(b)), as amended by  
 18 section 211(e) of this Act, is further amended—

19 (1) in paragraph (3), by redesignating subpara-  
 20 graphs (A) through (E) as clauses (i) through (v),  
 21 respectively;

22 (2) by redesignating paragraphs (1), (2), and  
 23 (3) as subparagraphs (A), (B), and (C), respectively;

24 (3) by inserting “(1)” after “(b)”; and

1           (4) by adding at the end the following new  
2 paragraph:

3           “(2) Each report under paragraph (1) shall be sub-  
4 mitted in unclassified form, but may include a classified  
5 annex.”.

6 **SEC. 219. REPORT ON VOLUNTARY DISCLOSURE OF BUSI-**  
7 **NESS RECORDS FOR FOREIGN INTELLIGENCE**  
8 **PURPOSES.**

9           (a) REPORT REQUIRED.—Not later than six months  
10 after the date of the enactment of this Act, the Attorney  
11 General shall submit to the Permanent Select Committee  
12 on Intelligence of the House of Representatives and the  
13 Select Committee on Intelligence of the Senate a report  
14 on the access provided to the Federal Bureau of Investiga-  
15 tion, on a voluntary basis at the request of the Bureau,  
16 to tangible things (including books, records, papers, docu-  
17 ments, and other items) for purposes of investigations de-  
18 scribed by section 501(a)(1) of the Foreign Intelligence  
19 Surveillance Act of 1978 (50 U.S.C. 1861(a)(1)).

20           (b) ELEMENTS.—The report required by subsection  
21 (a) shall include the following:

22           (1) A description of the policies and procedures  
23 of the Federal Bureau of Investigation for seeking  
24 access to things as described in subsection (a).



1           (2) A description of the circumstance in which  
2 such access is regularly sought.

3           (3) A description of the general frequency with  
4 which such access is sought.

5           (4) A description of the general frequency with  
6 which a request for such access is denied.

7           (5) An assessment of the success of the Bureau  
8 in obtaining through such access information of  
9 value to investigations described in subsection (a).

10          (c) FORM.—The report required by subsection (a)  
11 shall be submitted in unclassified form, but may include  
12 a classified annex.

Calendar No. 132

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 1266**

[Report No. 109-85]

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## **A BILL**

To permanently authorize certain provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, to reauthorize a provision of the Intelligence Reform and Terrorism Prevention Act of 2004, to clarify certain definitions in the Foreign Intelligence Surveillance Act of 1978, to provide additional investigative tools necessary to protect the national security, and for other purposes.

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JUNE 16, 2005

Read twice and placed on the calendar