

114TH CONGRESS  
2D SESSION

# S. 3369

To amend section 2709 of title 18, United States Code, to clarify that the Government may obtain a specified set of electronic communication transactional records under that section, and to make permanent the authority for individual terrorists to be treated as agents of foreign powers under the Foreign Intelligence Surveillance Act of 1978.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2016

Mr. MCCAIN (for himself, Mr. CORNYN, Mr. COTTON, Mr. BURR, Mr. GRAHAM, and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend section 2709 of title 18, United States Code, to clarify that the Government may obtain a specified set of electronic communication transactional records under that section, and to make permanent the authority for individual terrorists to be treated as agents of foreign powers under the Foreign Intelligence Surveillance Act of 1978.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Empowering Law En-  
3 forcement to Keep America Safe Act of 2016”.

4 **SEC. 2. COUNTERINTELLIGENCE ACCESS TO TELEPHONE**  
5 **TOLL AND TRANSACTIONAL RECORDS.**

6 Section 2709 of title 18, United States Code, is  
7 amended by striking subsection (b) and inserting the fol-  
8 lowing:

9 “(b) **REQUIRED CERTIFICATION.**—

10 “(1) **IN GENERAL.**—The Director of the Fed-  
11 eral Bureau of Investigation, or his or her designee  
12 in a position not lower than Deputy Assistant Direc-  
13 tor at Bureau headquarters or a Special Agent in  
14 Charge in a Bureau field office designated by the  
15 Director, may, using a term that specifically identi-  
16 fies a person, entity, telephone number, or account  
17 as the basis for a request, request information and  
18 records described in paragraph (2) of a person or  
19 entity, but not the contents of an electronic commu-  
20 nication, if the Director (or his or her designee) cer-  
21 tifies in writing to the wire or electronic communica-  
22 tion service provider to which the request is made  
23 that the information and records sought are relevant  
24 to an authorized investigation to protect against  
25 international terrorism or clandestine intelligence ac-  
26 tivities, provided that such an investigation of a

1 United States person is not conducted solely on the  
2 basis of activities protected by the first amendment  
3 to the Constitution of the United States.

4 “(2) OBTAINABLE TYPES OF INFORMATION AND  
5 RECORDS.—The information and records described  
6 in this paragraph are the following:

7 “(A) Name, physical address, e-mail ad-  
8 dress, telephone number, instrument number,  
9 and other similar account identifying informa-  
10 tion.

11 “(B) Account number, login history, length  
12 of service (including start date), types of serv-  
13 ice, and means and sources of payment for  
14 service (including any card or bank account in-  
15 formation).

16 “(C) Local and long distance toll billing  
17 records.

18 “(D) Internet Protocol (commonly known  
19 as ‘IP’) address or other network address, in-  
20 cluding any temporarily assigned IP or network  
21 address, communication addressing, routing, or  
22 transmission information, including any net-  
23 work address translation information (but ex-  
24 cluding cell tower information), and session

1 times and durations for an electronic commu-  
2 nication.”.

3 **SEC. 3. PERMANENT AUTHORITY FOR INDIVIDUAL TER-**  
4 **RORISTS TO BE TREATED AS AGENTS OF FOR-**  
5 **EIGN POWERS UNDER THE FOREIGN INTEL-**  
6 **LIGENCE SURVEILLANCE ACT OF 1978.**

7 Section 6001 of the Intelligence Reform and Ter-  
8 rorism Prevention Act of 2004 (50 U.S.C. 1801 note) is  
9 amended by striking subsection (b).

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