

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
FLAKE OF ARIZONA, OR HIS
DESIGNEE, DEBATABLE FOR 20 MINUTES:

AMENDMENT TO H.R. 3199
OFFERED BY MR. FLAKE OF ARIZONA

At the end of the bill, insert the following:

1 **SEC. ____.** **JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
2 **TERS.**

3 Chapter 223 of title 18, United States Code, is
4 amended—

5 (1) by inserting at the end of the table of sec-
6 tions the following new item:

“3511. Judicial review of requests for information.”

7 ; and

8 (2) by inserting after section 3510 the fol-
9 lowing:

10 **“§ 3511. Judicial review of requests for information**

11 “(a) The recipient of a request for records, a report,
12 or other information under section 2709(b) of this title,
13 section 625(a) or (b) or 626(a) of the Fair Credit Report-
14 ing Act, section 1114(a)(5)(A) of the Right to Financial
15 Privacy Act, or section 802(a) of the National Security
16 Act of 1947 may, in the United States district court for
17 the district in which that person or entity does business
18 or resides, petition for an order modifying or setting aside



1 the request. The court may modify or set aside the request
2 if compliance would be unreasonable or oppressive.

3 “(b) The recipient of a request for records, a report,
4 or other information under section 2709(b) of this title,
5 section 625(a) or (b) or 626(a) of the Fair Credit Report-
6 ing Act, section 1114(a)(5)A) of the Right to Financial
7 Privacy Act, or section 802(a) of the National Security
8 Act of 1947, may petition any court described in sub-
9 section (a) for an order modifying or setting aside a non-
10 disclosure requirement imposed in connection with such a
11 request.

12 “(1) If the petition is filed within one year of
13 the request for records, a report, or other informa-
14 tion under section 2709(b) of this title, section
15 625(a) or (b) or 626(a) of the Fair Credit Reporting
16 Act, section 1114(a)(5)(A) of the Right to Financial
17 Privacy Act, or section 802(a) of the National Secu-
18 rity Act of 1947, the court may modify or set aside
19 such a nondisclosure requirement if it finds that
20 there is no reason to believe that disclosure may en-
21 danger the national security of the United States,
22 interfere with a criminal, counterterrorism, or coun-
23 terintelligence investigation, interfere with diplo-
24 matic relations, or endanger the life or physical safe-
25 ty of any person. The certification made at the time



1 of the request that disclosure may endanger of the
2 national security of the United States or interfere
3 with diplomatic relations shall be treated as conclu-
4 sive unless the court finds that the certification was
5 made in bad faith.

6 “(2) If the petition is filed one year or more
7 after the request for records, a report, or other in-
8 formation under section 2709(b) of this title, section
9 625(a) or (b) or 626(a) of the Fair Credit Reporting
10 Act, section 1114 (a)(5)(A) of the Right to Finan-
11 cial Privacy Act, or section 802(a) of the National
12 Security Act of 1947, the issuing officer, within
13 ninety days of the filing of the petition, shall either
14 terminate the nondisclosure requirement or re-certify
15 that disclosure may result a danger to the national
16 security of the United States, interference with a
17 criminal, counterterrorism, or counterintelligence in-
18 vestigation, interference with diplomatic relations, or
19 danger to the life or physical safety of any person.
20 In the event or re-certification, the court may modify
21 or set aside such a nondisclosure requirement if it
22 finds that there is no reason to believe that disclo-
23 sure may endanger the national security of the
24 United States, interfere with a criminal,
25 counterterrorism, or counterintelligence investiga-



1 tion, interfere with diplomatic relations, or endanger
2 the life or physical safety of any person. The re-cer-
3 tification that disclosure may endanger of the na-
4 tional security of the United States or interfere with
5 diplomatic relations shall be treated as conclusive
6 unless the court finds that the re-certification was
7 made in bad faith. If the court denies a petition for
8 an order modifying or setting aside a nondisclosure
9 requirement under this paragraph, the recipient
10 shall be precluded for a period of one year from fil-
11 ing another petition to modify or set aside such non-
12 disclosure requirement.

13 “(c) In the case of a failure to comply with a request
14 for records, a report, or other information made to any
15 person or entity under section 2709(b) of this title, section
16 625(a) or (b) or 626(a) of the Fair Credit Reporting Act,
17 section 1114(a)(5)(A) of the Right to Financial Privacy
18 Act, or section 802(a) of the National Security Act of
19 1947, the Attorney General may invoke the aid of any
20 court of the United States within the jurisdiction in which
21 the investigation is carried on or the person or entity re-
22 sides, carries on business, or may be found, to compel
23 compliance with the request. The court may issue an order
24 requiring the person or entity to comply with the request.
25 Any failure to obey the order of the court may be punished



1 by the court as contempt thereof. Any process under this
2 section may be served in any judicial district in which the
3 person or entity may be found.

4 “(d) In all proceedings under this section, subject to
5 any right to an open hearing in a contempt proceeding,
6 the court must close any hearing to the extent necessary
7 to prevent an unauthorized disclosure of a request for
8 records, a report, or other information made to any person
9 or entity under section 2709(b) of this title, section 625(a)
10 or (b) or 626(a) of the Fair Credit Reporting Act, section
11 1114(a)(5)(A) of the Right to Financial Privacy Act, or
12 section 802(a) of the National Security Act of 1947. Peti-
13 tions, filings, records, orders, and subpoenas must also be
14 kept under seal to the extent and as long as necessary
15 to prevent the unauthorized disclosure of a request for
16 records, a report, or other information made to any person
17 or entity under section 2709(b) of this title, section 625(a)
18 or (b) or 626(a) of the Fair Credit Reporting Act, section
19 1114(a)(5)(A) of the Right to Financial Privacy Act, or
20 section 802(a) of the National Security Act of 1947.

21 “(e) In all proceedings under this section, the court
22 shall, upon the Federal Government’s request, review the
23 submission of the Government, which may include classi-
24 fied information, ex parte and in camera.”.



1 SEC. ____ . CONFIDENTIALITY OF NATIONAL SECURITY LET-
2 TERS.

3 (a) Section 2709(e) of title 18, United States Code,
4 is amended to read:

5 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

6 “(1) If the Director of the Federal Bureau of
7 Investigation, or his designee in a position not lower
8 than Deputy Assistant Director at Bureau head-
9 quarters or a Special Agent in Charge in a Bureau
10 field office designated by the Director, certifies that
11 otherwise there may result a danger to the national
12 security of the United States, interference with a
13 criminal, counterterrorism, or counterintelligence in-
14 vestigation, interference with diplomatic relations, or
15 danger to the life or physical safety of any person,
16 no wire or electronic communications service pro-
17 vider, or officer, employee, or agent thereof, shall
18 disclose to any person (other than those to whom
19 such disclosure is necessary in order to comply with
20 the request or an attorney to obtain legal advice
21 with respect to the request) that the Federal Bureau
22 of Investigation has sought or obtained access to in-
23 formation or records under this section.

24 “(2) The request shall notify the person or enti-
25 ty to whom the request is directed of the nondisclo-
26 sure requirement under paragraph (1).



1 “(3) Any recipient disclosing to those persons
2 necessary to comply with the request or to an attor-
3 ney to obtain legal advice with respect to the request
4 shall inform such person of any applicable nondislo-
5 sure requirement. Any person who receives a dislo-
6 sure under this subsection shall be subject to the
7 same prohibitions on disclosure under paragraph
8 (1).”.

9 (b) Section 625(d) of the Fair Credit Reporting Act
10 (15 U.S.C. 1681u(d)) is amended to read:

11 “(d) CONFIDENTIALITY.—

12 “(1) If the Director of the Federal Bureau of
13 Investigation, or his designee in a position not lower
14 than Deputy Assistant Director at Bureau head-
15 quarters or a Special Agent in Charge in a Bureau
16 field office designated by the Director, certifies that
17 otherwise there may result a danger to the national
18 security of the United States, interference with a
19 criminal, counterterrorism, or counterintelligence in-
20 vestigation, interference with diplomatic relations, or
21 danger to the life or physical safety of any person,
22 no consumer reporting agency or officer, employee,
23 or agent of a consumer reporting agency shall dis-
24 close to any person (other than those to whom such
25 disclosure is necessary in order to comply with the



1 request or an attorney to obtain legal advice with re-
2 spect to the request) that the Federal Bureau of In-
3 vestigation has sought or obtained the identity of fi-
4 nancial institutions or a consumer report respecting
5 any consumer under subsection (a), (b), or (c), and
6 no consumer reporting agency or officer, employee,
7 or agent of a consumer reporting agency shall in-
8 clude in any consumer report any information that
9 would indicate that the Federal Bureau of Investiga-
10 tion has sought or obtained such information on a
11 consumer report.

12 “(2) The request shall notify the person or enti-
13 ty to whom the request is directed of the nondiscl-
14 sure requirement under paragraph (1).

15 “(3) Any recipient disclosing to those persons
16 necessary to comply with the request or to an attor-
17 ney to obtain legal advice with respect to the request
18 shall inform such persons of any applicable non-
19 disclosure requirement. Any person who receives a
20 disclosure under this subsection shall be subject to
21 the same prohibitions on disclosure under paragraph
22 (1).”

23 (c) Section 626(c) of the Fair Credit Reporting Act
24 (15 U.S.C. 1681v(c)) is amended to read:

25 “(c) CONFIDENTIALITY.—



1 “(1) If the head of a government agency au-
2 thorized to conduct investigations or, or intelligence
3 or counterintelligence activities or analysis related
4 to, international terrorism, or his designee, certifies
5 that otherwise there may result a danger to the na-
6 tional security of the United States, interference
7 with a criminal, counterterrorism, or counterintel-
8 ligence investigation, interference with diplomatic re-
9 lations, or danger to the life or physical safety of
10 any person, no consumer reporting agency or officer,
11 employee, or agent of such consumer reporting agen-
12 cy, shall disclose to any person (other than those to
13 whom such disclosure is necessary in order to com-
14 ply with the request or an attorney to obtain legal
15 advice with respect to the request), or specify in any
16 consumer report, that a government agency has
17 sought or obtained access to information under sub-
18 section (a).

19 “(2) The request shall notify the person or enti-
20 ty to whom the request is directed of the nondiscl-
21 sure requirement under paragraph (1).

22 “(3) Any recipient disclosing to those persons
23 necessary to comply with the request or to any attor-
24 ney to obtain legal advice with respect to the request
25 shall inform such persons of any applicable non-



1 disclosure requirement. Any person who receives a
2 disclosure under this subsection shall be subject to
3 the same prohibitions on disclosure under paragraph
4 (1).”.

5 (d) Section 1114(a)(5)(D) of the Right to Financial
6 Privacy Act (12 U.S.C. 3414(a)(5)(D)) is amended to
7 read:

8 “(D) PROHIBITION OF CERTAIN DISCLO-
9 SURE.—

10 “(i) If the Director of the Federal Bu-
11 reau of Investigation, or his designee in a
12 position not lower than Deputy Assistant
13 Director at Bureau headquarters or a Spe-
14 cial Agent in Charge in a Bureau field of-
15 fice designated by the Director, certifies
16 that otherwise there may result a danger
17 to the national security of the United
18 States, interference with a criminal,
19 counterterrorism, or counterintelligence in-
20 vestigation, interference with diplomatic re-
21 lations, or danger to the life or physical
22 safety of any person, no financial institu-
23 tion, or officer, employee, or agent of such
24 institution, shall disclose to any person
25 (other than those to whom such disclosure



1 is necessary in order to comply with the re-
2 quest or an attorney to obtain legal advice
3 with respect to the request) that the Fed-
4 eral Bureau of Investigation has sought or
5 obtained access to a customer's or entity's
6 financial records under paragraph (5).

7 “(ii) The request shall notify the per-
8 son or entity to whom the request is di-
9 rected of the nondisclosure requirement
10 under paragraph (1).

11 “(iii) Any recipient disclosing to those
12 persons necessary to comply with the re-
13 quest or to an attorney to obtain legal ad-
14 vice with respect to the request shall in-
15 form such persons of any applicable non-
16 disclosure requirement. Any person who re-
17 ceives a disclosure under this subsection
18 shall be subject to the same prohibitions on
19 disclosure under paragraph (1).”.

20 (e) Section 802(b) of the National Security Act of
21 1947 (50 U.S.C. 436(b)) is amended to read as follows:

22 “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

23 “(1) If an authorized investigative agency de-
24 scribed in subsection (a) certifies that otherwise
25 there may result a danger to the national security of



1 the United States, interference with a criminal,
2 counterterrorism, or counterintelligence investiga-
3 tion, interference with diplomatic relations, or dan-
4 ger to the life or physical safety of any person, no
5 governmental or private entity, or officer, employee,
6 or agent of such entity, may disclose to any person
7 (other than those to whom such disclosure is nec-
8 essary in order to comply with the request or an at-
9 torney to obtain legal advice with respect to the re-
10 quest) that such entity has received or satisfied a re-
11 quest made by an authorized investigative agency
12 under this section.

13 “(2) The request shall notify the person or enti-
14 ty to whom the request is directed of the nondisclo-
15 sure requirement under paragraph (1).

16 “(3) Any recipient disclosing to those persons
17 necessary to comply with the request or to an attor-
18 ney to obtain legal advice with respect to the request
19 shall inform such persons of any applicable non-
20 disclosure requirement. Any person who receives a
21 disclosure under this subsection shall be subject to
22 the same prohibitions on disclosure under paragraph
23 (1).”



1 **SEC. ____.** **VIOLATIONS OF NONDISCLOSURE PROVISIONS**
2 **OF NATIONAL SECURITY LETTERS.**

3 Section 1510 of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(e) Whoever knowingly violates section 2709(c)(1)
6 of this title, sections 625(d) or 626(c) of the Fair Credit
7 Reporting Act (15 U.S.C. 1681u(d) or 1681v(c)), section
8 1114(a)(3) or 1114(a)(5)(D) of the Right to Financial
9 Privacy Act (12 U.S.C. 3414(a)(3) or 3414(a)(5)(D)), or
10 section 802(b) of the National Security Act of 1947 (50
11 U.S.C. 436(b)) shall be imprisoned for not more than one
12 year, and if the violation is committed with the intent to
13 obstruct an investigation or judicial proceeding, shall be
14 imprisoned for not more than five years.”.

15 **SEC. ____.** **REPORTS.**

16 Any report made to a committee of Congress regard-
17 ing national security letters under section 2709(e)(1) of
18 title 18, United States Code, sections 625(d) or 626(c)
19 of the Fair Credit Reporting Act (15 U.S.C. 1681u(d) or
20 1681v(e)), section 1114(a)(3) or 1114(a)(5)(D) of the
21 Right to Financial Privacy Act (12 U.S.C. 3414(a)(3) or
22 3414(a)(5)(D)), or section 802(b) of the National Security
23 Act of 1947 (50 U.S.C. 436(b)) shall also be made to the
24 Committees on the Judiciary of the House of Representa-
25 tives and the Senate.

