

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide clarification regarding the treatment of information and evidence acquired under the Foreign Intelligence Surveillance Act of 1978.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

H. R. 7888

To reform the Foreign Intelligence Surveillance Act of 1978.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. HIRONO

Viz:

1 At the end, add the following:

2 **SEC. 26. CLARIFICATION REGARDING TREATMENT OF IN-**
3 **FORMATION AND EVIDENCE ACQUIRED**
4 **UNDER THE FOREIGN INTELLIGENCE SUR-**
5 **VEILLANCE ACT OF 1978.**

6 (a) IN GENERAL.—Section 101 of the Foreign Intel-
7 ligence Surveillance Act of 1978 (50 U.S.C. 1801) is
8 amended by adding at the end the following:

9 “(q) For the purposes of notification provisions of
10 this Act, information or evidence is ‘derived’ from an elec-
11 tronic surveillance, physical search, use of a pen register
12 or trap and trace device, production of tangible things,

1 or acquisition under this Act when the Government would
2 not have originally possessed the information or evidence
3 but for that electronic surveillance, physical search, use
4 of a pen register or trap and trace device, production of
5 tangible things, or acquisition, and regardless of any claim
6 that the information or evidence is attenuated from the
7 surveillance or search, would inevitably have been discov-
8 ered, or was subsequently reobtained through other
9 means.”.

10 (b) POLICIES AND GUIDANCE.—

11 (1) IN GENERAL.—Not later than 90 days after
12 the date of the enactment of this Act, the Attorney
13 General and the Director of National Intelligence
14 shall publish the following:

15 (A) Policies concerning the application of
16 subsection (q) of section 101 of such Act, as
17 added by subsection (a).

18 (B) Guidance for all members of the intel-
19 ligence community (as defined in section 3 of
20 the National Security Act of 1947 (50 U.S.C.
21 3003)) and all Federal agencies with law en-
22 forcement responsibilities concerning the appli-
23 cation of such subsection (q).

24 (2) MODIFICATIONS.—Whenever the Attorney
25 General and the Director modify a policy or guid-

1 ance published under paragraph (1), the Attorney
2 General and the Director shall publish such modi-
3 fications.