

## Union Calendar No.

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 883

[Report No. 115-]

To amend title 18, United States Code, to provide a certification process for the issuance of nondisclosure requirements accompanying certain administrative subpoenas, to provide for judicial review of such nondisclosure requirements, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2017

Mr. DESANTIS introduced the following bill; which was referred to the  
Committee on the Judiciary

MARCH --, 2017

Committed to the Committee of the Whole House on the State of the Union,  
and ordered to be printed

# **A BILL**

To amend title 18, United States Code, to provide a certification process for the issuance of nondisclosure requirements accompanying certain administrative subpoenas, to provide for judicial review of such nondisclosure requirements, 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 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Targeting Child Preda-  
5 tors Act of 2017”.

6 **SEC. 2. NONDISCLOSURE OF ADMINISTRATIVE SUBPOENAS.**

7       Section 3486(a) of title 18, United States Code, is  
8 amended—

9           (1) by striking “the Secretary of the Treasury”  
10       each place it appears and inserting “the Secretary of  
11       Homeland Security”;

12           (2) in paragraph (5), by striking “ordered by a  
13       court”; and

14           (3) by striking paragraph (6) and inserting the  
15       following:

16           “(6)(A)(i) If a subpoena issued under this sec-  
17       tion is accompanied by a certification under clause  
18       (ii) and notice of the right to judicial review under  
19       subparagraph (C), no recipient of a subpoena under  
20       this section shall disclose to any person that the  
21       Federal official who issued the subpoena has sought  
22       or obtained access to information or records under  
23       this section, for a period of 180 days.

24           “(ii) The requirements of clause (i) shall apply  
25       if the Federal official who issued the subpoena cer-

1           tifies that the absence of a prohibition of disclosure  
2           under this subsection may result in—

3                   “(I) endangering the life or physical safety  
4                   of an individual;

5                   “(II) flight from prosecution;

6                   “(III) destruction of or tampering with evi-  
7                   dence;

8                   “(IV) intimidation of potential witnesses;

9                   or

10                   “(V) otherwise seriously jeopardizing an  
11                   investigation or unduly delaying a trial.

12                   “(B)(i) A recipient of a subpoena under this  
13                   section may disclose information otherwise subject to  
14                   any applicable nondisclosure requirement to—

15                           “(I) those persons to whom disclosure is  
16                           necessary in order to comply with the request;

17                           “(II) an attorney in order to obtain legal  
18                           advice or assistance regarding the request; or

19                           “(III) other persons as permitted by the  
20                           Federal official who issued the subpoena.

21                   “(ii) A person to whom disclosure is made  
22                   under clause (i) shall be subject to the nondisclosure  
23                   requirements applicable to a person to whom a sub-  
24                   poena is issued under this section in the same man-  
25                   ner as the person to whom the subpoena was issued.

1           “(iii) Any recipient that discloses to a person  
2 described in clause (i) information otherwise subject  
3 to a nondisclosure requirement shall notify the per-  
4 son of the applicable nondisclosure requirement.

5           “(iv) At the request of the Federal official who  
6 issued the subpoena, any person making or intend-  
7 ing to make a disclosure under subclause (I) or (III)  
8 of clause (i) shall identify to the individual making  
9 the request under this clause the person to whom  
10 such disclosure will be made or to whom such disclo-  
11 sure was made prior to the request.

12           “(C)(i) A nondisclosure requirement imposed  
13 under subparagraph (A) shall be subject to judicial  
14 review under section 3486A.

15           “(ii) A subpoena issued under this section, in  
16 connection with which a nondisclosure requirement  
17 under subparagraph (A) is imposed, shall include  
18 notice of the availability of judicial review described  
19 in clause (i).

20           “(D) A nondisclosure requirement imposed  
21 under subparagraph (A) may be extended in accord-  
22 ance with section 3486A(a)(4).”.

1 **SEC. 3. JUDICIAL REVIEW OF NONDISCLOSURE REQUIRE-**  
2 **MENTS.**

3 (a) IN GENERAL.—Chapter 223 of title 18, United  
4 States Code, is amended by inserting after section 3486  
5 the following:

6 **“§ 3486A. Judicial review of nondisclosure require-**  
7 **ments**

8 “(a) NONDISCLOSURE.—

9 “(1) IN GENERAL.—

10 “(A) NOTICE.—If a recipient of a sub-  
11 poena under section 3486 wishes to have a  
12 court review a nondisclosure requirement im-  
13 posed in connection with the subpoena, the re-  
14 cipient may notify the Government or file a pe-  
15 tition for judicial review in any court described  
16 in subsection (a)(5) of section 3486.

17 “(B) APPLICATION.—Not later than 30  
18 days after the date of receipt of a notification  
19 under subparagraph (A), the Government shall  
20 apply for an order prohibiting the disclosure of  
21 the existence or contents of the relevant sub-  
22 poena. An application under this subparagraph  
23 may be filed in the district court of the United  
24 States for the judicial district in which the re-  
25 cipient of the subpoena is doing business or in  
26 the district court of the United States for any

1           judicial district within which the authorized in-  
2           vestigation that is the basis for the subpoena is  
3           being conducted. The applicable nondisclosure  
4           requirement shall remain in effect during the  
5           pendency of proceedings relating to the require-  
6           ment.

7           “(C) CONSIDERATION.—A district court of  
8           the United States that receives a petition under  
9           subparagraph (A) or an application under sub-  
10          paragraph (B) should rule expeditiously, and  
11          shall, subject to paragraph (3), issue a non-  
12          disclosure order that includes conditions appro-  
13          priate to the circumstances.

14          “(2) APPLICATION CONTENTS.—An application  
15          for a nondisclosure order or extension thereof or a  
16          response to a petition filed under paragraph (1)  
17          shall include a certification from the Federal official  
18          who issued the subpoena indicating that the absence  
19          of a prohibition of disclosure under this subsection  
20          may result in—

21                  “(A) endangering the life or physical safety  
22                  of an individual;

23                  “(B) flight from prosecution;

24                  “(C) destruction of or tampering with evi-  
25                  dence;

1 “(D) intimidation of potential witnesses; or

2 “(E) otherwise seriously jeopardizing an  
3 investigation or unduly delaying a trial.

4 “(3) STANDARD.—A district court of the  
5 United States shall issue a nondisclosure order or  
6 extension thereof under this subsection if the court  
7 determines that there is reason to believe that disclo-  
8 sure of the information subject to the nondisclosure  
9 requirement during the applicable time period may  
10 result in—

11 “(A) endangering the life or physical safety  
12 of an individual;

13 “(B) flight from prosecution;

14 “(C) destruction of or tampering with evi-  
15 dence;

16 “(D) intimidation of potential witnesses; or

17 “(E) otherwise seriously jeopardizing an  
18 investigation or unduly delaying a trial.

19 “(4) EXTENSION.—Upon a showing that the  
20 circumstances described in subparagraphs (A)  
21 through (E) of paragraph (3) continue to exist, a  
22 district court of the United States may issue an ex  
23 parte order extending a nondisclosure order imposed  
24 under this subsection or under section  
25 3486(a)(6)(A) for additional periods of 180 days, or,



1 if the court determines that the circumstances neces-  
2 sitate a longer period of nondisclosure, for additional  
3 periods which are longer than 180 days.

4 “(b) CLOSED HEARINGS.—In all proceedings under  
5 this section, subject to any right to an open hearing in  
6 a contempt proceeding, the court must close any hearing  
7 to the extent necessary to prevent an unauthorized dislo-  
8 sure of a request for records, a report, or other informa-  
9 tion made to any person or entity under section 3486. Pe-  
10 titions, filings, records, orders, certifications, and sub-  
11 poenas must also be kept under seal to the extent and  
12 as long as necessary to prevent the unauthorized dislo-  
13 sure of a subpoena under section 3486.”.

14 (b) CLERICAL AMENDMENT.—The table of sections  
15 at the beginning of chapter 223 of title 18, United States  
16 Code, is amended by inserting after the item relating to  
17 section 3486 the following:

“3486A. Judicial review of nondisclosure requirements.”.