

WITHHOLD

Exemption 5

AMENDMENT NO.

Calendar No.

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

H. R. 3773

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. ROCKEFELLER

Viz:

1 In lieu of the matter proposed to be inserted by the
2 amendment of the House of Representatives to the amend-
3 ment of the Senate to the text of the bill, insert the fol-
4 lowing:

5 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) **SHORT TITLE.**—This Act may be cited as the
7 “Foreign Intelligence Surveillance Act of 1978 Amend-
8 ments Act of 2008” or the “FISA Amendments Act of
9 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

Sec. 101. Additional procedures regarding certain persons outside the United States.

Sec. 102. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.

Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

Sec. 108. Amendments for emergency pen registers and trap and trace devices.

Sec. 109. Foreign Intelligence Surveillance Court.

Sec. 110. Review of previous actions.

Sec. 111. Weapons of mass destruction.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

Sec. 201. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.

Sec. 202. Technical amendments.

TITLE III—COMMISSION ON INTELLIGENCE COLLECTION, PRIVACY PROTECTION, AND CHANGES IN INFORMATION TECHNOLOGY

Sec. 301. Commission on Intelligence Collection, Privacy Protection, and Changes in Information Technology.

TITLE IV—OTHER PROVISIONS

Sec. 401. Severability.

Sec. 402. Effective date.

Sec. 403. Repeals.

Sec. 404. Transition procedures.

3 **TITLE I—FOREIGN**
4 **INTELLIGENCE SURVEILLANCE**
5 **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
6 **PERSONS OUTSIDE THE UNITED STATES.**

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

1 (1) by striking title VII; and

2 (2) by adding after title VI the following new
3 title:

4 **“TITLE VII—ADDITIONAL PROCE-**
5 **DURES REGARDING CERTAIN**
6 **PERSONS OUTSIDE THE**
7 **UNITED STATES**

8 **“SEC. 701. DEFINITIONS.**

9 “(a) IN GENERAL.—The terms ‘agent of a foreign
10 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
11 lance’, ‘foreign intelligence information’, ‘foreign power’,
12 ‘person’, ‘United States’, and ‘United States person’ have
13 the meanings given such terms in section 101, except as
14 specifically provided in this title.

15 **“(b) ADDITIONAL DEFINITIONS.—**

16 **“(1) CONGRESSIONAL INTELLIGENCE COMMIT-**
17 **TEES.—**The term ‘congressional intelligence commit-
18 tees’ means—

19 **“(A) the Select Committee on Intelligence**
20 **of the Senate; and**

21 **“(B) the Permanent Select Committee on**
22 **Intelligence of the House of Representatives.**

23 **“(2) FOREIGN INTELLIGENCE SURVEILLANCE**
24 **COURT; COURT.—**The terms ‘Foreign Intelligence

1 Surveillance Court' and 'Court' mean the court es-
2 tablished by section 103(a).

3 "(3) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT OF REVIEW; COURT OF REVIEW.—The terms
5 'Foreign Intelligence Surveillance Court of Review'
6 and 'Court of Review' mean the court established by
7 section 103(b).

8 "(4) ELECTRONIC COMMUNICATION SERVICE
9 PROVIDER.—The term 'electronic communication
10 service provider' means—

11 "(A) a telecommunications carrier, as that
12 term is defined in section 3 of the Communica-
13 tions Act of 1934 (47 U.S.C. 153);

14 "(B) a provider of electronic communica-
15 tion service, as that term is defined in section
16 2510 of title 18, United States Code;

17 "(C) a provider of a remote computing
18 service, as that term is defined in section 2711
19 of title 18, United States Code;

20 "(D) any other communication service pro-
21 vider who has access to wire or electronic com-
22 munications either as such communications are
23 transmitted or as such communications are
24 stored; or

1 “(E) an officer, employee, or agent of an
2 entity described in subparagraph (A), (B), (C),
3 or (D).

4 “(5) INTELLIGENCE COMMUNITY.—The term
5 ‘intelligence community’ has the meaning given the
6 term in section 3(4) of the National Security Act of
7 1947 (50 U.S.C. 401a(4)).

8 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
9 **SONS OUTSIDE THE UNITED STATES OTHER**
10 **THAN UNITED STATES PERSONS.**

11 “(a) AUTHORIZATION.—Notwithstanding any other
12 provision of law, pursuant to an order issued in accord-
13 ance with subsection (i)(3) or a determination under sub-
14 section (g)(1)(B)(ii), the Attorney General and the Direc-
15 tor of National Intelligence may authorize jointly, for a
16 period of up to 1 year from the effective date of the au-
17 thorization, the targeting of persons reasonably believed
18 to be located outside the United States to acquire foreign
19 intelligence information.

20 “(b) LIMITATIONS.—An acquisition authorized under
21 subsection (a)—

22 “(1) may not intentionally target any person
23 known at the time of acquisition to be located in the
24 United States;

1 “(2) may not intentionally target a person rea-
2 sonably believed to be located outside the United
3 States if the purpose of such acquisition is in order
4 to target a particular, known person reasonably be-
5 lieved to be in the United States;

6 “(3) may not intentionally target a United
7 States person reasonably believed to be located out-
8 side the United States;

9 “(4) may not intentionally acquire any commu-
10 nication as to which the sender and all intended re-
11 cipients are known at the time of the acquisition to
12 be located in the United States; and

13 “(5) shall be conducted in a manner consistent
14 with the fourth amendment to the Constitution of
15 the United States.

16 “(c) CONDUCT OF ACQUISITION.—

17 “(1) IN GENERAL.—An acquisition authorized
18 under subsection (a) may be conducted only in ac-
19 cordance with—

20 “(A) the certification made by the Attor-
21 ney General and the Director of National Intel-
22 ligence submitted in accordance with subsection
23 (g); and

1 “(B) the targeting and minimization proce-
2 dures submitted in accordance with subsections
3 (d) and (e).

4 “(2) CONSTRUCTION.—Nothing in title I of this
5 Act shall be construed to require an application
6 under section 104 for an acquisition that is targeted
7 in accordance with this section at a person reason-
8 ably believed to be located outside the United States.

9 “(d) TARGETING PROCEDURES.—

10 “(1) REQUIREMENT TO ADOPT.—The Attorney
11 General, in consultation with the Director of Na-
12 tional Intelligence, shall adopt targeting procedures
13 that are reasonably designed to ensure that any ac-
14 quisition authorized under subsection (a) is limited
15 to targeting persons reasonably believed to be lo-
16 cated outside the United States and does not result
17 in the intentional acquisition of any communication
18 as to which the sender and all intended recipients
19 are known at the time of the acquisition to be lo-
20 cated in the United States.

21 “(2) JUDICIAL REVIEW.—The procedures re-
22 quired by paragraph (1) shall be subject to judicial
23 review pursuant to subsection (i).

24 “(e) MINIMIZATION PROCEDURES.—

1 “(1) REQUIREMENT TO ADOPT.—The Attorney
2 General, in consultation with the Director of Na-
3 tional Intelligence, shall adopt minimization proce-
4 dures that meet the definition of minimization proce-
5 dures under section 101(h) or section 301(4), as ap-
6 propriate, for acquisitions authorized under sub-
7 section (a).

8 “(2) JUDICIAL REVIEW.—The minimization
9 procedures required by paragraph (1) shall be sub-
10 ject to judicial review pursuant to subsection (i).

11 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
12 TIONS.—

13 “(1) REQUIREMENT TO ADOPT.—The Attorney
14 General, in consultation with the Director of Na-
15 tional Intelligence, shall adopt guidelines to ensure—

16 “(A) compliance with the limitations in
17 subsection (b); and

18 “(B) that an application is filed under sec-
19 tion 104 or section 303, as appropriate, if re-
20 quired by any other section of this Act.

21 “(2) TRAINING.—The Director of National In-
22 telligence shall establish a training program for ap-
23 propriate intelligence community personnel to ensure
24 that the guidelines adopted pursuant to paragraph
25 (1) are properly implemented.

1 “(3) SUBMISSION OF GUIDELINES.—The Attor-
2 ney General shall provide the guidelines adopted
3 pursuant to paragraph (1) to—

4 “(A) the congressional intelligence commit-
5 tees;

6 “(B) the Committee on the Judiciary of
7 the Senate;

8 “(C) the Committee on the Judiciary of
9 the House of Representatives; and

10 “(D) the Foreign Intelligence Surveillance
11 Court.

12 “(g) CERTIFICATION.—

13 “(1) IN GENERAL.—

14 “(A) REQUIREMENT.—In order to conduct
15 an acquisition under subsection (a), the Attor-
16 ney General and the Director of National Intel-
17 ligence shall provide to the Foreign Intelligence
18 Surveillance Court, under oath, a written cer-
19 tification and any supporting affidavit, under
20 seal, in accordance with this subsection.

21 “(B) TIMING OF SUBMISSION TO THE
22 COURT.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii), the Attorney General
25 and Director of National Intelligence shall

1 provide a copy of a certification made
2 under this subsection to the Foreign Intel-
3 ligence Surveillance Court prior to the ini-
4 tiation of an acquisition under subsection
5 (a).

6 “(ii) EXCEPTION.—If the Attorney
7 General and the Director of National Intel-
8 ligence determine that there should be im-
9 mediate implementation of the authoriza-
10 tion and time does not permit the issuance
11 of an order pursuant to subsection (i)(3)
12 prior to the implementation of the author-
13 ization, the Attorney General and the Di-
14 rector of National Intelligence may author-
15 ize the acquisition and shall submit to the
16 Foreign Intelligence Surveillance Court a
17 certification, including the determination
18 under this subsection, as soon as possible
19 but in no event more than 7 days after
20 such determination is made.

21 “(2) REQUIREMENTS.—A certification made
22 under this subsection shall—

23 “(A) attest that—

24 “(i) there are reasonable procedures
25 in place that have been approved or sub-

1 mitted for approval to the Foreign Intel-
2 ligence Surveillance Court, for determining
3 that the acquisition authorized under sub-
4 section (a)—

5 “(I) is targeted at persons rea-
6 sonably believed to be located outside
7 the United States; and

8 “(II) does not result in the inten-
9 tional acquisition of any communica-
10 tion as to which the sender and all in-
11 tended recipients are known at the
12 time of the acquisition to be located in
13 the United States;

14 “(ii) guidelines have been adopted in
15 accordance with subsection (f) to ensure
16 compliance with the limitations in sub-
17 section (b) and to ensure that applications
18 are filed under section 104 or section 303,
19 if required by this Act;

20 “(iii) the minimization procedures to
21 be used with respect to such acquisition—

22 “(I) meet the definition of mini-
23 mization procedures under section
24 101(h) or section 301(4), as appro-
25 priate; and

1 “(II) have been approved by, or
2 submitted for approval by, the For-
3 eign Intelligence Surveillance Court;

4 “(iv) the procedures and guidelines re-
5 ferred to in clauses (i), (ii), and (iii) are
6 consistent with the requirements of the
7 fourth amendment to the Constitution of
8 the United States;

9 “(v) a significant purpose of the ac-
10 quisition is to obtain foreign intelligence
11 information;

12 “(vi) the acquisition involves obtaining
13 the foreign intelligence information from or
14 with the assistance of an electronic com-
15 munication service provider; and

16 “(vii) the acquisition complies with
17 the limitations in subsection (b); and

18 “(B) be supported, as appropriate, by the
19 affidavit of any appropriate official in the area
20 of national security who is—

21 “(i) appointed by the President, by
22 and with the consent of the Senate; or

23 “(ii) the head of an element of the in-
24 telligence community; and

25 “(C) include—

1 “(i) an effective date for the author-
2 ization that is between 30 and 60 days
3 from the submission of the written certifi-
4 cation to the court; or

5 “(ii) if the acquisition has begun or
6 the effective date is less than 30 days from
7 the submission of the written certification
8 to the court—

9 “(I) the date the acquisition
10 began or the effective date for the ac-
11 quisition;

12 “(II) a description of why initi-
13 ation of the acquisition is required in
14 less than 30 days from the submission
15 of the written certification to the
16 court; and

17 “(III) if the acquisition is au-
18 thorized under paragraph (1)(B)(ii), a
19 description of why there should be im-
20 mediate implementation of the author-
21 ization and time does not permit the
22 issuance of an order pursuant to sub-
23 section (i)(3) prior to the implementa-
24 tion of the authorization.

1 “(3) CHANGE IN EFFECTIVE DATE.—The At-
2 torney General and the Director of National Intel-
3 ligence may advance or delay the effective date de-
4 scribed in paragraph (2)(C) by amending the certifi-
5 cation pursuant to subsection (i)(C) to include the
6 applicable requirements of paragraph (2)(C).

7 “(4) LIMITATION.—A certification made under
8 this subsection is not required to identify the specific
9 facilities, places, premises, or property at which the
10 acquisition authorized under subsection (a) will be
11 directed or conducted.

12 “(5) MAINTENANCE OF CERTIFICATION.—The
13 Attorney General shall maintain a copy of a certifi-
14 cation made under this subsection under security
15 measures adopted by the Chief Justice of the United
16 States and the Attorney General, in consultation
17 with the Director of National Intelligence.

18 “(6) REVIEW.—The certification required by
19 this subsection shall be subject to judicial review
20 pursuant to subsection (i).

21 “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
22 TIVES.—

23 “(1) AUTHORITY.—With respect to an acquisi-
24 tion authorized under subsection (a), the Attorney
25 General and the Director of National Intelligence

1 may direct, in writing, an electronic communication
2 service provider to—

3 “(A) immediately provide the Government
4 with all information, facilities, or assistance
5 necessary to accomplish the acquisition author-
6 ized in accordance with this section in a manner
7 that will protect the secrecy of the acquisition
8 and produce a minimum of interference with
9 the services that such electronic communication
10 service provider is providing to the target of the
11 acquisition; and

12 “(B) maintain under security procedures
13 approved by the Attorney General and the Di-
14 rector of National Intelligence any records con-
15 cerning the acquisition or the aid furnished that
16 such electronic communication service provider
17 wishes to maintain.

18 “(2) COMPENSATION.—The Government shall
19 compensate, at the prevailing rate, an electronic
20 communication service provider for providing infor-
21 mation, facilities, or assistance pursuant to para-
22 graph (1).

23 “(3) RELEASE FROM LIABILITY.—No cause of
24 action shall lie in any court against any electronic
25 communication service provider for providing any in-

1 formation, facilities, or assistance in accordance with
2 a directive issued pursuant to paragraph (1).

3 “(4) CHALLENGING OF DIRECTIVES.—

4 “(A) AUTHORITY TO CHALLENGE.—An
5 electronic communication service provider re-
6 ceiving a directive issued pursuant to paragraph
7 (1) may challenge the directive by filing a peti-
8 tion with the Foreign Intelligence Surveillance
9 Court, which shall have jurisdiction to review
10 such a petition.

11 “(B) ASSIGNMENT.—The presiding judge
12 of the Court shall assign the petition filed
13 under subparagraph (A) to 1 of the judges of
14 the Court serving in the pool established by sec-
15 tion 103(e)(1) not later than 24 hours after the
16 filing of the petition.

17 “(C) STANDARDS FOR REVIEW.—The For-
18 eign Intelligence Surveillance Court considering
19 a petition to modify or set aside a directive may
20 grant such petition only if the Court finds that
21 the directive does not meet the requirements of
22 this section, or is otherwise unlawful.

23 “(D) PROCEDURES FOR INITIAL RE-
24 VIEW.—The Foreign Intelligence Surveillance
25 Court shall conduct an initial review of a peti-

1 tion filed under subparagraph (A) not later
2 than 5 days after being assigned such petition.
3 If the Court determines that the petition does
4 not consist of claims, defenses, or other legal
5 contentions that are warranted by existing law
6 or by a nonfrivolous argument for extending,
7 modifying, or reversing existing law or for es-
8 tablishing new law, the Court shall immediately
9 deny the petition and affirm the directive or
10 any part of the directive that is the subject of
11 the petition and order the recipient to comply
12 with the directive or any part of it. Upon mak-
13 ing such a determination or promptly there-
14 after, the Court shall provide a written state-
15 ment for the record of the reasons for a deter-
16 mination under this subparagraph.

17 “(E) PROCEDURES FOR PLENARY RE-
18 VIEW.—If the Foreign Intelligence Surveillance
19 Court determines that a petition filed under
20 subparagraph (A) requires plenary review, the
21 Court shall affirm, modify, or set aside the di-
22 rective that is the subject of that petition not
23 later than 30 days after being assigned the pe-
24 tition. If the Court does not set aside the direc-
25 tive, the Court shall immediately affirm the di-

1 rective or order that the directive be modified,
2 and order the recipient to comply with the di-
3 rective in its entirety or as modified. The Court
4 shall provide a written statement for the record
5 of the reasons for a determination under this
6 subparagraph.

7 “(F) CONTINUED EFFECT.—Any directive
8 not explicitly modified or set aside under this
9 paragraph shall remain in full effect.

10 “(G) CONTEMPT OF COURT.—Failure to
11 obey an order of the Court issued under this
12 paragraph may be punished by the Court as
13 contempt of court.

14 “(5) ENFORCEMENT OF DIRECTIVES.—

15 “(A) ORDER TO COMPEL.—If an electronic
16 communication service provider fails to comply
17 with a directive issued pursuant to paragraph
18 (1), the Attorney General may file a petition for
19 an order to compel the electronic communica-
20 tion service provider to comply with the direc-
21 tive with the Foreign Intelligence Surveillance
22 Court, which shall have jurisdiction to review
23 such a petition.

24 “(B) ASSIGNMENT.—The presiding judge
25 of the Court shall assign a petition filed under

1 subparagraph (A) to 1 of the judges serving in
2 the pool established by section 103(e)(1) not
3 later than 24 hours after the filing of the peti-
4 tion.

5 “(C) PROCEDURES FOR REVIEW.—The
6 Foreign Intelligence Surveillance Court consid-
7 ering a petition filed under subparagraph (A)
8 shall issue an order requiring the electronic
9 communication service provider to comply with
10 the directive or any part of it, as issued or as
11 modified, not later than 30 days after being as-
12 signed the petition if the Court finds that the
13 directive meets the requirements of this section,
14 and is otherwise lawful. The Court shall provide
15 a written statement for the record of the rea-
16 sons for a determination under this paragraph.

17 “(D) CONTEMPT OF COURT.—Failure to
18 obey an order of the Court issued under this
19 paragraph may be punished by the Court as
20 contempt of court.

21 “(E) PROCESS.—Any process under this
22 paragraph may be served in any judicial district
23 in which the electronic communication service
24 provider may be found.

25 “(6) APPEAL.—

1 “(A) APPEAL TO THE COURT OF RE-
2 VIEW.—The Government or an electronic com-
3 munication service provider receiving a directive
4 issued pursuant to paragraph (1) may file a pe-
5 tition with the Foreign Intelligence Surveillance
6 Court of Review for review of a decision issued
7 pursuant to paragraph (4) or (5). The Court of
8 Review shall have jurisdiction to consider such
9 a petition and shall provide a written statement
10 for the record of the reasons for a decision
11 under this paragraph.

12 “(B) CERTIORARI TO THE SUPREME
13 COURT.—The Government or an electronic com-
14 munication service provider receiving a directive
15 issued pursuant to paragraph (1) may file a pe-
16 tition for a writ of certiorari for review of the
17 decision of the Court of Review issued under
18 subparagraph (A). The record for such review
19 shall be transmitted under seal to the Supreme
20 Court of the United States, which shall have ju-
21 risdiction to review such decision.

22 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
23 PROCEDURES.—

24 “(1) IN GENERAL.—

1 “(A) REVIEW BY THE FOREIGN INTEL-
2 LIGENCE SURVEILLANCE COURT.—The Foreign
3 Intelligence Surveillance Court shall have juris-
4 diction to review any certification submitted in
5 accordance with subsection (g) and the tar-
6 geting and minimization procedures submitted
7 in accordance with subsections (d) and (e), and
8 any amendments to such certification or proce-
9 dures.

10 “(B) TIME PERIOD FOR REVIEW.—The
11 Court shall review the certification submitted in
12 accordance with subsection (g) and the tar-
13 geting and minimization procedures submitted
14 in accordance with subsections (d) and (e) and
15 approve or deny an order under this subsection
16 not later than 30 days after the date on which
17 a certification is submitted.

18 “(C) AMENDMENTS.—The Attorney Gen-
19 eral and the Director of National Intelligence
20 may amend a certification submitted in accord-
21 ance with subsection (g) or the targeting and
22 minimization procedures submitted in accord-
23 ance with subsections (d) and (e) as necessary
24 after such certification or procedures have been
25 submitted for review to the Foreign Intelligence

1 Surveillance Court. If an amendment is sub-
2 mitted subsequent to the issuance of an order
3 under subsection (i)(3) that significantly modi-
4 fies such certification or procedures, the Attor-
5 ney General and Director of National Intel-
6 ligence shall seek approval of such amendment
7 by the Court.

8 “(2) REVIEW.—Court shall review the fol-
9 lowing:

10 “(A) CERTIFICATION.—A certification sub-
11 mitted in accordance with subsection (g) to de-
12 termine whether the certification contains all
13 the required elements.

14 “(B) TARGETING PROCEDURES.—The tar-
15 geting procedures submitted in accordance with
16 subsection (d) to assess whether the procedures
17 are reasonably designed to ensure that the ac-
18 quisition authorized under subsection (a) is lim-
19 ited to the targeting of persons reasonably be-
20 lieved to be located outside the United States
21 and does not result in the intentional acquisi-
22 tion of any communication as to which the
23 sender and all intended recipients are known at
24 the time of the acquisition to be located in the
25 United States.

1 “(C) MINIMIZATION PROCEDURES.—The
2 minimization procedures submitted in accord-
3 ance with subsection (e) to assess whether such
4 procedures meet the definition of minimization
5 procedures under section 101(h) or section
6 301(4), as appropriate.

7 “(3) ORDERS.—

8 “(A) APPROVAL.—If the Court finds that
9 a certification submitted in accordance with
10 subsection (g) contains all of the required ele-
11 ments and that the targeting and minimization
12 procedures submitted in accordance with sub-
13 sections (d) and (e) are consistent with the re-
14 quirements of those subsections and with the
15 fourth amendment to the Constitution of the
16 United States, the Court shall enter an order
17 approving the certification and the use of the
18 procedures for the acquisition.

19 “(B) CORRECTION OF DEFICIENCIES.—If
20 the Court finds that a certification required
21 submitted in accordance with subsection (g)
22 does not contain all of the required elements, or
23 that the procedures submitted in accordance
24 with subsections (d) and (e) are not consistent
25 with the requirements of those subsections or

1 the fourth amendment to the Constitution of
2 the United States, the Court shall issue an
3 order directing the Government to, at the Gov-
4 ernment's election and to the extent required by
5 the Court's order—

6 “(i) correct any deficiency identified
7 by the Court not later than 30 days after
8 the date the Court issues the order; or

9 “(ii) cease, or not begin, the acquisi-
10 tion authorized under subsection (a).

11 “(C) REQUIREMENT FOR WRITTEN STATE-
12 MENT.—In support of its orders under this sub-
13 section, the Court shall provide, simultaneously
14 with the orders, for the record a written state-
15 ment of its reasons.

16 “(4) APPEAL.—

17 “(A) APPEAL TO THE COURT OF RE-
18 VIEW.—The Government may appeal any order
19 under this section to the Foreign Intelligence
20 Surveillance Court of Review, which shall have
21 jurisdiction to review such order. For any deci-
22 sion affirming, reversing, or modifying an order
23 of the Foreign Intelligence Surveillance Court,
24 the Court of Review shall provide for the record
25 a written statement of its reasons.

1 “(B) CONTINUATION OF ACQUISITION
2 PENDING REHEARING OR APPEAL.—Any acqui-
3 sition affected by an order under paragraph
4 (3)(B) may continue—

5 “(i) during the pendency of any re-
6 hearing of the order by the Court en banc;
7 and

8 “(ii) if the Government appeals an
9 order under this section, subject to the
10 entry of an order under subparagraph (C).

11 “(C) IMPLEMENTATION PENDING AP-
12 PEAL.—Not later than 60 days after the filing
13 of an appeal of an order issued under para-
14 graph (3)(B) directing the correction of a defi-
15 ciency, the Court of Review shall determine,
16 and enter a corresponding order regarding,
17 whether all or any part of the correction order,
18 as issued or modified, shall be implemented
19 during the pendency of the appeal.

20 “(D) CERTIORARI TO THE SUPREME
21 COURT.—The Government may file a petition
22 for a writ of certiorari for review of a decision
23 of the Court of Review issued under subpara-
24 graph (A). The record for such review shall be
25 transmitted under seal to the Supreme Court of

1 the United States, which shall have jurisdiction
2 to review such decision.

3 “(5) SCHEDULE.—

4 “(A) REPLACEMENT OF AUTHORIZATIONS
5 IN EFFECT.—When replacing an authorization
6 issued pursuant to section 105B of the Foreign
7 Intelligence Surveillance Act of 1978, as added
8 by section 2 of the Protect America Act of 2007
9 (Public Law 110-55) with an authorization
10 under this section, the Attorney General and
11 the Director of National Intelligence shall, to
12 the extent practicable, submit to the Court the
13 certification prepared in accordance with sub-
14 section (g) and the procedures adopted in ac-
15 cordance with subsections (d) and (e) at least
16 30 days before the expiration of such authoriza-
17 tion.

18 “(B) REAUTHORIZATION OF AUTHORIZA-
19 TIONS IN EFFECT.—When replacing an author-
20 ization issued pursuant to this section, the At-
21 torney General and the Director of National In-
22 telligence shall, to the extent practicable, sub-
23 mit to the Court the certification prepared in
24 accordance with section (g) and the procedures
25 adopted in accordance with subsections (d) and

1 (e) at least 30 days prior to the expiration of
2 such authorization.

3 “(C) CONSOLIDATED SUBMISSIONS.—The
4 Attorney General and Director of National In-
5 telligence shall, to the extent practicable, annu-
6 ally submit to the Court a consolidation of—

7 “(i) certifications prepared in accord-
8 ance with subsection (g) for reauthoriza-
9 tion of authorizations in effect;

10 “(ii) the procedures adopted in ac-
11 cordance with subsections (d) and (e); and

12 “(iii) the annual review required by
13 subsection (1)(3) for the preceding year.

14 “(D) TIMING OF REVIEWS.—The Attorney
15 General and the Director of National Intel-
16 ligence shall schedule the completion of the an-
17 nual review required by subsection (1)(3) and a
18 semiannual assessment required by subsection
19 (1)(1) so that they may be submitted to the
20 Court at the time of the consolidated submis-
21 sion under subparagraph (C).

22 “(E) CONSTRUCTION.—The requirements
23 of subparagraph (C) shall not be construed to
24 preclude the Attorney General and the Director
25 of National Intelligence from submitting certifi-

1 cations for additional authorizations at other
2 times during the year as necessary.

3 “(6) COMPLIANCE.—At or before the end of the
4 period of time for which an authorization under sub-
5 section (a) expires, the Foreign Intelligence Surveil-
6 lance Court may assess compliance with the mini-
7 mization procedures required under subsection (e)
8 by reviewing the circumstances under which infor-
9 mation concerning United States persons was ac-
10 quired, retained, or disseminated.

11 “(j) JUDICIAL PROCEEDINGS.—

12 “(1) EXPEDITED PROCEEDINGS.—Judicial pro-
13 ceedings under this section shall be conducted as ex-
14 peditiously as possible.

15 “(2) TIME LIMITS.—A time limit for a judicial
16 decision in this section shall apply unless the Court,
17 the Court of Review, or any judge of either the
18 Court or the Court of Review, by order for reasons
19 stated, extends that time for good cause.

20 “(k) MAINTENANCE AND SECURITY OF RECORDS
21 AND PROCEEDINGS.—

22 “(1) STANDARDS.—The Foreign Intelligence
23 Surveillance Court shall maintain a record of a pro-
24 ceeding under this section, including petitions filed,
25 orders granted, and statements of reasons for deci-

1 sion, under security measures adopted by the Chief
2 Justice of the United States, in consultation with
3 the Attorney General and the Director of National
4 Intelligence.

5 “(2) FILING AND REVIEW.—All petitions under
6 this section shall be filed under seal. In any pro-
7 ceedings under this section, the court shall, upon re-
8 quest of the Government, review *ex parte* and in
9 camera any Government submission, or portions of
10 a submission, which may include classified informa-
11 tion.

12 “(3) RETENTION OF RECORDS.—The Director
13 of National Intelligence and the Attorney General
14 shall retain a directive made or an order granted
15 under this section for a period of not less than 10
16 years from the date on which such directive or such
17 order is made.

18 “(1) ASSESSMENTS AND REVIEWS.—

19 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
20 quently than once every 6 months, the Attorney
21 General and Director of National Intelligence shall
22 assess compliance with the targeting and minimiza-
23 tion procedures submitted in accordance with sub-
24 sections (d) and (e) and the guidelines adopted in

1 accordance with subsection (f) and shall submit each
2 such assessment to—

3 “(A) the Foreign Intelligence Surveillance
4 Court;

5 “(B) the congressional intelligence commit-
6 tees;

7 “(C) the Committee on the Judiciary of
8 the Senate; and

9 “(D) the Committee on the Judiciary of
10 the House of Representatives.

11 “(2) AGENCY ASSESSMENT.—The Inspectors
12 General of the Department of Justice and of each
13 element of the intelligence community authorized to
14 acquire foreign intelligence information under sub-
15 section (a) with respect to the department or ele-
16 ment of such Inspector General—

17 “(A) are authorized to review the compli-
18 ance with the targeting and minimization proce-
19 dures submitted in accordance with subsections
20 (d) and (e) and the guidelines submitted in ac-
21 cordance with subsection (f);

22 “(B) with respect to acquisitions author-
23 ized under subsection (a), shall review the num-
24 ber of disseminated intelligence reports con-
25 taining a reference to a United States person

1 identity and the number of United States per-
2 son identities subsequently disseminated by the
3 element concerned in response to requests for
4 identities that were not referred to by name or
5 title in the original reporting;

6 “(C) with respect to acquisitions author-
7 ized under subsection (a), shall review the num-
8 ber of targets that were later determined to be
9 located in the United States and, to the extent
10 possible, whether their communications were re-
11 viewed; and

12 “(D) shall provide each such review to—

13 “(i) the Attorney General;

14 “(ii) the Director of National Intel-
15 ligence;

16 “(iii) the congressional intelligence
17 committees; and

18 “(iv) the Committee on the Judiciary
19 of the Senate; and

20 “(v) the Committee on the Judiciary
21 of the House of Representatives.

22 “(3) ANNUAL REVIEW.—

23 “(A) REQUIREMENT TO CONDUCT.—The
24 head of each element of the intelligence commu-
25 nity conducting an acquisition authorized under

1 subsection (a) shall conduct an annual review to
2 determine whether there is reason to believe
3 that foreign intelligence information has been
4 or will be obtained from the acquisition. The
5 annual review shall provide, with respect to
6 such acquisitions authorized under subsection
7 (a)—

8 “(i) the number and nature of dis-
9 seminated intelligence reports containing a
10 reference to a United States person iden-
11 tity;

12 “(ii) the number and nature of United
13 States person identities subsequently dis-
14 seminated by that element in response to
15 requests for identities that were not re-
16 ferred to by name or title in the original
17 reporting;

18 “(iii) the number of targets that were
19 later determined to be located in the
20 United States and, to the extent possible,
21 whether their communications were re-
22 viewed; and

23 “(iv) a description of any procedures
24 developed by the head of such element of
25 the intelligence community and approved

1 by the Director of National Intelligence to
2 assess, in a manner consistent with na-
3 tional security, operational requirements
4 and the privacy interests of United States
5 persons, the extent to which the acquisi-
6 tions authorized under subsection (a) ac-
7 quire the communications of United States
8 persons, and the results of any such as-
9 sessment.

10 “(B) USE OF REVIEW.—The head of each
11 element of the intelligence community that con-
12 ducts an annual review under subparagraph (A)
13 shall use each such review to evaluate the ade-
14 quacy of the minimization procedures utilized
15 by such element or the application of the mini-
16 mization procedures to a particular acquisition
17 authorized under subsection (a).

18 “(C) PROVISION OF REVIEW.—The head of
19 each element of the intelligence community that
20 conducts an annual review under subparagraph
21 (A) shall provide such review to—

22 “(i) the Foreign Intelligence Surveil-
23 lance Court;

24 “(ii) the Attorney General;

1 “(iii) the Director of National Intel-
2 ligence;

3 “(iv) the congressional intelligence
4 committees; and

5 “(v) the Committees on the Judiciary
6 of the Senate; and

7 “(vi) the Committee on the Judiciary
8 of the House of Representatives.

9 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**
10 **STATES OF UNITED STATES PERSONS OUT-**
11 **SIDE THE UNITED STATES.**

12 “(a) JURISDICTION OF THE FOREIGN INTELLIGENCE
13 SURVEILLANCE COURT.—

14 “(1) IN GENERAL.—The Foreign Intelligence
15 Surveillance Court shall have jurisdiction to review
16 an application and to enter an order approving the
17 targeting of a United States person reasonably be-
18 lieved to be located outside the United States to ac-
19 quire foreign intelligence information, if the acquisi-
20 tion constitutes electronic surveillance or the acquisi-
21 tion of stored electronic communications or stored
22 electronic data that requires an order under this
23 Act, and such acquisition is conducted within the
24 United States.

1 “(2) LIMITATION.—If a United States person
2 targeted under this subsection is reasonably believed
3 to be located in the United States during the pend-
4 ency of an order issued pursuant to subsection (c),
5 the targeting of such United States person under
6 this section shall cease unless the targeted United
7 States person is again reasonably believed to be lo-
8 cated outside the United States during the pendency
9 of an order issued pursuant to subsection (c).

10 “(b) APPLICATION.—

11 “(1) IN GENERAL.—Each application for an
12 order under this section shall be made by a Federal
13 officer in writing upon oath or affirmation to a
14 judge having jurisdiction under subsection (a)(1).
15 Each application shall require the approval of the
16 Attorney General based upon the Attorney General’s
17 finding that it satisfies the criteria and requirements
18 of such application, as set forth in this section, and
19 shall include—

20 “(A) the identity of the Federal officer
21 making the application;

22 “(B) the identity, if known, or a descrip-
23 tion of the United States person who is the tar-
24 get of the acquisition;

1 “(C) a statement of the facts and cir-
2 cumstances relied upon to justify the appli-
3 cant’s belief that the United States person who
4 is the target of the acquisition is—

5 “(i) a person reasonably believed to be
6 located outside the United States; and

7 “(ii) a foreign power, an agent of a
8 foreign power, or an officer or employee of
9 a foreign power;

10 “(D) a statement of proposed minimization
11 procedures that meet the definition of mini-
12 mization procedures in section 101(h) or section
13 301(4), as appropriate;

14 “(E) a description of the nature of the in-
15 formation sought and the type of communica-
16 tions or activities to be subjected to acquisition;

17 “(F) a certification made by the Attorney
18 General or an official specified in section
19 104(a)(6) that—

20 “(i) the certifying official deems the
21 information sought to be foreign intel-
22 ligence information;

23 “(ii) a significant purpose of the ac-
24 quisition is to obtain foreign intelligence
25 information;

1 “(iii) such information cannot reason-
2 ably be obtained by normal investigative
3 techniques;

4 “(iv) designates the type of foreign in-
5 telligence information being sought accord-
6 ing to the categories described in section
7 101(e); and

8 “(v) includes a statement of the basis
9 for the certification that—

10 “(I) the information sought is
11 the type of foreign intelligence infor-
12 mation designated; and

13 “(II) such information cannot
14 reasonably be obtained by normal in-
15 vestigative techniques;

16 “(G) a summary statement of the means
17 by which the acquisition will be conducted and
18 whether physical entry is required to effect the
19 acquisition;

20 “(H) the identity of any electronic commu-
21 nication service provider necessary to effect the
22 acquisition, provided, however, that the applica-
23 tion is not required to identify the specific fa-
24 cilities, places, premises, or property at which

1 the acquisition authorized under this section
2 will be directed or conducted;

3 “(I) a statement of the facts concerning
4 any previous applications that have been made
5 to any judge of the Foreign Intelligence Surveil-
6 lance Court involving the United States person
7 specified in the application and the action taken
8 on each previous application; and

9 “(J) a statement of the period of time for
10 which the acquisition is required to be main-
11 tained, provided that such period of time shall
12 not exceed 90 days per application.

13 “(2) OTHER REQUIREMENTS OF THE ATTOR-
14 NEY GENERAL.—The Attorney General may require
15 any other affidavit or certification from any other
16 officer in connection with the application.

17 “(3) OTHER REQUIREMENTS OF THE JUDGE.—
18 The judge may require the applicant to furnish such
19 other information as may be necessary to make the
20 findings required by subsection (c)(1).

21 “(4) CONSTRUCTION.—Nothing in title I of this
22 Act shall be construed to require an application
23 under section 104 for an acquisition that is targeted
24 in accordance with this section at a United States

1 person reasonably believed to be located outside the
2 United States.

3 “(c) ORDER.—

4 “(1) FINDINGS.—Upon an application made
5 pursuant to subsection (b), the Foreign Intelligence
6 Surveillance Court shall enter an ex parte order as
7 requested or as modified by the Court approving the
8 acquisition if the Court finds that—

9 “(A) the application has been made by a
10 Federal officer and approved by the Attorney
11 General;

12 “(B) on the basis of the facts submitted by
13 the applicant, for the United States person who
14 is the target of the acquisition, there is prob-
15 able cause to believe that the target is—

16 “(i) a person reasonably believed to be
17 located outside the United States; and

18 “(ii) a foreign power, an agent of a
19 foreign power, or an officer or employee of
20 a foreign power;

21 “(C) the proposed minimization procedures
22 meet the definition of minimization procedures
23 under section 101(h) or section 301(4), as ap-
24 propriate; and

1 “(D) the application that has been filed
2 contains all statements and certifications re-
3 quired by subsection (b) and the certification or
4 certifications are not clearly erroneous on the
5 basis of the statement made under subsection
6 (b)(1)(F)(v) and any other information fur-
7 nished under subsection (b)(3).

8 “(2) PROBABLE CAUSE.—In determining
9 whether or not probable cause exists for purposes of
10 paragraph (1)(B), a judge having jurisdiction under
11 subsection (a)(1) may consider past activities of the
12 target, and facts and circumstances relating to cur-
13 rent or future activities of the target. No United
14 States person may be considered a foreign power,
15 agent of a foreign power, or officer or employee of
16 a foreign power solely upon the basis of activities
17 protected by the first amendment to the Constitution
18 of the United States.

19 “(3) REVIEW.—

20 “(A) LIMITATION ON REVIEW.—Review by
21 a judge having jurisdiction under subsection
22 (a)(1) shall be limited to that required to make
23 the findings described in paragraph (1).

24 “(B) REVIEW OF PROBABLE CAUSE.—If
25 the judge determines that the facts submitted

1 under subsection (b) are insufficient to estab-
2 lish probable cause under paragraph (1)(B), the
3 judge shall enter an order so stating and pro-
4 vide a written statement for the record of the
5 reasons for such determination. The Govern-
6 ment may appeal an order under this subpara-
7 graph pursuant to subsection (f).

8 “(C) REVIEW OF MINIMIZATION PROCE-
9 DURES.—If the judge determines that the pro-
10 posed minimization procedures referred to in
11 paragraph (1)(C) do not meet the definition of
12 minimization procedures under section 101(h)
13 or section 301(4), as appropriate, the judge
14 shall enter an order so stating and provide a
15 written statement for the record of the reasons
16 for such determination. The Government may
17 appeal an order under this subparagraph pursu-
18 ant to subsection (f).

19 “(D) REVIEW OF CERTIFICATION.—If the
20 judge determines that an application required
21 by subsection (b) does not contain all of the re-
22 quired elements, or that the certification or cer-
23 tifications are clearly erroneous on the basis of
24 the statement made under subsection
25 (b)(1)(F)(v) and any other information fur-

1 nished under subsection (b)(3), the judge shall
2 enter an order so stating and provide a written
3 statement for the record of the reasons for such
4 determination. The Government may appeal an
5 order under this subparagraph pursuant to sub-
6 section (f).

7 “(4) SPECIFICATIONS.—An order approving an
8 acquisition under this subsection shall specify—

9 “(A) the identity, if known, or a descrip-
10 tion of the United States person who is the tar-
11 get of the acquisition identified or described in
12 the application pursuant to subsection
13 (b)(1)(B);

14 “(B) if provided in the application pursu-
15 ant to subsection (b)(1)(H), the nature and lo-
16 cation of each of the facilities or places at
17 which the acquisition will be directed;

18 “(C) the nature of the information sought
19 to be acquired and the type of communications
20 or activities to be subjected to acquisition;

21 “(D) the means by which the acquisition
22 will be conducted and whether physical entry is
23 required to effect the acquisition; and

24 “(E) the period of time during which the
25 acquisition is approved.

1 “(5) DIRECTIONS.—An order approving an ac-
2 quisition under this subsection shall direct—

3 “(A) that the minimization procedures re-
4 ferred to in paragraph (1)(C), as approved or
5 modified by the Court, be followed;

6 “(B) an electronic communication service
7 provider to provide to the Government forthwith
8 all information, facilities, or assistance nec-
9 essary to accomplish the acquisition authorized
10 under such order in a manner that will protect
11 the secrecy of the acquisition and produce a
12 minimum of interference with the services that
13 such electronic communication service provider
14 is providing to the target of the acquisition;

15 “(C) an electronic communication service
16 provider to maintain under security procedures
17 approved by the Attorney General any records
18 concerning the acquisition or the aid furnished
19 that such electronic communication service pro-
20 vider wishes to maintain; and

21 “(D) that the Government compensate, at
22 the prevailing rate, such electronic communica-
23 tion service provider for providing such infor-
24 mation, facilities, or assistance.

1 “(6) DURATION.—An order approved under this
2 subsection shall be effective for a period not to ex-
3 ceed 90 days and such order may be renewed for ad-
4 ditional 90-day periods upon submission of renewal
5 applications meeting the requirements of subsection
6 (b).

7 “(7) COMPLIANCE.—At or prior to the end of
8 the period of time for which an acquisition is ap-
9 proved by an order or extension under this section,
10 the judge may assess compliance with the minimiza-
11 tion procedures referred to in paragraph (1)(C) by
12 reviewing the circumstances under which informa-
13 tion concerning United States persons was acquired,
14 retained, or disseminated.

15 “(d) EMERGENCY AUTHORIZATION.—

16 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
17 TION.—Notwithstanding any other provision of this
18 Act, if the Attorney General reasonably determines
19 that—

20 “(A) an emergency situation exists with re-
21 spect to the acquisition of foreign intelligence
22 information for which an order may be obtained
23 under subsection (c) before an order author-
24 izing such acquisition can with due diligence be
25 obtained, and

1 “(B) the factual basis for issuance of an
2 order under this subsection to approve such ac-
3 quisition exists,

4 the Attorney General may authorize such acquisition
5 if a judge having jurisdiction under subsection (a)(1)
6 is informed by the Attorney General, or a designee
7 of the Attorney General, at the time of such author-
8 ization that the decision has been made to conduct
9 such acquisition and if an application in accordance
10 with this section is made to a judge of the Foreign
11 Intelligence Surveillance Court as soon as prac-
12 ticable, but not more than 7 days after the Attorney
13 General authorizes such acquisition.

14 “(2) MINIMIZATION PROCEDURES.—If the At-
15 torney General authorizes an acquisition under para-
16 graph (1), the Attorney General shall require that
17 the minimization procedures referred to in sub-
18 section (c)(1)(C) for the issuance of a judicial order
19 be followed.

20 “(3) TERMINATION OF EMERGENCY AUTHOR-
21 IZATION.—In the absence of a judicial order approv-
22 ing an acquisition under paragraph (1), such acqui-
23 sition shall terminate when the information sought is
24 obtained, when the application for the order is de-
25 nied, or after the expiration of 7 days from the time

1 of authorization by the Attorney General, whichever
2 is earliest.

3 “(4) USE OF INFORMATION.—If an application
4 for approval submitted pursuant to paragraph (1) is
5 denied, or in any other case where the acquisition is
6 terminated and no order is issued approving the ac-
7 quisition, no information obtained or evidence de-
8 rived from such acquisition, except under cir-
9 cumstances in which the target of the acquisition is
10 determined not to be a United States person, shall
11 be received in evidence or otherwise disclosed in any
12 trial, hearing, or other proceeding in or before any
13 court, grand jury, department, office, agency, regu-
14 latory body, legislative committee, or other authority
15 of the United States, a State, or political subdivision
16 thereof, and no information concerning any United
17 States person acquired from such acquisition shall
18 subsequently be used or disclosed in any other man-
19 ner by Federal officers or employees without the
20 consent of such person, except with the approval of
21 the Attorney General if the information indicates a
22 threat of death or serious bodily harm to any per-
23 son.

24 “(e) RELEASE FROM LIABILITY.—No cause of action
25 shall lie in any court against any electronic communication

1 service provider for providing any information, facilities,
2 or assistance in accordance with an order or request for
3 emergency assistance issued pursuant to subsections (c)
4 or (d).

5 “(f) APPEAL.—

6 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
7 SURVEILLANCE COURT OF REVIEW.—The Govern-
8 ment may file an appeal with the Foreign Intel-
9 ligence Surveillance Court of Review for review of an
10 order issued pursuant to subsection (c). The Court
11 of Review shall have jurisdiction to consider such ap-
12 peal and shall provide a written statement for the
13 record of the reasons for a decision under this para-
14 graph.

15 “(2) CERTIORARI TO THE SUPREME COURT.—
16 The Government may file a petition for a writ of
17 certiorari for review of a decision of the Court of Re-
18 view issued under paragraph (1). The record for
19 such review shall be transmitted under seal to the
20 Supreme Court of the United States, which shall
21 have jurisdiction to review such decision.”

22 **“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED**
23 **STATES PERSONS OUTSIDE THE UNITED**
24 **STATES.**

25 “(a) JURISDICTION AND SCOPE.—

1 “(1) JURISDICTION.—The Foreign Intelligence
2 Surveillance Court shall have jurisdiction to enter an
3 order pursuant to subsection (c).

4 “(2) SCOPE.—No department or agency of the
5 Federal Government may intentionally target, for
6 the purpose of acquiring foreign intelligence infor-
7 mation, a United States person reasonably believed
8 to be located outside the United States under cir-
9 cumstances in which the targeted United States per-
10 son has a reasonable expectation of privacy and a
11 warrant would be required if the acquisition were
12 conducted inside the United States for law enforce-
13 ment purposes, unless a judge of the Foreign Intel-
14 ligence Surveillance Court has entered an order with
15 respect to such targeted United States person or the
16 Attorney General has authorized an emergency ac-
17 quisition pursuant to subsections (c) or (d) or any
18 other provision of this Act.

19 “(3) LIMITATIONS.—

20 “(A) MOVING OR MISIDENTIFIED TAR-
21 GETS.—If a targeted United States person is
22 reasonably believed to be in the United States
23 during the pendency of an order issued pursu-
24 ant to subsection (c), the targeting of such
25 United States person under this section shall

1 cease unless the targeted United States person
2 is again reasonably believed to be located out-
3 side the United States during the pendency of
4 an order issued pursuant to subsection (c).

5 “(B) APPLICABILITY.—If an acquisition is
6 to be conducted inside the United States and
7 could be authorized under section 703, the ac-
8 quisition may only be conducted if authorized
9 by section 703 or in accordance with another
10 provision of this Act other than this section.

11 “(b) APPLICATION.—Each application for an order
12 under this section shall be made by a Federal officer in
13 writing upon oath or affirmation to a judge having juris-
14 diction under subsection (a)(1). Each application shall re-
15 quire the approval of the Attorney General based upon the
16 Attorney General’s finding that it satisfies the criteria and
17 requirements of such application as set forth in this sec-
18 tion and shall include—

19 “(1) the identity of the Federal officer making
20 the application;

21 “(2) the identity, if known, or a description of
22 the specific United States person who is the target
23 of the acquisition;

24 “(3) a statement of the facts and circumstances
25 relied upon to justify the applicant’s belief that the

1 United States person who is the target of the acqui-
2 sition is—

3 “(A) a person reasonably believed to be lo-
4 cated outside the United States; and

5 “(B) a foreign power, an agent of a foreign
6 power, or an officer or employee of a foreign
7 power;

8 “(4) a statement of proposed minimization pro-
9 cedures that meet the definition of minimization pro-
10 cedures under section 101(h) or section 301(4), as
11 appropriate;

12 “(5) a certification made by the Attorney Gen-
13 eral, an official specified in section 104(a)(6), or the
14 head of an element of the intelligence community
15 that—

16 “(A) the certifying official deems the infor-
17 mation sought to be foreign intelligence infor-
18 mation; and

19 “(B) a significant purpose of the acquisi-
20 tion is to obtain foreign intelligence informa-
21 tion;

22 “(6) a statement of the facts concerning any
23 previous applications that have been made to any
24 judge of the Foreign Intelligence Surveillance Court
25 involving the United States person specified in the

1 application and the action taken on each previous
2 application; and

3 “(7) a statement of the period of time for which
4 the acquisition is required to be maintained, pro-
5 vided that such period of time shall not exceed 90
6 days per application.

7 “(c) ORDER.—

8 “(1) FINDINGS.—Upon an application made
9 pursuant to subsection (b), the Foreign Intelligence
10 Surveillance Court shall enter an ex parte order as
11 requested or as modified by the Court if the Court
12 finds that—

13 “(A) the application has been made by a
14 Federal officer and approved by the Attorney
15 General;

16 “(B) on the basis of the facts submitted by
17 the applicant, for the United States person who
18 is the target of the acquisition, there is prob-
19 able cause to believe that the target is—

20 “(i) a person reasonably believed to be
21 located outside the United States; and

22 “(ii) a foreign power, an agent of a
23 foreign power, or an officer or employee of
24 a foreign power;

1 “(C) the proposed minimization proce-
2 dures, with respect to their dissemination provi-
3 sions, meet the definition of minimization proce-
4 cedures under section 101(h) or section 301(4),
5 as appropriate; and

6 “(D) the application that has been filed
7 contains all statements and certifications re-
8 quired by subsection (b) and the certification
9 provided under subsection (b)(5) is not clearly
10 erroneous on the basis of the information fur-
11 nished under subsection (b).

12 “(2) PROBABLE CAUSE.—In determining
13 whether or not probable cause exists for purposes of
14 an order under paragraph (1)(B), a judge having ju-
15 risdiction under subsection (a)(1) may consider past
16 activities of the target, and facts and circumstances
17 relating to current or future activities of the target.
18 No United States person may be considered a for-
19 eign power, agent of a foreign power, or officer or
20 employee of a foreign power solely upon the basis of
21 activities protected by the first amendment to the
22 Constitution of the United States.

23 “(3) REVIEW.—

24 “(A) LIMITATIONS ON REVIEW.—Review
25 by a judge having jurisdiction under subsection

1 (a)(1) shall be limited to that required to make
2 the findings described in paragraph (1). The
3 judge shall not have jurisdiction to review the
4 means by which an acquisition under this sec-
5 tion may be conducted.

6 “(B) REVIEW OF PROBABLE CAUSE.—If
7 the judge determines that the facts submitted
8 under subsection (b) are insufficient to estab-
9 lish probable cause under this subsection, the
10 judge shall enter an order so stating and pro-
11 vide a written statement for the record of the
12 reasons for such determination. The Govern-
13 ment may appeal an order under this clause
14 pursuant to subsection (e).

15 “(C) REVIEW OF MINIMIZATION PROCE-
16 DURES.—If the judge determines that the mini-
17 mization procedures applicable to dissemination
18 of information obtained through an acquisition
19 under this subsection do not meet the definition
20 of minimization procedures under section
21 101(h) or section 301(4), as appropriate, the
22 judge shall enter an order so stating and pro-
23 vide a written statement for the record of the
24 reasons for such determination. The Govern-

1 ment may appeal an order under this clause
2 pursuant to subsection (e).

3 “(D) SCOPE OF REVIEW OF CERTIFI-
4 CATION.—If the Foreign Intelligence Surveil-
5 lance Court determines that an application
6 under subsection (b) does not contain all the re-
7 quired elements, or that the certification pro-
8 vided under subsection (b)(5) is clearly erro-
9 neous on the basis of the information furnished
10 under subsection (b), the judge shall enter an
11 order so stating and provide a written state-
12 ment for the record of the reasons for such de-
13 termination. The Government may appeal an
14 order under this clause pursuant to subsection
15 (e).

16 “(4) DURATION.—An order under this para-
17 graph shall be effective for a period not to exceed 90
18 days and such order may be renewed for additional
19 90-day periods upon submission of renewal applica-
20 tions meeting the requirements of subsection (b).

21 “(5) COMPLIANCE.—At or prior to the end of
22 the period of time for which an order or extension
23 is granted under this section, the judge may assess
24 compliance with the minimization procedures re-
25 ferred to in paragraph (1)(C) by reviewing the cir-

1 cumstances under which information concerning
2 United States persons was disseminated, provided
3 that the judge may not inquire into the cir-
4 cumstances relating to the conduct of the acqui-
5 sition.

6 “(d) EMERGENCY AUTHORIZATION.—

7 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
8 TION.—Notwithstanding any other provision of this
9 section, if the Attorney General reasonably deter-
10 mines that—

11 “(A) an emergency situation exists with re-
12 spect to the acquisition of foreign intelligence
13 information for which an order may be obtained
14 under subsection (c) before an order under that
15 subsection can, with due diligence, be obtained,
16 and

17 “(B) the factual basis for the issuance of
18 an order under this section exists,
19 the Attorney General may authorize the emergency
20 acquisition if a judge having jurisdiction under sub-
21 section (a)(1) is informed by the Attorney General
22 or a designee of the Attorney General at the time of
23 such authorization that the decision has been made
24 to conduct such acquisition and if an application in
25 accordance with this section is made to a judge of

1 the Foreign Intelligence Surveillance Court as soon
2 as practicable, but not more than 7 days after the
3 Attorney General authorizes such acquisition.

4 “(2) MINIMIZATION PROCEDURES.—If the At-
5 torney General authorizes an emergency acquisition
6 under paragraph (1), the Attorney General shall re-
7 quire that the minimization procedures referred to in
8 subsection (c)(1)(C) be followed.

9 “(3) TERMINATION OF EMERGENCY AUTHOR-
10 IZATION.—In the absence of an order under sub-
11 section (c), an emergency acquisition under para-
12 graph (1) shall terminate when the information
13 sought is obtained, if the application for the order
14 is denied, or after the expiration of 7 days from the
15 time of authorization by the Attorney General,
16 whichever is earliest.

17 “(4) USE OF INFORMATION.—If an application
18 submitted to the Court pursuant to paragraph (1) is
19 denied, or in any other case where the acquisition is
20 terminated and no order with respect to the target
21 of the acquisition is issued under subsection (c), no
22 information obtained or evidence derived from such
23 acquisition, except under circumstances in which the
24 target of the acquisition is determined not to be a
25 United States person shall be received in evidence or

1 otherwise disclosed in any trial, hearing, or other
2 proceeding in or before any court, grand jury, de-
3 partment, office, agency, regulatory body, legislative
4 committee, or other authority of the United States,
5 a State, or political subdivision thereof, and no in-
6 formation concerning any United States person ac-
7 quired from such acquisition shall subsequently be
8 used or disclosed in any other manner by Federal of-
9 ficers or employees without the consent of such per-
10 son, except with the approval of the Attorney Gen-
11 eral if the information indicates a threat of death or
12 serious bodily harm to any person.

13 “(e) APPEAL.—

14 “(1) APPEAL TO THE COURT OF REVIEW.—The
15 Government may file an appeal with the Foreign In-
16 telligence Surveillance Court of Review for review of
17 an order issued pursuant to subsection (c). The
18 Court of Review shall have jurisdiction to consider
19 such appeal and shall provide a written statement
20 for the record of the reasons for a decision under
21 this paragraph.

22 “(2) CERTIORARI TO THE SUPREME COURT.—
23 The Government may file a petition for a writ of
24 certiorari for review of a decision of the Court of Re-
25 view issued under paragraph (1). The record for

1 such review shall be transmitted under seal to the
2 Supreme Court of the United States, which shall
3 have jurisdiction to review such decision.

4 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-**
5 **THORIZATIONS.**

6 **“(a) JOINT APPLICATIONS AND ORDERS.—**If an ac-
7 quisition targeting a United States person under section
8 703 or section 704 is proposed to be conducted both inside
9 and outside the United States, a judge having jurisdiction
10 under section 703(a)(1) or section 704(a)(1) may issue si-
11 multaneously, upon the request of the Government in a
12 joint application complying with the requirements of sec-
13 tion 703(b) and section 704(b), orders under section
14 703(c) and section 704(c), as appropriate.

15 **“(b) CONCURRENT AUTHORIZATION.—**If an order
16 authorizing electronic surveillance or physical search has
17 been obtained under section 105 or section 304 and that
18 order is still in effect, during the pendency of that order,
19 the Attorney General may authorize, without an order
20 under section 703 or section 704, the targeting of that
21 United States person for the purpose of acquiring foreign
22 intelligence information while such person is reasonably
23 believed to be located outside the United States.

1 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE**
2 **VII.**

3 “(a) INFORMATION ACQUIRED UNDER SECTION
4 702.—Information acquired from an acquisition con-
5 ducted under section 702 shall be deemed to be informa-
6 tion acquired from an electronic surveillance pursuant to
7 title I for purposes of section 106, except for the purposes
8 of subsection (j) of such section.

9 “(b) INFORMATION ACQUIRED UNDER SECTION
10 703.—Information acquired from an acquisition con-
11 ducted under section 703 shall be deemed to be informa-
12 tion acquired from an electronic surveillance pursuant to
13 title I for purposes of section 106.

14 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

15 “(a) SEMIANNUAL REPORT.—Not less frequently
16 than once every 6 months, the Attorney General shall fully
17 inform, in a manner consistent with national security, the
18 congressional intelligence committees, and the Committees
19 on the Judiciary of the Senate and the House of Rep-
20 resentatives, concerning the implementation of this title.

21 “(b) CONTENT.—Each report made under subsection
22 (a) shall include—

23 “(1) with respect to section 702—

24 “(A) any certifications made under section
25 702(g) during the reporting period;

1 “(B) with respect to each certification
2 made under section 702(g)(1)(B)(ii), the rea-
3 sons for exercising the authority under such
4 paragraph;

5 “(C) any directives issued under section
6 702(h) during the reporting period;

7 “(D) a description of the judicial review
8 during the reporting period of any such certifi-
9 cations and targeting and minimization proce-
10 dures required by subsections (d) and (e) of
11 section 702 and utilized with respect to such
12 acquisition, including a copy of any order or
13 pleading in connection with such review that
14 contains a significant legal interpretation of the
15 provisions of section 702;

16 “(E) any actions taken to challenge or en-
17 force a directive under paragraphs (4) or (5) of
18 section 702(h);

19 “(F) any compliance reviews conducted by
20 the Attorney General or the Director of Na-
21 tional Intelligence of acquisitions authorized
22 under section 702(a);

23 “(G) a description of any incidents of non-
24 compliance with a directive issued by the Attor-

1 ney General and the Director of National Intel-
2 ligence under section 702(h), including—

3 “(i) incidents of noncompliance by an
4 element of the intelligence community with
5 procedures and guidelines submitted in ac-
6 cordance with subsections (d) and (e) and
7 (f) of section 702; and

8 “(ii) incidents of noncompliance by a
9 specified person to whom the Attorney
10 General and Director of National Intel-
11 ligence issued a directive under section
12 702(h); and

13 “(H) any procedures implementing section
14 702;

15 “(2) with respect to section 703—

16 “(A) the total number of applications made
17 for orders under section 703(b);

18 “(B) the total number of such orders—

19 “(i) granted;

20 “(ii) modified; or

21 “(iii) denied; and

22 “(C) the total number of emergency acqui-
23 sitions authorized by the Attorney General
24 under section 703(d) and the total number of

1 subsequent orders approving or denying such
2 acquisitions; and

3 “(3) with respect to section 704—

4 “(A) the total number of applications made
5 for orders under 704(b);

6 “(B) the total number of such orders

7 “(i) granted;

8 “(ii) modified; or

9 “(iii) denied; and

10 “(C) the total number of emergency acqui-
11 sitions authorized by the Attorney General
12 under section 704(d) and the total number of
13 subsequent orders approving or denying such
14 applications.

15 **“SEC. 708. SAVINGS PROVISION.**

16 “Nothing in this title shall be construed to limit the
17 authority of the Government to seek an order or author-
18 ization under, or otherwise engage in any activity that is
19 authorized under, any other title of this Act.”.

20 (b) TABLE OF CONTENTS.—The table of contents in
21 the first section of the Foreign Intelligence Surveillance
22 Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

23 (1) by striking the item relating to title VII;

24 (2) by striking the item relating to section 701;

25 and

1 (3) by adding at the end the following:

“TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN
PERSONS OUTSIDE THE UNITED STATES

“Sec. 701. Definitions.

“Sec. 702. Procedures for targeting certain persons outside the United States
other than United States persons.

“Sec. 703. Certain acquisitions inside the United States of United States per-
sons outside the United States.

“Sec. 704. Other acquisitions targeting United States persons outside the
United States.

“Sec. 705. Joint applications and concurrent authorizations.

“Sec. 706. Use of information acquired under title VII.

“Sec. 707. Congressional oversight.

“Sec. 708. Savings provision.”

2 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

3 (1) TITLE 18, UNITED STATES CODE.—Section
4 2511(2)(a)(ii)(A) of title 18, United States Code, is
5 amended by inserting “or a court order pursuant to
6 section 704 of the Foreign Intelligence Surveillance
7 Act of 1978” after “assistance”.

8 (2) FOREIGN INTELLIGENCE SURVEILLANCE
9 ACT OF 1978.—Section 601(a)(1) of the Foreign In-
10 telligence Surveillance Act of 1978 (50 U.S.C.
11 1871(a)(1)) is amended—

12 (A) in subparagraph (C), by striking

13 “and”; and

14 (B) by adding at the end the following new
15 subparagraphs:

16 “(E) acquisitions under section 703; and

17 “(F) acquisitions under section 704;”.

1 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
2 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
3 **TION OF CERTAIN COMMUNICATIONS MAY BE**
4 **CONDUCTED.**

5 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
6 the Foreign Intelligence Surveillance Act of 1978 (50
7 U.S.C. 1801 et seq.) is amended by adding at the end
8 the following new section:

9 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
10 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
11 TAIN COMMUNICATIONS MAY BE CONDUCTED

12 “SEC. 112. (a) Except as provided in subsection (b),
13 the procedures of chapters 119, 121, and 206 of title 18,
14 United States Code, and this Act shall be the exclusive
15 means by which electronic surveillance and the intercep-
16 tion of domestic wire, oral, or electronic communications
17 may be conducted.

18 “(b) Only an express statutory authorization for elec-
19 tronic surveillance or the interception of domestic wire,
20 oral, or electronic communications, other than as an
21 amendment to this Act or chapters 119, 121, or 206 of
22 title 18, United States Code, shall constitute an additional
23 exclusive means for the purpose of subsection (a).”.

24 (b) OFFENSE.—Section 109(a) of the Foreign Intel-
25 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
26 amended by striking “authorized by statute” each place

1 it appears in such section and inserting “authorized by
2 this Act, chapter 119, 121, or 206 of title 18, United
3 States Code, or any express statutory authorization that
4 is an additional exclusive means for conducting electronic
5 surveillance under section 112.”; and

6 (c) CONFORMING AMENDMENTS.—

7 (1) TITLE 18, UNITED STATES CODE.—Section
8 2511(2)(a) of title 18, United States Code, is
9 amended by adding at the end the following:

10 “(iii) If a certification under subpara-
11 graph (ii)(B) for assistance to obtain for-
12 eign intelligence information is based on
13 statutory authority, the certification shall
14 identify the specific statutory provision,
15 and shall certify that the statutory require-
16 ments have been met.”; and

17 (2) TABLE OF CONTENTS.—The table of con-
18 tents in the first section of the Foreign Intelligence
19 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
20 is amended by inserting after the item relating to
21 section 111, the following new item:

“Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of certain communications may be conducted.”.

1 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
2 **ORDERS UNDER THE FOREIGN INTEL-**
3 **LIGENCE SURVEILLANCE ACT OF 1978.**

4 (a) INCLUSION OF CERTAIN ORDERS IN SEMIANNUAL
5 REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of
6 section 601 of the Foreign Intelligence Surveillance Act
7 of 1978 (50 U.S.C. 1871) is amended by striking “(not
8 including orders)” and inserting “, orders,”.

9 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
10 OTHER ORDERS.—Such section 601 is further amended
11 by adding at the end the following:

12 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
13 General shall submit to the committees of Congress re-
14 ferred to in subsection (a)—

15 “(1) a copy of any decision, order, or opinion
16 issued by the Foreign Intelligence Surveillance Court
17 or the Foreign Intelligence Surveillance Court of Re-
18 view that includes significant construction or inter-
19 pretation of any provision of this Act, and any
20 pleadings, applications, or memoranda of law associ-
21 ated with such decision, order, or opinion, not later
22 than 45 days after such decision, order, or opinion
23 is issued; and

24 “(2) a copy of any such decision, order, or opin-
25 ion, and any pleadings, applications, or memoranda
26 of law associated with such decision, order, or opin-

1 ion, that was issued during the 5-year period ending
2 on the date of the enactment of the FISA Amend-
3 ments Act of 2008 and not previously submitted in
4 a report under subsection (a).

5 “(d) PROTECTION OF NATIONAL SECURITY.—The
6 Attorney General, in consultation with the Director of Na-
7 tional Intelligence, may authorize redactions of materials
8 described in subsection (c) that are provided to the com-
9 mittees of Congress referred to in subsection (a), if such
10 redactions are necessary to protect the national security
11 of the United States and are limited to sensitive sources
12 and methods information or the identities of targets.”.

13 (c) DEFINITIONS.—Such section 601, as amended by
14 subsections (a) and (b), is further amended by adding at
15 the end the following:

16 “(e) DEFINITIONS.—In this section:

17 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
18 COURT.—The term ‘Foreign Intelligence Surveillance
19 Court’ means the court established by section
20 103(a).

21 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
22 COURT OF REVIEW.—The term ‘Foreign Intelligence
23 Surveillance Court of Review’ means the court estab-
24 lished by section 103(b).”.

1 **SEC. 104. APPLICATIONS FOR COURT ORDERS.**

2 Section 104 of the Foreign Intelligence Surveillance
3 Act of 1978 (50 U.S.C. 1804) is amended—

4 (1) in subsection (a)—

5 (A) by striking paragraphs (2) and (11);

6 (B) by redesignating paragraphs (3)
7 through (10) as paragraphs (2) through (9), re-
8 spectively;

9 (C) in paragraph (5), as redesignated by
10 subparagraph (B) of this paragraph, by striking
11 “detailed”;

12 (D) in paragraph (6), as redesignated by
13 subparagraph (B) of this paragraph, in the
14 matter preceding subparagraph (A)—

15 (i) by striking “Affairs or” and insert-
16 ing “Affairs,”; and

17 (ii) by striking “Senate—” and insert-
18 ing “Senate, or the Deputy Director of the
19 Federal Bureau of Investigation, if des-
20 ignated by the President as a certifying of-
21 ficial—”;

22 (E) in paragraph (7), as redesignated by
23 subparagraph (B) of this paragraph, by striking
24 “statement of” and inserting “summary state-
25 ment of”;

1 (F) in paragraph (8), as redesignated by
2 subparagraph (B) of this paragraph, by adding
3 “and” at the end; and

4 (G) in paragraph (9), as redesignated by
5 subparagraph (B) of this paragraph, by striking
6 “; and” and inserting a period;

7 (2) by striking subsection (b);

8 (3) by redesignating subsections (c) through (e)
9 as subsections (b) through (d), respectively; and

10 (4) in paragraph (1)(A) of subsection (d), as re-
11 designated by paragraph (3) of this subsection, by
12 striking “or the Director of National Intelligence”
13 and inserting “the Director of National Intelligence,
14 or the Director of the Central Intelligence Agency”.

15 **SEC. 105. ISSUANCE OF AN ORDER.**

16 Section 105 of the Foreign Intelligence Surveillance
17 Act of 1978 (50 U.S.C. 1805) is amended—

18 (1) in subsection (a)—

19 (A) by striking paragraph (1); and

20 (B) by redesignating paragraphs (2)
21 through (5) as paragraphs (1) through (4), re-
22 spectively;

23 (2) in subsection (b), by striking “(a)(3)” and
24 inserting “(a)(2)”;

25 (3) in subsection (c)(1)—

1 (A) in subparagraph (D), by adding “and”
2 at the end;

3 (B) in subparagraph (E), by striking “;
4 and” and inserting a period; and

5 (C) by striking subparagraph (F);

6 (4) by striking subsection (d);

7 (5) by redesignating subsections (e) through (i)
8 as subsections (d) through (h), respectively;

9 (6) by amending subsection (e), as redesignated
10 by paragraph (5) of this section, to read as follows:

11 “(e)(1) Notwithstanding any other provision of this
12 title, the Attorney General may authorize the emergency
13 employment of electronic surveillance if the Attorney Gen-
14 eral—

15 “(A) reasonably determines that an emergency
16 situation exists with respect to the employment of
17 electronic surveillance to obtain foreign intelligence
18 information before an order authorizing such surveil-
19 lance can with due diligence be obtained;

20 “(B) reasonably determines that the factual
21 basis for the issuance of an order under this title to
22 approve such electronic surveillance exists;

23 “(C) informs, either personally or through a
24 designee, a judge having jurisdiction under section
25 103 at the time of such authorization that the deci-

1 sion has been made to employ emergency electronic
2 surveillance; and

3 “(D) makes an application in accordance with
4 this title to a judge having jurisdiction under section
5 103 as soon as practicable, but not later than 7 days
6 after the Attorney General authorizes such surveil-
7 lance.

8 “(2) If the Attorney General authorizes the emer-
9 gency employment of electronic surveillance under para-
10 graph (1), the Attorney General shall require that the
11 minimization procedures required by this title for the
12 issuance of a judicial order be followed.

13 “(3) In the absence of a judicial order approving such
14 electronic surveillance, the surveillance shall terminate
15 when the information sought is obtained, when the appli-
16 cation for the order is denied, or after the expiration of
17 7 days from the time of authorization by the Attorney
18 General, whichever is earliest.

19 “(4) A denial of the application made under this sub-
20 section may be reviewed as provided in section 103.

21 “(5) In the event that such application for approval
22 is denied, or in any other case where the electronic surveil-
23 lance is terminated and no order is issued approving the
24 surveillance, no information obtained or evidence derived
25 from such surveillance shall be received in evidence or oth-

1 erwise disclosed in any trial, hearing, or other proceeding
2 in or before any court, grand jury, department, office,
3 agency, regulatory body, legislative committee, or other
4 authority of the United States, a State, or political sub-
5 division thereof, and no information concerning any
6 United States person acquired from such surveillance shall
7 subsequently be used or disclosed in any other manner by
8 Federal officers or employees without the consent of such
9 person, except with the approval of the Attorney General
10 if the information indicates a threat of death or serious
11 bodily harm to any person.

12 “(6) The Attorney General shall assess compliance
13 with the requirements of paragraph (5).”; and

14 (7) by adding at the end the following:

15 “(i) In any case in which the Government makes an
16 application to a judge under this title to conduct electronic
17 surveillance involving communications and the judge
18 grants such application, upon the request of the applicant,
19 the judge shall also authorize the installation and use of
20 pen registers and trap and trace devices, and direct the
21 disclosure of the information set forth in section
22 402(d)(2).”.

23 **SEC. 106. USE OF INFORMATION.**

24 Subsection (i) of section 106 of the Foreign Intel-
25 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is

1 amended by striking “radio communication” and inserting
2 “communication”.

3 **SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.**

4 (a) APPLICATIONS.—Section 303 of the Foreign In-
5 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
6 amended—

7 (1) in subsection (a)—

8 (A) by striking paragraph (2);

9 (B) by redesignating paragraphs (3)
10 through (9) as paragraphs (2) through (8), re-
11 spectively;

12 (C) in paragraph (2), as redesignated by
13 subparagraph (B) of this paragraph, by striking
14 “detailed”;

15 (D) in paragraph (3)(C), as redesignated
16 by subparagraph (B) of this paragraph, by in-
17 serting “or is about to be” before “owned”; and

18 (E) in paragraph (6), as redesignated by
19 subparagraph (B) of this paragraph, in the
20 matter preceding subparagraph (A)—

21 (i) by striking “Affairs or” and insert-
22 ing “Affairs,”; and

23 (ii) by striking “Senate—” and insert-
24 ing “Senate, or the Deputy Director of the
25 Federal Bureau of Investigation, if des-

1 ignated by the President as a certifying of-
2 ficial—”; and

3 (2) in subsection (d)(1)(A), by striking “or the
4 Director of National Intelligence” and inserting “the
5 Director of National Intelligence, or the Director of
6 the Central Intelligence Agency”.

7 (b) ORDERS.—Section 304 of the Foreign Intel-
8 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
9 amended—

10 (1) in subsection (a)—

11 (A) by striking paragraph (1);

12 (B) by redesignating paragraphs (2)
13 through (5) as paragraphs (1) through (4), re-
14 spectively; and

15 (C) in paragraph (2)(B), as redesignated
16 by subparagraph (B) of this paragraph, by in-
17 serting “or is about to be” before “owned”; and

18 (2) by amending subsection (e) to read as fol-
19 lows:

20 “(e)(1) Notwithstanding any other provision of this
21 title, the Attorney General may authorize the emergency
22 employment of a physical search if the Attorney General—

23 “(A) reasonably determines that an emergency
24 situation exists with respect to the employment of a
25 physical search to obtain foreign intelligence infor-

1 mation before an order authorizing such physical
2 search can with due diligence be obtained;

3 “(B) reasonably determines that the factual
4 basis for issuance of an order under this title to ap-
5 prove such physical search exists;

6 “(C) informs, either personally or through a
7 designee, a judge of the Foreign Intelligence Surveil-
8 lance Court at the time of such authorization that
9 the decision has been made to employ an emergency
10 physical search; and

11 “(D) makes an application in accordance with
12 this title to a judge of the Foreign Intelligence Sur-
13 veillance Court as soon as practicable, but not more
14 than 7 days after the Attorney General authorizes
15 such physical search.

16 “(2) If the Attorney General authorizes the emer-
17 gency employment of a physical search under paragraph
18 (1), the Attorney General shall require that the minimiza-
19 tion procedures required by this title for the issuance of
20 a judicial order be followed.

21 “(3) In the absence of a judicial order approving such
22 physical search, the physical search shall terminate when
23 the information sought is obtained, when the application
24 for the order is denied, or after the expiration of 7 days

1 from the time of authorization by the Attorney General,
2 whichever is earliest.

3 “(4) A denial of the application made under this sub-
4 section may be reviewed as provided in section 103.

5 “(5)(A) In the event that such application for ap-
6 proval is denied, or in any other case where the physical
7 search is terminated and no order is issued approving the
8 physical search, no information obtained or evidence de-
9 rived from such physical search shall be received in evi-
10 dence or otherwise disclosed in any trial, hearing, or other
11 proceeding in or before any court, grand jury, department,
12 office, agency, regulatory body, legislative committee, or
13 other authority of the United States, a State, or political
14 subdivision thereof, and no information concerning any
15 United States person acquired from such physical search
16 shall subsequently be used or disclosed in any other man-
17 ner by Federal officers or employees without the consent
18 of such person, except with the approval of the Attorney
19 General if the information indicates a threat of death or
20 serious bodily harm to any person.

21 “(B) The Attorney General shall assess compliance
22 with the requirements of subparagraph (A).”

23 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
24 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
25 is amended—

1 (1) in section 304(a)(4), as redesignated by
2 subsection (b) of this section, by striking
3 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

4 (2) in section 305(k)(2), by striking
5 “303(a)(7)” and inserting “303(a)(6)”.

6 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**
7 **AND TRAP AND TRACE DEVICES.**

8 Section 403 of the Foreign Intelligence Surveillance
9 Act of 1978 (50 U.S.C. 1843) is amended—

10 (1) in subsection (a)(2), by striking “48 hours”
11 and inserting “7 days”; and

12 (2) in subsection (c)(1)(C), by striking “48
13 hours” and inserting “7 days”.

14 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

15 (a) **DESIGNATION OF JUDGES.**—Subsection (a) of
16 section 103 of the Foreign Intelligence Surveillance Act
17 of 1978 (50 U.S.C. 1803) is amended by inserting “at
18 least” before “seven of the United States judicial cir-
19 cuits”.

20 (b) **EN BANC AUTHORITY.**—

21 (1) **IN GENERAL.**—Subsection (a) of section
22 103 of the Foreign Intelligence Surveillance Act of
23 1978, as amended by subsection (a) of this section,
24 is further amended—

25 (A) by inserting “(1)” after “(a)”; and

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

3 “(2)(A) The court established under this subsection,
4 on its own initiative, or upon the request of the Govern-
5 ment in any proceeding or a party under section 501(f)
6 or paragraph (4) or (5) of section 702(h), may hold a
7 hearing or rehearing, en banc, when ordered by a majority
8 of the judges that constitute such court upon a determina-
9 tion that—

10 “(i) en banc consideration is necessary to se-
11 cure or maintain uniformity of the court’s decisions;
12 or

13 “(ii) the proceeding involves a question of ex-
14 ceptional importance.

15 “(B) Any authority granted by this Act to a judge
16 of the court established under this subsection may be exer-
17 cised by the court en banc. When exercising such author-
18 ity, the court en banc shall comply with any requirements
19 of this Act on the exercise of such authority.

20 “(C) For purposes of this paragraph, the court en
21 banc shall consist of all judges who constitute the court
22 established under this subsection.”.

23 (2) CONFORMING AMENDMENTS.—The Foreign
24 Intelligence Surveillance Act of 1978 is further
25 amended—

1 (A) in subsection (a) of section 103, as
2 amended by this subsection, by inserting “(ex-
3 cept when sitting en banc under paragraph
4 (2))” after “no judge designated under this
5 subsection”; and

6 (B) in section 302(c) (50 U.S.C. 1822(c)),
7 by inserting “(except when sitting en banc)”
8 after “except that no judge”.

9 (c) STAY OR MODIFICATION DURING AN APPEAL.—
10 Section 103 of the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1803) is amended—

12 (1) by redesignating subsection (f) as sub-
13 section (g); and

14 (2) by inserting after subsection (e) the fol-
15 lowing new subsection:

16 “(f)(1) A judge of the court established under sub-
17 section (a), the court established under subsection (b) or
18 a judge of that court, or the Supreme Court of the United
19 States or a justice of that court, may, in accordance with
20 the rules of their respective courts, enter a stay of an order
21 or an order modifying an order of the court established
22 under subsection (a) or the court established under sub-
23 section (b) entered under any title of this Act, while the
24 court established under subsection (a) conducts a rehear-
25 ing, while an appeal is pending to the court established

1 under subsection (b), or while a petition of certiorari is
2 pending in the Supreme Court of the United States, or
3 during the pendency of any review by that court.

4 “(2) The authority described in paragraph (1) shall
5 apply to an order entered under any provision of this
6 Act.”.

7 (d) **AUTHORITY OF FOREIGN INTELLIGENCE SUR-**
8 **VEILLANCE COURT.**—Section 103 of the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C. 1803), as
10 amended by this Act, is amended by adding at the end
11 the following:

12 “(i) Nothing in this Act shall be construed to reduce
13 or contravene the inherent authority of the court estab-
14 lished by subsection (a) to determine, or enforce, compli-
15 ance with an order or a rule of such court or with a proce-
16 dure approved by such court.”.

17 **SEC. 110. REVIEW OF PREVIOUS ACTIONS.**

18 (a) **DEFINITIONS.**—In this section:

19 (1) **APPROPRIATE COMMITTEES OF CON-**
20 **GRESS.**—The term “appropriate committees of Con-
21 gress” means—

22 (A) the Select Committee on Intelligence
23 and the Committee on the Judiciary of the Sen-
24 ate; and

1 (B) the Permanent Select Committee on
2 Intelligence and the Committee on the Judici-
3 ary of the House of Representatives.

4 (2) FOREIGN INTELLIGENCE SURVEILLANCE
5 COURT.—The term “Foreign Intelligence Surveil-
6 lance Court” means the court established by section
7 103(a) of the Foreign Intelligence Surveillance Act
8 of 1978 (50 U.S.C. 1803(a)).

9 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND
10 PROGRAM.—The terms “President’s Surveillance
11 Program” and “Program” mean the intelligence ac-
12 tivity involving communications that was authorized
13 by the President during the period beginning on
14 September 11, 2001, and ending on January 17,
15 2007, including the program referred to by the
16 President in a radio address on December 17, 2005
17 (commonly known as the Terrorist Surveillance Pro-
18 gram).

19 (b) REVIEWS.—

20 (1) REQUIREMENT TO CONDUCT.—The Inspec-
21 tors General of the Department of Justice, the Of-
22 fice of the Director of National Intelligence, the Na-
23 tional Security Agency, and any other element of the
24 intelligence community that participated in the
25 President’s Surveillance Program, shall complete a

1 comprehensive review of, with respect to the over-
2 sight authority and responsibility of each such In-
3 spector General—

4 (A) all of the facts necessary to describe
5 the establishment, implementation, product, and
6 use of the product of the Program;

7 (B) the procedures and substance of, and
8 access to, the legal reviews of the Program;

9 (C) communications with, and participa-
10 tion of, individuals and entities in the private
11 sector related to the Program;

12 (D) interaction with the Foreign Intel-
13 ligence Surveillance Court and transition to
14 court orders related to the Program; and

15 (E) any other matters identified by any
16 such Inspector General that would enable that
17 Inspector General to complete a review of the
18 Program, with respect to such Department or
19 element.

20 (2) COOPERATION AND COORDINATION.—

21 (A) COOPERATION.—Each Inspector Gen-
22 eral required to conduct a review under para-
23 graph (1) shall—

1 (i) work in conjunction, to the extent
2 practicable, with any other Inspector Gen-
3 eral required to conduct such a review; and

4 (ii) utilize to the extent practicable,
5 and not unnecessarily duplicate or delay,
6 such reviews or audits that have been com-
7 pleted or are being undertaken by any such
8 Inspector General or by any other office of
9 the Executive Branch related to the Pro-
10 gram.

11 (B) INTEGRATION OF OTHER REVIEWS.—

12 The Office of Professional Responsibility of the
13 Department of Justice shall provide the report
14 of any investigation conducted by such Office
15 on matters relating to the Program to the In-
16 spector General of the Department of Justice,
17 who shall integrate the factual findings and
18 conclusions of such investigation into its review

19 (C) COORDINATION.—The Inspectors Gen-
20 eral shall designate one of the Inspectors Gen-
21 eral required to conduct a review under para-
22 graph (1) that is appointed by the President, by
23 and with the advice and consent of the Senate,
24 to coordinate the conduct of the reviews and the
25 preparation of the reports.

1 (c) REPORTS.—

2 (1) PRELIMINARY REPORTS.—Not later than 60
3 days after the date of the enactment of this Act, the
4 Inspectors General of the Department of Justice, the
5 Office of the Director of National Intelligence, the
6 National Security Agency, and any other Inspector
7 General required to conduct a review under sub-
8 section (b)(1), shall submit to the appropriate com-
9 mittees of Congress an interim report that describes
10 the planned scope of such review.

11 (2) FINAL REPORT.—Not later than 1 year
12 after the date of the enactment of this Act, the In-
13 spectors General of the Department of Justice, the
14 Office of the Director of National Intelligence, the
15 National Security Agency, and any other Inspector
16 General required to conduct a review under sub-
17 section (b)(1), shall submit to the appropriate com-
18 mittees of Congress and the Commission established
19 under section 301(a), to the extent practicable, a
20 comprehensive report on such reviews that includes
21 any recommendations of any such Inspectors Gen-
22 eral within the oversight authority and responsibility
23 of any such Inspector General with respect to the re-
24 views.

1 (3) FORM.—A report submitted under this sub-
2 section shall be submitted in unclassified form, but
3 may include a classified annex. The unclassified re-
4 port shall not disclose the name or identity of any
5 individual or entity of the private sector that partici-
6 pated in the Program or with whom there was com-
7 munication about the Program, to the extent that
8 information is classified.

9 (d) RESOURCES.—

10 (1) EXPEDITED SECURITY CLEARANCE.—The
11 Director of National Intelligence shall ensure that
12 the process for the investigation and adjudication of
13 an application by an Inspector General or any ap-
14 propriate staff of an Inspector General for a security
15 clearance necessary for the conduct of the review
16 under subsection (b)(1) is carried out as expedi-
17 tiously as possible.

18 (2) ADDITIONAL PERSONNEL FOR THE INSPEC-
19 TORS GENERAL.—An Inspector General required to
20 conduct a review under subsection (b)(1) and submit
21 a report under subsection (c) is authorized to hire
22 such additional personnel as may be necessary to
23 carry out such review and prepare such report in a
24 prompt and timely manner. Personnel authorized to
25 be hired under this paragraph—

1 (A) shall perform such duties relating to
2 such a review as the relevant Inspector General
3 shall direct; and

4 (B) are in addition to any other personnel
5 authorized by law.

6 **SEC. 111. WEAPONS OF MASS DESTRUCTION.**

7 (a) DEFINITIONS.—

8 (1) FOREIGN POWER.—Subsection (a) of sec-
9 tion 101 of the Foreign Intelligence Surveillance Act
10 of 1978 (50 U.S.C. 1801(a)) is amended—

11 (A) in paragraph (5), by striking “persons;
12 or” and inserting “persons;”;

13 (B) in paragraph (6) by striking the period
14 and inserting “; or”; and

15 (C) by adding at the end the following new
16 paragraph:

17 “(7) an entity not substantially composed of
18 United States persons that is engaged in the inter-
19 national proliferation of weapons of mass destruc-
20 tion.”.

21 (2) AGENT OF A FOREIGN POWER.—Subsection
22 (b)(1) of such section 101 is amended—

23 (A) in subparagraph (B), by striking “or”
24 at the end; and

1 (B) by adding at the end the following new
2 subparagraph

3 “(D) engages in the international prolifera-
4 tion of weapons of mass destruction, or activi-
5 ties in preparation therefor; or.”

6 (3) FOREIGN INTELLIGENCE INFORMATION.—

7 Subsection (e)(1)(B) of such section 101 is amended
8 by striking “sabotage or international terrorism”
9 and inserting “sabotage, international terrorism, or
10 the international proliferation of weapons of mass
11 destruction”.

12 (4) WEAPON OF MASS DESTRUCTION.—Such
13 section 101 is amended by adding at the end the fol-
14 lowing new subsection:

15 “(p) ‘Weapon of mass destruction’ means—

16 “(1) any explosive, incendiary, or poison gas de-
17 vice that is intended or has the capability to cause
18 a mass casualty incident;

19 “(2) any weapon that is designed or intended to
20 cause death or serious bodily injury to a significant
21 number of persons through the release, dissemina-
22 tion, or impact of toxic or poisonous chemicals or
23 their precursors;

24 “(3) any weapon involving a biological agent,
25 toxin, or vector (as such terms are defined in section

1 178 of title 18, United States Code) that is de-
2 signed, intended, or has the capability of causing
3 death, illness, or serious bodily injury to a signifi-
4 cant number of persons; or

5 “(4) any weapon that is designed, intended, or
6 has the capability of releasing radiation or radioac-
7 tivity causing death, illness, or serious bodily injury
8 to a significant number of persons.”.

9 (b) USE OF INFORMATION.—

10 (1) IN GENERAL.—Section 106(k)(1)(B) of the
11 Foreign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
13 otage or international terrorism” and inserting “sab-
14 otage, international terrorism, or the international
15 proliferation of weapons of mass destruction”.

16 (2) PHYSICAL SEARCHES.—Section
17 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
18 is amended by striking “sabotage or international
19 terrorism” and inserting “sabotage, international
20 terrorism, or the international proliferation of weap-
21 ons of mass destruction”.

22 (c) TECHNICAL AND CONFORMING AMENDMENT.—

23 Section 301(1) of the Foreign Intelligence Surveillance
24 Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting
25 “weapon of mass destruction,” after “person,”.

1 **TITLE II—PROTECTIONS FOR**
2 **ELECTRONIC COMMUNICA-**
3 **TION SERVICE PROVIDERS**

4 **SEC. 201. PROCEDURES FOR IMPLEMENTING STATUTORY**
5 **DEFENSES UNDER THE FOREIGN INTEL-**
6 **LIGENCE SURVEILLANCE ACT OF 1978.**

7 The Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1801 et seq.), as amended by section 101, is
9 further amended by adding after title VII the following
10 new title:

11 **“TITLE VIII—PROTECTION OF**
12 **PERSONS ASSISTING THE**
13 **GOVERNMENT**

14 **“SEC. 801. DEFINITIONS.**

15 “In this title:

16 “(1) ASSISTANCE.—The term ‘assistance’
17 means the provision of, or the provision of access to,
18 information (including communication contents,
19 communications records, or other information relat-
20 ing to a customer or communication), facilities, or
21 another form of assistance.

22 “(2) CONGRESSIONAL INTELLIGENCE COMMIT-
23 TEES.—The term ‘congressional intelligence commit-
24 tees’ means—

1 “(A) the Select Committee on Intelligence
2 of the Senate; and

3 “(B) the Permanent Select Committee on
4 Intelligence of the House of Representatives.

5 “(3) CONTENTS.—The term ‘contents’ has the
6 meaning given that term in section 101(n).

7 “(4) ELECTRONIC COMMUNICATION SERVICE
8 PROVIDER.—The term ‘electronic communication
9 service provider’ means—

10 “(A) a telecommunications carrier, as that
11 term is defined in section 3 of the Communica-
12 tions Act of 1934 (47 U.S.C. 153);

13 “(B) a provider of electronic communica-
14 tion service, as that term is defined in section
15 2510 of title 18, United States Code;

16 “(C) a provider of a remote computing
17 service, as that term is defined in section 2711
18 of title 18, United States Code;

19 “(D) any other communication service pro-
20 vider who has access to wire or electronic com-
21 munications either as such communications are
22 transmitted or as such communications are
23 stored;

1 “(E) a parent, subsidiary, affiliate, suc-
2 cessor, or assignee of an entity described in
3 subparagraph (A), (B), (C), or (D); or

4 “(F) an officer, employee, or agent of an
5 entity described in subparagraph (A), (B), (C),
6 (D), or (E).

7 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
8 NITY.—The term ‘element of the intelligence com-
9 munity’ means an element of the intelligence com-
10 munity as specified or designated under section 3(4)
11 of the National Security Act of 1947 (50 U.S.C.
12 401a(4)).

13 “(6) PERSON.—The term ‘person’ means—

14 “(A) an electronic communication service
15 provider; or

16 “(B) a landlord, custodian, or other person
17 who may be authorized or required to furnish
18 assistance pursuant to—

19 “(i) an order of the court established
20 under section 103(a) directing such assist-
21 ance;

22 “(ii) a certification in writing under
23 section 2511(2)(a)(ii)(B) or 2709(b) of
24 title 18, United States Code; or

1 “(iii) a directive under section
2 102(a)(4), 105B(e), as in effect on the day
3 before the date of the enactment of the
4 FISA Amendments Act of 2008 or 703(h).

5 “(7) STATE.—The term ‘State’ means any
6 State, political subdivision of a State, the Common-
7 wealth of Puerto Rico, the District of Columbia, and
8 any territory or possession of the United States, and
9 includes any officer, public utility commission, or
10 other body authorized to regulate an electronic com-
11 munication service provider.

12 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
13 **DEFENSES.**

14 “(a) GENERAL REQUIREMENT FOR CERTIFI-
15 CATION.—Notwithstanding any other provision of law, no
16 civil action may lie or be maintained in a Federal or State
17 court against any person for providing assistance to an
18 element of the intelligence community, and shall be
19 promptly dismissed, if the Attorney General certifies to
20 the court that—

21 “(1) any assistance by that person was provided
22 pursuant to an order of the court established under
23 section 103(a) directing such assistance;

24 “(2) any assistance by that person was provided
25 pursuant to a certification in writing under section

1 2511(2)(a)(ii)(B) or 2709(b) of title 18, United
2 States Code;

3 “(3) any assistance by that person was provided
4 pursuant to a directive under sections 102(a)(4),
5 105B(e), as in effect on the day before the date of
6 the enactment of the FISA Amendments Act of
7 2008, or 703(h) directing such assistance; or

8 “(4) the person did not provide the alleged as-
9 sistance.

10 “(b) ADDITIONAL LIMITATION.—Notwithstanding
11 any other provision of law, no civil action may lie or be
12 maintained in a Federal or State court against an elec-
13 tronic communication service provider for furnishing as-
14 sistance to an element of the intelligence community, and
15 shall be promptly dismissed, if the Attorney General cer-
16 tifies to the court that the assistance alleged to have been
17 provided by the electronic communication service provider
18 was—

19 “(1) in connection with an intelligence activity
20 involving communications that was—

21 “(A) authorized by the President during
22 the period beginning on September 11, 2001,
23 and ending on January 17, 2007; and

1 “(B) designed to detect or prevent a ter-
2 rorist attack, or activities in preparation for a
3 terrorist attack, against the United States; and

4 “(2) described in a written request or directive,
5 or a series of such requests or directives, from the
6 Attorney General or the head of an element of the
7 intelligence community (or the deputy of such per-
8 son) to the electronic communication service provider
9 indicating that the activity was—

10 “(A) authorized by the President; and

11 “(B) determined to be lawful.

12 “(c) JUDICIAL REVIEW.—

13 “(1) REVIEW OF CERTIFICATIONS.—A certifi-
14 cation made pursuant to subsection (a) or (b) shall
15 be reviewed for abuse of discretion and a determina-
16 tion of whether the certification is unsupported by
17 substantial evidence or otherwise not in accordance
18 with law.

19 “(2) SUPPLEMENTAL MATERIALS.—In its re-
20 view of the certifications in subsections (a) and (b),
21 the court may examine the court order, certification,
22 or directive described in subsection (a) or the writ-
23 ten request or directives, or series of such requests
24 or directives, described in subsection (b)(1)(B).

1 “(d) LIMITATIONS ON DISCLOSURE.—If the Attorney
2 General files a declaration under section 1746 of title 28,
3 United States Code, that disclosure of a certification made
4 pursuant to subsection (a) or (b) would harm the national
5 security of the United States, the court shall—

6 “(1) review such certification in camera and ex
7 parte; and

8 “(2) limit any public disclosure concerning such
9 certification, including any public order following
10 such an ex parte review, to a statement that the con-
11 ditions of section 802 have been met and a descrip-
12 tion of the legal standards that govern the order,
13 without disclosing the subsection that is the basis
14 for the order.

15 “(e) ROLE OF THE PARTIES.—The court may ask
16 any party to submit arguments on relevant issues of law,
17 if deemed appropriate by the court.

18 “(f) NONDELEGATION.—The authority and duties of
19 the Attorney General under this section shall be performed
20 by the Attorney General (or Acting Attorney General) or
21 a designee in a position not lower than the Deputy Attor-
22 ney General.

23 “(g) APPEAL.—The courts of appeals shall have ju-
24 risdiction of appeals from interlocutory orders of the dis-

1 strict courts of the United States granting or denying a
2 motion to dismiss under this section.

3 “(h) REMOVAL.—A civil action against a person for
4 providing assistance to an element of the intelligence com-
5 munity that is brought in a State court shall be deemed
6 to arise under the Constitution and laws of the United
7 States and shall be removable under section 1441 of title
8 28, United States Code.

9 “(i) RELATIONSHIP TO OTHER LAWS.—Nothing in
10 this section may be construed to limit any otherwise avail-
11 able immunity, privilege, or defense under any other provi-
12 sion of law.

13 “(j) APPLICABILITY.—This section shall apply to a
14 civil action pending on or filed after the date of enactment
15 of the FISA Amendments Act of 2008.

16 **“SEC. 803. PREEMPTION.**

17 “(a) IN GENERAL.—No State shall have authority
18 to—

19 “(1) conduct an investigation into an electronic
20 communication service provider’s alleged assistance
21 to an element of the intelligence community;

22 “(2) require through regulation or any other
23 means the disclosure of information about an elec-
24 tronic communication service provider’s alleged as-
25 sistance to an element of the intelligence community;

1 “(3) impose any administrative sanction on an
2 electronic communication service provider for assist-
3 ance to an element of the intelligence community; or

4 “(4) commence or maintain a civil action or
5 other proceeding to enforce a requirement that an
6 electronic communication service provider disclose
7 information concerning alleged assistance to an ele-
8 ment of the intelligence community.

9 “(b) SUITS BY THE UNITED STATES.—The United
10 States may bring suit to enforce the provisions of this sec-
11 tion.

12 “(c) JURISDICTION.—The district courts of the
13 United States shall have jurisdiction over any civil action
14 brought by the United States to enforce the provisions of
15 this section.

16 “(d) APPLICATION.—This section shall apply to any
17 investigation, action, or proceeding that is pending on or
18 filed after the date of enactment of the FISA Amendments
19 Act of 2008.

20 **“SEC. 804. REPORTING.**

21 “(a) SEMIANNUAL REPORT.—Not less frequently
22 than once every 6 months, the Attorney General shall fully
23 inform, in a manner consistent with national security, the
24 congressional intelligence committees, the Committee on
25 the Judiciary of the Senate, and the Committee on the

1 Judiciary of the House of Representatives, concerning the
2 implementation of this title.

3 “(b) CONTENT.—Each report made under subpara-
4 graph (a) shall include—

5 “(1) any certifications made under section 802;

6 “(2) a description of the judicial review of the
7 certifications made under section 802; and

8 “(3) any actions taken to enforce the provisions
9 of section 803.”.

10 **SEC. 202. TECHNICAL AMENDMENTS.**

11 The table of contents in the first section of the For-
12 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
13 1801 et seq.), as amended by section 101(b), is further
14 amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE
GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.

“Sec. 804. Reporting.”.

1 **TITLE III—COMMISSION ON IN-**
2 **TELLIGENCE COLLECTION,**
3 **PRIVACY PROTECTION, AND**
4 **CHANGES IN INFORMATION**
5 **TECHNOLOGY**

6 **SEC. 301. COMMISSION ON INTELLIGENCE COLLECTION,**
7 **PRIVACY PROTECTION, AND CHANGES IN IN-**
8 **FORMATION TECHNOLOGY.**

9 (a) **ESTABLISHMENT OF COMMISSION.**—There is es-
10 tablished in the legislative branch a commission to be
11 known as the “Commission on Intelligence Collection, Pri-
12 vacy Protection, and Changes in Information and Commu-
13 nications Technology” (in this section referred to as the
14 “Commission”).

15 (b) **DUTIES OF COMMISSION.**—

16 (1) **IN GENERAL.**—The Commission shall—

17 (A) ascertain, evaluate, and report upon
18 the facts and circumstances relating to an intel-
19 ligence activity involving communications au-
20 thorized by the President during the period be-
21 tween September 11, 2001 and January 17,
22 2007 and designed to detect or prevent a ter-
23 rorist attack, or activities in preparation for a
24 terrorist attack, against the United States;

1 (B) conduct a comprehensive examination
2 of the legal framework for the collection of in-
3 telligence information in the United States or
4 regarding United States persons both inside
5 and outside the United States in light of the
6 threats to the national security, recent and an-
7 ticipated changes in information and commu-
8 nications technology that may affect the nature
9 of that collection, and constitutional and pri-
10 vacy interests of United States persons; and

11 (C) report to the President and Congress
12 the findings and conclusions of the Commission
13 and any recommendations the Commission con-
14 siders appropriate for changes or improvements
15 in laws, policies, and practices relating to the
16 collection of intelligence inside the United
17 States and regarding United States persons in
18 order to enhance national security, protect the
19 privacy of United States persons, ensure com-
20 pliance with the Constitution, and improve the
21 effectiveness and accountability of intelligence
22 programs.

23 (2) PROTECTION OF NATIONAL SECURITY.—

24 The Commission shall carry out the duties of the

1 Commission under this section in a manner con-
2 sistent with the need to protect national security.

3 (3) RELATIONSHIP TO PREVIOUS INQUIRIES.—

4 In fulfilling its duties under subsection (b)(1)(A),
5 the Commission shall build upon the reports sub-
6 mitted under section 110, and avoid unnecessary du-
7 plication of the review under that section which was
8 conducted by the Inspectors General of the Depart-
9 ment of Justice, the Office of the Director of Na-
10 tional Intelligence, the National Security Agency,
11 and any other inspector general that participated in
12 it, as well as any related findings, conclusions, and
13 recommendations of the Office of Professional Re-
14 sponsibility of the Department of Justice

15 (c) COMPOSITION OF COMMISSION.—

16 (1) MEMBERS.—The Commission shall be com-
17 posed of 10 members, of whom—

18 (A) 1 member, who shall serve as the chair
19 of the Commission, shall be appointed by the
20 President;

21 (B) 1 member, who shall serve as the vice
22 chair of the Commission, shall be appointed
23 jointly by the leader of the Senate and the lead-
24 er of the House of Representatives who are not
25 of the same party as the President;

1 (C) 2 members shall be appointed by the
2 senior member of the leadership of the House
3 of Representatives of the Democratic Party;

4 (D) 2 members shall be appointed by the
5 senior member of the leadership of the House
6 of Representatives of the Republican Party;

7 (E) 2 members shall be appointed by the
8 senior member of the leadership of the Senate
9 of the Democratic Party; and

10 (F) 2 members shall be appointed by the
11 senior member of the leadership of the Senate
12 of the Republican Party.

13 (2) NONGOVERNMENTAL APPOINTEES.—An in-
14 dividual appointed to the Commission may not be an
15 officer or employee of the Federal Government.

16 (3) QUALIFICATIONS.—It is the sense of Con-
17 gress that individuals appointed to the Commission
18 should be prominent United States citizens with sig-
19 nificant depth of experience in national security, in-
20 telligence, Constitutional law, civil liberties and pri-
21 vacy, and information and telecommunications tech-
22 nology matters.

23 (4) DEADLINE FOR APPOINTMENT.—All mem-
24 bers of the Commission shall be appointed by June
25 1, 2009.

1 (5) INITIAL MEETING.—The Commission shall
2 hold its first meeting and begin operations as soon
3 as possible but not later than August 1, 2009.

4 (6) SUBSEQUENT MEETINGS.—After its initial
5 meeting, the Commission shall meet upon the call of
6 the Chair.

7 (7) QUORUM.—A majority of the members of
8 the Commission shall constitute a quorum, but the
9 Commission may provide that a lesser number may
10 hold hearings.

11 (8) VACANCIES.—Any vacancy in the Commis-
12 sion shall not affect its powers and shall be filled in
13 the same manner in which the original appointment
14 was made.

15 (d) POWERS OF COMMISSION.—

16 (1) HEARINGS AND EVIDENCE.—The Commis-
17 sion or, on the authority of the Chair, any sub-
18 committee or member thereof may, for the purpose
19 of carrying out this section, hold such hearings and
20 sit and act at such times and places, take such testi-
21 mony, receive such evidence, and administer such
22 oaths as the Commission, such designated sub-
23 committee, or designated member may determine ad-
24 visable.

25 (2) SUBPOENAS.—

1 (A) AUTHORIZATION AND ISSUANCE.—

2 (i) IN GENERAL.—The Commission is
3 authorized to subpoena witnesses to attend
4 and testify and to produce evidence per-
5 taining to any matter that the Commission
6 is empowered to investigate under this sec-
7 tion. The attendance of witnesses and the
8 production of evidence may be required
9 from any place within the United States at
10 any designated place of hearing within the
11 United States. The Commission may by
12 rule delegate to the Chair and Vice Chair,
13 acting jointly, the authority to authorize
14 subpoenas under this paragraph.

15 (ii) ISSUANCE.—Subject to clause (i),
16 subpoenas authorized under this paragraph
17 may be issued under the signature of the
18 Chair of the Commission, or by any mem-
19 ber designated by the chair, or any mem-
20 ber designated by the Chair or a member
21 designated to sign the subpoena.

22 (B) ENFORCEMENT.—

23 (i) JURISDICTION.—In the case of
24 contumacy or failure to obey a subpoena
25 issued under subparagraph (A), the United

1 States district court for the judicial district
2 in which the subpoenaed person resides, is
3 served, or may be found, or where the sub-
4 poena is returnable, may issue an order re-
5 quiring such person to appear at any des-
6 ignated place to testify or to produce docu-
7 mentary or other evidence. Any failure to
8 obey the order of the court may be pun-
9 ished by the court as a contempt of that
10 court.

11 (ii) IN GENERAL.—If a person refuses
12 to obey a subpoena issued under subpara-
13 graph (A), the Commission, upon a major-
14 ity vote, may apply, either through the At-
15 torney General or another attorney of its
16 choosing, to a United States district court
17 for an order requiring that person to ap-
18 pear before the Commission to give testi-
19 mony, produce evidence, or both, relating
20 to the matter under investigation. The ap-
21 plication may be made within the judicial
22 district where the hearing is conducted or
23 where that person is found, resides, or
24 transacts business. Any failure to obey the

1 order of the court may be punished by the
2 court as civil contempt.

3 (iii) ADDITIONAL ENFORCEMENT.—In
4 the case of the failure of a witness to com-
5 ply with any subpoena or to testify when
6 summoned under authority of this para-
7 graph, the Commission, by majority vote,
8 may certify a statement of fact attesting to
9 such failure to the appropriate United
10 States attorney, who shall bring the matter
11 before the grand jury for its action, under
12 the same statutory authority and proce-
13 dures as if the United States attorney had
14 received a certification under sections 102
15 through 104 of the Revised Statutes of the
16 United States (2 U.S.C. 192 through 194).

17 (3) CONTRACTING.—The Commission may, to
18 such extent and in such amounts as are provided in
19 appropriations Acts, enter into contracts to enable
20 the Commission to discharge its duties under this
21 section.

22 (4) INFORMATION FROM FEDERAL AGENCIES.—

23 (A) IN GENERAL.—The Commission is au-
24 thorized to secure directly from any depart-
25 ment, bureau, agency, board, commission, of-

1 fice, independent establishment, or instrumen-
2 tality of the executive branch documents, infor-
3 mation, suggestions, estimates, and statistics
4 for the purposes of this section. Each such de-
5 partment, bureau, agency, board, commission,
6 office, independent establishment, or instrumen-
7 tality shall furnish such documents, informa-
8 tion, suggestions, estimates, and statistics di-
9 rectly to the Commission upon request made by
10 the Chair, or any member designated by a ma-
11 jority of the Commission.

12 (B) RECEIPT, HANDLING, STORAGE, AND
13 DISSEMINATION.—Information shall only be re-
14 ceived, handled, stored, and disseminated by
15 members of the Commission and its staff in a
16 manner consistent with all applicable statutes,
17 regulations, and Executive orders.

18 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

19 (A) GENERAL SERVICES ADMINISTRA-
20 TION.—The Administrator of General Services
21 shall provide to the Commission on a reimburs-
22 able basis administrative support and other
23 services for the performance of the Commis-
24 sion's functions.

1 (B) DIRECTOR OF NATIONAL INTEL-
2 LIGENCE.—The Director of National Intel-
3 ligence shall provide to the Commission appro-
4 priate space and technical facilities approved by
5 the Commission and other services for the per-
6 formance of the Commission's functions.

7 (C) OTHER DEPARTMENTS AND AGEN-
8 CIES.—In addition to the assistance prescribed
9 in subparagraph (A), departments and agencies
10 of the United States may provide to the Com-
11 mission such services, funds, facilities, staff,
12 and other support services as they may deter-
13 mine advisable and as may be authorized by
14 law.

15 (6) GIFTS.—The Commission may accept, use,
16 and dispose of gifts or donations of services or prop-
17 erty.

18 (7) POSTAL SERVICES.—The Commission may
19 use the United States mails in the same manner and
20 under the same conditions as departments and agen-
21 cies of the United States.

22 (e) STAFF OF COMMISSION.—

23 (1) IN GENERAL.—

24 (A) APPOINTMENT AND COMPENSATION.—
25 The Chair, in consultation with the Vice Chair

1 and in accordance with rules agreed upon by
2 the Commission, may appoint and fix the com-
3 pensation of an executive director and such
4 other personnel as may be necessary to enable
5 the Commission to carry out its functions, with-
6 out regard to the provisions of title 5, United
7 States Code, governing appointments in the
8 competitive service, and without regard to the
9 provisions of chapter 51 and subchapter III of
10 chapter 53 of such title relating to classification
11 and General Schedule pay rates, except that no
12 rate of pay fixed under this paragraph may ex-
13 ceed the equivalent of that payable for a posi-
14 tion at level IV of the Executive Schedule under
15 section 5316 of title 5, United States Code.

16 (B) PERSONNEL AS FEDERAL EMPLOY-
17 EES.—

18 (i) IN GENERAL.—The executive di-
19 rector and any personnel of the Commis-
20 sion who are employees shall be employees
21 under section 2105 of title 5, United
22 States Code, for purposes of chapters 63,
23 81, 83, 84, 85, 87, 89, 89A, 89B, and 90
24 of that title.

1 (ii) MEMBERS OF COMMISSION.—

2 Clause (i) shall not be construed to apply
3 to members of the Commission.

4 (2) DETAILEES.—A Federal Government em-
5 ployee may be detailed to the Commission without
6 reimbursement from the Commission, and such
7 detailee shall retain the rights, status, and privileges
8 of his or her regular employment without interrup-
9 tion.

10 (3) CONSULTANT SERVICES.—The Commission
11 is authorized to procure the services of experts and
12 consultants in accordance with section 3109 of title
13 5, United States Code, at rates not to exceed the
14 daily rate paid a person occupying a position at level
15 III of the Executive Schedule under section 5315 of
16 title 5, United States Code.

17 (f) SECURITY CLEARANCES FOR COMMISSION MEM-
18 BERS AND STAFF.—

19 (1) EXPEDITIOUS PROVISION OF CLEAR-
20 ANCES.—The appropriate Federal agencies or de-
21 partments shall cooperate with the Commission in
22 expeditiously providing to the Commission members
23 and staff appropriate security clearances to the ex-
24 tent possible pursuant to existing procedures and re-
25 quirements. No person shall be provided with access

1 to classified information under this section without
2 the appropriate security clearances.

3 (2) ACCESS TO CLASSIFIED INFORMATION.—All
4 members of the Commission, and commission staff
5 as authorized by the Chair and Vice Chair, who have
6 obtained appropriate security clearances shall have
7 access to classified information related to the intel-
8 ligence activities within the scope of the examination
9 of the Commission and any other related classified
10 information that the members of the Commission de-
11 termine relevant to carrying out the duties of the
12 Commission under this section.

13 (g) COMPENSATION AND TRAVEL EXPENSES.—

14 (1) COMPENSATION.—Each member of the
15 Commission shall be compensated at the rate equal
16 to the daily equivalent of the annual rate of basic
17 pay in effect for a position at level III of the Execu-
18 tive Schedule under section 5315 of title 5, United
19 States Code, for each day during which that member
20 is engaged in the actual performance of the duties
21 of the Commission.

22 (2) TRAVEL EXPENSES.—While away from
23 their homes or regular places of business in the per-
24 formance of services for the Commission, members
25 of the Commission shall be allowed travel expenses,

1 including per diem in lieu of subsistence, in the
2 same manner as persons employed intermittently in
3 the Government service are allowed expenses under
4 section 5703(b) of title 5, United States Code.

5 (h) NONAPPLICABILITY OF FEDERAL ADVISORY
6 COMMITTEE ACT.—

7 (1) IN GENERAL.—The Federal Advisory Com-
8 mittee Act (5 U.S.C. App.) shall not apply to the
9 Commission.

10 (2) PUBLIC MEETINGS.—The Commission shall
11 hold public hearings and meetings to the extent ap-
12 propriate.

13 (3) PUBLIC HEARINGS.—Any public hearing of
14 the Commission shall be conducted in a manner con-
15 sistent with the protection of information provided
16 to or developed for or by the Commission as re-
17 quired by any applicable statute, regulation, or Ex-
18 ecutive order.

19 (i) REPORTS AND RECOMMENDATIONS OF COMMIS-
20 SION.—

21 (1) INTERIM REPORTS.—The Commission may
22 submit to the President and Congress interim re-
23 ports containing such findings, conclusions, and rec-
24 ommendations for corrective measures as have been
25 agreed to by a majority of Commission members.

1 (2) FINAL REPORT.—Not later than 18 months
2 after the date of its first meeting, the Commission
3 shall submit to the President and Congress a final
4 report containing such information, analysis, find-
5 ings, conclusions, and recommendations as have
6 been agreed to by a majority of Commission mem-
7 bers and such minority and additional views as a
8 member may wish to include.

9 (3) FORM.—The reports submitted under para-
10 graphs (1) and (2) shall be submitted in unclassified
11 form, but may include a classified annex.

12 (4) RECOMMENDATIONS FOR DECLASSIFICA-
13 TION.—The Commission may make recommenda-
14 tions to the appropriate department or agency of the
15 Federal Government regarding the declassification of
16 documents or portions of documents.

17 (j) TERMINATION.—

18 (1) IN GENERAL.—The Commission, and all the
19 authorities of this section, shall terminate 90 days
20 after the date on which the final report is submitted
21 under subsection (i)(2).

22 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
23 MINATION.—The Commission may use the 90-day
24 period referred to in paragraph (1) for the purpose
25 of concluding its activities, including providing testi-

1 mony to committees of Congress concerning its re-
2 port and disseminating the final report, except that
3 nothing under this paragraph shall limit the ability
4 of the Chair, the Vice Chair, or any member of the
5 Commission to provide additional testimony to com-
6 mittees of Congress concerning the report after that
7 time.

8 (k) DEFINITIONS.—In this section:

9 (1) INTELLIGENCE COMMUNITY.—The term
10 “intelligence community” has the meaning given the
11 term in section 3(4) of the National Security Act of
12 1947 (50 U.S.C. 401a(4)).

13 (2) UNITED STATES PERSON.—The term
14 “United States person” has the meaning given the
15 term in section 101(i) of the Foreign Intelligence
16 Surveillance Act of 1978 (50 U.S.C. 1801(i)).

17 (l) FUNDING.—

18 (1) IN GENERAL.—There are authorized to be
19 appropriated such sums as may be necessary to
20 carry out the activities of the Commission under this
21 section.

22 (2) DURATION OF AVAILABILITY.—Amounts
23 made available to the Commission under paragraph
24 (1) shall remain available until the termination of
25 the Commission.

1 (m) EFFECTIVE DATE.—This section shall take ef-
2 fect on January 21, 2009.

3 **TITLE IV—OTHER PROVISIONS**

4 **SEC. 401. SEVERABILITY.**

5 If any provision of this Act, any amendment made
6 by this Act, or the application thereof to any person or
7 circumstances is held invalid, the validity of the remainder
8 of the Act, any such amendments, and of the application
9 of such provisions to other persons and circumstances
10 shall not be affected thereby.

11 **SEC. 402. EFFECTIVE DATE.**

12 Except as provided in section 404, the amendments
13 made by this Act shall take effect on the date of the enact-
14 ment of this Act.

15 **SEC. 403. REPEALS.**

16 (a) REPEAL OF PROTECT AMERICA ACT OF 2007
17 PROVISIONS.—

18 (1) AMENDMENTS TO FISA.—

19 (A) IN GENERAL.—Except as provided in
20 section 404, sections 105A, 105B, and 105C of
21 the Foreign Intelligence Surveillance Act of
22 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are
23 repealed.

24 (B) TECHNICAL AND CONFORMING AMEND-
25 MENTS.—

1 (i) TABLE OF CONTENTS.—The table
2 of contents in the first section of the For-
3 eign Intelligence Surveillance Act of 1978
4 (50 U.S.C. 1801 et seq.) is amended by
5 striking the items relating to sections
6 105A, 105B, and 105C.

7 (ii) CONFORMING AMENDMENTS.—Ex-
8 cept as provided in section 404, section
9 103(e) of the Foreign Intelligence Surveil-
10 lance Act of 1978 (50 U.S.C. 1803(e)) is
11 amended—

12 (I) in paragraph (1), by striking
13 “105B(h) or 501(f)(1)” and inserting
14 “501(f)(1) or 702(h)(4)”; and

15 (II) in paragraph (2), by striking
16 “105B(h) or 501(f)(1)” and inserting
17 “501(f)(1) or 702(h)(4)”.

18 (2) REPORTING REQUIREMENTS.—Except as
19 provided in section 404, section 4 of the Protect
20 America Act of 2007 (Public Law 110-55; 121 Stat.
21 555) is repealed.

22 (3) TRANSITION PROCEDURES.—Except as pro-
23 vided in section 404, subsection (b) of section 6 of
24 the Protect America Act of 2007 (Public Law 110-
25 55; 121 Stat. 556) is repealed.

1 (b) FISA AMENDMENTS ACT OF 2008.—

2 (1) IN GENERAL.—Except as provided in sec-
3 tion 404, effective December 31, 2011, title VII of
4 the Foreign Intelligence Surveillance Act of 1978, as
5 amended by section 101(a), is repealed.

6 (2) TECHNICAL AND CONFORMING AMEND-
7 MENTS.—Effective December 31, 2011—

8 (A) the table of contents in the first sec-
9 tion of such Act (50 U.S.C. 1801 et seq.) is
10 amended by striking the items related to title
11 VII;

12 (B) except as provided in section 404, sec-
13 tion 601(a)(1) of such Act (50 U.S.C.
14 1871(a)(1)) is amended to read as such section
15 read on the day before the date of the enact-
16 ment of this Act; and

17 (C) except as provided in section 404, sec-
18 tion 2511(2)(a)(ii)(A) of title 18, United States
19 Code, is amended by striking “or a court order
20 pursuant to section 704 of the Foreign Intel-
21 ligence Surveillance Act of 1978”.

22 **SEC. 404. TRANSITION PROCEDURES.**

23 (a) TRANSITION PROCEDURES FOR PROTECT AMER-
24 ICA ACT OF 2007 PROVISIONS.—

1 (1) CONTINUED EFFECT OF ORDERS, AUTHOR-
2 IZATIONS, DIRECTIVES.—Notwithstanding any other
3 provision of law, any order, authorization, or direc-
4 tive issued or made pursuant to section 105B of the
5 Foreign Intelligence Surveillance Act of 1978, as
6 added by section 2 of the Protect America Act of
7 2007 (Public Law 110-55; 121 Stat. 552), shall con-
8 tinue in effect until the expiration of such order, au-
9 thorization, or directive.

10 (2) APPLICABILITY OF PROTECT AMERICA ACT
11 OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS,
12 DIRECTIVES.—Notwithstanding any other provision
13 of this Act, any amendment made by this Act or the
14 Foreign Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1801 et seq.)—

16 (A) subject to paragraph (3), section 105A
17 of such Act, as added by section 2 of the Pro-
18 tect America Act of 2007 (Public Law 110-55;
19 121 Stat. 552), shall continue to apply to any
20 acquisition conducted pursuant to an order, au-
21 thorization, or directive referred to in para-
22 graph (1); and

23 (B) sections 105B and 105C of the For-
24 eign Intelligence Surveillance Act of 1978, as
25 added by sections 2 and 3, respectively, of the

1 Protect America Act of 2007, shall continue to
2 apply with respect to an order, authorization, or
3 directive referred to in paragraph (1) until the
4 later of—

5 (i) the expiration of such order, au-
6 thorization, or directive; or

7 (ii) the date on which final judgement
8 is entered for any petition or other litiga-
9 tion relating to such order, authorization,
10 or directive.

11 (3) USE OF INFORMATION.—Information ac-
12 quired from an acquisition conducted pursuant to an
13 order, authorization, or directive referred to in para-
14 graph (1) shall be deemed to be information ac-
15 quired from an electronic surveillance pursuant to
16 title I of the Foreign Intelligence Surveillance Act of
17 1978 (50 U.S.C. 1801 et seq.) for purposes of sec-
18 tion 106 of such Act (50 U.S.C. 1806), except for
19 purposes of subsection (j) of such section.

20 (4) PROTECTION FROM LIABILITY.—Subsection
21 (1) of section 105B of the Foreign Intelligence Sur-
22 veillance Act of 1978, as added by section 2 of the
23 Protect America Act of 2007, shall continue to apply
24 with respect to any directives issued pursuant to
25 such section 105B.

1 (5) JURISDICTION OF FOREIGN INTELLIGENCE
2 SURVEILLANCE COURT.—Notwithstanding any other
3 provision of this Act or of the Foreign Intelligence
4 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
5 section 103(e) of the Foreign Intelligence Surveil-
6 lance Act (50 U.S.C. 1803(e)), as amended by sec-
7 tion 5(a) of the Protect America Act of 2007 (Public
8 Law 110-55; 121 Stat. 556), shall continue to apply
9 with respect to a directive issued pursuant to section
10 105B of the Foreign Intelligence Surveillance Act of
11 1978, as added by section 2 of the Protect America
12 Act of 2007, until the later of—

13 (A) the expiration of all orders, authoriza-
14 tions, or directives referred to in paragraph (1);
15 or

16 (B) the date on which final judgement is
17 entered for any petition or other litigation relat-
18 ing to such order, authorization, or directive.

19 (6) REPORTING REQUIREMENTS.—

20 (A) CONTINUED APPLICABILITY.—Not-
21 withstanding any other provision of this Act,
22 any amendment made by this Act, the Protect
23 America Act of 2007 (Public Law 110-55), or
24 the Foreign Intelligence Surveillance Act of
25 1978 (50 U.S.C. 1801 et seq.), section 4 of the

1 Protect America Act of 2007 shall continue to
2 apply until the date that the certification de-
3 scribed in subparagraph (B) is submitted.

4 (B) CERTIFICATION.—The certification de-
5 scribed in this subparagraph is a certification—

6 (i) made by the Attorney General;

7 (ii) submitted as part of a semi-an-
8 nual report required by section 4 of the
9 Protect America Act of 2007;

10 (iii) that states that there will be no
11 further acquisitions carried out under sec-
12 tion 105B of the Foreign Intelligence Sur-
13 veillance Act of 1978, as added by section
14 2 of the Protect America Act of 2007,
15 after the date of such certification; and

16 (iv) that states that the information
17 required to be included under such section
18 4 relating to any acquisition conducted
19 under such section 105B has been included
20 in a semi-annual report required by such
21 section 4.

22 (7) EFFECTIVE DATE.—Paragraphs (1)
23 through (7) shall take effect as if enacted on August
24 5, 2007.