

1 “(E) a description of the nature of the information sought and the type of
2 communications or activities to be subjected to acquisition;

3 “(F) a certification made by the Attorney General or an official specified in section
4 104(a)(6) that—

5 “(i) the certifying official deems the information sought to be foreign
6 intelligence information;

7 “(ii) a significant purpose of the acquisition is to obtain foreign intelligence
8 information;

9 “(iii) such information cannot reasonably be obtained by normal investigative
10 techniques;

11 “(iv) designates the type of foreign intelligence information being sought
12 according to the categories described in section 101(e); and

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

14 “(I) the information sought is the type of foreign intelligence information
15 designated; and

16 “(II) such information cannot reasonably be obtained by normal
17 investigative techniques;

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

20 “(H) the identity of any electronic communication service provider necessary to
21 effect the acquisition, provided, however, that the application is not required to identify
22 the specific facilities, places, premises, or property at which the acquisition authorized
23 under this section will be directed or conducted;

24 “(I) a statement of the facts concerning any previous applications that have been
25 made to any judge of the Foreign Intelligence Surveillance Court involving the United
26 States person specified in the application and the action taken on each previous
27 application; and

28 “(J) a statement of the period of time for which the acquisition is required to be
29 maintained, provided that such period of time shall not exceed 90 days per application.

30 “(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may
31 require any other affidavit or certification from any other officer in connection with the
32 application.

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

36 “(4) CONSTRUCTION.—Nothing in title I of this Act shall be construed to require an
37 application under section 104 for an acquisition that is targeted in accordance with
38 this section at a United States person reasonably believed to be located outside the
39 United States.

40 “(c) Order.—

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

4 “(A) the application has been made by a Federal officer and approved by the
5 Attorney General;

6 “(B) on the basis of the facts submitted by the applicant, for the United States person
7 who is the target of the acquisition, there is probable cause to believe that the target
8 is—

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

10 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
11 a foreign power;

12 “(C) the proposed minimization procedures meet the definition of minimization
13 procedures under section 101(h) or section 301(4), as appropriate; and

14 “(D) the application ~~which~~ that has been filed contains all statements and
15 certifications required by subsection (b) and the certification or certifications are not
16 clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and
17 any other information furnished under subsection (b)(3).

18 “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for
19 purposes of ~~an order under~~ paragraph (1)(B), a judge having jurisdiction under subsection
20 (a)(1) may consider past activities of the target, ~~as well as~~ and facts and circumstances
21 relating to current or future activities of the target. ~~However, no~~ No United States person
22 may be considered a foreign power, agent of a foreign power, or officer or employee of a
23 foreign power solely upon the basis of activities protected by the first amendment to the
24 Constitution of the United States.

25 “(3) REVIEW.—

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

29 “(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted
30 under subsection (b) are insufficient to establish probable cause ~~to issue an order under~~
31 paragraph (1)(B), the judge shall enter an order so stating and provide a written
32 statement for the record of the reasons for such determination. The Government may
33 appeal an order under this ~~elause~~ subparagraph pursuant to subsection (f).

34 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
35 proposed minimization procedures ~~required under~~ referred to in paragraph (1)(C) do
36 not meet the definition of minimization procedures under section 101(h) or section
37 301(4), as appropriate, the judge shall enter an order so stating and provide a written
38 statement for the record of the reasons for such determination. The Government may
39 appeal an order under this ~~elause~~ subparagraph pursuant to subsection (f).

40 “(D) REVIEW OF CERTIFICATION.—If the judge determines that an application
41 required by subsection (b) does not contain all of the required elements, or that the

1 certification or certifications are clearly erroneous on the basis of the statement made
2 under subsection (b)(1)(F)(v) and any other information furnished under subsection
3 (b)(3), the judge shall enter an order so stating and provide a written statement for the
4 record of the reasons for such determination. The Government may appeal an order
5 under this ~~clause~~ **subparagraph** pursuant to subsection (f).

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

8 **“(A)** the identity, if known, or a description of the United States person who is the
9 target of the acquisition identified or described in the application pursuant to
10 subsection (b)(1)(B);

11 **“(B)** if provided in the application pursuant to subsection (b)(1)(H), the nature and
12 location of each of the facilities or places at which the acquisition will be directed;

13 **“(C)** the nature of the information sought to be acquired and the type of
14 communications or activities to be subjected to acquisition;

15 **“(D)** the means by which the acquisition will be conducted and whether physical
16 entry is required to effect the acquisition; and

17 **“(E)** the period of time during which the acquisition is approved.

18 **“(5) DIRECTIONS.—**An order approving ~~acquisitions~~ **an acquisition** under this subsection
19 shall direct—

20 **“(A)** that the minimization procedures ~~referred to in paragraph (1)(C), as~~
21 **approved or modified by the Court**, be followed;

22 **“(B)** an electronic communication service provider to provide to the Government
23 forthwith all information, facilities, or assistance necessary to accomplish the
24 acquisition authorized under ~~this subsection~~ **such order** in a manner that will protect
25 the secrecy of the acquisition and produce a minimum of interference with the services
26 that such electronic communication service provider is providing to the target of the
27 **acquisition**;

28 **“(C)** an electronic communication service provider to maintain under security
29 procedures approved by the Attorney General any records concerning the acquisition
30 or the aid furnished that such electronic communication service provider wishes to
31 maintain; and

32 **“(D)** that the Government compensate, at the prevailing rate, such electronic
33 communication service provider for providing such information, facilities, or
34 assistance.

35 **“(6) DURATION.—**An order approved under this ~~paragraph~~ **subsection** shall be effective
36 for a period not to exceed 90 days and such order may be renewed for additional 90-day
37 periods upon submission of renewal applications meeting the requirements of subsection
38 (b).

39 **“(7) COMPLIANCE.—**At or prior to the end of the period of time for which an acquisition
40 is approved by an order or extension under this section, the judge may assess compliance
41 with the minimization procedures ~~referred to in paragraph (1)(C)~~ by reviewing the

1 circumstances under which information concerning United States persons was acquired,
2 retained, or disseminated.

3 “(d) Emergency Authorization.—

4 “(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other
5 provision of this Act, if the Attorney General reasonably determines that—

6 “(A) an emergency situation exists with respect to the acquisition of foreign
7 intelligence information for which an order may be obtained under subsection (c)
8 before an order authorizing such acquisition can with due diligence be obtained, and

9 “(B) the factual basis for issuance of an order under this subsection to approve such
10 acquisition exists,

11 the Attorney General may authorize ~~the emergency~~ such acquisition if a judge having
12 jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of
13 the Attorney General, at the time of such authorization that the decision has been made to
14 conduct such acquisition and if an application in accordance with this ~~subsection~~ section is
15 made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but
16 not more than 7 days after the Attorney General authorizes such acquisition.

17 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes ~~such emergency~~
18 an acquisition under paragraph (1), the Attorney General shall require that the
19 minimization procedures ~~required by this section referred to in subsection (c)(1)(C)~~ for
20 the issuance of a judicial order be followed.

21 “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order
22 approving ~~such an acquisition, the~~ under paragraph (1), such acquisition shall terminate
23 when the information sought is obtained, when the application for the order is denied, or
24 after the expiration of 7 days from the time of authorization by the Attorney General,
25 whichever is earliest.

26 “(4) USE OF INFORMATION.—~~IN THE EVENT THAT SUCH INFORMATION.—~~If an application
27 for approval submitted pursuant to paragraph (1) is denied, or in any other case where
28 the acquisition is terminated and no order is issued approving the acquisition, no
29 information obtained or evidence derived from such acquisition, except under
30 circumstances in which the target of the acquisition is determined not to be a United States
31 person ~~during the pendency of the 7-day emergency acquisition period~~, shall be received in
32 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any
33 court, grand jury, department, office, agency, regulatory body, legislative committee, or
34 other authority of the United States, a State, or political subdivision thereof, and no
35 information concerning any United States person acquired from such acquisition shall
36 subsequently be used or disclosed in any other manner by Federal officers or employees
37 without the consent of such person, except with the approval of the Attorney General if the
38 information indicates a threat of death or serious bodily harm to any person.

39 “(e) Release From Liability.—~~Notwithstanding any other law, no~~ Liability.—No cause of
40 action shall lie in any court against any electronic communication service provider for providing
41 any information, facilities, or assistance in accordance with an order or request for emergency
42 assistance issued pursuant to subsections (c) or (d).

1 “(f) Appeal.—

2 “(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The
3 Government may file an appeal with the Foreign Intelligence Surveillance Court of Review
4 for review of an order issued pursuant to subsection (c). The Court of Review shall have
5 jurisdiction to consider such appeal and shall provide a written statement for the record of
6 the reasons for a decision under this paragraph.

7 “(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a
8 writ of certiorari for review of the a decision of the Court of Review issued under paragraph
9 (1). The record for such review shall be transmitted under seal to the Supreme Court of the
10 United States, which shall have jurisdiction to review such ~~decision.~~ decision.”

11 **“SEC. 705 704. OTHER ACQUISITIONS TARGETING**
12 **UNITED STATES PERSONS OUTSIDE THE UNITED**
13 **STATES.**

14 “(a) Jurisdiction and Scope.—

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

17 “(2) SCOPE.—No ~~element of the intelligence community~~ department or agency of the
18 Federal Government may intentionally target, for the purpose of acquiring foreign
19 intelligence information, a United States person reasonably believed to be located outside
20 the United States under circumstances in which the targeted United States person has a
21 reasonable expectation of privacy and a warrant would be required if the acquisition were
22 conducted inside the United States for law enforcement purposes, unless a judge of the
23 Foreign Intelligence Surveillance Court has entered an order with respect to such targeted
24 United States person or the Attorney General has authorized an emergency acquisition
25 pursuant to subsections (c) or (d) or any other provision of this Act.

26 “(3) LIMITATIONS.—

27 “(A) MOVING OR MISIDENTIFIED TARGETS.—~~IN THE EVENT THAT THE TARGETS.—~~If
28 a targeted United States person is reasonably believed to be in the United States during
29 the pendency of an order issued pursuant to subsection (c), ~~such acquisition shall cease~~
30 ~~until authority is obtained pursuant to this Act or the targeting of such United States~~
31 ~~person under this section shall cease unless the targeted United States person is~~
32 ~~again reasonably believed to be located outside the United States during the pendency~~
33 ~~of an order issued pursuant to subsection (c).~~

34 “(B) APPLICABILITY.—If ~~the an~~ acquisition is to be conducted inside the United
35 States and could be authorized under section 704, ~~the procedures of section 704 shall~~
36 ~~apply, unless an order or emergency acquisition authority has been obtained under a~~
37 ~~703, the acquisition may only be conducted if authorized by section 703 or in~~
38 ~~accordance with another provision of this Act other than under this section.~~

39 “(b) Application.—Each application for an order under this section shall be made by a Federal
40 officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1).
41 Each application shall require the approval of the Attorney General based upon the Attorney

1 General's finding that it satisfies the criteria and requirements of such application as set forth in
2 this section and shall include—

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

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

6 “~~(2)~~“(3) a statement of the facts and circumstances relied upon to justify the applicant's
7 belief that the United States person who is the target of the acquisition is—

8 “(A) a person reasonably believed to be located outside the United States; and

9 “(B) a foreign power, an agent of a foreign power, or an officer or employee of a
10 foreign power;

11 “~~(3)~~“(4) a statement of the proposed minimization procedures that meet the definition of
12 minimization procedures under section 101(h) or section 301(4), **as appropriate;**

13 “(4)“(5) a certification made by the Attorney General, an official specified in section
14 104(a)(6), or the head of an element of the intelligence community that—

15 “(A) the certifying official deems the information sought to be foreign intelligence
16 information; and

17 “(B) a significant purpose of the acquisition is to obtain foreign intelligence
18 information;

19 “~~(5)~~“(6) a statement of the facts concerning any previous applications that have been
20 made to any judge of the Foreign Intelligence Surveillance Court involving the United
21 States person specified in the application and the action taken on each previous application;
22 and

23 “~~(6)~~“(7) a statement of the period of time for which the acquisition is required to be
24 maintained, provided that such period of time shall not exceed 90 days per application.

25 “(c) Order.—

26 “(1) ~~FINDINGS. — IF, UPON FINDINGS. —~~ Upon an application made pursuant to subsection
27 (b), ~~a judge having jurisdiction under subsection (a) finds that —~~ the Foreign Intelligence
28 Surveillance Court shall enter an ex parte order as requested or as modified by the
29 Court if the Court finds that—

30 “~~(A)~~“(A) the application has been made by a Federal officer and approved by
31 the Attorney General;

32 “(B) on the basis of the facts submitted by the applicant, for the United States person
33 who is the target of the acquisition, there is probable cause to believe that the target
34 is—

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

36 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
37 a foreign power;

38 “~~(B)~~“(C) the proposed minimization procedures, with respect to their dissemination
39 provisions, meet the definition of minimization procedures under section 101(h) or

1 section 301(4), as appropriate; and

2 ~~“(C)”~~“(D) the application which that has been filed contains all statements and
3 certifications required by subsection (b) and the certification provided under subsection
4 ~~(b)(4)(b)(5)~~ is not clearly erroneous on the basis of the information furnished under
5 subsection (b).;

6 ~~the Court shall issue an ex parte order so stating.~~

7 “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for
8 purposes of an order under paragraph ~~(1)(A)~~(1)(B), a judge having jurisdiction under
9 subsection (a)(1) may consider past activities of the target, ~~as well as~~ and facts and
10 circumstances relating to current or future activities of the target. ~~However, no~~ No United
11 States person may be considered a foreign power, agent of a foreign power, or officer or
12 employee of a foreign power solely upon the basis of activities protected by the first
13 amendment to the Constitution of the United States.

14 “(3) REVIEW.—

15 “(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under
16 subsection (a)(1) shall be limited to that required to make the findings described in
17 paragraph (1). The judge shall not have jurisdiction to review the means by which an
18 acquisition under this section may be conducted.

19 “(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted
20 under subsection (b) are insufficient to establish probable cause ~~to issue an order~~ under
21 this subsection, the judge shall enter an order so stating and provide a written statement
22 for the record of the reasons for such determination. The Government may appeal an
23 order under this clause pursuant to subsection (e).

24 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
25 minimization procedures applicable to dissemination of information obtained through
26 an acquisition under this subsection do not meet the definition of minimization
27 procedures under section 101(h) or section 301(4), as appropriate, the judge shall
28 enter an order so stating and provide a written statement for the record of the reasons
29 for such determination. The Government may appeal an order under this clause
30 pursuant to subsection (e).

31 “(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge ~~determines Foreign~~
32 **Intelligence Surveillance Court determines that an application under subsection**
33 **(b) does not contain all the required elements, or that the certification provided**
34 **under subsection ~~(b)(4)(b)(5)~~ is clearly erroneous on the basis of the information**
35 **furnished under subsection (b), the judge shall enter an order so stating and provide a**
36 **written statement for the record of the reasons for such determination. The**
37 **Government may appeal an order under this ~~subparagraph~~ clause pursuant to**
38 **subsection (e).**

39 “(4) DURATION.—An order under this paragraph shall be effective for a period not to
40 exceed 90 days and such order may be renewed for additional 90-day periods upon
41 submission of renewal applications meeting the requirements of subsection (b).

42 “(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or

1 extension is granted under this section, the judge may assess compliance with the
2 minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances
3 under which information concerning United States persons was disseminated, provided that
4 the judge may not inquire into the circumstances relating to the conduct of the acquisition.

5 “(d) Emergency Authorization.—

6 “(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other
7 provision in of this subsection section, if the Attorney General reasonably determines
8 that—

9 “(A) an emergency situation exists with respect to the acquisition of foreign
10 intelligence information for which an order may be obtained under subsection (c)
11 before an order under that subsection may can, with due diligence, be obtained, and

12 “(B) the factual basis for the issuance of an order under this section exists,
13 the Attorney General may authorize the emergency acquisition if a judge having jurisdiction
14 under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney
15 General at the time of such authorization that the decision has been made to conduct such
16 acquisition and if an application in accordance with this subsection section is made to a
17 judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more
18 than 7 days after the Attorney General authorizes such acquisition.

19 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such an
20 emergency acquisition under paragraph (1), the Attorney General shall require that the
21 minimization procedures required by this section referred to in subsection (c)(1)(C) be
22 followed.

23 “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under
24 subsection (c), the an emergency acquisition under paragraph (1) shall terminate when
25 the information sought is obtained, if the application for the order is denied, or after the
26 expiration of 7 days from the time of authorization by the Attorney General, whichever is
27 earliest.

28 “(4) USE OF INFORMATION.—~~IN THE EVENT THAT SUCH APPLICATION INFORMATION.—If~~
29 ~~an application submitted to the Court pursuant to paragraph (1) is denied, or in any~~
30 ~~other case where the acquisition is terminated and no order is issued approving the~~
31 ~~acquisition with respect to the target of the acquisition is issued under subsection (c),~~
32 ~~no information obtained or evidence derived from such acquisition, except under~~
33 ~~circumstances in which the target of the acquisition is determined not to be a United States~~
34 ~~person during the pendency of the 7-day emergency acquisition period, shall be received in~~
35 ~~evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any~~
36 ~~court, grand jury, department, office, agency, regulatory body, legislative committee, or~~
37 ~~other authority of the United States, a State, or political subdivision thereof, and no~~
38 ~~information concerning any United States person acquired from such acquisition shall~~
39 ~~subsequently be used or disclosed in any other manner by Federal officers or employees~~
40 ~~without the consent of such person, except with the approval of the Attorney General if the~~
41 ~~information indicates a threat of death or serious bodily harm to any person.~~

42 “(e) Appeal.—

1 “(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the
2 Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to
3 subsection (c). The Court of Review shall have jurisdiction to consider such appeal and
4 shall provide a written statement for the record of the reasons for a decision under this
5 paragraph.

6 “(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a
7 writ of certiorari for review of the a decision of the Court of Review issued under paragraph
8 (1). The record for such review shall be transmitted under seal to the Supreme Court of the
9 United States, which shall have jurisdiction to review such decision.

10 **“SEC. 706 705. JOINT APPLICATIONS AND**
11 **CONCURRENT AUTHORIZATIONS.**

12 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under
13 section 704 703 or section 705 704 is proposed to be conducted both inside and outside the
14 United States, a judge having jurisdiction under section 704(a)(1) 703(a)(1) or section 705(a)(1)
15 704(a)(1) may issue simultaneously, upon the request of the Government in a joint application
16 complying with the requirements of section 704(b) or 703(b) and section 705(b) 704(b), orders
17 under section 704(e) or 703(c) and section 705(e), 704(c), as applicable appropriate.

18 “(b) Concurrent Authorization.—If an order authorizing electronic surveillance or physical
19 search has been obtained under section 105 or section 304 and that order is still in effect, during
20 the pendency of that order, the Attorney General may authorize, without an order under section
21 704 or section 705, an acquisition of foreign intelligence information targeting 703 or section
22 704, the targeting of that United States person for the purpose of acquiring foreign
23 intelligence information while such person is reasonably believed to be located outside the
24 United States.

25 **“SEC. 707 706. USE OF INFORMATION ACQUIRED**
26 **UNDER TITLE VII.**

27 “(a) Information Acquired Under Section 703.—~~Information 702.~~—Information acquired
28 from an acquisition conducted under section 703 702 shall be deemed to be information acquired
29 from an electronic surveillance pursuant to title I for purposes of section 106, except for the
30 purposes of subsection (j) of such section.

31 “(b) Information Acquired Under Section 704.—~~Information 703.~~—Information acquired
32 from an acquisition conducted under section 704 703 shall be deemed to be information acquired
33 from an electronic surveillance pursuant to title I for purposes of section 106.

34 **“SEC. 708 707. CONGRESSIONAL OVERSIGHT.**

35 “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General
36 shall fully inform, in a manner consistent with national security, the congressional intelligence
37 committees, and the Committee Committees on the Judiciary of the Senate, and the Committee
38 on the Judiciary of and the House of Representatives, concerning the implementation of this
39 title.

40 “(b) Content.—Each report made under subparagraph subsection (a) shall include—

1 “(1) with respect to section ~~703~~— 702—

2 “(A) any certifications made under ~~subsection 703(f)~~ section 702(g) during the
3 reporting period;

4 “(B) with respect to each certification made under section 702(g)(1)(B)(ii), the
5 reasons for exercising the authority under such paragraph;

6 “(C) any directives issued under ~~subsection 703(g)~~ section 702(h) during the
7 reporting period;

8 “~~(C)~~“(D) a description of the judicial review during the reporting period of any such
9 certifications and targeting and minimization procedures required by subsections (d)
10 and (e) of section 702 and utilized with respect to such acquisition, including a copy
11 of any order or pleading in connection with such review that contains a significant
12 legal interpretation of the provisions of this section 702;

13 “~~(D)~~“(E) any actions taken to challenge or enforce a directive under paragraphs (4)
14 or (5) of section ~~703(g)~~; 702(h);

15 “~~(E)~~“(F) any compliance reviews conducted by the ~~Department of Justice or the~~
16 ~~Office of Attorney General or the Director of National Intelligence~~ of acquisitions
17 authorized under ~~subsection 703(a)~~; section 702(a);

18 “~~(F)~~“(G) a description of any incidents of noncompliance with a directive issued by
19 the Attorney General and the Director of National Intelligence under ~~subsection 703(g)~~
20 section 702(h), including—

21 “(i) incidents of noncompliance by an element of the intelligence community
22 with procedures ~~adopted pursuant to and guidelines submitted in accordance~~
23 with subsections (d) and (e) and (f) of section ~~703~~; 702; and

24 “(ii) incidents of noncompliance by a specified person to whom the Attorney
25 General and Director of National Intelligence issued a directive under ~~subsection~~
26 ~~703(g)~~; section 702(h); and

27 “~~(G)~~“(H) any procedures implementing ~~this~~ section 702;

28 “(2) with respect to section ~~704~~— 703—

29 “(A) the total number of applications made for orders under section ~~704(b)~~ 703(b);

30 “(B) the total number of such ~~orders either~~ orders—

31 “(i) granted;;

32 “(ii) modified; or

33 “(iii) denied; and

34 “(C) the total number of emergency acquisitions authorized by the Attorney General
35 under section ~~704(d)~~ 703(d) and the total number of subsequent orders approving or
36 denying such acquisitions; and

37 “(3) with respect to section ~~705~~— 704—

38 “(A) the total number of applications made for orders under ~~705(b)~~ 704(b);

1 “(B) the total number of such orders
2 either“(i) granted;;
3 “(ii) modified;; or
4 “(iii) denied; and
5 “(C) the total number of emergency acquisitions authorized by the Attorney General
6 under ~~subsection 705(d)~~ section 704(d) and the total number of subsequent orders
7 approving or denying such ~~applications.”~~.
8 applications.

9 **“SEC. 708. SAVINGS PROVISION.**

10 “Nothing in this title shall be construed to limit the authority of the Government to seek
11 an order or authorization under, or otherwise engage in any activity that is authorized
12 under, any other title of this Act.”.

13 (b) Table of Contents.—The table of contents in the first section of the Foreign Intelligence
14 Surveillance Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

- 15 (1) by striking the item relating to title VII;
16 (2) by striking the item relating to section 701; and
17 (3) by adding at the end the following:

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

20 ~~“Sec. 701. Limitation on definition of electronic surveillance.”~~ **“Sec. 701. Definitions.**

21 ~~“Sec. 702. Definitions.~~

22 ~~“Sec. 703. Procedures”~~ **“Sec. 702. Procedures** for targeting certain persons outside the United States
23 other than United States persons.

24 ~~“Sec. 704. Certain”~~ **“Sec. 703. Certain** acquisitions inside the United States of United States persons
25 outside the United States.

26 ~~“Sec. 705. Other”~~ **“Sec. 704. Other** acquisitions targeting United States persons outside the United
27 States.

28 ~~“Sec. 706. Joint”~~ **“Sec. 705. Joint** applications and concurrent authorizations.

29 ~~“Sec. 707. Use”~~ **“Sec. 706. Use** of information acquired under title VII.

30 **“Sec. 707. Congressional oversight.**

31 ~~“Sec. 708. Savings provision.”~~ ~~“Sec. 708. Congressional oversight.”~~.

32 (c) Technical and Conforming Amendments.—

33 (1) TITLE 18, UNITED STATES CODE.—Section code.—

34 (A) ~~Section 2232.~~ Section 2232(e) of title 18, United States Code, is amended by
35 inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978,

1 regardless of the limitation of section 701 of that Act) after "electronic surveillance".

2 (B) Section 2511. Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended
3 by inserting "or a court order pursuant to section 705 704 of the Foreign Intelligence
4 Surveillance Act of 1978" after "assistance".

5 (2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 601(a)(1) 1978.—

6 (A) Section 109. Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50
7 U.S.C. 1809) is amended 1871(a)(1) is amended—

8 (A) in subparagraph (C), by striking "and"; and

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

10 "(c) Definition. For the purpose of this section, the term 'electronic surveillance'
11 means electronic surveillance as defined in section 101(f) of this Act regardless of the
12 limitation of section 701 of this Act."

13 (B) Section 110. Section 110 of the Foreign Intelligence Surveillance Act of 1978
14 (50 U.S.C. 1810) is amended by—

15 (i) adding an "(a)" before "Civil Action";

16 (ii) redesignating subsections (a) through (e) as paragraphs (1) through (3),
17 respectively; and

18 (iii) adding at the end the following:

19 "(b) Definition. For the purpose of this section, the term 'electronic surveillance'
20 means electronic surveillance as defined in section 101(f) of this Act regardless of the
21 limitation of section 701 of this Act."

22 (C) Section 601. Section 601(a)(1) of the Foreign Intelligence Surveillance Act of
23 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and
24 inserting the following:

25 "(C) pen registers under section 402;

26 "(D) access to records under section 501;

27 "(E) acquisitions under section 704; 703; and

28 "(F) acquisitions under section 704;". 705;".

29 (d) Termination of Authority. —

30 (1) In general. Except as provided in paragraph (2), the amendments made by
31 subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2013.

32 (2) Continuing applicability. Section 703(g)(3) of the Foreign Intelligence
33 Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with
34 respect to any directive issued pursuant to section 703(g) of that Act (as so amended)
35 for information, facilities, or assistance provided during the period such directive was
36 or is in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as
37 amended by subsection (a)) shall remain in effect with respect to an order or request
38 for emergency assistance under that section. The use of information acquired by an

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1 acquisition conducted under section 703 of that Act (as so amended) shall continue to
2 be governed by the provisions of section 707 of that Act (as so amended).

3 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**
4 **WHICH ELECTRONIC SURVEILLANCE AND**
5 **INTERCEPTION OF ~~DOMESTIC~~ CERTAIN**
6 **COMMUNICATIONS MAY BE CONDUCTED.**

7 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of
8 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

9 “statement of exclusive means by which electronic surveillance and interception of ~~domestic~~
10 **certain** communications may be conducted

11 “Sec. 112. ~~The~~(a) Except as provided in subsection (b), the procedures of chapters 119,
12 121, and 206 of title 18, United States Code, and this Act shall be the exclusive means by which
13 electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701)
14 and the interception of domestic wire, oral, or electronic communications may be ~~conducted~~.”
15 **conducted.**

16 (b) ~~Table of Contents.~~—The“(b) Only an express statutory authorization for electronic
17 surveillance or the interception of domestic wire, oral, or electronic communications, other
18 than as an amendment to this Act or chapters 119, 121, or 206 of title 18, United States
19 Code, shall constitute an additional exclusive means for the purpose of subsection (a).”.

20 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1809(a)) is amended by striking “authorized by statute” each place it appears in
22 such section and inserting “authorized by this Act, chapter 119, 121, or 206 of title 18,
23 United States Code, or any express statutory authorization that is an additional exclusive
24 means for conducting electronic surveillance under section 112.”; and

25 (c) Conforming Amendments.—

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

28 “(iii) If a certification under subparagraph (ii)(B) for assistance to obtain
29 foreign intelligence information is based on statutory authority, the
30 certification shall identify the specific statutory provision, and shall certify
31 that the statutory requirements have been met.”; and

32 (2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign
33 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding
34 inserting after the item relating to section 111, the following new item:

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

37 (c) ~~Conforming Amendments.~~—Section 2511(2) of title 18,
38 ~~United States Code, is amended in paragraph (f), by striking “,~~

1 ~~as defined in section 101 of such Act,” and inserting “(as~~
2 ~~defined in section 101(f) of such Act regardless of the limitation~~
3 ~~of section 701 of such Act)”.~~

4 SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN
5 COURT ORDERS UNDER THE FOREIGN INTELLIGENCE
6 SURVEILLANCE ACT OF 1978.

7 (a) Inclusion of Certain Orders in Semiannual Reports of Attorney General.—Subsection
8 (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is
9 amended by striking “(not including orders)” and inserting “, orders.”.

10 (b) Reports by Attorney General on Certain Other Orders.—Such section 601 is further
11 amended by adding at the end the following:

12 “(c) Submissions to Congress.—The Attorney General shall submit to the committees of
13 Congress referred to in subsection (a)—

14 “(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence
15 Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes
16 significant construction or interpretation of any provision of this Act, and any pleadings,
17 applications, or memoranda of law associated with such decision, order, or opinion, not
18 later than 45 days after such decision, order, or opinion is issued; and

19 “(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or
20 memoranda of law associated with such decision, order, or opinion, that was issued during
21 the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008
22 and not previously submitted in a report under subsection (a).

23 “(d) Protection of National Security.—The Attorney General, in consultation with the Director
24 of National Intelligence, may authorize redactions of materials described in subsection (c) that
25 are provided to the committees of Congress referred to in subsection (a), if such redactions are
26 necessary to protect the national security of the United States and are limited to sensitive sources
27 and methods information or the identities of targets.”.

28 (c) Definitions.—Such section 601, as amended by subsections (a) and (b), is further amended
29 by adding at the end the following:

30 “(e) Definitions.—In this section:

31 “(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term “‘Foreign
32 ‘Foreign Intelligence Surveillance Court’” Court’ means the court established by section
33 103(a).

34 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The
35 term ‘Foreign Intelligence Surveillance Court of Review’ means the court established by
36 section 103(b).”.

37 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

3 (1) in subsection (a)—

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

5 (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9),
6 respectively;

7 (C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by
8 striking “detailed”;

9 (D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the
10 matter preceding subparagraph (A)—

11 (i) by striking “Affairs or” and inserting “Affairs,”; and

12 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the
13 Federal Bureau of Investigation, if designated by the President as a certifying
14 official—”;

15 (E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by
16 striking “statement of” and inserting “summary statement of”;

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

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

21 (2) by striking subsection (b);

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

24 (4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this
25 subsection, by striking “or the Director of National Intelligence” and inserting “the Director
26 of National Intelligence, or the Director of the Central Intelligence Agency”.

27 SEC. 105. ISSUANCE OF AN ORDER.

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

30 (1) in subsection (a)—

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

32 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
33 respectively;

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

35 (3) in subsection (c)(1)—

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

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

2 (C) by striking subparagraph (F);

3 (4) by striking subsection (d);

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

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

8 “(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize
9 the emergency employment of electronic surveillance if the Attorney General—

10 “(A) reasonably determines that an emergency situation exists with respect to the
11 employment of electronic surveillance to obtain foreign intelligence information before an
12 order authorizing such surveillance can with due diligence be obtained;

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

15 “(C) informs, either personally or through a designee, a judge having jurisdiction under
16 section 103 at the time of such authorization that the decision has been made to employ
17 emergency electronic surveillance; and

18 “(D) makes an application in accordance with this title to a judge having jurisdiction
19 under section 103 as soon as practicable, but not later than 7 days after the Attorney General
20 authorizes such surveillance.

21 “(2) If the Attorney General authorizes the emergency employment of electronic surveillance
22 under paragraph (1), the Attorney General shall require that the minimization procedures
23 required by this title for the issuance of a judicial order be followed.

24 “(3) In the absence of a judicial order approving such electronic surveillance, the surveillance
25 shall terminate when the information sought is obtained, when the application for the order is
26 denied, or after the expiration of 7 days from the time of authorization by the Attorney General,
27 whichever is earliest.

28 “(4) A denial of the application made under this subsection may be reviewed as provided in
29 section 103.

30 “(5) In the event that such application for approval is denied, or in any other case where the
31 electronic surveillance is terminated and no order is issued approving the surveillance, no
32 information obtained or evidence derived from such surveillance shall be received in evidence or
33 otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,
34 department, office, agency, regulatory body, legislative committee, or other authority of the
35 United States, a State, or political subdivision thereof, and no information concerning any United
36 States person acquired from such surveillance shall subsequently be used or disclosed in any
37 other manner by Federal officers or employees without the consent of such person, except with
38 the approval of the Attorney General if the information indicates a threat of death or serious
39 bodily harm to any person.

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

1 and

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

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

8 **SEC. 106. USE OF INFORMATION.**

9 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.
10 1806) is amended by striking “radio communication” and inserting “communication”.

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

12 (a) Applications.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50
13 U.S.C. 1823) is amended—

14 (1) in subsection (a)—

15 (A) by striking paragraph (2);

16 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),
17 respectively;

18 (C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by
19 striking “detailed”;

20 (D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by
21 inserting “or is about to be” before “owned”; and

22 (E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the
23 matter preceding subparagraph (A)—

24 (i) by striking “Affairs or” and inserting “Affairs,”; and

25 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the
26 Federal Bureau of Investigation, if designated by the President as a certifying
27 official—”; and

28 (2) in subsection (d)(1)(A), by striking “or the Director of National Intelligence” and
29 inserting “the Director of National Intelligence, or the Director of the Central Intelligence
30 Agency”.

31 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
32 1824) is amended—

33 (1) in subsection (a)—

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

35

36 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
37 respectively; and

1 (C) in paragraph (2)(B), as redesignated by subparagraph (B) of this
2 paragraph, by inserting “or is about to be” before “owned”; and

3 (2) by amending subsection (e) to read as follows:

4 “(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize
5 the emergency employment of a physical search if the Attorney General reasonably—
6 General—

7 “(A) reasonably determines that an emergency situation exists with respect to the
8 employment of a physical search to obtain foreign intelligence information before an order
9 authorizing such physical search can with due diligence be obtained;

10 “(B) reasonably determines that the factual basis for issuance of an order under this title
11 to approve such physical search exists;

12 “(C) informs, either personally or through a designee, a judge of the Foreign Intelligence
13 Surveillance Court at the time of such authorization that the decision has been made to
14 employ an emergency physical search; and

15 “(D) makes an application in accordance with this title to a judge of the Foreign
16 Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the
17 Attorney General authorizes such physical search.

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

21 “(3) In the absence of a judicial order approving such physical search, the physical search shall
22 terminate when the information sought is obtained, when the application for the order is denied,
23 or after the expiration of 7 days from the time of authorization by the Attorney General,
24 whichever is earliest.

25 “(4) A denial of the application made under this subsection may be reviewed as provided in
26 section 103.

27 “(5)(A) In the event that such application for approval is denied, or in any other case where the
28 physical search is terminated and no order is issued approving the physical search, no
29 information obtained or evidence derived from such physical search shall be received in
30 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court,
31 grand jury, department, office, agency, regulatory body, legislative committee, or other authority
32 of the United States, a State, or political subdivision thereof, and no information concerning any
33 United States person acquired from such physical search shall subsequently be used or disclosed
34 in any other manner by Federal officers or employees without the consent of such person, except
35 with the approval of the Attorney General if the information indicates a threat of death or serious
36 bodily harm to any person.

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

39 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
40 1801 et seq.) is amended—

41 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking

1 "303(a)(7)(E)" and inserting "303(a)(6)(E)"; and

2 (2) in section 305(k)(2), by striking "303(a)(7)" and inserting "303(a)(6)".

3 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN**
4 **REGISTERS AND TRAP AND TRACE DEVICES.**

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

7 (1) in subsection (a)(2), by striking "48 hours" and inserting "7 days"; and

8 (2) in subsection (c)(1)(C), by striking "48 hours" and inserting "7 days".

9 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE**
10 **COURT.**

11 (a) Designation of Judges.—Subsection (a) of section 103 of the Foreign Intelligence
12 Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting "at least" before "seven of
13 the United States judicial circuits".

14 (b) En Banc Authority.—

15 (1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance
16 Act of 1978, as amended by subsection (a) of this section, is further amended—

17 (A) by inserting "(1)" after "(a)"; and

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

19 "(2)(A) The court established under this subsection ~~may~~, on its own initiative, or upon the
20 request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or
21 (5) of section ~~703(h); 702(h)~~, ~~may~~ hold a hearing or rehearing, en banc, when ordered by a
22 majority of the judges that constitute such court upon a determination that—

23 "(i) en banc consideration is necessary to secure or maintain uniformity of the court's
24 decisions; or

25 "(ii) the proceeding involves a question of exceptional importance.

26 "(B) Any authority granted by this Act to a judge of the court established under this subsection
27 may be exercised by the court en banc. When exercising such authority, the court en banc shall
28 comply with any requirements of this Act on the exercise of such authority.

29 "(C) For purposes of this paragraph, the court en banc shall consist of all judges who
30 constitute the court established under this subsection."

31 (2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is
32 further amended—

33 (A) in subsection (a) of section 103, as amended by this subsection, by inserting
34 "(except when sitting en banc under paragraph (2))" after "no judge designated under
35 this subsection"; and

36 (B) in section 302(c) (50 U.S.C. 1822(c)), by inserting "(except when sitting en

1 banc)” after “except that no judge”.

2 (c) Stay or Modification During an Appeal.—Section 103 of the Foreign Intelligence
3 Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

4 (1) by redesignating subsection (f) as subsection (g); and

5 (2) by inserting after subsection (e) the following new subsection:

6 “(f)(1) A judge of the court established under subsection (a), the court established under
7 subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of
8 that court, may, in accordance with the rules of their respective courts, enter a stay of an order or
9 an order modifying an order of the court established under subsection (a) or the court established
10 under subsection (b) entered under any title of this Act, while the court established under
11 subsection (a) conducts a rehearing, while an appeal is pending to the court established under
12 subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United
13 States, or during the pendency of any review by that court.

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

16 (d) Authority of Foreign Intelligence Surveillance Court.—Section 103 of the Foreign
17 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is amended by
18 adding at the end the following:

19 ~~“(h)(1)“(i) Nothing in this Act shall be considered construed to reduce or contravene the~~
20 ~~inherent authority of the Foreign Intelligence Surveillance Court court established by~~
21 ~~subsection (a) to determine, or enforce, compliance with an order or a rule of such Court court~~
22 ~~or with a procedure approved by such Court court.”.~~

23 ~~“(2) In this subsection, the terms ‘Foreign Intelligence~~
24 ~~Surveillance Court’ and ‘Court’ mean SEC. 110. REVIEW OF~~
25 ~~PREVIOUS ACTIONS.~~

26 (a) Definitions.—In this section:

27 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees
28 of Congress” means—

29 (A) the Select Committee on Intelligence and the Committee on the Judiciary of
30 the Senate; and

31 (B) the Permanent Select Committee on Intelligence and the Committee on the
32 Judiciary of the House of Representatives.

33 (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence
34 Surveillance Court” means the court established by subsection (a).”.

35 SEC. 110 section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50
36 U.S.C. 1803(a)).

37 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND PROGRAM.—The terms “President’s
38 Surveillance Program” and “Program” mean the intelligence activity involving

1 communications that was authorized by the President during the period beginning on
2 September 11, 2001, and ending on January 17, 2007, including the program referred
3 to by the President in a radio address on December 17, 2005 (commonly known as the
4 Terrorist Surveillance Program).

5 (b) Reviews.—

6 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of
7 Justice, the Office of the Director of National Intelligence, the National Security
8 Agency, and any other element of the intelligence community that participated in the
9 President's Surveillance Program, shall complete a comprehensive review of, with
10 respect to the oversight authority and responsibility of each such Inspector General—

11 (A) all of the facts necessary to describe the establishment, implementation,
12 product, and use of the product of the Program;

13 (B) the procedures and substance of, and access to, the legal reviews of the
14 Program;

15 (C) communications with, and participation of, individuals and entities in the
16 private sector related to the Program;

17 (D) interaction with the Foreign Intelligence Surveillance Court and transition
18 to court orders related to the Program; and

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

22 (2) COOPERATION AND COORDINATION.—

23 (A) COOPERATION.—Each Inspector General required to conduct a review
24 under paragraph (1) shall—

25 (i) work in conjunction, to the extent practicable, with any other Inspector
26 General required to conduct such a review; and

27 (ii) utilize to the extent practicable, and not unnecessarily duplicate or
28 delay, such reviews or audits that have been completed or are being
29 undertaken by any such Inspector General or by any other office of the
30 Executive Branch related to the Program.

31 (B) INTEGRATION OF OTHER REVIEWS.—The Office of Professional
32 Responsibility of the Department of Justice shall provide the report of any
33 investigation conducted by such Office on matters relating to the Program to the
34 Inspector General of the Department of Justice, who shall integrate the factual
35 findings and conclusions of such investigation into its review

36 (C) COORDINATION.—The Inspectors General shall designate one of the
37 Inspectors General required to conduct a review under paragraph (1) that is
38 appointed by the President, by and with the advice and consent of the Senate, to
39 coordinate the conduct of the reviews and the preparation of the reports.

40 (c) Reports.—

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

7 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act,
8 the Inspectors General of the Department of Justice, the Office of the Director of
9 National Intelligence, the National Security Agency, and any other Inspector General
10 required to conduct a review under subsection (b)(1), shall submit to the appropriate
11 committees of Congress and the Commission established under section 301(a), to the
12 extent practicable, a comprehensive report on such reviews that includes any
13 recommendations of any such Inspectors General within the oversight authority and
14 responsibility of any such Inspector General with respect to the reviews.

15 (3) FORM.—A report submitted under this subsection shall be submitted in
16 unclassified form, but may include a classified annex. The unclassified report shall not
17 disclose the name or identity of any individual or entity of the private sector that
18 participated in the Program or with whom there was communication about the
19 Program, to the extent that information is classified.

20 (d) Resources.—

21 (1) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall
22 ensure that the process for the investigation and adjudication of an application by an
23 Inspector General or any appropriate staff of an Inspector General for a security
24 clearance necessary for the conduct of the review under subsection (b)(1) is carried out
25 as expeditiously as possible.

26 (2) ADDITIONAL PERSONNEL FOR THE INSPECTORS GENERAL.—An Inspector General
27 required to conduct a review under subsection (b)(1) and submit a report under
28 subsection (c) is authorized to hire such additional personnel as may be necessary to
29 carry out such review and prepare such report in a prompt and timely manner.
30 Personnel authorized to be hired under this paragraph—

31 (A) shall perform such duties relating to such a review as the relevant Inspector
32 General shall direct; and

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

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

35 (a) Definitions.—

36 (1) FOREIGN POWER.—Subsection (a)(4) of section 101 of the Foreign Intelligence
37 Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting “;” is amended—

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

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

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

1 “(7) **an entity not substantially composed of United States persons that is engaged in**
2 **the international proliferation of weapons of mass destruction,**” after **“international-**
3 **terrorism” destruction.**”

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

5 (A) in subparagraph (B), by striking “or” at the end; and ~~(B) in subparagraph (C), by~~
6 ~~striking “or” at the end; and~~

7 ~~(C)(B)~~ by adding at the end the following new subparagraphs: **subparagraph**

8 “(D) engages in the international proliferation of weapons of mass destruction, or
9 activities in preparation therefor; or.”. ~~or~~

10 ~~“(E) engages in the international proliferation of weapons of mass destruction, or~~
11 ~~activities in preparation therefor, for or on behalf of a foreign power; or”.~~

12 (3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is
13 amended by striking “sabotage or international terrorism” and inserting “sabotage,
14 international terrorism, or the international proliferation of weapons of mass destruction”.

15 (4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by ~~inserting after~~
16 ~~subsection (e) the adding at the end the following new subsection:~~

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

18 “(1) ~~any destructive device described in section 921(a)(4)(A) of title 18, United States~~
19 ~~Code, explosive, incendiary, or poison gas device that is intended or has the capability to~~
20 ~~cause death or serious bodily injury to a significant number of people; a mass casualty~~
21 ~~incident;~~

22 “(2) any weapon that is designed or intended to cause death or serious bodily injury to a
23 **significant number of persons** through the release, dissemination, or impact of toxic or
24 poisonous chemicals or their precursors;

25 “(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined
26 in section 178 of title 18, United States Code) **that is designed, intended, or has the**
27 **capability of causing death, illness, or serious bodily injury to a significant number of**
28 **persons; or**

29 “(4) any weapon that is designed ~~to release, intended, or has the capability of releasing~~
30 ~~radiation or radioactivity at a level dangerous to human life.~~ **causing death, illness, or**
31 **serious bodily injury to a significant number of persons.”.**

32 (b) Use of Information.—

33 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of
34 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international
35 terrorism” and inserting “sabotage, international terrorism, or the international proliferation
36 of weapons of mass destruction”.

37 (2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is
38 amended by striking “sabotage or international terrorism” and inserting “sabotage,
39 international terrorism, or the international proliferation of weapons of mass destruction”.

40 (c) Technical and Conforming Amendment.—Section 301(1) of the Foreign Intelligence

Deleted: 5/2/2008

1 Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting “~~“weapon”~~“~~weapon~~ of
2 mass destruction”, ~~destruction,~~” after “~~“person”,~~“~~person,~~”.

3 ~~SEC. 111. TECHNICAL AND CONFORMING~~
4 ~~AMENDMENTS.~~

5 ~~Section 103(e) of the Foreign Intelligence Surveillance Act of~~
6 ~~1978 (50 U.S.C. 1803(e)) is amended—~~

7

8 * ~~15 (1) in paragraph (1), by striking “105B(h) or 501(f)(1)” and~~
9 ~~inserting “501(f)(1) or 703”;~~ and

10

11 * ~~16 (2) in paragraph (2), by striking “105B(h) or 501(f)(1)” and~~
12 ~~inserting “501(f)(1) or 703”.~~

13 TITLE II—PROTECTIONS FOR ELECTRONIC
14 COMMUNICATION SERVICE PROVIDERS

15 ** 2 SEC. ~~203~~ 201. PROCEDURES FOR IMPLEMENTING
16 STATUTORY DEFENSES UNDER THE FOREIGN
17 INTELLIGENCE SURVEILLANCE ACT OF 1978.

18 ** 3 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended
19 by section 101, is further amended by adding after title VII the following new title:

20 ~~SEC. 201. DEFINITIONS.~~ “TITLE VIII—PROTECTION OF
21 PERSONS ASSISTING THE GOVERNMENT

22 ~~In this title:~~ “SEC. 801. DEFINITIONS.

23 (1) “In this title:

24 “(1) ASSISTANCE.—The term “~~assistance”~~ ‘assistance’ means the provision of, or the
25 provision of access to, information (including communication contents, communications
26 records, or other information relating to a customer or communication), facilities, or another
27 form of assistance.

28 (2) Contents.—The term “~~contents”~~ has the meaning given that term in section 101(n) of
29 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)). “(2)

30 CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence
31 committees’ means—

1 ~~(3) Covered civil action.—The term “covered civil action” means a civil action filed~~
2 ~~in a Federal or State court that—“(A) the Select Committee on Intelligence of the~~
3 ~~Senate; and~~

4 ~~(A) alleges that an electronic communication service provider furnished assistance~~
5 ~~to an element of the intelligence community; and~~

6 ~~(B) seeks monetary or other relief from the electronic communication service~~
7 ~~provider related to the provision of such assistance.”(B) the Permanent Select~~
8 ~~Committee on Intelligence of the House of Representatives.~~

9 ** 4 “(3) CONTENTS.—The term ‘contents’ has the meaning given that term in section
10 101(n).

11 ~~(4)“(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term “electronic~~
12 ~~‘electronic communication service provider’ provider’ means—~~

13 ~~(A)“(A) a telecommunications carrier, as that term is defined in section 3 of the~~
14 ~~Communications Act of 1934 (47 U.S.C. 153);~~

15 ~~(B)“(B) a provider of an electronic communication service, as that term is defined in~~
16 ~~section 2510 of title 18, United States Code;~~

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

19 ~~(D)“(D) any other communication service provider who has access to wire or~~
20 ~~electronic communications either as such communications are transmitted or as such~~
21 ~~communications are stored;~~

22 ~~(E)“(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in~~
23 ~~subparagraph (A), (B), (C), or (D); or~~

24 ~~(F)“(F) an officer, employee, or agent of an entity described in subparagraph (A),~~
25 ~~(B), (C), (D), or (E).~~

26 ~~(5)“(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term “element ‘element of~~
27 ~~the intelligence community” community’ means an element of the intelligence community~~
28 ~~as specified in or designated under section 3(4) of the National Security Act of 1947 (50~~
29 ~~U.S.C. 401a(4)).~~

30 ~~SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC~~
31 ~~COMMUNICATION SERVICE PROVIDERS.”(6) PERSON.—The term ‘person’~~
32 ~~means—~~

33 ~~(a) Limitations.—~~

34 ~~(1) In general.—Notwithstanding any other provision of law, a covered civil action~~
35 ~~shall not lie or be maintained in a Federal or State court, and shall be promptly~~
36 ~~dismissed, if the Attorney General certifies to the court that—~~

37 ~~(A) the assistance alleged to have been provided by the“(A) an electronic~~
38 ~~communication service provider was—; or~~

39 ** 5 “(B) a landlord, custodian, or other person who may be authorized or required
40 to furnish assistance pursuant to—

1 ** 6 “(i) an order of the court established under section 103(a) directing such
2 assistance;

3 ** 7 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of
4 title 18, United States Code; or

5 ** 8 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day
6 before the date of the enactment of the FISA Amendments Act of 2008 or 703(h).

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

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

13 ** 10 “(1) ~~In general.~~ ~~Notwithstanding~~“(a) **General Requirement for Certification.**—
14 **Notwithstanding** any other provision of law, no civil action may lie or be maintained in a
15 Federal or State court against any person for providing assistance to an element of the
16 intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the
17 court that—

18 ** 11 “(A)“(1) any assistance by that person was provided pursuant to an order of the
19 court established under section 103(a) directing such assistance;

20 ** 12 “(B)“(2) any assistance by that person was provided pursuant to a certification in
21 writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

22 ** 13 “(C)“(3) any assistance by that person was provided pursuant to a directive under
23 sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the
24 FISA Amendments Act of 2008, or 703(h) directing such assistance; or

25 “(4) the person did not provide the alleged assistance.

26 “(b) **Additional Limitation.**—**Notwithstanding any other provision of law, no civil action**
27 **may lie or be maintained in a Federal or State court against an electronic communication**
28 **service provider for furnishing assistance to an element of the intelligence community, and**
29 **shall be promptly dismissed, if the Attorney General certifies to the court that the**
30 **assistance alleged to have been provided by the electronic communication service provider**
31 **was—**

32 “(1)(i) in connection with an intelligence activity involving communications that was—

33 (i)“(A) authorized by the President during the period beginning on September 11,
34 2001, and ending on January 17, 2007; and

35 (ii)“(B) designed to detect or prevent a terrorist attack, or activities in preparation
36 for a terrorist attack, against the United States; and

37 (iii)“(2) described in a written request or directive, or a series of such requests or
38 directives, from the Attorney General or the head of an element of the intelligence
39 community (or the deputy of such person) to the electronic communication service provider

1 indicating that the activity was—

2 (F)“(A) authorized by the President; and

3 (H)“(B) determined to be lawful; or.

4 ~~(B) the electronic communication service provider did not provide the alleged assistance.~~“(c)
5 **Judicial Review.**—

6 (2) **Review.**—A“(1) **REVIEW OF CERTIFICATIONS.**—A certification made pursuant to
7 paragraph (1) shall be subject to review by a court subsection (a) or (b) shall be reviewed
8 for abuse of discretion and a determination of whether the certification is unsupported
9 by substantial evidence or otherwise not in accordance with law.

10 “(2) **SUPPLEMENTAL MATERIALS.**—In its review of the certifications in subsections
11 (a) and (b), the court may examine the court order, certification, or directive described
12 in subsection (a) or the written request or directives, or series of such requests or
13 directives, described in subsection (b)(1)(B).

14 “(d) **Limitations on Disclosure.**—If:

15 ~~(b) **Review of Certifications.**—If the Attorney General files a declaration under section 1746~~
16 ~~of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a)~~
17 ~~or (b) would harm the national security of the United States, the court shall—~~

18 (1)“(1) review such certification in camera and ex parte; and

19 (2)“(2) limit any public disclosure concerning such certification, including any public
20 order following such an ex parte review, to a statement that the conditions of subsection (a)
21 ~~have been met section 802 have been met and a description of the legal standards that~~
22 ~~govern the order, without disclosing the subparagraph of subsection (a)(1) that is the basis~~
23 ~~for the certification order.~~

24 (e)“(e) **Role of the Parties.**—The court may ask any party to submit arguments on
25 relevant issues of law, if deemed appropriate by the court.

26 “(f) **Nondelegation.**—The authority and duties of the Attorney General under this section shall
27 be performed by the Attorney General (or Acting Attorney General) or a designee in a position
28 not lower than the Deputy Attorney General.

29 ~~(d) **Civil Actions in State Court.**—A covered civil action that is brought in a State court shall~~
30 ~~be deemed to arise under the Constitution and laws~~“(g) **Appeal.**—The courts of appeals shall
31 have jurisdiction of appeals from interlocutory orders of the district courts of the United
32 States and shall be removable under section 1441 of title 28, United States Code. granting or
33 denying a motion to dismiss under this section.

34 ** 14 “(e)“(h) **Removal.**—A civil action against a person for providing assistance to an
35 element of the intelligence community that is brought in a State court shall be deemed to arise
36 under the Constitution and laws of the United States and shall be removable under section 1441
37 of title 28, United States Code.

38 (e) **Rule of Construction.**—Nothing“(i) **Relationship to Other Laws.**—Nothing in this
39 section may be construed to limit any otherwise available immunity, privilege, or defense under
40 any other provision of law.

1 (f) Effective Date and Application.—This section shall apply to any covered civil action that is
2 pending on or filed after the date of enactment of this Act.

3
4 * 2 SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER
5 THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

6
7 * 3 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended
8 by section 101, is further amended by adding after title VII the following new title:

9 “TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

10 “SEC. 801. DEFINITIONS.

11 “In this title:

12 “(1) Assistance.—The term ‘assistance’ means the provision of, or the provision of access to,
13 information (including communication contents, communications records, or other information
14 relating to a customer or communication), facilities, or another form of assistance.

15 “(2) Attorney general.—The term ‘Attorney General’ has the meaning give that term in
16 section 101(g).

17
18 * 4 “(3) Contents.—The term ‘contents’ has the meaning given that term in section 101(n).

19 “(4) Electronic communication service provider.—The term ‘electronic communication
20 service provider’ means—

21 “(A) a telecommunications carrier, as that term is defined in section 3 of the Communications
22 Act of 1934 (47 U.S.C. 153);

23 “(B) a provider of electronic communication service, as that term is defined in section 2510 of
24 title 18, United States Code;

25 “(C) a provider of a remote computing service, as that term is defined in section 2711 of title
26 18, United States Code;

27 “(D) any other communication service provider who has access to wire or electronic
28 communications either as such communications are transmitted or as such communications are
29 stored;

30 “(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in
31 subparagraph (A), (B), (C), or (D); or

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

34 “(5) Element of the intelligence community.—The term ‘element of the intelligence
35 community’ means an element of the intelligence community as specified or designated under
36 section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

37 “(6) Person.—The term ‘person’ means—

1 ~~“(A) an electronic communication service provider; or~~

2

3 ~~* 5 “(B) a landlord, custodian, or other person who may be authorized or required to furnish~~
4 ~~assistance pursuant to—~~

5

6 ~~* 6 “(i) an order of the court established under section 103(a) directing such assistance;~~

7

8 ~~* 7 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United~~
9 ~~States Code; or~~

10

11 ~~* 8 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before the date of~~
12 ~~the enactment of the FISA Amendments Act of 2008 or 703(h).~~

13

14 ~~* 9 “(7) State.—The term ‘State’ means any State, political subdivision of a State, the~~
15 ~~Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the~~
16 ~~United States, and includes any officer, public utility commission, or other body authorized to~~
17 ~~regulate an electronic communication service provider.~~

18 ~~“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.~~

19 ~~“(a) Requirement for Certification.—~~

20

21 ~~* 10 “(1) In general.—Notwithstanding any other provision of law, no civil action may lie or~~
22 ~~be maintained in a Federal or State court against any person for providing assistance to an~~
23 ~~element of the intelligence community, and shall be promptly dismissed, if the Attorney General~~
24 ~~certifies to the court that—~~

25

26 ~~* 11 “(A) any assistance by that person was provided pursuant to an order of the court~~
27 ~~established under section 103(a) directing such assistance;~~

28

29 ~~* 12 “(B) any assistance by that person was provided pursuant to a certification in writing~~
30 ~~under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;~~

31

32 ~~* 13 “(C) any assistance by that person was provided pursuant to a directive under sections~~
33 ~~102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA~~
34 ~~Amendments Act of 2008, or 703(h) directing such assistance; or~~

35 ~~“(D) the person did not provide the alleged assistance.~~

36 ~~“(2) Review.—A certification made pursuant to paragraph (1) shall be subject to review by a~~
37 ~~court for abuse of discretion.~~

1 ~~“(b) Limitations on Disclosure.—If the Attorney General files a declaration under section~~
2 ~~1746 of title 28, United States Code, that disclosure of a certification made pursuant to~~
3 ~~subsection (a) would harm the national security of the United States, the court shall—~~

4 ~~“(1) review such certification in camera and ex parte; and~~

5 ~~“(2) limit any public disclosure concerning such certification, including any public order~~
6 ~~following such an ex parte review, to a statement that the conditions of subsection (a) have been~~
7 ~~met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the~~
8 ~~certification.~~

9
10 * 14 ~~“(c) Removal.—A civil action against a person for providing assistance to an element of~~
11 ~~the intelligence community that is brought in a State court shall be deemed to arise under the~~
12 ~~Constitution and laws of the United States and shall be removable under section 1441 of title 28,~~
13 ~~United States Code.~~

14 ~~“(d) Relationship to Other Laws.—Nothing in this section may be construed to limit any~~
15 ~~otherwise available immunity, privilege, or defense under any other provision of law.~~

16 ~~“(e)(j) Applicability.—This section shall apply to a civil action pending on or filed after the~~
17 ~~date of enactment of the FISA Amendments Act of 2008. 2008.”~~

18 ~~SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.~~

19 ~~Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as added by~~
20 ~~section 203 of this Act, is amended by adding at the end the following new section:~~

21 ~~“SEC. 803. PREEMPTION.~~

22 ~~“(a) In General.—No State shall have authority to—~~

23 ~~“(1) conduct an investigation into an electronic communication service provider’s alleged~~
24 ~~assistance to an element of the intelligence community;~~

25 ~~“(2) require through regulation or any other means the disclosure of information about an~~
26 ~~electronic communication service provider’s alleged assistance to an element of the~~
27 ~~intelligence community;~~

28 ~~“(3) impose any administrative sanction on an electronic communication service provider~~
29 ~~for assistance to an element of the intelligence community; or~~

30 ~~“(4) commence or maintain a civil action or other proceeding to enforce a requirement~~
31 ~~that an electronic communication service provider disclose information concerning alleged~~
32 ~~assistance to an element of the intelligence community.~~

33 ~~“(b) Suits by the United States.—The United States may bring suit to enforce the provisions of~~
34 ~~this section.~~

35 ~~“(c) Jurisdiction.—The district courts of the United States shall have jurisdiction over any civil~~
36 ~~action brought by the United States to enforce the provisions of this section.~~

37 ~~“(d) Application.—This section shall apply to any investigation, action, or proceeding that is~~
38 ~~pending on or filed after the date of enactment of the FISA Amendments Act of 2008.”. 2008.~~

1 ~~SEC. 205~~ **SEC. 804. REPORTING.**

2 “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney
3 General shall fully inform, in a manner consistent with national security, the congressional
4 intelligence committees, the Committee on the Judiciary of the Senate, and the Committee
5 on the Judiciary of the House of Representatives, concerning the implementation of this
6 title.

7 “(b) Content.—Each report made under subparagraph (a) shall include—

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

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

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

12 **SEC. 202. TECHNICAL AMENDMENTS.**

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

16 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**
17 **THE GOVERNMENT**

18 **“Sec.801.Definitions.**

19 **“Sec.802.Procedures for implementing statutory defenses.**

20 **“Sec.803.Preemption.”.**

21 **TITLE III—OTHER PROVISIONS**

22 ~~SEC. 301.~~ **“Sec.803.Preemption.**

23 **“Sec.804.Reporting.”.**

24 **TITLE III—COMMISSION ON INTELLIGENCE**
25 **COLLECTION, PRIVACY PROTECTION, AND**
26 **CHANGES IN INFORMATION TECHNOLOGY**

27 **SEC. 301. COMMISSION ON INTELLIGENCE**
28 **COLLECTION, PRIVACY PROTECTION, AND**
29 **CHANGES IN INFORMATION TECHNOLOGY.**

30 (a) Establishment of Commission.—There is established in the legislative branch a
31 commission to be known as the “Commission on Intelligence Collection, Privacy
32 Protection, and Changes in Information and Communications Technology” (in this section
33 referred to as the “Commission”).

34 (b) Duties of Commission.—

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

2 (A) ascertain, evaluate, and report upon the facts and circumstances relating to
3 an intelligence activity involving communications authorized by the President
4 during the period between September 11, 2001 and January 17, 2007 and
5 designed to detect or prevent a terrorist attack, or activities in preparation for a
6 terrorist attack, against the United States;

7 (B) conduct a comprehensive examination of the legal framework for the
8 collection of intelligence information in the United States or regarding United
9 States persons both inside and outside the United States in light of the threats to
10 the national security, recent and anticipated changes in information and
11 communications technology that may affect the nature of that collection, and
12 constitutional and privacy interests of United States persons; and

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

20 (2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the
21 duties of the Commission under this section in a manner consistent with the need to
22 protect national security.

23 (3) RELATIONSHIP TO PREVIOUS INQUIRIES.—In fulfilling its duties under subsection
24 (b)(1)(A), the Commission shall build upon the reports submitted under section 110,
25 and avoid unnecessary duplication of the review under that section which was
26 conducted by the Inspectors General of the Department of Justice, the Office of the
27 Director of National Intelligence, the National Security Agency, and any other
28 inspector general that participated in it, as well as any related findings, conclusions,
29 and recommendations of the Office of Professional Responsibility of the Department
30 of Justice

31 (c) Composition of Commission.—

32 (1) MEMBERS.—The Commission shall be composed of 10 members, of whom—

33 (A) 1 member, who shall serve as the chair of the Commission, shall be
34 appointed by the President;

35 (B) 1 member, who shall serve as the vice chair of the Commission, shall be
36 appointed jointly by the leader of the Senate and the leader of the House of
37 Representatives who are not of the same party as the President;

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

40 (D) 2 members shall be appointed by the senior member of the leadership of the
41 House of Representatives of the Republican Party;

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

3 (F) 2 members shall be appointed by the senior member of the leadership of the
4 Senate of the Republican Party.

5 (2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission
6 may not be an officer or employee of the Federal Government.

7 (3) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the
8 Commission should be prominent United States citizens with significant depth of
9 experience in national security, intelligence, Constitutional law, civil liberties and
10 privacy, and information and telecommunications technology matters.

11 (4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be
12 appointed by June 1, 2009.

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

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

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

19 (8) VACANCIES.—Any vacancy in the Commission shall not affect its powers and
20 shall be filled in the same manner in which the original appointment was made.

21 (d) Powers of Commission.—

22 (1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Chair,
23 any subcommittee or member thereof may, for the purpose of carrying out this
24 section, hold such hearings and sit and act at such times and places, take such
25 testimony, receive such evidence, and administer such oaths as the Commission, such
26 designated subcommittee, or designated member may determine advisable.

27 (2) SUBPOENAS.—

28 (A) AUTHORIZATION AND ISSUANCE.—

29 (i) IN GENERAL.—The Commission is authorized to subpoena witnesses to
30 attend and testify and to produce evidence pertaining to any matter that the
31 Commission is empowered to investigate under this section. The attendance
32 of witnesses and the production of evidence may be required from any place
33 within the United States at any designated place of hearing within the United
34 States. The Commission may by rule delegate to the Chair and Vice Chair,
35 acting jointly, the authority to authorize subpoenas under this paragraph.

36 (ii) ISSUANCE.—Subject to clause (i), subpoenas authorized under this
37 paragraph may be issued under the signature of the Chair of the
38 Commission, or by any member designated by the chair, or any member
39 designated by the Chair or a member designated to sign the subpoena.

40 (B) ENFORCEMENT.—

1 (i) JURISDICTION.—In the case of contumacy or failure to obey a subpoena
2 issued under subparagraph (A), the United States district court for the
3 judicial district in which the subpoenaed person resides, is served, or may be
4 found, or where the subpoena is returnable, may issue an order requiring
5 such person to appear at any designated place to testify or to produce
6 documentary or other evidence. Any failure to obey the order of the court
7 may be punished by the court as a contempt of that court.

8 (ii) IN GENERAL.—If a person refuses to obey a subpoena issued under
9 subparagraph (A), the Commission, upon a majority vote, may apply, either
10 through the Attorney General or another attorney of its choosing, to a United
11 States district court for an order requiring that person to appear before the
12 Commission to give testimony, produce evidence, or both, relating to the
13 matter under investigation. The application may be made within the judicial
14 district where the hearing is conducted or where that person is found,
15 resides, or transacts business. Any failure to obey the order of the court may
16 be punished by the court as civil contempt.

17 (iii) ADDITIONAL ENFORCEMENT.—In the case of the failure of a witness to
18 comply with any subpoena or to testify when summoned under authority of
19 this paragraph, the Commission, by majority vote, may certify a statement of
20 fact attesting to such failure to the appropriate United States attorney, who
21 shall bring the matter before the grand jury for its action, under the same
22 statutory authority and procedures as if the United States attorney had
23 received a certification under sections 102 through 104 of the Revised
24 Statutes of the United States (2 U.S.C. 192 through 194).

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

28 (4) INFORMATION FROM FEDERAL AGENCIES.—

29 (A) IN GENERAL.—The Commission is authorized to secure directly from any
30 department, bureau, agency, board, commission, office, independent
31 establishment, or instrumentality of the executive branch documents,
32 information, suggestions, estimates, and statistics for the purposes of this section.
33 Each such department, bureau, agency, board, commission, office, independent
34 establishment, or instrumentality shall furnish such documents, information,
35 suggestions, estimates, and statistics directly to the Commission upon request
36 made by the Chair, or any member designated by a majority of the Commission.

37 (B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall
38 only be received, handled, stored, and disseminated by members of the
39 Commission and its staff in a manner consistent with all applicable statutes,
40 regulations, and Executive orders.

41 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

42 (A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General
43 Services shall provide to the Commission on a reimbursable basis administrative

1 support and other services for the performance of the Commission's functions.

2 (B) DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National
3 Intelligence shall provide to the Commission appropriate space and technical
4 facilities approved by the Commission and other services for the performance of
5 the Commission's functions.

6 (C) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance
7 prescribed in subparagraph (A), departments and agencies of the United States
8 may provide to the Commission such services, funds, facilities, staff, and other
9 support services as they may determine advisable and as may be authorized by
10 law.

11 (6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of
12 services or property.

13 (7) POSTAL SERVICES.—The Commission may use the United States mails in the
14 same manner and under the same conditions as departments and agencies of the
15 United States.

16 (e) Staff of Commission.—

17 (1) IN GENERAL.—

18 (A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with the
19 Vice Chair and in accordance with rules agreed upon by the Commission, may
20 appoint and fix the compensation of an executive director and such other
21 personnel as may be necessary to enable the Commission to carry out its
22 functions, without regard to the provisions of title 5, United States Code,
23 governing appointments in the competitive service, and without regard to the
24 provisions of chapter 51 and subchapter III of chapter 53 of such title relating to
25 classification and General Schedule pay rates, except that no rate of pay fixed
26 under this paragraph may exceed the equivalent of that payable for a position at
27 level IV of the Executive Schedule under section 5316 of title 5, United States
28 Code.

29 (B) PERSONNEL AS FEDERAL EMPLOYEES.—

30 (i) IN GENERAL.—The executive director and any personnel of the
31 Commission who are employees shall be employees under section 2105 of title
32 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A,
33 89B, and 90 of that title.

34 (ii) MEMBERS OF COMMISSION.—Clause (i) shall not be construed to apply
35 to members of the Commission.

36 (2) DETAILEES.—A Federal Government employee may be detailed to the
37 Commission without reimbursement from the Commission, and such detailee shall
38 retain the rights, status, and privileges of his or her regular employment without
39 interruption.

40 (3) CONSULTANT SERVICES.—The Commission is authorized to procure the services
41 of experts and consultants in accordance with section 3109 of title 5, United States

1 Code, at rates not to exceed the daily rate paid a person occupying a position at level
2 III of the Executive Schedule under section 5315 of title 5, United States Code.

3 (f) Security Clearances for Commission Members and Staff.—

4 (1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or
5 departments shall cooperate with the Commission in expeditiously providing to the
6 Commission members and staff appropriate security clearances to the extent possible
7 pursuant to existing procedures and requirements. No person shall be provided with
8 access to classified information under this section without the appropriate security
9 clearances.

10 (2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission, and
11 commission staff as authorized by the Chair and Vice Chair, who have obtained
12 appropriate security clearances shall have access to classified information related to
13 the intelligence activities within the scope of the examination of the Commission and
14 any other related classified information that the members of the Commission
15 determine relevant to carrying out the duties of the Commission under this section.

16 (g) Compensation and Travel Expenses.—

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

22 (2) TRAVEL EXPENSES.—While away from their homes or regular places of business
23 in the performance of services for the Commission, members of the Commission shall
24 be allowed travel expenses, including per diem in lieu of subsistence, in the same
25 manner as persons employed intermittently in the Government service are allowed
26 expenses under section 5703(b) of title 5, United States Code.

27 (h) Nonapplicability of Federal Advisory Committee Act.—

28 (1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not
29 apply to the Commission.

30 (2) PUBLIC MEETINGS.—The Commission shall hold public hearings and meetings to
31 the extent appropriate.

32 (3) PUBLIC HEARINGS.—Any public hearing of the Commission shall be conducted in
33 a manner consistent with the protection of information provided to or developed for or
34 by the Commission as required by any applicable statute, regulation, or Executive
35 order.

36 (i) Reports and Recommendations of Commission.—

37 (1) INTERIM REPORTS.—The Commission may submit to the President and Congress
38 interim reports containing such findings, conclusions, and recommendations for
39 corrective measures as have been agreed to by a majority of Commission members.

40 (2) FINAL REPORT.—Not later than 18 months after the date of its first meeting, the
41 Commission shall submit to the President and Congress a final report containing such

1 information, analysis, findings, conclusions, and recommendations as have been
2 agreed to by a majority of Commission members and such minority and additional
3 views as a member may wish to include.

4 (3) FORM.—The reports submitted under paragraphs (1) and (2) shall be submitted
5 in unclassified form, but may include a classified annex.

6 (4) RECOMMENDATIONS FOR DECLASSIFICATION.—The Commission may make
7 recommendations to the appropriate department or agency of the Federal
8 Government regarding the declassification of documents or portions of documents.

9 (j) Termination.—

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

13 (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use
14 the 90-day period referred to in paragraph (1) for the purpose of concluding its
15 activities, including providing testimony to committees of Congress concerning its
16 report and disseminating the final report, except that nothing under this paragraph
17 shall limit the ability of the Chair, the Vice Chair, or any member of the Commission
18 to provide additional testimony to committees of Congress concerning the report after
19 that time.

20 (k) Definitions.—In this section:

21 (1) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the
22 meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C.
23 401a(4)).

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

27 (l) Funding.—

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

30 (2) DURATION OF AVAILABILITY.—Amounts made available to the Commission
31 under paragraph (1) shall remain available until the termination of the Commission.

32 (m) Effective Date.—This section shall take effect on January 21, 2009.

33 **TITLE IV—OTHER PROVISIONS**

34 **SEC. 401. SEVERABILITY.**

35 If any provision of this Act, any amendment made by this Act, or the application thereof to
36 any person or circumstances is held invalid, the validity of the remainder of the Act, any such
37 amendments, and of the application of such provisions to other persons and circumstances shall
38 not be affected thereby.

1 ~~SEC. 302.~~ **402. EFFECTIVE DATE; REPEAL; TRANSITION**
2 **PROCEDURES.**

3 ~~(a) In General.~~ **Except** ~~Except~~ as provided in subsection ~~(e)~~ section 404, the amendments
4 made by this Act shall take effect on the date of the enactment of this Act.

5 ~~(b) Repeal.~~ **SEC. 403. REPEALS.**

6 ~~(1)(a) Repeal of Protect America Act of 2007 Provisions.~~

7 **(1) AMENDMENTS TO FISA.—**

8 **(A) IN GENERAL.**—Except as provided in subsection ~~(e)~~ section 404, sections 105A,
9 105B, and 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
10 1805a, 1805b, and 1805c) are repealed.

11 **(B) TECHNICAL AND CONFORMING AMENDMENTS.—**

12 **(i)(2) TABLE OF CONTENTS.**—The table of contents in the first section of the
13 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
14 amended by striking the items relating to sections 105A, 105B, and 105C.

15 **(e) Transitions Procedures.—**

16 **(1) Protection from liability.**—Notwithstanding subsection ~~(b)(1)~~, subsection ~~(1)~~
17 ~~of section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain~~
18 ~~in effect with respect to any directives issued pursuant to such section 105B for~~
19 ~~information, facilities, or assistance provided during the period such directive was~~
20 ~~or is in effect.~~

21 **(2) Orders in effect.—**

22 **(A) Orders in effect on date of enactment.**—Notwithstanding any other
23 provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

24 **(i) any order in effect on the date of enactment of this Act issued pursuant to**
25 **the Foreign Intelligence Surveillance Act of 1978 or section 6(b) of the Protect**
26 **America Act of 2007 (Public Law 11055; 121 Stat. 556) shall remain in effect**
27 **until the date of expiration of such order; and**

28 **(ii) at the request of the applicant, the court established under section 103(a) of**
29 **the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall**
30 **reauthorize such order if the facts and circumstances continue to justify issuance**
31 **of such order under the provisions of such Act, as in effect on the day before the**
32 **date of the enactment of the Protect America Act of 2007, except as amended by**
33 **sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.**

34 **(B) Orders in effect on december 31, 2013.**—Any order issued under title VII
35 of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101
36 of this Act, in effect on December 31, 2013, shall continue in effect until the date
37 of the expiration of such order. Any such order shall be governed by the
38 applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so
39 amended.

1 (3) Authorizations and directives in effect.—

2 (A) Authorizations and directives in effect on date of enactment.—

3 Notwithstanding any other provision of this Act or of the Foreign Intelligence
4 Surveillance Act of 1978, any authorization or directive in effect on the date of
5 the enactment of this Act issued pursuant to the Protect America Act of 2007, or
6 any amendment made by that Act, shall remain in effect until the date of
7 expiration of such authorization or directive. Any such authorization or directive
8 shall be governed by the applicable provisions of the Protect America Act of 2007
9 (121 Stat. 552), and the amendment made by that Act, and, except as provided in
10 paragraph (4) of this subsection, any acquisition pursuant to such authorization or
11 directive shall be deemed not to constitute electronic surveillance (as that term is
12 defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50
13 U.S.C. 1801(f)), as construed in accordance with section 105A of the Foreign
14 Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a)).

15 (B) Authorizations and directives in effect on december 31, 2013.— Any
16 authorization or directive issued under title VII of the Foreign Intelligence
17 Surveillance Act of 1978, as amended by section 101 of this Act, in effect on
18 December 31, 2013, shall continue in effect until the date of the expiration of such
19 authorization or directive. Any such authorization or directive shall be governed
20 by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978,
21 as so amended, and, except as provided in section 707 of the Foreign Intelligence
22 Surveillance Act of 1978, as so amended, any acquisition pursuant to such
23 authorization or directive shall be deemed not to constitute electronic surveillance
24 (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance
25 Act of 1978, to the extent that such section 101(f) is limited by section 701 of the
26 Foreign Intelligence Surveillance Act of 1978, as so amended).

27 (4) Use of information acquired under protect america act.— Information
28 acquired from an acquisition conducted under the Protect America Act of 2007,
29 and the amendments made by that Act, shall be deemed to be information
30 acquired from an electronic surveillance pursuant to title I of the Foreign
31 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of
32 section 106 of that Act (50 U.S.C. 1806), except for purposes of subsection (j) of
33 such section.

34 (5) New orders.— Notwithstanding any other provision of this Act or of the
35 Foreign Intelligence Surveillance Act of 1978 —

36 (A) the government may file an application for an order under the Foreign
37 Intelligence Surveillance Act of 1978, as in effect on the day before the date of
38 the enactment of the Protect America Act of 2007, except as amended by sections
39 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act; and

40 (B) the court established under section 103(a) of the Foreign Intelligence
41 Surveillance Act of 1978 shall enter an order granting such an application if the
42 application meets the requirements of such Act, as in effect on the day before the
43 date of the enactment of the Protect America Act of 2007, except as amended by
44 sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

1 (6) Extant authorizations.—At the request of the applicant, the court established
2 under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall
3 extinguish any extant authorization to conduct electronic surveillance or physical
4 search entered pursuant to such Act.

5 (7) Applicable provisions.—Any surveillance conducted pursuant to an order
6 entered pursuant to this subsection shall be subject to the provisions of the
7 Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the
8 date of the enactment of the Protect America Act of 2007, except as amended by
9 sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.(ii)

10 CONFORMING AMENDMENTS.—Except as provided in section 404, section
11 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e))
12 is amended—

13 ** 15 (I) in paragraph (1), by striking “105B(h) or 501(f)(1)” and
14 inserting “501(f)(1) or 703²; 702(h)(4)”; and

15 ** 16 (II) in paragraph (2), by striking “105B(h) or 501(f)(1)” and
16 inserting “501(f)(1) or 703² 702(h)(4)”.

17 (8)(2) REPORTING REQUIREMENTS.—Except as provided in section 404, section 4 of
18 the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 555) is repealed.

19 (3) TRANSITION PROCEDURES.—Except as provided in section 404, subsection (b) of
20 section 6 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) is
21 repealed.

22 (b) FISA Amendments Act of 2008.—

23 (1) IN GENERAL.—Except as provided in section 404, effective December 31, 2011,
24 title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section
25 101(a), is repealed.

26 (2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2011—

27 (A) the table of contents in the first section of such Act (50 U.S.C. 1801 et seq.)
28 is amended by striking the items related to title VII;

29 (B) except as provided in section 404, section 601(a)(1) of such Act (50 U.S.C.
30 1871(a)(1)) is amended to read as such section read on the day before the date of
31 the enactment of this Act; and

32 (C) except as provided in section 404, section 2511(2)(a)(ii)(A) of title 18, United
33 States Code, is amended by striking “or a court order pursuant to section 704 of
34 the Foreign Intelligence Surveillance Act of 1978”.

35 SEC. 404. TRANSITION PROCEDURES.

36 (a) Transition Procedures for Protect America Act of 2007 Provisions.—

37 (1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—

38 Notwithstanding any other provision of law, any order, authorization, or directive
39 issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act
40 of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55;

1 121 Stat. 552), shall continue in effect until the expiration of such order, authorization,
2 or directive.

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

7 (A) subject to paragraph (3), section 105A of such Act, as added by section 2 of
8 the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall
9 continue to apply to any acquisition conducted pursuant to an order,
10 authorization, or directive referred to in paragraph (1); and

11 (B) sections 105B and 105C of the Foreign Intelligence Surveillance Act of 1978,
12 as added by sections 2 and 3, respectively, of the Protect America Act of 2007,
13 shall continue to apply with respect to an order, authorization, or directive
14 referred to in paragraph (1) until the later of—

15 (i) the expiration of such order, authorization, or directive; or

16 (ii) the date on which final judgement is entered for any petition or other
17 litigation relating to such order, authorization, or directive.

18 (3) USE OF INFORMATION.—Information acquired from an acquisition conducted
19 pursuant to an order, authorization, or directive referred to in paragraph (1) shall be
20 deemed to be information acquired from an electronic surveillance pursuant to title I
21 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for
22 purposes of section 106 of such Act (50 U.S.C. 1806), except for purposes of subsection
23 (j) of such section.

24 (4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign
25 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act
26 of 2007, shall continue to apply with respect to any directives issued pursuant to such
27 section 105B.

28 (5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—
29 Notwithstanding any other provision of this Act or of the Foreign Intelligence
30 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 103(e) of the Foreign
31 Intelligence Surveillance Act (50 U.S.C. 1803(e)), as amended by section 5(a) of the
32 Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556), shall continue to
33 apply with respect to a directive issued pursuant to section 105B of the Foreign
34 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act
35 of 2007, until the later of—

36 (A) the expiration of all orders, authorizations, or directives referred to in
37 paragraph (1); or

38 (B) the date on which final judgement is entered for any petition or other
39 litigation relating to such order, authorization, or directive.

40 (6) REPORTING REQUIREMENTS.—

41 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this

1 Act, any amendment made by this Act, the Protect America Act of 2007 (Public
2 Law 110-55), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801
3 et seq.), section 4 of the Protect America Act of 2007 shall continue to apply until
4 the date that the certification described in subparagraph (B) is submitted.

5 (B) CERTIFICATION.—The certification described in this subparagraph is a
6 certification—

7 (i) made by the Attorney General;

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

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

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

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

19 (b) Transition Procedures for FISA Amendments Act of 2008 Provisions.—

20 (1) ORDERS IN EFFECT ON DECEMBER 31, 2011.—Notwithstanding any other
21 provision of this Act, any amendment made by this Act, or the Foreign Intelligence
22 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive
23 issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978, as
24 amended by section 101(a), shall continue in effect until the date of the expiration of
25 such order, authorization, or directive.

26 (2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS,
27 DIRECTIVES.—Notwithstanding any other provision of this Act, any amendment made
28 by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
29 seq.), with respect to any order, authorization, or directive referred to in paragraph
30 (1), title VII of such Act, as amended by section 101(a), shall continue to apply until
31 the later of—

32 (A) the expiration of such order, authorization, or directive; or

33 (B) the date on which final judgement is entered for any petition or other
34 litigation relating to such order, authorization, or directive.

35 (3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF
36 INFORMATION.—Notwithstanding any other provision of this Act or of the Foreign
37 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

38 (A) section 103(e) of such Act, as amended by section 113, shall continue to
39 apply with respect to any directive issued pursuant to section 702(h) of such Act,
40 as added by section 101(a);

1 (B) section 702(h)(3) of such Act (as so added) shall continue to apply with
2 respect to any directive issued pursuant to section 702(h) of such Act (as so
3 added);

4 (C) section 703(e) of such Act (as so added) shall continue to apply with respect
5 to an order or request for emergency assistance under that section;

6 (D) section 706 of such Act (as so added) shall continue to apply to an
7 acquisition conducted under section 702 or 703 of such Act (as so added); and

8 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by
9 section 101(c)(1), shall continue to apply to an order issued pursuant to section
10 704 of the Foreign Intelligence Surveillance Act of 1978, as added by section
11 101(a).

12 (4) REPORTING REQUIREMENTS.—

13 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this
14 Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
15 seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section
16 101(c)(2), and sections 702(l) and 707 of such Act, as added by section 101(a), shall
17 continue to apply until the date that the certification described in subparagraph
18 (B) is submitted.

19 (B) CERTIFICATION.—The certification described in this subparagraph is a
20 certification—

21 (i) made by the Attorney General;

22 (ii) submitted to the Select Committee on Intelligence of the Senate, the
23 Permanent Select Committee on Intelligence of the House of Representatives,
24 and the Committees on the Judiciary of the Senate and the House of
25 Representatives;

26 (iii) that states that there will be no further acquisitions carried out under
27 title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by
28 section 101(a), after the date of such certification; and

29 (iv) that states that the information required to be included in a review,
30 assessment, or report under section 601 of such Act, as amended by section
31 101(c), or section 702(l) or 707 of such Act, as added by section 101(a),
32 relating to any acquisition conducted under title VII of such Act, as amended
33 by section 101(a), has been included in a review, assessment, or report under
34 such section 601, 702(l), or 707.

35 (5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS
36 OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section
37 2.5 of Executive Order 12333 to intentionally target a United States person reasonably
38 believed to be located outside the United States shall remain continue in effect, and shall
39 constitute a sufficient basis for conducting such an acquisition targeting a United States
40 person located outside the United States until the earlier of—

41 (A) the date that authorization expires; or

1 (B) the date that is 90 days after the date of the enactment of this Act.
2 Attest:
3 Secretary.66514
4 110th CONGRESS
5 2d Session
6 H.R. 3773
7
8 AMENDMENT

9/26/2008
11:31 AM

Deleted: 5/2/2008

1 Purpose: To provide a complete substitute.
2
3

4 H. R. 3773
5

6 To amend the Foreign Intelligence Surveillance Act of 1978
7 to establish a procedure for authorizing certain acquisitions
8 of foreign intelligence, and for other purposes.
9

10 Referred to the Committee on _____ and ordered to be
11 printed

12 Ordered to lie on the table and to be printed

13 AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO
14 BE PROPOSED BY MR. ROCKEFELLER

15 Viz:

16 ~~HOUSE AMENDMENT TO SENATE AMENDMENT:~~

17 In lieu of the matter proposed to be inserted by the amendment of the Senate House of
18 Representatives to the amendment of the Senate to the text of the bill, insert the following:

19 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

20 (a) Short Title.—This Act may be cited as the “Foreign Intelligence Surveillance Act of 1978
21 Amendments Act of 2008” or the “FISA Amendments Act of 2008”.

22 (b) Table of Contents.—The table of contents for this Act is as follows:

23 Sec.1.Short title; table of contents.

24 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

30 Sec.104.Applications for court orders.

31 Sec.105.Issuance of an order.

32 Sec.106.Use of information.

- 1 Sec.107.Amendments for physical searches.
- 2 Sec.108.Amendments for emergency pen registers and trap and trace devices.
- 3 Sec.109.Foreign intelligence surveillance court **Intelligence Surveillance Court.**
- 4 Sec.110.Review of previous actions.
- 5 Sec.111.Weapons of mass destruction.

6 ~~Sec.112.Statute of limitations.~~ **TITLE II—PROTECTIONS**
7 **FOR ELECTRONIC COMMUNICATION SERVICE**
8 **PROVIDERS**

9 ~~TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT~~

- 10 ~~Sec.201.Statutory defenses.~~ **Sec.201.Procedures for implementing statutory defenses under**
11 **the Foreign Intelligence Surveillance Act of 1978.**

- 12 Sec.202.Technical amendments.

13 ~~TITLE III—COMMISSION ON WARRANTLESS~~
14 ~~ELECTRONIC SURVEILLANCE ACTIVITIES~~
15 **INTELLIGENCE COLLECTION, PRIVACY**
16 **PROTECTION, AND CHANGES IN INFORMATION**
17 **TECHNOLOGY**

- 18 ~~Sec.301.Commission on Warrantless Electronic Surveillance Activities.~~ **Intelligence Collection,**
19 **Privacy Protection, and Changes in Information Technology.**

20 **TITLE IV—OTHER PROVISIONS**

- 21 Sec.401.Severability.

- 22 Sec.402.Effective date.

- 23 Sec.403.Repeals.

- 24 Sec.404.Transition procedures.

- 25 ~~Sec.405.No rights under the FISA Amendments Act of 2008 for~~
26 ~~undocumented aliens.~~

- 27 ~~Sec.406.Surveillance to protect the United States.~~

28 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

- 29 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**
30 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

1 (a) In General.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
2 amended—

3 (1) by striking title VII; and

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

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

7 “SEC. 701. DEFINITIONS.

8 “(a) In General.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’,
9 ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’, ~~‘minimization~~
10 ~~‘procedures’~~, ‘person’, ‘United States’, and ‘United States person’ have the meanings given such
11 terms in section 101, except as specifically provided in this title.

12 “(b) Additional Definitions.—

13 “(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence
14 committees’ means—

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

16 “(B) the Permanent Select Committee on Intelligence of the House of
17 Representatives.

18 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign
19 Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

20 “(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The
21 terms ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the
22 court established by section 103(b).

23 “(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic
24 communication service provider’ means—

25 “(A) a telecommunications carrier, as that term is defined in section 3 of the
26 Communications Act of 1934 (47 U.S.C. 153);

27 “(B) a provider of electronic communication service, as that term is defined in
28 section 2510 of title 18, United States Code;

29 “(C) a provider of a remote computing service, as that term is defined in section
30 2711 of title 18, United States Code;

31 “(D) any other communication service provider who has access to wire or electronic
32 communications either as such communications are transmitted or as such
33 communications are stored; or

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

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

1 "SEC. 702. PROCEDURES FOR TARGETING CERTAIN
2 PERSONS OUTSIDE THE UNITED STATES OTHER THAN
3 UNITED STATES PERSONS.

4 "(a) Authorization.—Notwithstanding any other provision of law, pursuant to an order issued
5 in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B)(ii), the
6 Attorney General and the Director of National Intelligence may authorize jointly, for a period of
7 up to 1 year from the effective date of the authorization, the targeting of persons reasonably
8 believed to be located outside the United States to acquire foreign intelligence information.

9 "(b) Limitations.—An acquisition authorized under subsection (a)—

10 "(1) may not intentionally target any person known at the time of acquisition to be
11 located in the United States;

12 "(2) may not intentionally target a person reasonably believed to be located outside the
13 United States if the purpose of such acquisition is in order to target a particular, known
14 person reasonably believed to be in the United States;

15 "(3) may not intentionally target a United States person reasonably believed to be located
16 outside the United States;

17 "(4) may not intentionally acquire any communication as to which the sender and all
18 intended recipients are known at the time of the acquisition to be located in the United
19 States; and

20 "(5) shall be conducted in a manner consistent with the fourth amendment to the
21 Constitution of the United States.

22 "(c) Conduct of Acquisition.—An Acquisition.—

23 "(1) IN GENERAL.—An acquisition authorized under subsection (a) may be conducted
24 only in accordance with—

25 "~~(1) a~~ "(A) the certification made by the Attorney General and the Director of
26 National Intelligence pursuant to subsection (g) or a determination under paragraph
27 ~~(1)(B) of such subsection; and submitted in accordance with subsection (g); and~~

28 "~~(2) the procedures and guidelines required pursuant to subsections (d), (e), and~~
29 ~~(f).~~ "(B) the targeting and minimization procedures submitted in accordance with
30 subsections (d) and (e).

31 ** 1 "~~(m)~~ "(2) CONSTRUCTION.—Nothing in title I of this Act shall be construed to
32 require an application under section 104 for an acquisition that is targeted in accordance
33 with this section at a person reasonably believed to be located outside the United States.

34 "(d) Targeting Procedures.—

35 "(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
36 of National Intelligence, shall adopt targeting procedures that are reasonably designed to
37 ensure that any acquisition authorized under subsection (a) is limited to targeting persons
38 reasonably believed to be located outside the United States and does not result in the
39 intentional acquisition of any communication as to which the sender and all intended

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1 recipients are known at the time of the acquisition to be located in the United States.

2 “(2) JUDICIAL REVIEW.—The procedures required by paragraph (1) shall be subject to
3 judicial review pursuant to subsection (i).

4 “(e) Minimization Procedures.—

5 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
6 of National Intelligence, shall adopt minimization procedures ~~that for acquisitions~~
7 ~~authorized under subsection (a) that—~~

8 ~~“(A) in the case of electronic surveillance, meet the definition of minimization~~
9 ~~procedures under section 101(h) or section 301(4), as appropriate, for acquisitions~~
10 ~~authorized under subsection (a); and~~

11 ~~“(B) in the case of a physical search, meet the definition of minimization procedures~~
12 ~~under section 301(4).~~

13 “(2) JUDICIAL REVIEW.—The minimization procedures required by paragraph (1) shall be
14 subject to judicial review pursuant to subsection (i).

15 “(f) Guidelines for Compliance With Limitations.—

16 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
17 of National Intelligence, shall adopt guidelines to ensure—

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

19 “(B) that an application is filed under section 104 or 303, if required by this Act
20 section 303, as appropriate, if required by any other section of this Act.

21 “(2) Criteria.—With respect to subsection (b)(2), the guidelines adopted pursuant to
22 paragraph (1) shall contain specific criteria for determining whether a significant purpose of
23 an acquisition is to acquire the communications of a specific United States person
24 reasonably believed to be located in the United States. Such criteria shall include
25 consideration of whether—

26 “(A) the department or agency of the Federal Government conducting the acquisition has
27 made an inquiry to another department or agency of the Federal Government to gather
28 information on the specific United States person;

29 “(B) the department or agency of the Federal Government conducting the acquisition has
30 provided information that identifies the specific United States person to another department
31 or agency of the Federal Government;

32 “(C) the department or agency of the Federal Government conducting the acquisition
33 determines that the specific United States person has been the subject of ongoing interest or
34 repeated investigation by a department or agency of the Federal Government; and

35 “(D) the specific United States person is a natural person.

36 “(3)“(2) TRAINING.—The Director of National Intelligence shall establish a training
37 program for appropriate personnel of the intelligence community personnel to ensure that
38 the guidelines adopted pursuant to paragraph (1) are properly implemented.

39 “(4) Submission to congress and foreign intelligence surveillance court.—The“(3)

1 **SUBMISSION OF GUIDELINES.**—The Attorney General shall ~~submit~~ **provide** the guidelines
2 adopted pursuant to paragraph (1) to—

3 “(A) the congressional intelligence committees;

4 “(B) the ~~Committees~~ **Committee on the Judiciary of the Senate;**

5 “(C) ~~the Committee on the Judiciary of the House of Representatives and the~~
6 **Senate;** and

7 ~~“(C)”~~“(D) the Foreign Intelligence Surveillance Court.

8 “(g) Certification.—

9 “(1) IN GENERAL.—

10 ~~“(A) REQUIREMENT. SUBJECT TO SUBPARAGRAPH (B), IF REQUIREMENT.—In~~
11 **order to conduct an acquisition under subsection (a), the Attorney General and the**
12 **Director of National Intelligence seek to authorize an acquisition under this section, the**
13 ~~Attorney General and the Director of National Intelligence shall provide~~ **shall provide**
14 **to the Foreign Intelligence Surveillance Court, under oath, a written certification, as**
15 ~~described in this subsection.~~

16 ~~“(B) Emergency authorization.—If and any supporting affidavit, under seal, in~~
17 **accordance with this subsection.**

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

19 “(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General
20 **and Director of National Intelligence shall provide a copy of a certification**
21 **made under this subsection to the Foreign Intelligence Surveillance Court**
22 **prior to the initiation of an acquisition under subsection (a).**

23 “(ii) EXCEPTION.—If the Attorney General and the Director of National
24 **Intelligence determine that an emergency situation exists, immediate action by the**
25 **Government is required, there should be immediate implementation of the**
26 **authorization and time does not permit the completion of judicial review**
27 **issuance of an order pursuant to subsection (i)(3) prior to the initiation of an**
28 ~~acquisition~~ **implementation of the authorization, the Attorney General and the**
29 **Director of National Intelligence may authorize the acquisition and shall submit to**
30 **the Foreign Intelligence Surveillance Court a certification, including the**
31 **determination under this subsection, as soon as possible but in no event more**
32 **than 7 days after such determination is made.**

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

34 “(A) attest that—

35 “(i) there are reasonable procedures in place that **have been approved or**
36 **submitted for approval to the Foreign Intelligence Surveillance Court, for**
37 **determining that the acquisition authorized under subsection (a)—**

38 “(I) ~~is targeted at persons reasonably believed to be located outside the~~
39 **United States and such procedures have been submitted to the Foreign**
40 **Intelligence Surveillance Court; and**

1 “(II) does not result in the intentional acquisition of any communication as
2 to which the sender and all intended recipients are known at the time of the
3 acquisition to be located in the United States, and such procedures have been
4 submitted to the Foreign Intelligence Surveillance Court;

5 “(ii) guidelines have been adopted in accordance with subsection (f) to ensure
6 compliance with the limitations in subsection (b) and to ensure that applications
7 are filed under section 104 or section 303, if required by this Act;

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

9 “(I) meet the definition of minimization procedures under section 101(h)
10 or section 301(4) in accordance with subsection (e), as appropriate; and

11 “(II) have been approved by, or submitted to for approval by, the
12 Foreign Intelligence Surveillance Court;

13 “(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are
14 consistent with the requirements of the fourth amendment to the Constitution of
15 the United States;

16 “(v) a significant purpose of the acquisition is to obtain foreign intelligence
17 information;

18 “(vi) the acquisition involves obtaining the foreign intelligence information
19 from or with the assistance of an electronic communication service provider; and

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

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

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

24 “(ii) the head of an element of the intelligence community; and

25 “(C) include—

26 “(i) an effective date for the authorization that is between 30 and 60 days from
27 the submission of the written certification to the court; or

28 “(ii) if the acquisition has begun or will begin in the effective date is less than
29 30 days from the submission of the written certification to the court—

30 “(I) the date the acquisition began or the effective date for the acquisition;

31 “(II) a description of why ~~implementation was~~ **initiation of the**
32 **acquisition is** required in less than 30 days from the submission of the
33 written certification to the court; and

34 “(III) if the acquisition is authorized under paragraph (1)(B), ~~the basis for~~
35 ~~the determination that an emergency situation exists, immediate action by the~~
36 ~~government is required,~~ **(ii), a description of why there should be**
37 **immediate implementation of the authorization** and time does not permit
38 ~~the completion of judicial review prior to the initiation of the acquisition.~~
39 **issuance of an order pursuant to subsection (i)(3) prior to the**

1 implementation of the authorization.

2 ~~“(3)“(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of~~
3 ~~National Intelligence may advance or delay the effective date described in paragraph~~
4 ~~(2)(C) by amending the certification pursuant to subsection (i)(C) to include the~~
5 ~~applicable requirements of paragraph (2)(C).~~

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

9 ~~“(4) Submission to the court.—The~~“(5) MAINTENANCE OF CERTIFICATION.—The
10 Attorney General shall ~~transmit~~ maintain a copy of a certification made under this
11 subsection, ~~and any supporting affidavit, under seal to the Foreign Intelligence Surveillance~~
12 ~~Court before the initiation of an acquisition under this section, except in accordance with~~
13 ~~paragraph (1)(B).~~ The Attorney General shall maintain such certification under security
14 measures adopted by the Chief Justice of the United States and the Attorney General, in
15 consultation with the Director of National Intelligence.

16 ~~“(5) Review.—A~~“(6) REVIEW.—The certification ~~submitted pursuant to~~ required by
17 this subsection shall be subject to judicial review pursuant to subsection (i).

18 “(h) Directives and Judicial Review of Directives.—

19 ~~“(1) AUTHORITY.— PURSUANT TO AN ORDER ISSUED IN ACCORDANCE WITH SUBSECTION~~
20 ~~(H)(3) OR A DETERMINATION UNDER SUBSECTION (G)(1)(B) AUTHORITY.—With respect to~~
21 ~~an acquisition authorized under subsection (a), the Attorney General and the Director of~~
22 ~~National Intelligence may direct, in writing, an electronic communication service provider~~
23 ~~to—~~

24 “(A) immediately provide the Government with all information, facilities, or
25 assistance necessary to accomplish the acquisition authorized in accordance with this
26 section in a manner that will protect the secrecy of the acquisition and produce a
27 minimum of interference with the services that such electronic communication service
28 provider is providing to the target of the acquisition; and

29 “(B) maintain under security procedures approved by the Attorney General and the
30 Director of National Intelligence any records concerning the acquisition or the aid
31 furnished that such electronic communication service provider wishes to maintain.

32 “(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an
33 electronic communication service provider for providing information, facilities, or
34 assistance pursuant to paragraph (1).

35 ~~“(3) RELEASE FROM LIABILITY.— NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO~~
36 ~~LIABILITY.—No cause of action shall lie in any court against any electronic communication~~
37 ~~service provider for providing any information, facilities, or assistance in accordance with a~~
38 ~~directive issued pursuant to paragraph (1).~~

39 “(4) CHALLENGING OF DIRECTIVES.—

40 “(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider
41 receiving a directive issued pursuant to paragraph (1) may challenge the directive by

1 filing a petition with the Foreign Intelligence Surveillance Court, which shall have
2 jurisdiction to review such a petition.

3 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed
4 under subparagraph (A) to 1 of the judges of the Court serving in the pool established
5 by section 103(e)(1) not later than 24 hours after the filing of the petition.

6 “(C) STANDARDS FOR REVIEW.—~~A JUDGE REVIEW.~~—**The Foreign Intelligence**
7 **Surveillance Court** considering a petition to modify or set aside a directive may grant
8 such petition only if the **judge Court** finds that the directive does not meet the
9 requirements of this section, or is otherwise unlawful.

10 “(D) PROCEDURES FOR INITIAL REVIEW.—~~A JUDGE REVIEW.~~—**The Foreign**
11 **Intelligence Surveillance Court** shall conduct an initial review of a petition filed
12 under subparagraph (A) not later than 5 days after being assigned such petition. If the
13 **judge Court** determines that the petition does not consist of claims, defenses, or other
14 legal contentions that are warranted by existing law; or by a nonfrivolous argument for
15 extending, modifying, or reversing existing law; or for establishing new law, the **judge**
16 **Court** shall immediately deny the petition and affirm the directive or any part of the
17 directive that is the subject of the petition and order the recipient to comply with the
18 directive or any part of it. Upon making such a determination or promptly thereafter,
19 the **judge Court** shall provide a written statement for the record of the reasons for a
20 determination under this subparagraph.

21 “(E) PROCEDURES FOR PLENARY REVIEW.—If a **judge the Foreign Intelligence**
22 **Surveillance Court** determines that a petition filed under subparagraph (A) requires
23 plenary review, the **judge Court** shall affirm, modify, or set aside the directive that is
24 the subject of that petition not later than 30 days after being assigned the petition. If the
25 **judge Court** does not set aside the directive, the **judge Court** shall immediately affirm
26 ~~or modify the directive or order that the directive be modified,~~ and order the
27 recipient to comply with the directive in its entirety or as modified. The **judge Court**
28 shall provide a written statement for the ~~records~~ record of the reasons for a
29 determination under this subparagraph.

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

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

34 “(5) ENFORCEMENT OF DIRECTIVES.—

35 “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to
36 comply with a directive issued pursuant to paragraph (1), the Attorney General may
37 file a petition for an order to compel the electronic communication service provider to
38 comply with the directive with the Foreign Intelligence Surveillance Court, which shall
39 have jurisdiction to review such a petition.

40 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed
41 under subparagraph (A) to 1 of the judges serving in the pool established by section
42 103(e)(1) not later than 24 hours after the filing of the petition.

1 “(C) PROCEDURES FOR REVIEW.—A JUDGE REVIEW.—**The Foreign Intelligence**
2 **Surveillance Court** considering a petition filed under subparagraph (A) shall issue an
3 order requiring the electronic communication service provider to comply with the
4 directive or any part of it, as issued or as modified, not later than 30 days after being
5 assigned the petition if the judge Court finds that the directive meets the requirements
6 of this section, and is otherwise lawful. The judge Court shall provide a written
7 statement for the record of the reasons for a determination under this paragraph.

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

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

12 “(6) APPEAL.—

13 “(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic
14 communication service provider receiving a directive issued pursuant to paragraph (1)
15 may file a petition with the Foreign Intelligence Surveillance Court of Review for
16 review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall
17 have jurisdiction to consider such a petition and shall provide a written statement for
18 the record of the reasons for a decision under this paragraph.

19 “(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic
20 communication service provider receiving a directive issued pursuant to paragraph (1)
21 may file a petition for a writ of certiorari for review of the decision of the Court of
22 Review issued under subparagraph (A). The record for such review shall be
23 transmitted under seal to the Supreme Court of the United States, which shall have
24 jurisdiction to review such decision.

25 “(i) Judicial Review of Certifications and Procedures.—

26 “(1) IN GENERAL.—

27 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
28 Intelligence Surveillance Court shall have jurisdiction to review any certification
29 submitted pursuant to in accordance with subsection (g) and the targeting and
30 minimization procedures required by submitted in accordance with subsections (d)
31 and (e), and any amendments to such certification or procedures.

32 “(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted
33 pursuant to in accordance with subsection (g) and the targeting and minimization
34 procedures required by submitted in accordance with subsections (d) and (e) and
35 approve or deny an order under this subsection not later than 30 days after the date on
36 which a certification is submitted.

37 “(C) AMENDMENTS.—The Attorney General and the Director of National
38 Intelligence may amend a certification submitted in accordance with subsection
39 (g) or the targeting and minimization procedures submitted in accordance with
40 subsections (d) and (e) as necessary after such certification or procedures have
41 been submitted for review to the Foreign Intelligence Surveillance Court. If an
42 amendment is submitted subsequent to the issuance of an order under subsection

1 (i)(3) that significantly modifies such certification or procedures, the Attorney
2 General and Director of National Intelligence shall seek approval of such
3 amendment by the Court.

4 ~~“(2) REVIEW.—Court“(2) Review.—~~ The Court shall review the following:

5 ~~“(A) CERTIFICATIONS.—A CERTIFICATION.—~~A certification submitted pursuant to
6 in accordance with subsection (g) to determine whether the certification contains all
7 the required elements.

8 ~~“(B) TARGETING PROCEDURES.—~~The targeting procedures required by submitted in
9 accordance with subsection (d) to assess whether the procedures are reasonably
10 designed to ensure that the acquisition authorized under subsection (a) is limited to the
11 targeting of persons reasonably believed to be located outside the United States and
12 does not result in the intentional acquisition of any communication as to which the
13 sender and all intended recipients are known at the time of the acquisition to be located
14 in the United States.

15 ~~“(C) MINIMIZATION PROCEDURES.—~~The minimization procedures required by
16 submitted in accordance with subsection (e) to assess whether such procedures meet
17 the definition of minimization procedures under section 101(h) or section 301(4) in
18 accordance with subsection (e), as appropriate.

19 ~~“(3) ORDERS.—~~

20 ~~“(A) APPROVAL.—~~If the Court finds that a certification submitted pursuant to in
21 accordance with subsection (g) contains all of the required elements and that the
22 procedures required by targeting and minimization procedures submitted in
23 accordance with subsections (d) and (e) are consistent with the requirements of those
24 subsections and with the fourth amendment to the Constitution of the United States, the
25 Court shall enter an order approving the certification and the use of the procedures for
26 the acquisition.

27 ~~“(B) CORRECTION OF DEFICIENCIES.—~~If the Court finds that a certification required
28 submitted pursuant to in accordance with subsection (g) does not contain all of the
29 required elements, or that the procedures required by submitted in accordance with
30 subsections (d) and (e) are not consistent with the requirements of those subsections or
31 the fourth amendment to the Constitution of the United States States—

32 ~~“(i) in the case of a certification submitted in accordance with subsection (g)(1)(A),~~
33 ~~the Court shall deny the order, identify any deficiency in the certification or~~
34 ~~procedures, and provide the Government with an opportunity to correct such~~
35 ~~deficiency; and~~

36 ~~“(ii) in the case of a certification submitted in accordance with subsection (g)(1)(B),~~
37 ~~the Court shall issue an order directing the Government to, at the Government’s~~
38 ~~election and to the extent required by the Court’s order—~~

39 ~~“(I)“(i) correct any deficiency identified by the Court not later than 30 days~~
40 ~~after the date the Court issues the order; or~~

41 ~~“(II)“(ii) cease, or not begin, the acquisition authorized under subsection~~
42 ~~(g)(1)(B)(a).~~

1 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this
2 subsection, the Court shall provide, simultaneously with the orders, for the record a
3 written statement of its reasons.

4 “(4) APPEAL.—

5 “(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order
6 under this section to the Foreign Intelligence Surveillance Court of Review, which
7 shall have jurisdiction to review such order. For any decision affirming, reversing, or
8 modifying an order of the Foreign Intelligence Surveillance Court, the Court of
9 Review shall provide for the record a written statement of its reasons.

10 “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any
11 acquisition affected by an order under paragraph (3)(B)(ii) may continue—

12 “(i) during the pendency of any rehearing of the order by the Court en banc;
13 and

14 “(ii) if the Government appeals an order under this section, subject to
15 subparagraph (C), until the Court of Review enters the entry of an order under
16 subparagraph (A)-(C).

17 “(C) IMPLEMENTATION OF EMERGENCY AUTHORITY PENDING APPEAL.—Not later than
18 60 days after the filing of an appeal of an order issued under paragraph (3)(B)(ii)
19 directing the correction of a deficiency, the Court of Review shall determine, and enter
20 a corresponding order regarding, whether all or any part of the correction order, as
21 issued or modified, shall be implemented during the pendency of the appeal. ~~The~~
22 ~~Government shall conduct an acquisition affected by such order issued under~~
23 ~~paragraph (3)(B)(ii) in accordance with an order issued under this subparagraph or~~
24 ~~shall cease such acquisition.~~

25 “(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for
26 a writ of certiorari for review of a decision of the Court of Review issued under
27 subparagraph (A). The record for such review shall be transmitted under seal to the
28 Supreme Court of the United States, which shall have jurisdiction to review such
29 decision.

30 “(5) SCHEDULE.—

31 ~~“(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.— IF THE ATTORNEY GENERAL~~
32 ~~AND THE DIRECTOR OF NATIONAL INTELLIGENCE SEEK TO REPLACE EFFECT.— When~~
33 **replacing an authorization issued pursuant to section 105B of the Foreign Intelligence**
34 **Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007**
35 **(Public Law 110-55) with an authorization under this section, the Attorney General**
36 **and the Director of National Intelligence shall, to the extent practicable, submit to the**
37 **Court a the certification under prepared in accordance with subsection (g) and the**
38 **procedures required by adopted in accordance with subsections (d), (e), and (f)(e) at**
39 **least 30 days before the expiration of such authorization.**

40 ~~“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.— IF THE ATTORNEY~~
41 ~~GENERAL AND THE DIRECTOR OF NATIONAL INTELLIGENCE SEEK TO REPLACE~~
42 **EFFECT.— When replacing an authorization issued pursuant to this section, the**

1 Attorney General and the Director of National Intelligence shall, to the extent
2 practicable, submit to the Court a ~~the certification under subsection prepared in~~
3 ~~accordance with section (g) and the procedures required by adopted in accordance~~
4 ~~with subsections (d), (e), and (f)(e)~~ at least 30 days prior to the expiration of such
5 authorization.

6 “(C) CONSOLIDATED SUBMISSIONS.—The Attorney General and Director of National
7 Intelligence shall, to the extent practicable, annually submit to the Court a
8 consolidation of—

9 “(i) certifications ~~under prepared in accordance with~~ subsection (g) for
10 reauthorization of authorizations in effect;

11 “(ii) the procedures ~~required by adopted in accordance with~~ subsections (d),
12 ~~(e), and (f)(e)~~; and

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

14 “(D) TIMING OF REVIEWS.—The Attorney General and the Director of National
15 Intelligence shall, ~~to the extent practicable~~, schedule the completion of the annual
16 review ~~under required by~~ subsection (l)(3) and a semiannual assessment ~~under~~
17 ~~required by~~ subsection (l)(1) so that they may be submitted to the Court at the time of
18 the consolidated submission under subparagraph (C).

19 “(E) CONSTRUCTION.—The requirements of subparagraph (C) shall not be construed
20 to preclude the Attorney General and the Director of National Intelligence from
21 submitting certifications for additional authorizations at other times during the year as
22 necessary.

23 “(6) COMPLIANCE.—At or before the end of the period of time for which ~~a certification~~
24 ~~submitted pursuant to subsection (g) and procedures required by subsection (d) and (e) are~~
25 ~~approved by an order under this section an authorization under subsection (a) expires~~,
26 the Foreign Intelligence Surveillance Court may assess compliance with the minimization
27 procedures required by ~~under~~ subsection (e) by reviewing the circumstances under which
28 information concerning United States persons was acquired, retained, or disseminated.

29 “(j) Judicial Proceedings.—

30 “(1) EXPEDITED PROCEEDINGS.—Judicial proceedings under this section shall be
31 conducted as expeditiously as possible.

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

35 “(k) Maintenance and Security of Records and Proceedings.—

36 “(1) STANDARDS.—The Foreign Intelligence Surveillance Court shall maintain a record
37 of a proceeding under this section, including petitions filed, orders granted, and statements
38 of reasons for decision, under security measures adopted by the Chief Justice of the United
39 States, in consultation with the Attorney General and the Director of National Intelligence.

40 “(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In
41 any proceedings under this section, the court shall, upon request of the Government, review

1 ex parte and in camera any Government submission, or portions of a submission, which
2 may include classified information.

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

6 “(1) Assessments and Reviews.—

7 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the
8 Attorney General and Director of National Intelligence shall assess compliance with the
9 ~~procedures and guidelines required by subsections (d), (e), and targeting and~~
10 ~~minimization procedures submitted in accordance with subsections (d) and (e) and the~~
11 ~~guidelines adopted in accordance with subsection (f) and shall submit each such~~
12 ~~assessment to—~~

13 “(A) the Foreign Intelligence Surveillance Court;

14 “(B) the congressional intelligence committees;

15 ~~“(B)“(C) the Committees Committee on the Judiciary of the House of~~
16 ~~Representatives and the Senate; and Senate; and~~

17 ~~“(C) the Foreign Intelligence Surveillance Court.”(D) the Committee on the~~
18 ~~Judiciary of the House of Representatives.~~

19 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of
20 each element of the intelligence community authorized to acquire foreign intelligence
21 information under subsection (a); with respect to ~~such Department or such element— the~~
22 ~~department or element of such Inspector General—~~

23 “(A) are authorized to review the compliance with the ~~procedures and guidelines~~
24 ~~required by subsections (d), (e), and targeting and minimization procedures~~
25 ~~submitted in accordance with subsections (d) and (e) and the guidelines submitted~~
26 ~~in accordance with subsection (f);~~

27 “(B) with respect to acquisitions authorized under subsection (a), shall review the
28 number of disseminated intelligence reports containing a reference to a United States
29 person identity and the number of United States person identities subsequently
30 disseminated by the element concerned in response to requests for identities that were
31 not referred to by name or title in the original reporting;

32 “(C) with respect to acquisitions authorized under subsection (a), shall review the
33 number of targets that were later determined to be located in the United States and, to
34 the extent possible, whether their communications were reviewed; and

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

36 “(i) the Attorney General;

37 “(ii) the Director of National Intelligence;

38 “(iii) the congressional intelligence committees; and

39 ~~“(iv) the Committees Committee on the Judiciary of the House of~~
40 ~~Representatives and the Senate; and~~

1 “(v) the Foreign Intelligence Surveillance Court. Committee on the Judiciary
2 of the House of Representatives.

3 “(3) ANNUAL REVIEW.—

4 “(A) REQUIREMENT TO CONDUCT.—The head of each element of the intelligence
5 community conducting an acquisition authorized under subsection (a) shall conduct an
6 annual review to determine whether there is reason to believe that foreign intelligence
7 information has been or will be obtained from the acquisition. The annual review shall
8 provide, with respect to such acquisitions authorized under subsection (a)—

9 “(i) the number and nature of disseminated intelligence reports containing a
10 reference to a United States person identity;

11 “(ii) the number and nature of United States person identities subsequently
12 disseminated by that element in response to requests for identities that were not
13 referred to by name or title in the original reporting;

14 “(iii) the number of targets that were later determined to be located in the
15 United States and, to the extent possible, whether their communications were
16 reviewed; and

17 “(iv) a description of any procedures developed by the head of such element of
18 the intelligence community and approved by the Director of National Intelligence
19 to assess, in a manner consistent with national security, operational requirements
20 and the privacy interests of United States persons, the extent to which the
21 acquisitions authorized under subsection (a) acquire the communications of
22 United States persons, and the results of any such assessment.

23 “(B) USE OF REVIEW.—The head of each element of the intelligence community that
24 conducts an annual review under subparagraph (A) shall use each such review to
25 evaluate the adequacy of the minimization procedures utilized by such element or the
26 application of the minimization procedures to a particular acquisition authorized under
27 subsection (a).

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

31 “(i) the Foreign Intelligence Surveillance Court;

32 “(ii) the Attorney General;

33 “(iii) the Director of National Intelligence;

34 “(iv) the congressional intelligence committees; and

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

36 “(vi) the Committee on the Judiciary of the House of Representatives and the
37 Senate.

38
39 * 1 ~~“(m) Construction. Nothing in this Act shall be construed~~

1 ~~to require an application under section 104 for an acquisition~~
2 ~~that is targeted in accordance with this section at a person~~
3 ~~reasonably believed to be located outside the United States.~~

4 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE**
5 **UNITED STATES OF UNITED STATES PERSONS**
6 **OUTSIDE THE UNITED STATES.**

7 **“(a) Jurisdiction of the Foreign Intelligence Surveillance Court.—**

8 **“(1) IN GENERAL.—**The Foreign Intelligence Surveillance Court shall have jurisdiction to
9 review an application and to enter an order approving the targeting of a United States
10 person reasonably believed to be located outside the United States to acquire foreign
11 intelligence information, if the acquisition constitutes electronic surveillance or the
12 acquisition of stored electronic communications or stored electronic data that requires an
13 order under this Act, and such acquisition is conducted within the United States.

14 **“(2) LIMITATION.—**If a United States person targeted under this subsection is reasonably
15 believed to be located in the United States during the pendency of an order issued pursuant
16 to subsection (c), ~~such acquisition shall cease unless authority, other than the targeting of~~
17 ~~such United States person under this section, is obtained pursuant to this Act or shall~~
18 **cease unless** the targeted United States person is again reasonably believed to be located
19 outside the United States during the pendency of an order issued pursuant to subsection (c).

20 **“(b) Application.—**

21 **“(1) IN GENERAL.—**Each application for an order under this section shall be made by a
22 Federal officer in writing upon oath or affirmation to a judge having jurisdiction under
23 subsection (a)(1). Each application shall require the approval of the Attorney General based
24 upon the Attorney General’s finding that it satisfies the criteria and requirements of such
25 application, as set forth in this section, and shall include—

26 **“(A) the identity of the Federal officer making the application;**

27 **“(B) the identity, if known, or a description of the United States person who is the**
28 **target of the acquisition;**

29 **“(C) a statement of the facts and circumstances relied upon to justify the applicant’s**
30 **belief that the United States person who is the target of the acquisition is—**

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

32 **“(ii) a foreign power, an agent of a foreign power, or an officer or employee of**
33 **a foreign power;**

34 **“(D) a statement of proposed minimization procedures that that—**

35 **“(i) in the case of electronic surveillance, meet the definition of minimization**
36 **procedures in section 101(h) or section 301(4), as appropriate;; and**

37 **“(ii) in the case of a physical search, meet the definition of minimization procedures**

1 in section 301(4);

2 “(E) a description of the nature of the information sought and the type of
3 communications or activities to be subjected to acquisition;

4 “(F) a certification made by the Attorney General or an official specified in section
5 104(a)(6) that—

6 “(i) the certifying official deems the information sought to be foreign
7 intelligence information;

8 “(ii) a significant purpose of the acquisition is to obtain foreign intelligence
9 information;

10 “(iii) such information cannot reasonably be obtained by normal investigative
11 techniques;

12 “(iv) identifies designates the type of foreign intelligence information being
13 sought according to the categories described in each subparagraph of section
14 101(e); and

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

16 “(I) the information sought is the type of foreign intelligence information
17 designated; and

18 “(II) such information cannot reasonably be obtained by normal
19 investigative techniques;

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

22 “(H) the identity of any electronic communication service provider necessary to
23 effect the acquisition, provided, however, that the application is not required to identify
24 the specific facilities, places, premises, or property at which the acquisition authorized
25 under this section will be directed or conducted;

26 “(I) a statement of the facts concerning any previous applications that have been
27 made to any judge of the Foreign Intelligence Surveillance Court involving the United
28 States person specified in the application and the action taken on each previous
29 application; and

30 “(J) a statement of the period of time for which the acquisition is required to be
31 maintained, provided that such period of time shall not exceed 90 days per application.

32 “(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may
33 require any other affidavit or certification from any other officer in connection with the
34 application.

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

38 ** 2 “(g)”(4) CONSTRUCTION.—Nothing in title I of this Act shall be construed to require
39 an application under section 104 for an acquisition that is targeted in accordance with this
40 section at a United States person reasonably believed to be located outside the United

1 States.

2 “(c) Order.—

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

6 “(A) the application has been made by a Federal officer and approved by the
7 Attorney General;

8 “(B) on the basis of the facts submitted by the applicant, for the United States person
9 who is the target of the acquisition, there is probable cause to believe that the target
10 is—

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

12 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
13 a foreign power;

14 “(C) the proposed minimization ~~procedures~~ ~~procedures~~—

15 ~~“(i) in the case of electronic surveillance, meet the definition of minimization~~
16 ~~procedures under section 101(h) or section 301(4), as appropriate; and in section-~~
17 ~~101(h); and~~

18 ~~“(ii) in the case of a physical search, meet the definition of minimization procedures-~~
19 ~~in section 301(4);~~

20 “(D) the application that has been filed contains all statements and certifications
21 required by subsection (b) and the certification or certifications are not clearly
22 erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any
23 other information furnished under subsection (b)(3).

24 “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for
25 purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may
26 consider past activities of the target, and facts and circumstances relating to current or
27 future activities of the target. No United States person may be considered a foreign power,
28 agent of a foreign power, or officer or employee of a foreign power solely upon the basis of
29 activities protected by the first amendment to the Constitution of the United States.

30 “(3) REVIEW.—

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

34 “(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted
35 under subsection (b) are insufficient to establish probable cause under paragraph
36 (1)(B), the judge shall enter an order so stating and provide a written statement for the
37 record of the reasons for such determination. The Government may appeal an order
38 under this subparagraph pursuant to subsection (f).

39 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
40 proposed minimization procedures referred to in paragraph (1)(C) do not meet the

1 definition of minimization procedures as required under such paragraph under section
2 **101(h) or section 301(4), as appropriate**, the judge shall enter an order so stating and
3 provide a written statement for the record of the reasons for such determination. The
4 Government may appeal an order under this subparagraph pursuant to subsection (f).

5 “(D) REVIEW OF CERTIFICATION.—If the judge determines that an application under
6 **required by** subsection (b) does not contain all of the required elements, or that the
7 certification or certifications are clearly erroneous on the basis of the statement made
8 under subsection (b)(1)(F)(v) and any other information furnished under subsection
9 (b)(3), the judge shall enter an order so stating and provide a written statement for the
10 record of the reasons for such determination. The Government may appeal an order
11 under this subparagraph pursuant to subsection (f).

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

14 “(A) the identity, if known, or a description of the United States person who is the
15 target of the acquisition identified or described in the application pursuant to
16 subsection (b)(1)(B);

17 “(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and
18 location of each of the facilities or places at which the acquisition will be directed;

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

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

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

24 “(5) DIRECTIONS.—An order approving an acquisition under this subsection shall
25 direct—

26 “(A) that the minimization procedures referred to in paragraph (1)(C), as approved
27 or modified by the Court, be followed;

28 “(B) an electronic communication service provider to provide to the Government
29 forthwith all information, facilities, or assistance necessary to accomplish the
30 acquisition authorized under such order in a manner that will protect the secrecy of the
31 acquisition and produce a minimum of interference with the services that such
32 electronic communication service provider is providing to the target of the acquisition;

33 “(C) an electronic communication service provider to maintain under security
34 procedures approved by the Attorney General any records concerning the acquisition
35 or the aid furnished that such electronic communication service provider wishes to
36 maintain; and

37 “(D) that the Government compensate, at the prevailing rate, such electronic
38 communication service provider for providing such information, facilities, or
39 assistance.

40 “(6) DURATION.—An order approved under this subsection shall be effective for a period
41 not to exceed 90 days and such order may be renewed for additional 90-day periods upon

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1 submission of renewal applications meeting the requirements of subsection (b).

2 “(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition
3 is approved by an order or extension under this section, the judge may assess compliance
4 with the minimization procedures referred to in paragraph (1)(C) by reviewing the
5 circumstances under which information concerning United States persons was acquired,
6 retained, or disseminated.

7 “(d) Emergency Authorization.—

8 “(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other
9 provision of this Act, if the Attorney General reasonably determines that—

10 “(A) an emergency situation exists with respect to the acquisition of foreign
11 intelligence information for which an order may be obtained under subsection (c)
12 before an order authorizing such acquisition can with due diligence be obtained, and

13 “(B) the factual basis for issuance of an order under this subsection to approve such
14 acquisition exists,

15 the Attorney General may authorize such acquisition if a judge having jurisdiction under
16 subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney
17 General, at the time of such authorization that the decision has been made to conduct such
18 acquisition and if an application in accordance with this section is made to a judge of the
19 Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days
20 after the Attorney General authorizes such acquisition.

21 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an acquisition
22 under paragraph (1), the Attorney General shall require that the minimization procedures
23 referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

24 “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order
25 approving an acquisition authorized under paragraph (1), such acquisition shall terminate
26 when the information sought is obtained, when the application for the order is denied, or
27 after the expiration of 7 days from the time of authorization by the Attorney General,
28 whichever is earliest.

29 “(4) USE OF INFORMATION.—If an application for approval submitted pursuant to
30 paragraph (1) is denied, or in any other case where the acquisition is terminated and no
31 order is issued approving the acquisition, no information obtained or evidence derived from
32 such acquisition, except under circumstances in which the target of the acquisition is
33 determined not to be a United States person, shall be received in evidence or otherwise
34 disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,
35 department, office, agency, regulatory body, legislative committee, or other authority of the
36 United States, a State, or political subdivision thereof, and no information concerning any
37 United States person acquired from such acquisition shall subsequently be used or disclosed
38 in any other manner by Federal officers or employees without the consent of such person,
39 except with the approval of the Attorney General if the information indicates a threat of
40 death or serious bodily harm to any person.

41 “(e) Release From Liability.—~~Notwithstanding any other provision of law, no~~ Liability.—No
42 cause of action shall lie in any court against any electronic communication service provider for

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

3 “(f) Appeal.—

4 “(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The
5 Government may file an appeal with the Foreign Intelligence Surveillance Court of Review
6 for review of an order issued pursuant to subsection (c). The Court of Review shall have
7 jurisdiction to consider such appeal and shall provide a written statement for the record of
8 the reasons for a decision under this paragraph.

9 “(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a
10 writ of certiorari for review of a decision of the Court of Review issued under paragraph
11 (1). The record for such review shall be transmitted under seal to the Supreme Court of the
12 United States, which shall have jurisdiction to review such ~~decision.~~ decision.”

13
14 *2 “(g) Construction.— ~~Nothing in this Act shall be construed to~~
15 ~~require an application under section 104 for an acquisition that is~~
16 ~~targeted in accordance with this section at a person reasonably~~
17 ~~believed to be located outside the United States.~~

18 “SEC. 704. OTHER ACQUISITIONS TARGETING UNITED
19 STATES PERSONS OUTSIDE THE UNITED STATES.

20 “(a) Jurisdiction and Scope.—

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

23 “(2) SCOPE.—No department or agency of the Federal Government may intentionally
24 target, for the purpose of acquiring foreign intelligence information, a United States person
25 reasonably believed to be located outside the United States under circumstances in which
26 the targeted United States person has a reasonable expectation of privacy and a warrant
27 would be required if the acquisition were conducted inside the United States for law
28 enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has
29 entered an order with respect to such targeted United States person or the Attorney General
30 has authorized an emergency acquisition pursuant to subsection subsections (c) or (d) or
31 any other provision of this Act.

32 “(3) LIMITATIONS.—

33 “(A) MOVING OR MISIDENTIFIED TARGETS.—If a targeted United States person is
34 reasonably believed to be in the United States during the pendency of an order issued
35 pursuant to subsection (c), ~~acquisitions relating to such targeted~~ the targeting of such
36 United States Person person under this section shall cease unless authority is
37 ~~obtained pursuant to this Act or the targeted~~ United States person is again reasonably
38 believed to be located outside the United States during the pendency of such order an

1 order issued pursuant to subsection (c).

2 “(B) APPLICABILITY.—If an acquisition is to be conducted inside the United States
3 and could be authorized under section 703, the acquisition may only be conducted if
4 authorized ~~under~~ by section 703 or in accordance with another provision of this Act
5 other than this section.

6 “(b) Application.—Each application for an order under this section shall be made by a Federal
7 officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1).
8 Each application shall require the approval of the Attorney General based upon the Attorney
9 General’s finding that it satisfies the criteria and requirements of such application as set forth in
10 this section and shall include—

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

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

14 “(3) a statement of the facts and circumstances relied upon to justify the applicant’s belief
15 that the United States person who is the target of the acquisition is—

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

17 “(B) a foreign power, an agent of a foreign power, or an officer or employee of a
18 foreign power;

19 “(4) a statement of proposed minimization procedures ~~that that~~—

20 ~~“(A) in the case of electronic surveillance, meet the definition of minimization~~
21 ~~procedures under section 101(h) or section 301(4), as appropriate; in section 101(h); and~~

22 ~~“(B) in the case of a physical search, meet the definition of minimization procedures in~~
23 ~~section 301(4);~~

24 “(5) a certification made by the Attorney General, an official specified in section
25 104(a)(6), or the head of an element of the intelligence community that—

26 “(A) the certifying official deems the information sought to be foreign intelligence
27 information; and

28 “(B) a significant purpose of the acquisition is to obtain foreign intelligence
29 information;

30 “(6) a statement of the facts concerning any previous applications that have been made to
31 any judge of the Foreign Intelligence Surveillance Court involving the United States person
32 specified in the application and the action taken on each previous application; and

33 “(7) a statement of the period of time for which the acquisition is required to be
34 maintained, provided that such period of time shall not exceed 90 days per application.

35 “(c) Order.—

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

39 “(A) the application has been made by a Federal officer and approved by the

1 Attorney General;

2 “(B) on the basis of the facts submitted by the applicant, for the United States person
3 who is the target of the acquisition, there is probable cause to believe that the target
4 is—

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

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

8 “(C) the proposed minimization procedures, with respect to their dissemination
9 provisions procedures—

10 “(i) ~~in the case of electronic surveillance, meet the definition of minimization~~
11 ~~procedures under section 101(h) or section 301(4), as appropriate; and in section-~~
12 ~~101(h); and~~

13 “(ii) ~~in the case of a physical search, meet the definition of minimization procedures~~
14 ~~in section 301(4);~~

15 “(D) the application that has been filed contains all statements and certifications
16 required by subsection (b) and the certification provided under subsection (b)(5) is not
17 clearly erroneous on the basis of the information furnished under subsection (b).

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

25 “(3) REVIEW.—

26 “(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under
27 subsection (a)(1) shall be limited to that required to make the findings described in
28 paragraph (1). The judge shall not have jurisdiction to review the means by which an
29 acquisition under this section may be conducted.

30 “(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted
31 under subsection (b) are insufficient to establish probable cause under ~~paragraph (1)(B)~~
32 **this subsection**, the judge shall enter an order so stating and provide a written
33 statement for the record of the reasons for such determination. The Government may
34 appeal an order under this clause pursuant to subsection (e).

35 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
36 ~~proposed minimization procedures referred to in paragraph (1)(C)~~ **applicable to**
37 **dissemination of information obtained through an acquisition under this**
38 **subsection** do not meet the definition of minimization procedures ~~as required under~~
39 ~~such paragraph under section 101(h) or section 301(4), as appropriate~~, the judge
40 shall enter an order so stating and provide a written statement for the record of the
41 reasons for such determination. The Government may appeal an order under this clause

1 pursuant to subsection (e).

2 “(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge Foreign Intelligence
3 Surveillance Court determines that an application under subsection (b) does not
4 contain all the required elements, or that the certification provided under subsection
5 (b)(5) is clearly erroneous on the basis of the information furnished under subsection
6 (b), the judge shall enter an order so stating and provide a written statement for the
7 record of the reasons for such determination. The Government may appeal an order
8 under this clause pursuant to subsection (e).

9 “(4) DURATION.—An order under this paragraph shall be effective for a period not to
10 exceed 90 days and such order may be renewed for additional 90-day periods upon
11 submission of renewal applications meeting the requirements of subsection (b).

12 “(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or
13 extension is granted under this section, the judge may assess compliance with the
14 minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances
15 under which information concerning United States persons was disseminated, provided that
16 the judge may not inquire into the circumstances relating to the conduct of the acquisition.

17 “(d) Emergency Authorization.—

18 “(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other
19 provision of this section, if the Attorney General reasonably determines that—

20 “(A) an emergency situation exists with respect to the acquisition of foreign
21 intelligence information for which an order may be obtained under subsection (c)
22 before an order under that subsection may can, with due diligence, be obtained, and

23 “(B) the factual basis for the issuance of an order under this section exists,
24 the Attorney General may authorize such the emergency acquisition if a judge having
25 jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the
26 Attorney General at the time of such authorization that the decision has been made to
27 conduct such acquisition and if an application in accordance with this section is made to a
28 judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more
29 than 7 days after the Attorney General authorizes such acquisition.

30 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an emergency
31 acquisition under paragraph (1), the Attorney General shall require that the minimization
32 procedures referred to in subsection (c)(1)(C) be followed.

33 “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under
34 subsection (c), the an emergency acquisition authorized under paragraph (1) shall terminate
35 when the information sought is obtained, if the application for the order is denied, or after
36 the expiration of 7 days from the time of authorization by the Attorney General, whichever
37 is earliest.

38 “(4) USE OF INFORMATION.—If an application submitted to the Court pursuant to
39 paragraph (1) is denied, or in any other case where an the acquisition under this section is
40 terminated and no order with respect to the target of the acquisition is issued under
41 subsection (c), no information obtained or evidence derived from such acquisition, except
42 under circumstances in which the target of the acquisition is determined not to be a United

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

9 “(e) Appeal.—

10 “(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the
11 Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to
12 subsection (c). The Court of Review shall have jurisdiction to consider such appeal and
13 shall provide a written statement for the record of the reasons for a decision under this
14 paragraph.

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

19 “SEC. 705. JOINT APPLICATIONS AND CONCURRENT
20 AUTHORIZATIONS.

21 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under
22 section 703 or section 704 is proposed to be conducted both inside and outside the United States,
23 a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue
24 simultaneously, upon the request of the Government in a joint application complying with the
25 requirements of section 703(b) and section 704(b), orders under section 703(c) and section
26 704(c), as appropriate.

27 “(b) Concurrent Authorization.—If Authorization.—

28 “(1) Electronic surveillance.—If an order authorizing electronic surveillance or physical
29 search has been obtained under section 105 or section 304 and that order is still in effect, during
30 the pendency of that order, the Attorney General may authorize, without an order under section
31 703 or 704, ~~electronic surveillance section 704, the targeting of that United States person~~ for
32 the purpose of acquiring foreign intelligence information ~~targeting that United States person~~
33 while such person is reasonably believed to be located outside the United States.

34 ~~“(2) Physical search.— If an order authorizing a physical search~~
35 ~~has been obtained under section 304 and that order is still in~~
36 ~~effect, during the pendency of that order the Attorney General~~
37 ~~may authorize, without an order under section 703 or 704, a~~
38 ~~physical search for the purpose of acquiring foreign intelligence~~
39 ~~information targeting that United States person while such~~

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

3 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER**
4 **TITLE VII.**

5 **“(a) Information Acquired Under Section 702.—Information acquired from an**
6 **acquisition conducted under section 702 shall be deemed to be information acquired from**
7 **an electronic surveillance pursuant to title I for purposes of section 106, except for the**
8 **purposes of subsection (j) of such section.**

9 **“(b) Information Acquired Under Section 703.—Information acquired from an**
10 **acquisition conducted under section 703 shall be deemed to be**~~Information acquired~~
11 ~~pursuant to section 702 or 703 shall be considered~~ **information acquired from an electronic**
12 **surveillance pursuant to title I for purposes of section 106.**

13 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

14 **“(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General**
15 **shall fully inform, in a manner consistent with national security, the congressional intelligence**
16 **committees, and the Committees on the Judiciary of the Senate and the House of**
17 **Representatives, concerning the implementation of this title.**

18 **“(b) Content.—Each report made under subsection (a) shall include—**

19 **“(1) with respect to section 702—**

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

21 **“(B) with respect to each certification made under ~~paragraph (1)(B) of such section~~**
22 **section 702(g)(1)(B)(ii), the reasons for exercising the authority under such paragraph;**

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

24 **“(D) a description of the judicial review during the reporting period of any such**
25 **certifications and targeting and minimization procedures ~~adopted pursuant to required~~**
26 **by subsections (d) and (e) of section 702 and utilized with respect to such acquisition,**
27 **including a copy of any order or pleading in connection with such review that contains**
28 **a significant legal interpretation of the provisions of section 702;**

29 **“(E) any actions taken to challenge or enforce a directive under ~~paragraph~~**
30 **paragraphs (4) or (5) of section 702(h);**

31 **“(F) any compliance reviews conducted by the Attorney General or the Director of**
32 **National Intelligence of acquisitions authorized under ~~subsection section~~ section 702(a);**

33 **“(G) a description of any incidents of noncompliance with a directive issued by the**
34 **Attorney General and the Director of National Intelligence under ~~subsection section~~**
35 **702(h), including—**

36 **“(i) incidents of noncompliance by an element of the intelligence community**
37 **with procedures and guidelines ~~adopted pursuant to submitted in accordance~~**

1 with subsections (d), and (e); and ~~(f)~~ of section 702; and
2 “(ii) incidents of noncompliance by a specified person to whom the Attorney
3 General and Director of National Intelligence issued a directive under subsection
4 section 702(h); and
5 “(H) any procedures implementing section 702;
6 “(2) with respect to section 703—
7 “(A) the total number of applications made for orders under section 703(b);
8 “(B) the total number of such orders—
9 “(i) granted;
10 “(ii) modified; or
11 “(iii) denied; and
12 “(C) the total number of emergency acquisitions authorized by the Attorney General
13 under section 703(d) and the total number of subsequent orders approving or denying
14 such acquisitions; and
15 “(3) with respect to section 704—
16 “(A) the total number of applications made for orders under 704(b);
17 “(B) the total number of such orders— orders
18 “(i) granted;
19 “(ii) modified; or
20 “(iii) denied; and
21 “(C) the total number of emergency acquisitions authorized by the Attorney General
22 under subsection section 704(d) and the total number of subsequent orders approving
23 or denying such applications.

24 **“SEC. 708. SAVINGS PROVISION.**

25 “Nothing in this title shall be construed to limit the authority of the Federal Government to
26 seek an order or authorization under, or otherwise engage in any activity that is authorized under,
27 any other title of this Act.”.

28 (b) Table of Contents.—The table of contents in the first section of the Foreign Intelligence
29 Surveillance Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

- 30 (1) by striking the item relating to title VII;
31 (2) by striking the item relating to section 701; and
32 (3) by adding at the end the following:

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

35 **“Sec. 701. Definitions.**

1 "Sec.702.Procedures for targeting certain persons outside the United States other than United
2 States persons.

3 "Sec.703.Certain acquisitions inside the United States of United States persons outside the
4 United States.

5 "Sec.704.Other acquisitions targeting United States persons outside the United States.

6 "Sec.705.Joint applications and concurrent authorizations.

7 "Sec.706.Use of information acquired under title VII.

8 "Sec.707.Congressional oversight.

9 "Sec.708.Savings provision.";

10 (c) Technical and Conforming Amendments.—

11 (1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a)(ii)(A) of title 18, United States
12 Code, is amended by inserting "or a court order pursuant to section 704 of the Foreign
13 Intelligence Surveillance Act of 1978" after "assistance".

14 (2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 601(a)(1) of the
15 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended—

16 (A) in subparagraph (C), by striking "and"; and

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

18 "(E) acquisitions under section 703; and

19 "(F) acquisitions under section 704;".

20 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**
21 **WHICH ELECTRONIC SURVEILLANCE AND**
22 **INTERCEPTION OF CERTAIN COMMUNICATIONS MAY**
23 **BE CONDUCTED.**

24 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of
25 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

26 "statement of exclusive means by which electronic surveillance and interception of certain
27 communications may be conducted

28 "Sec. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and
29 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic
30 surveillance and the interception of domestic wire, oral, or electronic communications may be
31 conducted.

32 "(b) Only an express statutory authorization for electronic surveillance or the interception of
33 domestic wire, oral, or electronic communications, other than as an amendment to this Act or
34 chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive
35 means for the purpose of subsection (a)."

36 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.

1 1809(a) is amended by striking “authorized by statute” each place it appears in such section and
2 inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any
3 express statutory authorization that is an additional exclusive means for conducting electronic
4 surveillance under section 112.”; and

5 (c) Conforming Amendments.—

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

8 “(iii) If a certification under subparagraph (ii)(B) for assistance to obtain
9 foreign intelligence information is based on statutory authority, the certification
10 shall identify the specific statutory provision, and shall certify that the statutory
11 requirements have been met.”; and

12 (2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign
13 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after
14 the item relating to section 111, the following new item:

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

17 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN**
18 **COURT ORDERS UNDER THE FOREIGN INTELLIGENCE**
19 **SURVEILLANCE ACT OF 1978.**

20 (a) Inclusion of Certain Orders in Semiannual Reports of Attorney General.—Subsection
21 (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is
22 amended by striking “(not including orders)” and inserting “, orders,”.

23 (b) Reports by Attorney General on Certain Other Orders.—Such section 601 is further
24 amended by adding at the end the following:

25 “(c) Submissions to Congress.—The Attorney General shall submit to the committees of
26 Congress referred to in subsection (a)—

27 “(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence
28 Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes
29 significant construction or interpretation of any provision of this Act, and any pleadings,
30 applications, or memoranda of law associated with such decision, order, or opinion, not
31 later than 45 days after such decision, order, or opinion is issued; and

32 “(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or
33 memoranda of law associated with such decision, order, or opinion, that was issued during
34 the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008
35 and not previously submitted in a report under subsection (a).

36 “(d) Protection of National Security.—The Attorney General, in consultation with the Director
37 of National Intelligence, may authorize redactions of materials described in subsection (c) that
38 are provided to the committees of Congress referred to in subsection (a), if such redactions are
39 necessary to protect the national security of the United States and are limited to sensitive sources
40 and methods information or the identities of targets.”.

1 (c) Definitions.—Such section 601, as amended by subsections (a) and (b), is further amended
2 by adding at the end the following:

3 “(e) Definitions.—In this section:

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

6 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The term ‘Foreign
7 Intelligence Surveillance Court of Review’ means the court established by section 103(b).”.

8 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

11 (1) in subsection (a)—

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

13 (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9),
14 respectively;

15 (C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by
16 striking “detailed”;

17 (D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph,
18 in the matter preceding subparagraph (A)—

19 (i) by striking “Affairs or” and inserting “Affairs,”; and

20 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of
21 the Federal Bureau of Investigation, if designated by the President as a
22 certifying official—”;

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

25 ~~(E)~~(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by
26 adding “and” at the end; and

27 ~~(F)~~(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by
28 striking “; and” and inserting a period;

29 (2) by striking subsection (b);

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

32 (4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this
33 subsection, by striking “or the Director of National Intelligence” and inserting “the Director
34 of National Intelligence, or the Director of the Central Intelligence Agency”.

35 SEC. 105. ISSUANCE OF AN ORDER.

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

Deleted: 5/2/2008

- 1 (1) in subsection (a)—
2 (A) by striking paragraph (1); and
3 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
4 respectively;
5 (2) in subsection (b), by striking “(a)(3)” and inserting “(a)(2)”;
6 (3) in subsection (c)(1)—
7 (A) in subparagraph (D), by adding “and” at the end;
8 (B) in subparagraph (E), by striking “; and” and inserting a period; and
9 (C) by striking subparagraph (F);
10 (4) by striking subsection (d);
11 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),
12 respectively;
13 (6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read
14 as follows:
15 “(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize
16 the emergency employment of electronic surveillance if the Attorney General—
17 “(A) reasonably determines that an emergency situation exists with respect to the
18 employment of electronic surveillance to obtain foreign intelligence information before an
19 order authorizing such surveillance can with due diligence be obtained;
20 “(B) reasonably determines that the factual basis for the issuance of an order under this
21 title to approve such electronic surveillance exists;
22 “(C) informs, either personally or through a designee, a judge having jurisdiction under
23 section 103 at the time of such authorization that the decision has been made to employ
24 emergency electronic surveillance; and
25 “(D) makes an application in accordance with this title to a judge having jurisdiction
26 under section 103 as soon as practicable, but not later than 7 days after the Attorney General
27 authorizes such surveillance.
28 “(2) If the Attorney General authorizes the emergency employment of electronic surveillance
29 under paragraph (1), the Attorney General shall require that the minimization procedures
30 required by this title for the issuance of a judicial order be followed.
31 “(3) In the absence of a judicial order approving such electronic surveillance, the surveillance
32 shall terminate when the information sought is obtained, when the application for the order is
33 denied, or after the expiration of 7 days from the time of authorization by the Attorney General,
34 whichever is earliest.
35 “(4) A denial of the application made under this subsection may be reviewed as provided in
36 section 103.
37 “(5) In the event that such application for approval is denied, or in any other case where the
38 electronic surveillance is terminated and no order is issued approving the surveillance, no

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

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

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

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

17 SEC. 106. USE OF INFORMATION.

18 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.
19 1806) is amended by striking “radio communication” and inserting “communication”.

20 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

21 (a) Applications.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1823) is amended—

23 (1) in subsection (a)—

24 (A) by striking paragraph (2);

25 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),
26 respectively;

27 (C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by
28 striking “detailed”; and

29
30 (D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by
31 inserting “or is about to be” before “owned”; and

32 (E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in
33 the matter preceding subparagraph (A)—

34 (i) by striking “Affairs or” and inserting “Affairs,”; and

35 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of
36 the Federal Bureau of Investigation, if designated by the President as a
37 certifying official—”; and

38 (2) in subsection (d)(1)(A), by striking “or the Director of National Intelligence” and

1 inserting "the Director of National Intelligence, or the Director of the Central Intelligence
2 Agency".

3 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
4 1824) is amended—

5 (1) in subsection (a)—

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

7
8 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
9 respectively; and

10 (C) in paragraph (2)(B), as redesignated by subparagraph (B) of this
11 paragraph, by inserting "or is about to be" before "owned"; and

12 (2) by amending subsection (e) to read as follows:

13 "(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize
14 the emergency employment of a physical search if the Attorney General—

15 "(A) reasonably determines that an emergency situation exists with respect to the
16 employment of a physical search to obtain foreign intelligence information before an order
17 authorizing such physical search can with due diligence be obtained;

18 "(B) reasonably determines that the factual basis for issuance of an order under this title
19 to approve such physical search exists;

20 "(C) informs, either personally or through a designee, a judge of the Foreign Intelligence
21 Surveillance Court at the time of such authorization that the decision has been made to
22 employ an emergency physical search; and

23 "(D) makes an application in accordance with this title to a judge of the Foreign
24 Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the
25 Attorney General authorizes such physical search.

26 "(2) If the Attorney General authorizes the emergency employment of a physical search under
27 paragraph (1), the Attorney General shall require that the minimization procedures required by
28 this title for the issuance of a judicial order be followed.

29 "(3) In the absence of a judicial order approving such physical search, the physical search shall
30 terminate when the information sought is obtained, when the application for the order is denied,
31 or after the expiration of 7 days from the time of authorization by the Attorney General,
32 whichever is earliest.

33 "(4) A denial of the application made under this subsection may be reviewed as provided in
34 section 103.

35 "(5)(A) In the event that such application for approval is denied, or in any other case where the
36 physical search is terminated and no order is issued approving the physical search, no
37 information obtained or evidence derived from such physical search shall be received in
38 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court,
39 grand jury, department, office, agency, regulatory body, legislative committee, or other authority
40 of the United States, a State, or political subdivision thereof, and no information concerning any

1 United States person acquired from such physical search shall subsequently be used or disclosed
2 in any other manner by Federal officers or employees without the consent of such person, except
3 with the approval of the Attorney General if the information indicates a threat of death or serious
4 bodily harm to any person.

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

7 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
8 1801 et seq.) is amended—

9 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking
10 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

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

12 SEC. 108. AMENDMENTS FOR EMERGENCY PEN 13 REGISTERS AND TRAP AND TRACE DEVICES.

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

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

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

18 SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE 19 COURT.

20 (a) Designation of Judges.—Subsection (a) of section 103 of the Foreign Intelligence
21 Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting “at least” before “seven of
22 the United States judicial circuits”.

23 (b) En Banc Authority.—

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

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

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

28 “(2)(A) The court established under this subsection, on its own initiative, or upon the request
29 of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of
30 section ~~703(h)~~ 702(h), may hold a hearing or rehearing, en banc, when ordered by a majority of
31 the judges that constitute such court upon a determination that—

32 “(i) en banc consideration is necessary to secure or maintain uniformity of the court’s
33 decisions; or

34 “(ii) the proceeding involves a question of exceptional importance.

35 “(B) Any authority granted by this Act to a judge of the court established under this subsection
36 may be exercised by the court en banc. When exercising such authority, the court en banc shall
37 comply with any requirements of this Act on the exercise of such authority.

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

3 (2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is
4 further amended—

5 (A) in subsection (a) of section 103, as amended by this subsection, by inserting
6 “(except when sitting en banc under paragraph (2))” after “no judge designated under
7 this subsection”; and

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

10 (c) Stay or Modification During an Appeal.—Section 103 of the Foreign Intelligence
11 Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

12 (1) by redesignating subsection (f) as subsection (g); and

13 (2) by inserting after subsection (e) the following new subsection:

14 “(f)(1) A judge of the court established under subsection (a), the court established under
15 subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of
16 that court, may, in accordance with the rules of their respective courts, enter a stay of an order or
17 an order modifying an order of the court established under subsection (a) or the court established
18 under subsection (b) entered under any title of this Act, while the court established under
19 subsection (a) conducts a rehearing, while an appeal is pending to the court established under
20 subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United
21 States, or during the pendency of any review by that court.

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

24 (d) Authority of Foreign Intelligence Surveillance Court.—Section 103 of the Foreign
25 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is further
26 amended by adding at the end the following:

27 “(i) Nothing in this Act shall be construed to reduce or contravene the inherent authority of the
28 court established by subsection (a) to determine, or enforce, compliance with an order or a rule
29 of such court or with a procedure approved by such court.”.

30 **SEC. 110. ~~INSPECTOR GENERAL~~ REVIEW OF PREVIOUS**
31 **ACTIONS.**

32 (a) Definitions.—In this section:

33 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of
34 Congress” means—

35 (A) the Select Committee on Intelligence and the Committee on the Judiciary of the
36 Senate; and

37 (B) the Permanent Select Committee on Intelligence and the Committee on the
38 Judiciary of the House of Representatives.

39 (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence

1 Surveillance Court” means the court established by section 103(a) of the Foreign
2 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

3 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND PROGRAM.—The terms “President’s
4 Surveillance Program” and “Program” mean the intelligence activity involving
5 communications that was authorized by the President during the period beginning on
6 September 11, 2001, and ending on January 17, 2007, including the program referred to by
7 the President in a radio address on December 17, 2005 (commonly known as the Terrorist
8 Surveillance Program).

9 (b) Reviews.—

10 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice,
11 the Office of the Director of National Intelligence, the National Security Agency, and any
12 other element of the intelligence community that participated in the President’s Surveillance
13 Program, shall complete a comprehensive review of, with respect to the oversight authority
14 and responsibility of each such Inspector General—

15 (A) all of the facts necessary to describe the establishment, implementation, product,
16 and use of the product of the Program;

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

18 (C) communications with, and participation of, individuals and entities in the private
19 sector related to the Program;

20 (D) interaction with the Foreign Intelligence Surveillance Court and transition to
21 court orders related to the Program; and

22 (E) any other matters identified by any such Inspector General that would enable
23 that Inspector General to complete a review of the Program, with respect to such
24 Department or element.

25 (2) COOPERATION AND COORDINATION.—

26 (A) COOPERATION.—Each Inspector General required to conduct a review under
27 paragraph (1) shall—

28 (i) work in conjunction, to the extent practicable, with any other Inspector
29 General required to conduct such a review; and

30 (ii) utilize, to the extent practicable, and not unnecessarily duplicate or delay,
31 such reviews or audits that have been completed or are being undertaken by any
32 such Inspector General or by any other office of the Executive Branch related to
33 the Program.

34 (B) INTEGRATION OF OTHER REVIEWS.—The Office of Professional
35 Responsibility of the Department of Justice shall provide the report of any
36 investigation conducted by such Office on matters relating to the Program to the
37 Inspector General of the Department of Justice, who shall integrate the factual
38 findings and conclusions of such investigation into its review

39 (C) COORDINATION.—The Inspectors General shall designate one of the Inspectors
40 General required to conduct a review under paragraph (1) that is appointed by the

1 President, by and with the advice and consent of the Senate, to coordinate the conduct
2 of the reviews and the preparation of the reports.

3 (c) Reports.—

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

9 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the
10 Inspectors General of the Department of Justice, the Office of the Director of National
11 Intelligence, the National Security Agency, and any other Inspector General required to
12 conduct a review under subsection (b)(1), shall submit to the appropriate committees of
13 Congress and the Commission established under section 301(a), to the extent practicable,
14 a comprehensive report on such reviews that includes any recommendations of any such
15 Inspectors General within the oversight authority and responsibility of any such Inspector
16 General with respect to the reviews.

17 (3) FORM.—A report submitted under this subsection shall be submitted in unclassified
18 form, but may include a classified annex. The unclassified report shall not disclose the name
19 or identity of any individual or entity of the private sector that participated in the Program
20 or with whom there was communication about the Program, to the extent that information is
21 classified.

22 (d) Resources.—

23 (1) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall
24 ensure that the process for the investigation and adjudication of an application by an
25 Inspector General or any appropriate staff of an Inspector General for a security clearance
26 necessary for the conduct of the review under subsection (b)(1) is carried out as
27 expeditiously as possible.

28 (2) ADDITIONAL PERSONNEL FOR THE INSPECTORS GENERAL.—An Inspector General
29 required to conduct a review under subsection (b)(1) and submit a report under subsection
30 (c) is authorized to hire such additional personnel as may be necessary to carry out such
31 review and prepare such report in a prompt and timely manner. Personnel authorized to be
32 hired under this paragraph—

33 (A) shall perform such duties relating to such a review as the relevant Inspector
34 General shall direct; and

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

36 SEC. 111. WEAPONS OF MASS DESTRUCTION.

37 (a) Definitions.—

38 (1) FOREIGN POWER.—Subsection (a) of section 101 of the Foreign Intelligence
39 Surveillance Act of 1978 (50 U.S.C. 1801(a)) is amended—

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

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

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

3 “(7) an entity not substantially composed of United States persons that is engaged in the
4 international proliferation of weapons of mass destruction.”

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

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

7 (B) by adding at the end the following new subparagraph:

8 “(D) engages in the international proliferation of weapons of mass destruction, or
9 activities in preparation therefor; or”

10 (3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is
11 amended by striking “sabotage or international terrorism” and inserting “sabotage,
12 international terrorism, or the international proliferation of weapons of mass destruction”.

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

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

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

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

21 “(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined
22 in section 178 of title 18, United States Code) that is designed, intended, or has the
23 capability of causing death, illness, or serious bodily injury to a significant number of
24 persons; or

25 “(4) any weapon that is designed, intended, or has the capability of releasing radiation or
26 radioactivity causing death, illness, or serious bodily injury to a significant number of
27 persons.”

28 (b) Use of Information.—

29 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of
30 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international
31 terrorism” and inserting “sabotage, international terrorism, or the international proliferation
32 of weapons of mass destruction”.

33 (2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is
34 amended by striking “sabotage or international terrorism” and inserting “sabotage,
35 international terrorism, or the international proliferation of weapons of mass destruction”.

36 (c) Technical and Conforming Amendment.—Section 301(1) of the Foreign Intelligence
37 Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting “weapon of mass
38 destruction,” after “person,”.

1 ~~SEC. 112. STATUTE OF LIMITATIONS. TITLE II—~~
2 ~~PROTECTIONS FOR ELECTRONIC~~
3 ~~COMMUNICATION SERVICE PROVIDERS~~

4 ~~(a) In General.—Section 109 of the Foreign Intelligence~~
5 ~~Surveillance Act of 1978 (50 U.S.C. 1809) is amended by~~
6 ~~adding at the end the following new subsection:~~

7 ~~“(e) Statute of Limitations.—No person shall be prosecuted,~~
8 ~~tried, or punished for any offense under this section unless the~~
9 ~~indictment is found or the information is instituted not later than~~
10 ~~10 years after the commission of the offense.”.~~

11 ~~(b) Application.—The amendment made by subsection (a) shall~~
12 ~~apply to any offense committed before the date of the enactment~~
13 ~~of this Act if the statute of limitations applicable to that offense~~
14 ~~has not run as of such date.~~

15 ~~TITLE II—PROTECTION OF PERSONS ASSISTING THE~~
16 ~~GOVERNMENT~~

17 ~~SEC. 201. STATUTORY DEFENSES. SEC. 201.~~
18 ~~PROCEDURES FOR IMPLEMENTING STATUTORY~~
19 ~~DEFENSES UNDER THE FOREIGN INTELLIGENCE~~
20 ~~SURVEILLANCE ACT OF 1978.~~

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

23 ~~“TITLE VIII—PROTECTION OF PERSONS ASSISTING~~
24 ~~THE GOVERNMENT~~

25 ~~“SEC. 801. DEFINITIONS.~~

26 ~~“In this title:~~

27 ~~“(1) ASSISTANCE.—The term ‘assistance’ means the provision of, or the provision of~~
28 ~~access to, information (including communication contents, communications records, or~~
29 ~~other information relating to a customer or communication), facilities, or another form of~~
30 ~~assistance.~~

1 ~~“(2) ATTORNEY GENERAL.—THE TERM ‘ATTORNEY GENERAL’ HAS THE MEANING GIVEN~~
2 ~~THAT TERM IN SECTION 101(G). CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term~~
3 ~~‘congressional intelligence committees’ means—~~

4 ~~“(A) the Select Committee on Intelligence of the Senate; and~~

5 ~~“(B) the Permanent Select Committee on Intelligence of the House of~~
6 ~~Representatives.~~

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

8 ~~“(4) Covered civil action.—The term ‘covered civil action’ means a suit in Federal or~~
9 ~~State court against any person for providing assistance to an element of the intelligence-~~
10 ~~community.~~

11 ~~“(5) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic~~
12 ~~communication service provider’ means—~~

13 ~~“(A) a telecommunications carrier, as that term is defined in section 3 of the~~
14 ~~Communications Act of 1934 (47 U.S.C. 153);~~

15 ~~“(B) a provider of electronic communication service, as that term is defined in~~
16 ~~section 2510 of title 18, United States Code;~~

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

19 ~~“(D) any other communication service provider who has access to wire or electronic~~
20 ~~communications either as such communications are transmitted or as such~~
21 ~~communications are stored;~~

22 ~~“(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in~~
23 ~~subparagraph (A), (B), (C), or (D); or~~

24 ~~“(F) an officer, employee, or agent of an entity described in subparagraph (A), (B),~~
25 ~~(C), (D), or (E).~~

26 ~~“(6) Intelligence“(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term~~
27 ~~‘intelligence community’ has the meaning given that term in ‘element of the intelligence~~
28 ~~community’ means an element of the intelligence community as specified or designated~~
29 ~~under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).~~

30 ~~“(7)“(6) PERSON.—The term ‘person’ means—~~

31 ~~“(A) an electronic communication service provider; or~~

32 ~~“(B) a landlord, custodian, or other person who may be authorized or required to~~
33 ~~furnish assistance pursuant to—~~

34 ~~“(i) an order of the court established under section 103(a) directing such~~
35 ~~assistance;~~

36 ~~“(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title~~
37 ~~18, United States Code; or~~

38 ~~“(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the~~
39 ~~Protect America Act of 2007 (Public Law 110-55), or 703(h), in effect on the day~~

1 before the date of the enactment of the FISA Amendments Act of 2008 or
2 703(h).

3 ~~“(8)“(7) STATE.—The term ‘State’ means any State, political subdivision of a State, the~~
4 ~~Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of~~
5 ~~the United States, and includes any officer, public utility commission, or other body~~
6 ~~authorized to regulate an electronic communication service provider.~~

7 ~~“SEC. 802. PROCEDURES FOR COVERED CIVIL~~
8 ~~ACTIONS: IMPLEMENTING STATUTORY DEFENSES.~~

9 ~~“(a) Intervention by Government.—In any covered civil action, the court shall permit the~~
10 ~~Government to intervene. Whether or not the Government intervenes in the civil action;“(a)~~
11 ~~General Requirement for Certification.—Notwithstanding any other provision of law, no~~
12 ~~civil action may lie or be maintained in a Federal or State court against any person for~~
13 ~~providing assistance to an element of the intelligence community, and shall be promptly~~
14 ~~dismissed, if the Attorney General may submit any information in any form the Attorney~~
15 ~~General determines is appropriate and the court shall consider all such submissions: certifies to~~
16 ~~the court that—~~

17 ~~“(b) Factual and Legal Determinations.—In any covered civil action, any party may~~
18 ~~submit to the court evidence, briefs, arguments, or other information on any matter with~~
19 ~~respect to which a privilege based on state secrets is asserted. The court shall review any~~
20 ~~such submission in accordance with the procedures set forth in section 106(f) and may,~~
21 ~~based on the review, make any appropriate determination of fact or law. The court may, on~~
22 ~~motion of“(1) any assistance by that person was provided pursuant to an order of the~~
23 ~~court established under section 103(a) directing such assistance;~~

24 ~~“(2) any assistance by that person was provided pursuant to a certification in~~
25 ~~writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;~~

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

29 ~~“(4) the person did not provide the alleged assistance.~~

30 ~~“(b) Additional Limitation.—Notwithstanding any other provision of law, no civil action~~
31 ~~may lie or be maintained in a Federal or State court against an electronic communication~~
32 ~~service provider for furnishing assistance to an element of the intelligence community, and~~
33 ~~shall be promptly dismissed, if the Attorney General, take any additional actions the court~~
34 ~~deems necessary to protect classified information. The court may, to the extent practicable and~~
35 ~~consistent with national security, request that any party present briefs and arguments on any legal~~
36 ~~question the court determines is raised by such a submission even if that party does not have full~~
37 ~~access to the submission. The court shall consider whether the employment of a special master or~~
38 ~~an expert witness, or both, would facilitate proceedings under this section.~~

39 ~~“(c) Location of Review.—The court may conduct the review in a location and facility~~
40 ~~specified by certifies to the court that the assistance alleged to have been provided by the~~
41 ~~electronic communication service provider was—~~

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

2 “(A) authorized by the President during the period beginning on September 11,
3 2001, and ending on January 17, 2007; and

4 “(B) designed to detect or prevent a terrorist attack, or activities in preparation
5 for a terrorist attack, against the United States; and

6 “(2) described in a written request or directive, or a series of such requests or
7 directives, from the Attorney General ~~as necessary to ensure security~~ or the head of an
8 element of the intelligence community (or the deputy of such person) to the electronic
9 communication service provider indicating that the activity was—

10 ~~“(d) Removal.—A covered civil action~~“(A) authorized by the President; and

11 “(B) determined to be lawful.

12 “(c) Judicial Review.—

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

17 “(2) SUPPLEMENTAL MATERIALS.—In its review of the certifications in subsections
18 (a) and (b), the court may examine the court order, certification, or directive described
19 in subsection (a) or the written request or directives, or series of such requests or
20 directives, described in subsection (b)(1)(B).

21 “(d) Limitations on Disclosure.—If the Attorney General files a declaration under
22 section 1746 of title 28, United States Code, that disclosure of a certification made pursuant
23 to subsection (a) or (b) would harm the national security of the United States, the court
24 shall—

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

26 “(2) limit any public disclosure concerning such certification, including any public
27 order following such an ex parte review, to a statement that the conditions of section
28 802 have been met and a description of the legal standards that govern the order,
29 without disclosing the subsection that is the basis for the order.

30 “(e) Role of the Parties.—The court may ask any party to submit arguments on relevant
31 issues of law, if deemed appropriate by the court.

32 “(f) Nondelegation.—The authority and duties of the Attorney General under this section
33 shall be performed by the Attorney General (or Acting Attorney General) or a designee in
34 a position not lower than the Deputy Attorney General.

35 “(g) Appeal.—The courts of appeals shall have jurisdiction of appeals from interlocutory
36 orders of the district courts of the United States granting or denying a motion to dismiss
37 under this section.

38 “(h) Removal.—A civil action against a person for providing assistance to an element of
39 the intelligence community that is brought in a State court shall be deemed to arise under the
40 Constitution and laws of the United States and shall be removable under section 1441 of title 28,

1 United States Code.

2 ~~“(e) Special Rule for Certain Cases.—For any covered civil action alleging that a person~~
3 ~~provided assistance to an element of the intelligence community pursuant to a request or~~
4 ~~directive during the period from September 11, 2001 through January 17, 2007, the Attorney~~
5 ~~General shall provide to the court any request or directive related to the allegations under the~~
6 ~~procedures set forth in subsection (b).“(i) Relationship to Other Laws.—Nothing in this~~
7 ~~section may be construed to limit any otherwise available immunity, privilege, or defense~~
8 ~~under any other provision of law.~~

9 ~~“(f)“(j) Applicability.—This section shall apply to a civil action pending on or filed after the~~
10 ~~date of the enactment of this Act.” enactment of the FISA Amendments Act of 2008.~~

11 **“SEC. 803. PREEMPTION.**

12 **“(a) In General.—No State shall have authority to—**

13 **“(1) conduct an investigation into an electronic communication service provider’s**
14 **alleged assistance to an element of the intelligence community;**

15 **“(2) require through regulation or any other means the disclosure of information**
16 **about an electronic communication service provider’s alleged assistance to an element**
17 **of the intelligence community;**

18 **“(3) impose any administrative sanction on an electronic communication service**
19 **provider for assistance to an element of the intelligence community; or**

20 **“(4) commence or maintain a civil action or other proceeding to enforce a**
21 **requirement that an electronic communication service provider disclose information**
22 **concerning alleged assistance to an element of the intelligence community.**

23 **“(b) Suits by the United States.—The United States may bring suit to enforce the**
24 **provisions of this section.**

25 **“(c) Jurisdiction.—The district courts of the United States shall have jurisdiction over**
26 **any civil action brought by the United States to enforce the provisions of this section.**

27 **“(d) Application.—This section shall apply to any investigation, action, or proceeding**
28 **that is pending on or filed after the date of enactment of the FISA Amendments Act of**
29 **2008.**

30 **“SEC. 804. REPORTING.**

31 **“(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney**
32 **General shall fully inform, in a manner consistent with national security, the congressional**
33 **intelligence committees, the Committee on the Judiciary of the Senate, and the Committee**
34 **on the Judiciary of the House of Representatives, concerning the implementation of this**
35 **title.**

36 **“(b) Content.—Each report made under subparagraph (a) shall include—**

37 **“(1) any certifications made under section 802;**

38 **“(2) a description of the judicial review of the certifications made under section 802;**
39 **and**

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

2 **SEC. 202. TECHNICAL AMENDMENTS.**

3 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978
4 (50 U.S.C. 1801 et seq.) is, as amended by section 101(b), is further amended by adding at the
5 end the following:

6 **“TITLE VII PROTECTION VIII—PROTECTION OF**
7 **PERSONS ASSISTING THE GOVERNMENT**

8 “Sec. 801. Definitions.

9 “Sec. 802. Procedures for covered civil actions.” implementing statutory defenses.

10 “Sec. 803. Preemption.

11 “Sec. 804. Reporting.”.

12 **TITLE III—COMMISSION ON WARRANTLESS**
13 **ELECTRONIC SURVEILLANCE ACTIVITIES**
14 **INTELLIGENCE COLLECTION, PRIVACY**
15 **PROTECTION, AND CHANGES IN INFORMATION**
16 **TECHNOLOGY**

17 **SEC. 301. COMMISSION ON WARRANTLESS**
18 **ELECTRONIC SURVEILLANCE ACTIVITIES.**
19 **INTELLIGENCE COLLECTION, PRIVACY**
20 **PROTECTION, AND CHANGES IN INFORMATION**
21 **TECHNOLOGY.**

22 (a) Establishment of Commission.—There is established in the legislative branch a
23 commission to be known as the “Commission on ~~Warrantless Electronic Surveillance Activities~~”
24 **Intelligence Collection, Privacy Protection, and Changes in Information and**
25 **Communications Technology**” (in this section referred to as the “Commission”).

26 (b) Duties of Commission.—

27 (1) IN GENERAL.—The Commission shall—

28 (A) ascertain, evaluate, and report upon the facts and circumstances relating to
29 ~~electronic surveillance activities conducted without a warrant~~ **an intelligence activity**
30 **involving communications authorized by the President during the period between**
31 **September 11, 2001 and January 17, 2007 and designed to detect or prevent a**
32 **terrorist attack, or activities in preparation for a terrorist attack, against the**
33 **United States;;**

34 ~~(B) evaluate the lawfulness of such activities;~~

1 ~~(C) examine all programs and activities relating to intelligence collection inside~~(B)
2 **conduct a comprehensive examination of the legal framework for the collection of**
3 **intelligence information in the United States or regarding United States persons that**
4 **were in effect or operation on September 11, 2001, and all such programs and activities**
5 **undertaken since that date, including the legal framework or justification for these**
6 **activities; and both inside and outside the United States in light of the threats to**
7 **the national security, recent and anticipated changes in information and**
8 **communications technology that may affect the nature of that collection, and**
9 **constitutional and privacy interests of United States persons; and**

10 ~~(D)~~(C) report to the President and Congress the findings and conclusions of the
11 Commission and any recommendations the Commission considers appropriate for
12 changes or improvements in laws, policies, and practices relating to the collection
13 of intelligence inside the United States and regarding United States persons in
14 order to enhance national security, protect the privacy of United States persons,
15 ensure compliance with the Constitution, and improve the effectiveness and
16 accountability of intelligence programs.

17 (2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the duties of
18 the Commission under this section in a manner consistent with the need to protect national
19 security.

20 (3) RELATIONSHIP TO PREVIOUS INQUIRIES.—In fulfilling its duties under subsection
21 (b)(1)(A), the Commission shall build upon the reports submitted under section 110,
22 and avoid unnecessary duplication of the review under that section which was
23 conducted by the Inspectors General of the Department of Justice, the Office of the
24 Director of National Intelligence, the National Security Agency, and any other
25 inspector general that participated in it, as well as any related findings, conclusions,
26 and recommendations of the Office of Professional Responsibility of the Department
27 of Justice

28 (c) Composition of Commission.—

29 (1) MEMBERS.—The Commission shall be composed of 9 10 members, of whom—

30 (A) ~~5~~ 1 member, who shall serve as the chair of the Commission, shall
31 be appointed by the President;

32 (B) 1 member, who shall serve as the vice chair of the Commission, shall be
33 appointed jointly by the majority leader of the Senate and the Speaker leader of the
34 House of Representatives ; and who are not of the same party as the President;

35 ~~(B)~~(C) 2 members shall be appointed jointly by the minority leader senior
36 member of the Senate and the minority leader leadership of the House of
37 Representatives of the Democratic Party;

38 (D) 2 members shall be appointed by the senior member of the leadership of the
39 House of Representatives of the Republican Party;

40 (E) 2 members shall be appointed by the senior member of the leadership of the
41 Senate of the Democratic Party; and

42 (F) 2 members shall be appointed by the senior member of the leadership of the

1 Senate of the Republican Party.

2 (2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission
3 may not be an officer or employee of the Federal Government.

4 (3):

5 (2) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the
6 Commission should be prominent United States citizens with significant depth of
7 experience in national security, intelligence, Constitutional law, and ~~civil liberties~~. civil
8 liberties and privacy, and information and telecommunications technology matters.

9 (3) Chair; vice chair.—

10 (A) Chair.—~~The Chair~~(4) DEADLINE FOR APPOINTMENT.—All members of the
11 Commission shall be appointed by June 1, 2009. ~~jointly appointed by the majority leader~~
12 ~~of the Senate and the Speaker of the House of Representatives from among the members~~
13 ~~appointed under paragraph (1)(A).~~

14 (B) Vice chair.—~~The Vice Chair of the Commission shall be jointly appointed by the~~
15 ~~minority leader of the Senate and the minority leader of the House of Representatives from~~
16 ~~among the members appointed under paragraph (1)(B).~~

17 (4) Deadline for appointment.—All members of the Commission shall be appointed not
18 later than 90 days after the date of the enactment of this Act.

19 (5) INITIAL MEETING.—The Commission shall hold its first meeting and begin operations
20 not later than 45 days after the date on which a majority of its members have been
21 appointed. ~~as soon as possible but not later than August 1, 2009.~~

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

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

26 (8) VACANCIES.—Any vacancy in the Commission shall not affect its powers and shall be
27 filled in the same manner in which the original appointment was made.

28 (d) Powers of Commission.—

29 (1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Chair, any
30 subcommittee or member thereof may, for the purpose of carrying out this section, hold
31 such hearings and sit and act at such times and places, take such testimony, receive such
32 evidence, and administer such oaths as the Commission, such designated subcommittee, or
33 designated member may determine advisable.

34 (2) SUBPOENAS.—

35 (A) ISSUANCE.— AUTHORIZATION AND ISSUANCE.—

36 (i) IN GENERAL.—The Commission ~~may issue subpoenas requiring the~~
37 ~~attendance and testimony of witnesses and the production of any evidence relating~~
38 ~~is authorized to subpoena witnesses to attend and testify and to produce~~
39 ~~evidence pertaining to any matter that the Commission is empowered to~~
40 investigate under this section. The attendance of witnesses and the production of

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1 evidence may be required from any place within the United States at any
2 designated place of hearing within the United States. The Commission may by
3 rule delegate to the Chair and Vice Chair, acting jointly, the authority to
4 authorize subpoenas under this paragraph.

5 (ii) ISSUANCE.—Subject to clause (i), subpoenas authorized ~~(ii) Signature.~~
6 Subpoenas issued under this paragraph may be issued under the signature of the
7 Chair of the Commission, ~~the chair of any subcommittee created by a majority of~~
8 ~~the Commission or by any member designated by the chair,~~ or any member
9 designated by a majority of the Commission and may be served by any person
10 designated by such Chair, ~~subcommittee chair, or member.~~ the Chair or a
11 member designated to sign the subpoena.

12 (B) ENFORCEMENT.—

13 ** 3 ~~(ii)~~(i) JURISDICTION.—In the case of contumacy or failure to obey a
14 subpoena issued under subparagraph (A), the United States district court for the
15 judicial district in which the subpoenaed person resides, is served, or may be
16 found, or where the subpoena is returnable, may issue an order requiring such
17 person to appear at any designated place to testify or to produce documentary or
18 other evidence. Any failure to obey the order of the court may be punished by the
19 court as a contempt of that court.

20 ~~(i)~~(ii) IN GENERAL.—If a person refuses to obey a subpoena issued under
21 subparagraph (A), the Commission may apply, upon a majority vote, may
22 apply, either through the Attorney General or another attorney of its
23 choosing, to a United States district court for an order requiring that person to
24 appear before the Commission to give testimony, produce evidence, or both,
25 relating to the matter under investigation. The application may be made within the
26 judicial district where the hearing is conducted or where that person is found,
27 resides, or transacts business. Any failure to obey the order of the court may be
28 punished by the court as civil contempt.

29
30 * 3 (ii) Jurisdiction.—In the case of contumacy or failure to obey a subpoena
31 issued under subparagraph (A), the United States district court for the judicial
32 district in which the subpoenaed person resides, is served, or may be found, or
33 where the subpoena is returnable, may issue an order requiring such person to
34 appear at any designated place to testify or to produce documentary or other
35 evidence. Any failure to obey the order of the court may be punished by the court
36 as a contempt of that court.

37 (iii) ADDITIONAL ENFORCEMENT.—In the case of the failure of a witness to
38 comply with any subpoena or to testify when summoned under authority of this
39 paragraph, the Commission, by majority vote, may certify a statement of fact
40 attesting to such failure to the appropriate United States attorney, who shall bring
41 the matter before the grand jury for its action, under the same statutory authority
42 and procedures as if the United States attorney had received a certification under
43 sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C.

1 192 through 194).

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

5 (4) INFORMATION FROM FEDERAL AGENCIES.—

6 (A) IN GENERAL.—The Commission is authorized to secure directly from any
7 executive department, bureau, agency, board, commission, office, independent
8 establishment, or instrumentality of the Government executive branch documents,
9 information, suggestions, estimates, and statistics for the purposes of this section. Each
10 such department, bureau, agency, board, commission, office, independent
11 establishment, or instrumentality shall furnish such documents, information,
12 suggestions, estimates, and statistics directly to the Commission upon request made by
13 the Chair, ~~the chair of any subcommittee created by a majority of the Commission,~~ or
14 any member designated by a majority of the Commission.

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

19 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

20 (A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services
21 shall provide to the Commission on a reimbursable basis administrative support and
22 other services for the performance of the Commission's functions.

23 (B) DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National
24 Intelligence shall provide to the Commission appropriate space and technical
25 facilities approved by the Commission and other services for the performance of
26 the Commission's functions.

27 (C) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed
28 in subparagraph (A), departments and agencies of the United States may provide to the
29 Commission such services, funds, facilities, staff, and other support services as they
30 may determine advisable and as may be authorized by law.

31 (6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of
32 services or property.

33 (7) POSTAL SERVICES.—The Commission may use the United States mails in the same
34 manner and under the same conditions as departments and agencies of the United States.

35 (e) Staff of Commission.—

36 (1) IN GENERAL.—

37 (A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with the Vice
38 Chair and in accordance with rules agreed upon by the Commission, may appoint and
39 fix the compensation of an executive director and such other personnel as may be
40 necessary to enable the Commission to carry out its functions, without regard to the
41 provisions of title 5, United States Code, governing appointments in the competitive

1 service, and without regard to the provisions of chapter 51 and subchapter III of
2 chapter 53 of such title relating to classification and General Schedule pay rates, except
3 that no rate of pay fixed under this paragraph may exceed the equivalent of that
4 payable for a position at level ~~V~~ IV of the Executive Schedule under section 5316 of
5 title 5, United States Code.

6 (B) PERSONNEL AS FEDERAL EMPLOYEES.—

7 (i) IN GENERAL.—The executive director and any personnel of the Commission
8 who are employees shall be employees under section 2105 of title 5, United States
9 Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that
10 title.

11 (ii) MEMBERS OF COMMISSION.—Clause (i) shall not be construed to apply to
12 members of the Commission.

13 (2) DETAILEES.—A Federal Government employee may be detailed to the Commission
14 without reimbursement from the Commission, and such detailee shall retain the rights,
15 status, and privileges of his or her regular employment without interruption.

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

20 (f) Security Clearances for Commission Members and Staff.—

21 (1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or
22 departments shall cooperate with the Commission in expeditiously providing to the
23 Commission members and staff appropriate security clearances to the extent possible
24 pursuant to existing procedures and requirements, ~~except that no~~. No person shall be
25 provided with access to classified information under this section without the appropriate
26 security clearances.

27 (2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission, and
28 commission staff, as authorized by the Chair ~~or the designee of the~~ and Vice Chair, who
29 have obtained appropriate security clearances, shall have access to classified information
30 related to the ~~surveillance~~ intelligence activities within the scope of the examination of the
31 Commission and any other related classified information that the members of the
32 Commission determine relevant to carrying out the duties of the Commission under this
33 section.

34 ~~(3) Facilities and resources.—The Director of National Intelligence shall provide the~~
35 ~~Commission with appropriate space and technical facilities approved by the Commission.~~

36 (g) Compensation and Travel Expenses.—

37 (1) COMPENSATION.—Each member of the Commission ~~may~~ shall be compensated at a
38 the rate ~~not equal~~ to exceed the daily equivalent of the annual rate of basic pay in effect for
39 a position at level ~~IV~~ III of the Executive Schedule under section 5315 of title 5, United
40 States Code, for each day during which that member is engaged in the actual performance
41 of the duties of the Commission.

1 (2) TRAVEL EXPENSES.—While away from their homes or regular places of business in
2 the performance of services for the Commission, members of the Commission shall be
3 allowed travel expenses, including per diem in lieu of subsistence, in the same manner as
4 persons employed intermittently in the Government service are allowed expenses under
5 section 5703(b) of title 5, United States Code.

6 (h) Nonapplicability of Federal Advisory Committee Act.—

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

9 (2) PUBLIC MEETINGS.—The Commission shall hold public hearings and meetings to the
10 extent appropriate.

11 (3) PUBLIC HEARINGS.—Any public ~~hearings~~ **hearing** of the Commission shall be
12 conducted in a manner consistent with the protection of information provided to or
13 developed for or by the Commission as required by any applicable statute, regulation, or
14 Executive order.

15 (i) Reports and Recommendations of Commission.—

16 (1) INTERIM REPORTS.—The Commission may submit to the President and Congress
17 interim reports containing such findings, conclusions, and recommendations for corrective
18 measures as have been agreed to by a majority of Commission members.

19 (2) FINAL REPORT.—Not later than ~~one year~~ **18 months** after the date of its first meeting,
20 the Commission, ~~in consultation with appropriate representatives of the intelligence-~~
21 ~~community,~~ shall submit to the President and Congress a final report containing such
22 information, analysis, findings, conclusions, and recommendations as have been agreed to
23 by a majority of Commission members **and such minority and additional views as a**
24 **member may wish to include.**

25 (3) FORM.—The reports submitted under paragraphs (1) and (2) shall be submitted in
26 unclassified form, but may include a classified annex.

27 (4) RECOMMENDATIONS FOR DECLASSIFICATION.—The Commission may make
28 recommendations to the appropriate department or agency of the Federal Government
29 regarding the declassification of documents or portions of documents.

30 (j) Termination.—

31 (1) IN GENERAL.—The Commission, and all the authorities of this section, shall terminate
32 ~~60~~ **90** days after the date on which the final report is submitted under subsection (i)(2).

33 (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the
34 ~~60~~ **90**-day period referred to in paragraph (1) for the purpose of concluding its activities,
35 including providing testimony to committees of Congress concerning its report and
36 disseminating the final report, **except that nothing under this paragraph shall limit the**
37 **ability of the Chair, the Vice Chair, or any member of the Commission to provide**
38 **additional testimony to committees of Congress concerning the report after that time.**

39 (k) Definitions.—In this section:

40 (1) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning

- 1 given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).
2 (2) UNITED STATES PERSON.—The term “United States person” has the meaning given the
3 term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
4 1801(i)).
- 5 (l) Funding.—
6 (1) IN GENERAL.—There are authorized to be appropriated such sums as may be
7 necessary to carry out the activities of the Commission under this section.
8 (2) DURATION OF AVAILABILITY.—Amounts made available to the Commission under
9 paragraph (1) shall remain available until the termination of the Commission.
- 10 (m) Effective Date.—This section shall take effect on January 21, 2009.

11 TITLE IV—OTHER PROVISIONS

12 SEC. 401. SEVERABILITY.

13 If any provision of this Act, any amendment made by this Act, or the application thereof to
14 any person or circumstances is held invalid, the validity of the remainder of the Act, any such
15 amendments, and of the application of such provisions to other persons and circumstances shall
16 not be affected thereby.

17 SEC. 402. EFFECTIVE DATE.

18 Except as provided in section 404, the amendments made by this Act shall take effect on the
19 date of the enactment of this Act.

20 SEC. 403. REPEALS.

21 (a) Repeal of Protect America Act of 2007 Provisions.—

22 (1) AMENDMENTS TO FISA.—

23 (A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and
24 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,
25 and 1805c) are repealed.

26 (B) TECHNICAL AND CONFORMING AMENDMENTS.—

27 (i) TABLE OF CONTENTS.—The table of contents in the first section of the
28 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 ~~nt~~ et seq.) is
29 amended by striking the items relating to sections 105A, 105B, and 105C.

30 (ii) CONFORMING AMENDMENTS.—Except as provided in section 404, section
31 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is
32 amended—

33 (I) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting
34 “501(f)(1) or 702(h)(4)”; and

35 (II) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting
36 “501(f)(1) or 702(h)(4)”.

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

3 (3) TRANSITION PROCEDURES.—Except as provided in section 404, subsection (b) of
4 section 6 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) is
5 repealed.

6 (b) FISA Amendments Act of 2008.—

7 (1) IN GENERAL.—Except as provided in section 404, effective December 31, 2009 2011,
8 title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a),
9 is repealed.

10 (2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2009—
11 2011—

12 (A) the table of contents in the first section of such Act (50 U.S.C. 1801 ~~et seq.~~)
13 is amended by striking the items related to title VII;

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

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

20 SEC. 404. TRANSITION PROCEDURES.

21 (a) Transition Procedures for Protect America Act of 2007 Provisions.—

22 (1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any
23 other provision of law, any order, authorization, or directive issued or made pursuant to
24 section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of
25 the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in
26 effect until the expiration of such order, authorization, or directive.

27 (2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS,
28 AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act ~~or of, any~~
29 **amendment made by this Act or the Foreign Intelligence Surveillance Act of 1978** (50
30 U.S.C. 1801 et seq.)—

31 (A) subject to paragraph (3), section 105A of such Act, as added by section 2 of the
32 Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to
33 apply to any acquisition conducted pursuant to an order, authorization, or directive
34 referred to in paragraph (1); and

35 (B) sections 105B and 105C of ~~such Act (as so added)~~ **the Foreign Intelligence**
36 **Surveillance Act of 1978, as added by sections 2 and 3, respectively, of the Protect**
37 **America Act of 2007**, shall continue to apply with respect to an order, authorization,
38 or directive referred to in paragraph (1) until the later of—

39 (i) the expiration of such order, authorization, or directive; or

1 (ii) the date on which final judgement is entered for any petition or other
2 litigation relating to such order, authorization, or directive.

3 (3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant
4 to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be
5 information acquired from an electronic surveillance pursuant to title I of the Foreign
6 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106
7 of such Act (50 U.S.C. 1806), **except for purposes of subsection (j) of such section.**

8 (4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign
9 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of
10 2007, shall continue to apply with respect to any directives issued pursuant to such section
11 105B.

12 (5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding
13 any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50
14 U.S.C. 1801 et seq.), section 103(e) of the **Foreign Intelligence Surveillance Act (50**
15 **U.S.C. 1803(e))**, as amended by section 5(a) of the Protect America Act of 2007 (Public
16 Law 110-55; 121 Stat. 556), shall continue to apply with respect to a directive issued
17 pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by
18 section 2 of the Protect America Act of 2007, until the ~~expiration of all orders,~~
19 ~~authorizations, and directives issued or made pursuant to such section.~~

20 later of—

21 (A) the expiration of all orders, authorizations, or directives referred to in
22 paragraph (1); or

23 (B) the date on which final judgement is entered for any petition or other
24 litigation relating to such order, authorization, or directive.

25 (6) REPORTING REQUIREMENTS.—

26 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act,
27 **any amendment made by this Act**, the Protect America Act of 2007 (Public Law
28 110-55), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
29 section 4 of the Protect America Act of 2007 shall continue to apply until the date that
30 the certification described in subparagraph (B) is submitted.

31 (B) CERTIFICATION.—The certification described in this subparagraph is a
32 certification—

33 (i) made by the Attorney General;

34 (ii) submitted as part of a semi-annual report required by section 4 of the
35 Protect America Act of 2007;

36 (iii) that states that there will be no further acquisitions carried out under
37 section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by
38 section 2 of the Protect America Act of 2007, after the date of such certification;
39 and

40 (iv) that states that the information required to be included under such section 4
41 relating to any acquisition conducted under such section 105B has been included

1 in a semi-annual report required by such section 4.

2 (7) EFFECTIVE DATE.—Paragraphs (1) through ~~(6)~~(7) shall take effect as if enacted on
3 August 5, 2007.

4 (b) Transition Procedures for FISA Amendments Act of 2008 Provisions.—

5 (1) ORDERS IN EFFECT ON DECEMBER 31, 2009.—~~NOTWITHSTANDING 2011.~~—

6 ~~Notwithstanding~~ any other provision of this Act ~~or of~~, any amendment made by this Act,
7 or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order,
8 authorization, or directive issued or made under title VII of the Foreign Intelligence
9 Surveillance Act of 1978, as amended by section 101(a), shall continue in effect until the
10 date of the expiration of such order, authorization, or directive.

11 (2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS,
12 DIRECTIVES.—Notwithstanding any other provision of this Act ~~or of~~, any amendment
13 made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
14 seq.), with respect to any order, authorization, or directive referred to in paragraph (1), title
15 VII of such Act, as amended by section 101(a), shall continue to apply until the ~~expiration~~
16 ~~of such order, authorization, or directive.~~

17 later of—

18 (A) the expiration of such order, authorization, or directive; or

19 (B) the date on which final judgement is entered for any petition or other
20 litigation relating to such order, authorization, or directive.

21 (3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF INFORMATION.—
22 Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance
23 Act of 1978 (50 U.S.C. 1801 et seq.)—

24 (A) section 103(e) of such Act, as amended by section 113, shall continue to apply
25 with respect to any directive issued pursuant to section 702(h) of such Act, as added by
26 section 101(a);

27 (B) section 702(h)(3) of such Act (as so added) shall continue to apply with respect
28 to any directive issued pursuant to section 702(h) of such Act (as so added);

29 (C) section 703(e) of such Act (as so added) shall continue to apply with respect to
30 an order or request for emergency assistance under that section;

31 (D) section 706 of such Act (as so added) shall continue to apply to an acquisition
32 conducted under section 702 or 703 of such Act (as so added); and

33 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section
34 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the
35 Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

36 (4) REPORTING REQUIREMENTS.—

37 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or
38 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section
39 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections
40 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until

1 the date that the certification described in subparagraph (B) is submitted.

2 (B) CERTIFICATION.—The certification described in this subparagraph is a
3 certification—

4 (i) made by the Attorney General;

5 (ii) submitted to the Select Committee on Intelligence of the Senate, the
6 Permanent Select Committee on Intelligence of the House of Representatives, and
7 the Committees on the Judiciary of the Senate and the House of Representatives;

8 (iii) that states that there will be no further acquisitions carried out under title
9 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section
10 101(a), after the date of such certification; and

11 (iv) that states that the information required to be included in a review,
12 assessment, or report under section 601 of such Act, as amended by section
13 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating
14 to any acquisition conducted under title VII of such Act, as amended by section
15 101(a), has been included in a review, assessment, or report under such section
16 601, 702(l), or 707.

17 (5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS
18 OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section
19 2.5 of Executive Order 12333 to intentionally target a United States person reasonably
20 believed to be located outside the United States shall continue in effect, and shall constitute
21 a sufficient basis for conducting such an acquisition targeting a United States person located
22 outside the United States until the earlier of—

23 (A) the date that such authorization expires; or

24 (B) the date that is 90 days after the date of the enactment of this Act.

25 ~~SEC. 405. NO RIGHTS UNDER THE FISA AMENDMENTS ACT OF 2008 FOR~~
26 ~~UNDOCUMENTED ALIENS.~~

27 ~~This Act and the amendments made by this Act shall not be construed to prohibit~~
28 ~~surveillance of, or grant any rights to, an alien not permitted to be in or remain in the~~
29 ~~United States.~~

30 ~~SEC. 406. SURVEILLANCE TO PROTECT THE UNITED STATES.~~

31 ~~This Act and the amendments made by this Act shall not be construed to prohibit the~~
32 ~~intelligence community (as defined in section 3(4) of the National Security Act of~~
33 ~~1947 (50 U.S.C. 401a(4))) from conducting lawful surveillance that is necessary to—~~

34 ~~(1) prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist~~
35 ~~organization from attacking the United States, any United States person, or any ally of~~
36 ~~the United States;~~

37 ~~(2) ensure the safety and security of members of the United States Armed Forces or~~
38 ~~any other officer or employee of the Federal Government involved in protecting the~~
39 ~~national security of the United States; or~~

40 ~~(3) protect the United States, any United States person, or any ally of the United~~

1 ~~States from threats posed by weapons of mass destruction or other threats to national~~
2 ~~security.~~

3 Attest:

4 Clerk:66514

5 110th CONGRESS

6 2d Session

7 H.R. 3773

8

9 ~~HOUSE AMENDMENT TO SENATE AMENDMENT~~