

WITHHOLD

Exemption 5

[STAFF WORKING DRAFT]

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Foreign Intelligence Surveillance Act of 1978 Amend-
4 ments Act of 2008” or the “FISA Amendments Act of
5 2008”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

- Sec. 101. Additional procedures regarding certain persons outside the United States.
- Sec. 102. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.
- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 104. Applications for court orders.
- Sec. 105. Issuance of an order.
- Sec. 106. Use of information.
- Sec. 107. Amendments for physical searches.
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.
- Sec. 109. Foreign Intelligence Surveillance Court.
- Sec. 110. Weapons of mass destruction.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

- Sec. 201. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 202. Technical amendments.

TITLE III—REVIEW OF PREVIOUS ACTIONS

- Sec. 301. Review of previous actions.

TITLE IV—OTHER PROVISIONS

- Sec. 401. Severability.
- Sec. 402. Effective date.
- Sec. 403. Repeals.
- Sec. 404. Transition procedures.

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

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

7 (1) by striking title VII; and

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

10 **“TITLE VII—ADDITIONAL PROCE-**
11 **DURES REGARDING CERTAIN**
12 **PERSONS OUTSIDE THE**
13 **UNITED STATES**

14 **“SEC. 701. DEFINITIONS.**

15 “(a) IN GENERAL.—The terms ‘agent of a foreign
16 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
17 lance’, ‘foreign intelligence information’, ‘foreign power’,
18 ‘person’, ‘United States’, and ‘United States person’ have
19 the meanings given such terms in section 101, except as
20 specifically provided in this title.

21 “(b) ADDITIONAL DEFINITIONS.—

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

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

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

5 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
6 COURT; COURT.—The terms ‘Foreign Intelligence
7 Surveillance Court’ and ‘Court’ mean the court es-
8 tablished by section 103(a).

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

14 “(4) ELECTRONIC COMMUNICATION SERVICE
15 PROVIDER.—The term ‘electronic communication
16 service provider’ means—

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

20 “(B) a provider of electronic communica-
21 tion service, as that term is defined in section
22 2510 of title 18, United States Code;

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

1 “(D) any other communication service pro-
2 vider who has access to wire or electronic com-
3 munications either as such communications are
4 transmitted or as such communications are
5 stored; or

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

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

13 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
14 **SONS OUTSIDE THE UNITED STATES OTHER**
15 **THAN UNITED STATES PERSONS.**

16 “(a) AUTHORIZATION.—Notwithstanding any other
17 provision of law, upon the issuance of an order in accord-
18 ance with subsection (i)(3) or a determination under sub-
19 section (c)(2), the Attorney General and the Director of
20 National Intelligence may authorize jointly, for a period
21 of up to 1 year from the effective date of the authoriza-
22 tion, the targeting of persons reasonably believed to be lo-
23 cated outside the United States to acquire foreign intel-
24 ligence information.

1 “(b) LIMITATIONS.—An acquisition authorized under
2 subsection (a)—

3 “(1) may not intentionally target any person
4 known at the time of acquisition to be located in the
5 United States;

6 “(2) may not intentionally target a person rea-
7 sonably believed to be located outside the United
8 States if the purpose of such acquisition is to target
9 a particular, known person reasonably believed to be
10 in the United States;

11 “(3) may not intentionally target a United
12 States person reasonably believed to be located out-
13 side the United States;

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

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

21 “(c) CONDUCT OF ACQUISITION.—

22 “(1) IN GENERAL.—An acquisition authorized
23 under subsection (a) may be conducted only in ac-
24 cordance with—

1 “(A) a certification in accordance with sub-
2 section (g), as soon as such certification is sub-
3 mitted in accordance with such subsection; and

4 “(B) the targeting and minimization proce-
5 dures adopted in accordance with subsections
6 (d) and (e).

7 “(2) DETERMINATION.—A determination under
8 this paragraph is a determination by the Attorney
9 General and the Director of National Intelligence
10 that exigent circumstances exist because, without
11 immediate implementation of an authorization under
12 paragraph (1), intelligence important to the national
13 security of the United States may be lost or not
14 timely acquired and time does not permit the
15 issuance of an order pursuant to subsection (i)(3)
16 prior to the implementation of such authorization.

17 “(3) TIMING OF DETERMINATION.—The Attor-
18 ney General and the Director of National Intel-
19 ligence may make the determination under para-
20 graph (3)—

21 “(A) before the submission of a certifi-
22 cation under subsection (g); or

23 “(B) by amending a certification pursuant
24 to subsection (i)(1)(C) at any time during

1 which judicial review under subsection (i) of
2 such certification is pending.

3 “(4) CONSTRUCTION.—Nothing in title I shall
4 be construed to require an application for a court
5 order under such title for an acquisition that is tar-
6 geted in accordance with this section at a person
7 reasonably believed to be located outside the United
8 States.

9 “(d) TARGETING PROCEDURES.—

10 “(1) REQUIREMENT TO ADOPT.—The Attorney
11 General, in consultation with the Director of Na-
12 tional Intelligence, shall adopt targeting procedures
13 that are reasonably designed to—

14 “(A) ensure that any acquisition author-
15 ized under subsection (a) is limited to targeting
16 persons reasonably believed to be located out-
17 side the United States; and

18 “(B) prevent the intentional acquisition of
19 any communication as to which the sender and
20 all intended recipients are known at the time of
21 the acquisition to be located in the United
22 States.

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

1 “(e) MINIMIZATION PROCEDURES.—

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

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

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

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

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

19 “(B) that an application for a court order
20 is filed as required by this Act.

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

24 “(A) the congressional intelligence commit-
25 tees;

1 “(B) the Committee on the Judiciary of
2 the Senate;

3 “(C) the Committee on the Judiciary of
4 the House of Representatives; and

5 “(D) the Foreign Intelligence Surveillance
6 Court.

7 “(g) CERTIFICATION.—

8 “(1) IN GENERAL.—

9 “(A) REQUIREMENT.—Subject to subpara-
10 graph (B), prior to the initiation of an acquisi-
11 tion authorized under subsection (a), the Attor-
12 ney General and the Director of National Intel-
13 ligence shall provide to the Foreign Intelligence
14 Surveillance Court, under oath, a written cer-
15 tification and any supporting affidavit, under
16 seal, in accordance with this subsection.

17 “(B) EXCEPTION.—If the Attorney Gen-
18 eral and the Director of National Intelligence
19 make a determination under subsection (c)(2)
20 and time does not permit the submission of a
21 certification under this subsection prior to the
22 authorization referred to in such subsection, the
23 Attorney General and the Director of National
24 Intelligence shall submit to the Court a certifi-
25 cation for such authorization as soon as prac-

1 ticable but in no event later than 7 days after
2 such determination is made.

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

5 “(A) attest that—

6 “(i) there are reasonable procedures
7 in place that have been approved, have
8 been submitted for approval, or will be
9 submitted with the certification for ap-
10 proval by the Foreign Intelligence Surveil-
11 lance Court—

12 “(I) for ensuring that the acqui-
13 sition authorized under subsection (a)
14 is targeted at persons reasonably be-
15 lieved to be located outside the United
16 States; and

17 “(II) to prevent the intentional
18 acquisition of any communication as
19 to which the sender and all intended
20 recipients are known at the time of
21 the acquisition to be located in the
22 United States;

23 “(ii) the minimization procedures to
24 be used with respect to such acquisition—

1 “(I) meet the definition of mini-
2 mization procedures under section
3 101(h) or section 301(4), as appro-
4 priate; and

5 “(II) have been approved, have
6 been submitted for approval, or will be
7 submitted with the certification for
8 approval by the Foreign Intelligence
9 Surveillance Court;

10 “(iii) guidelines have been adopted in
11 accordance with subsection (f) to ensure
12 compliance with the limitations in sub-
13 section (b) and to ensure that applications
14 for court orders are filed if required by
15 this Act;

16 “(iv) the procedures and guidelines re-
17 ferred to in clauses (i), (ii), and (iii) are
18 consistent with the requirements of the
19 fourth amendment to the Constitution of
20 the United States;

21 “(v) a significant purpose of the ac-
22 quisition is to obtain foreign intelligence
23 information;

24 “(vi) the acquisition involves obtaining
25 the foreign intelligence information from or

1 with the assistance of an electronic com-
2 munication service provider; and

3 “(vii) the acquisition complies with
4 the limitations in subsection (b);

5 “(B) include the procedures adopted in ac-
6 cordance with subsections (d) and (e);

7 “(C) be supported, as appropriate, by the
8 affidavit of any appropriate official in the area
9 of national security who is—

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

12 “(ii) the head of an element of the in-
13 telligence community;

14 “(D) include—

15 “(i) an effective date for the author-
16 ization that is at least 30 days after the
17 submission of the written certification to
18 the court; or

19 “(ii) if the acquisition has begun or
20 the effective date is less than 30 days after
21 the submission of the written certification
22 to the court, the date the acquisition began
23 or the effective date for the acquisition;
24 and

1 “(E) if the Attorney General and the Di-
2 rector of National Intelligence make a deter-
3 mination under subsection (c)(1)(A)(ii), include
4 a statement that such determination has been
5 made.

6 “(3) CHANGE IN EFFECTIVE DATE.—The At-
7 torney General and the Director of National Intel-
8 ligence may advance or delay the effective date re-
9 ferred to in paragraph (2)(D) by submitting an
10 amended certification in accordance with this sub-
11 section to the Foreign Intelligence Surveillance
12 Court for review pursuant to subsection (i).

13 “(4) LIMITATION.—A certification made under
14 this subsection is not required to identify the specific
15 facilities, places, premises, or property at which the
16 acquisition authorized under subsection (a) will be
17 directed or conducted.

18 “(5) MAINTENANCE OF CERTIFICATION.—The
19 Attorney General or a designee of the Attorney Gen-
20 eral shall maintain a copy of a certification made
21 under this subsection.

22 “(6) REVIEW.—The certification required by
23 this subsection shall be subject to judicial review
24 pursuant to subsection (i).

1 “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
2 TIVES.—

3 “(1) AUTHORITY.—With respect to an acquisi-
4 tion authorized under subsection (a), the Attorney
5 General and the Director of National Intelligence
6 may direct, in writing, an electronic communication
7 service provider to—

8 “(A) immediately provide the Government
9 with all information, facilities, or assistance
10 necessary to accomplish the acquisition in a
11 manner that will protect the secrecy of the ac-
12 quisition and produce a minimum of inter-
13 ference with the services that such electronic
14 communication service provider is providing to
15 the target of the acquisition; and

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

22 “(2) COMPENSATION.—The Government shall
23 compensate, at the prevailing rate, an electronic
24 communication service provider for providing infor-

1 mation, facilities, or assistance pursuant to para-
2 graph (1).

3 “(3) RELEASE FROM LIABILITY.—No cause of
4 action shall lie in any court against any electronic
5 communication service provider for providing any in-
6 formation, facilities, or assistance in accordance with
7 a directive issued pursuant to paragraph (1).

8 “(4) CHALLENGING OF DIRECTIVES.—

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

16 “(B) ASSIGNMENT.—The presiding judge
17 of the Court shall assign the petition filed
18 under subparagraph (A) to 1 of the judges serv-
19 ing in the pool established by section 103(e)(1)
20 not later than 24 hours after the filing of the
21 petition.

22 “(C) STANDARDS FOR REVIEW.—A judge
23 considering a petition to modify or set aside a
24 directive may grant such petition only if the
25 judge finds that the directive does not meet the

1 requirements of this section, or is otherwise un-
2 lawful.

3 “(D) PROCEDURES FOR INITIAL RE-
4 VIEW.—A judge shall conduct an initial review
5 of a petition filed under subparagraph (A) not
6 later than 5 days after being assigned such pe-
7 tition. If the judge determines that the petition
8 does not consist of claims, defenses, or other
9 legal contentions that are warranted by existing
10 law or by a nonfrivolous argument for extend-
11 ing, modifying, or reversing existing law or for
12 establishing new law, the judge shall imme-
13 diately deny the petition and affirm the direc-
14 tive or any part of the directive that is the sub-
15 ject of the petition and order the recipient to
16 comply with the directive or any part of it.
17 Upon making such a determination or promptly
18 thereafter, the judge shall provide a written
19 statement for the record of the reasons for a
20 determination under this subparagraph.

21 “(E) PROCEDURES FOR PLENARY RE-
22 VIEW.—If a judge determines that a petition
23 described in subparagraph (A) requires plenary
24 review, the judge shall affirm, modify, or set
25 aside the directive that is the subject of that pe-

1 tition not later than 30 days after being as-
2 signed the petition. If the Court does not set
3 aside the directive, the judge shall immediately
4 affirm or affirm with modifications the direc-
5 tive, and order the recipient to comply with the
6 directive in its entirety or as modified. The
7 judge shall provide a written statement for the
8 record of the reasons for a determination under
9 this subparagraph.

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

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

17 “(5) ENFORCEMENT OF DIRECTIVES.—

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

1 Court, which shall have jurisdiction to review
2 such a petition.

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

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

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

24 “(E) PROCESS.—Any process under this
25 paragraph may be served in any judicial district

1 in which the electronic communication service
2 provider may be found.

3 “(6) APPEAL.—

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

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

1 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
2 PROCEDURES.—

3 “(1) IN GENERAL.—

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

13 “(B) TIME PERIOD FOR REVIEW.—The
14 Court shall review the certification submitted in
15 accordance with subsection (g) and the tar-
16 geting and minimization procedures adopted in
17 accordance with subsections (d) and (e) and
18 shall complete such review and issue an order
19 under paragraph (3) not later than 30 days
20 after the date on which such certification and
21 procedures are submitted.

22 “(C) AMENDMENTS.—The Attorney Gen-
23 eral and the Director of National Intelligence
24 may amend a certification submitted in accord-
25 ance with subsection (g) or the targeting and

1 minimization procedures adopted in accordance
2 with subsections (d) and (e) as necessary at any
3 time, including if the Court is conducting or
4 has completed review of such certification or
5 such procedures, and shall submit such amend-
6 ed certification or amended procedures to the
7 Court not later than 7 days after amending
8 such certification or such procedures. The
9 Court shall review any amendment under this
10 subparagraph under the procedures set forth in
11 this subsection. The Attorney General and the
12 Director of National Intelligence may authorize
13 the use of an amended certification or amended
14 procedures pending the Court's review of such
15 amended certification or amended procedures.

16 “(2) REVIEW.—The Court shall review the fol-
17 lowing:

18 “(A) CERTIFICATION.—A certification sub-
19 mitted in accordance with subsection (g) to de-
20 termine whether the certification contains all
21 the required elements.

22 “(B) TARGETING PROCEDURES.—The tar-
23 geting procedures adopted in accordance with
24 subsection (d) to assess whether the procedures
25 are reasonably designed to—

1 “(i) ensure that the acquisition au-
2 thorized under subsection (a) is limited to
3 the targeting of persons reasonably be-
4 lieved to be located outside the United
5 States; and

6 “(ii) prevent the intentional acquisi-
7 tion of any communication as to which the
8 sender and all intended recipients are
9 known at the time of the acquisition to be
10 located in the United States.

11 “(C) MINIMIZATION PROCEDURES.—The
12 minimization procedures submitted in accord-
13 ance with subsection (e) to assess whether such
14 procedures meet the definition of minimization
15 procedures under section 101(h) or section
16 301(4), as appropriate.

17 “(3) ORDERS.—

18 “(A) APPROVAL.—If the Court finds that
19 a certification submitted in accordance with
20 subsection (g) contains all of the required ele-
21 ments and that the targeting and minimization
22 procedures adopted in accordance with sub-
23 sections (d) and (e) are consistent with the re-
24 quirements of those subsections and with the
25 fourth amendment to the Constitution of the

1 United States, the Court shall enter an order
2 approving the certification and the use, or con-
3 tinued use in the case of an acquisition author-
4 ized pursuant to a determination under sub-
5 section (e)(2), of the procedures for the acquisi-
6 tion.

7 “(B) CORRECTION OF DEFICIENCIES.—If
8 the Court finds that a certification submitted in
9 accordance with subsection (g) does not contain
10 all of the required elements, or that the proce-
11 dures adopted in accordance with subsections
12 (d) and (e) are not consistent with the require-
13 ments of those subsections or the fourth
14 amendment to the Constitution of the United
15 States, the Court shall issue an order directing
16 the Government to, at the Government’s elec-
17 tion and to the extent required by the Court’s
18 order—

19 “(i) correct any deficiency identified
20 by the Court’s order not later than 30 days
21 after the date the Court issues the order;
22 or

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

1 “(C) REQUIREMENT FOR WRITTEN STATE-
2 MENT.—In support of its orders under this sub-
3 section, the Court shall provide, simultaneously
4 with the orders, for the record a written state-
5 ment of its reasons.

6 “(4) APPEAL.—

7 “(A) APPEAL TO THE COURT OF RE-
8 VIEW.—The Government may appeal any order
9 under this section to the Foreign Intelligence
10 Surveillance Court of Review, which shall have
11 jurisdiction to review such order. For any deci-
12 sion affirming, reversing, or modifying an order
13 of the Foreign Intelligence Surveillance Court,
14 the Court of Review shall provide for the record
15 a written statement of its reasons.

16 “(B) CONTINUATION OF ACQUISITION
17 PENDING REHEARING OR APPEAL.—Any acqui-
18 sition affected by an order under paragraph
19 (3)(B) may continue—

20 “(i) during the pendency of any re-
21 hearing of the order by the Court en banc;
22 and

23 “(ii) if the Government appeals an
24 order under this section, until the Court of

1 Review enters an order under subpara-
2 graph (C).

3 “(C) IMPLEMENTATION PENDING AP-
4 PEAL.—Not later than 60 days after the filing
5 of an appeal of an order under paragraph
6 (3)(B) directing the correction of a deficiency,
7 the Court of Review shall determine, and enter
8 a corresponding order regarding, whether all or
9 any part of the correction order, as issued or
10 modified, shall be implemented during the pend-
11 ency of the appeal.

12 “(D) CERTIORARI TO THE SUPREME
13 COURT.—The Government may file a petition
14 for a writ of certiorari for review of a decision
15 of the Court of Review issued under subpara-
16 graph (A). The record for such review shall be
17 transmitted under seal to the Supreme Court of
18 the United States, which shall have jurisdiction
19 to review such decision.

20 “(5) SCHEDULE.—

21 “(A) REPLACEMENT OF AUTHORIZATIONS
22 IN EFFECT.—If the Attorney General and the
23 Director of National Intelligence seek to replace
24 an authorization issued pursuant to section
25 105B of the Foreign Intelligence Surveillance

1 Act of 1978, as added by section 2 of the Pro-
2 tect America Act of 2007 (Public Law 110-55)
3 with an authorization under this section, the
4 Attorney General and the Director of National
5 Intelligence shall, to the extent practicable, sub-
6 mit to the Court the certification prepared in
7 accordance with subsection (g) and the proce-
8 dures adopted in accordance with subsections
9 (d) and (e) at least 30 days before the expira-
10 tion of such authorization.

11 “(B) REAUTHORIZATION OF AUTHORIZA-
12 TIONS IN EFFECT.—If the Attorney General
13 and the Director of National Intelligence seek
14 to reauthorize or replace an authorization
15 issued pursuant to this section, the Attorney
16 General and the Director of National Intel-
17 ligence shall, to the extent practicable, submit
18 to the Court the certification prepared in ac-
19 cordance with subsection (g) and the procedures
20 adopted in accordance with subsections (d) and
21 (e) at least 30 days prior to the expiration of
22 such authorization.

23 “(C) REAUTHORIZATION OF ORDERS, AU-
24 THORIZATIONS, AND DIRECTIVES.—If the At-
25 torney General and the Director of National In-

1 telligence seek to replace an authorization made
2 pursuant to this section by filing a certification
3 pursuant to paragraph (B), that authorization,
4 and any directives issued thereunder and any
5 order related thereto, shall remain in effect
6 until the Court issues an order with respect to
7 that certification under paragraph (3) at which
8 time the provisions of that paragraph and para-
9 graph (4) shall apply.

10 “(j) JUDICIAL PROCEEDINGS.—

11 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Ju-
12 dicial proceedings under this section shall be con-
13 ducted as expeditiously as possible.

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

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

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

1 for decision, under security measures adopted by the
2 Chief Justice of the United States, in consultation
3 with the Attorney General and the Director of Na-
4 tional Intelligence.

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

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

18 “(1) ASSESSMENTS AND REVIEWS.—

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

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

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

5 “(B) consistent with the Rules of the
6 House of Representatives, the Standing Rules
7 of the Senate, and Senate Resolution 400 of the
8 94th Congress or any successor Senate resolu-
9 tion—

10 “(i) the congressional intelligence
11 committees; and

12 “(ii) the Committees on the Judiciary
13 of the House of Representatives and the
14 Senate.

15 “(2) AGENCY ASSESSMENT.—The Inspectors
16 General of the Department of Justice and each ele-
17 ment of the intelligence community authorized to ac-
18 quire foreign intelligence information under sub-
19 section (a) with respect to the department or ele-
20 ment of such Inspector General—

21 “(A) are authorized to review the compli-
22 ance with the targeting and minimization proce-
23 dures adopted in accordance with subsections
24 (d) and (e) and the guidelines adopted in ac-
25 cordance with subsection (f);

1 “(B) with respect to acquisitions author-
2 ized under subsection (a), shall review the num-
3 ber of disseminated intelligence reports con-
4 taining a reference to a United States person
5 identity and the number of United States per-
6 son identities subsequently disseminated by the
7 element concerned in response to requests for
8 identities that were not referred to by name or
9 title in the original reporting;

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

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

17 “(i) the Attorney General;

18 “(ii) the Director of National Intel-
19 ligence; and

20 “(iii) consistent with the Rules of the
21 House of Representatives, the Standing
22 Rules of the Senate, and Senate Resolution
23 400 of the 94th Congress or any successor
24 Senate resolution—

1 “(I) the congressional intelligence
2 committees; and

3 “(II) the Committees on the Ju-
4 diciary of the House of Representa-
5 tives and the Senate.

6 “(3) ANNUAL REVIEW.—

7 “(A) REQUIREMENT TO CONDUCT.—The
8 head of each element of the intelligence commu-
9 nity conducting an acquisition authorized under
10 subsection (a) shall conduct an annual review to
11 determine whether there is reason to believe
12 that foreign intelligence information has been
13 or will be obtained from the acquisition. The
14 annual review shall provide, with respect to
15 such acquisitions authorized under subsection
16 (a)—

17 “(i) an accounting of the number of
18 disseminated intelligence reports con-
19 taining a reference to a United States per-
20 son identity;

21 “(ii) an accounting of the number of
22 United States person identities subse-
23 quently disseminated by that element in re-
24 sponse to requests for identities that were

1 not referred to by name or title in the
2 original reporting;

3 “(iii) the number of targets that were
4 later determined to be located in the
5 United States and, to the extent possible,
6 whether their communications were re-
7 viewed; and

8 “(iv) a description of any procedures
9 developed by the head of such element of
10 the intelligence community and approved
11 by the Director of National Intelligence to
12 assess, in a manner consistent with na-
13 tional security, operational requirements
14 and the privacy interests of United States
15 persons, the extent to which the acqui-
16 sitions authorized under subsection (a) ac-
17 quire the communications of United States
18 persons, and the results of any such as-
19 sessment.

20 “(B) USE OF REVIEW.—The head of each
21 element of the intelligence community that con-
22 ducts an annual review under subparagraph (A)
23 shall use each such review to evaluate the ade-
24 quacy of the minimization procedures utilized
25 by such element or the application of the mini-

1 mization procedures to a particular acquisition
2 authorized under subsection (a).

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

7 “(i) the Foreign Intelligence Surveil-
8 lance Court;

9 “(ii) the Attorney General;

10 “(iii) the Director of National Intel-
11 ligence; and

12 “(iv) consistent with the Rules of the
13 House of Representatives, the Standing
14 Rules of the Senate, and Senate Resolution
15 400 of the 94th Congress or any successor
16 Senate resolution—

17 “(I) the congressional intelligence
18 committees; and

19 “(II) the Committees on the Ju-
20 diciary of the House of Representa-
21 tives and the Senate.

1 "SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED
2 STATES OF UNITED STATES PERSONS OUT-
3 SIDE THE UNITED STATES.

4 "(a) JURISDICTION OF THE FOREIGN INTELLIGENCE
5 SURVEILLANCE COURT.—

6 "(1) IN GENERAL.—The Foreign Intelligence
7 Surveillance Court shall have jurisdiction to review
8 an application and to enter an order approving the
9 targeting of a United States person reasonably be-
10 lieved to be located outside the United States to ac-
11 quire foreign intelligence information, if the acquisi-
12 tion constitutes electronic surveillance or the acquisi-
13 tion of stored electronic communications or stored
14 electronic data that requires an order under this
15 Act, and such acquisition is conducted within the
16 United States.

17 "(2) LIMITATION.—If a United States person
18 targeted under this subsection is reasonably believed
19 to be located in the United States during the effec-
20 tive period of an order issued pursuant to subsection
21 (c), an acquisition targeting such United States per-
22 son under this section shall cease unless the targeted
23 United States person is again reasonably believed to
24 be located outside the United States while an order
25 issued pursuant to subsection (c) is in effect. Noth-
26 ing in this paragraph shall be construed to limit the

1 authority of the Government to seek an order or au-
2 thorization under, or otherwise engage in any activ-
3 ity that is authorized under, any other title of this
4 Act or chapter 119, 121, or 206 of title 18, United
5 States Code.

6 “(b) APPLICATION.—

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

16 “(A) the identity of the Federal officer
17 making the application;

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

21 “(C) a statement of the facts and cir-
22 cumstances relied upon to justify the appli-
23 cant’s belief that the United States person who
24 is the target of the acquisition is—

- 1 “(i) a person reasonably believed to be
2 located outside the United States; and
3 “(ii) a foreign power, an agent of a
4 foreign power, or an officer or employee of
5 a foreign power;
6 “(D) a statement of proposed minimization
7 procedures that meet the definition of mini-
8 mization procedures under section 101(h) or
9 section 301(4), as appropriate;
10 “(E) a description of the nature of the in-
11 formation sought and the type of communica-
12 tions or activities to be subjected to acquisition;
13 “(F) a certification made by the Attorney
14 General or an official specified in section
15 104(a)(6) that—
16 “(i) the certifying official deems the
17 information sought to be foreign intel-
18 ligence information;
19 “(ii) a significant purpose of the ac-
20 quisition is to obtain foreign intelligence
21 information;
22 “(iii) such information cannot reason-
23 ably be obtained by normal investigative
24 techniques;

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

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

7 “(I) the information sought is
8 the type of foreign intelligence infor-
9 mation designated; and

10 “(II) such information cannot
11 reasonably be obtained by normal in-
12 vestigative techniques;

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

17 “(H) the identity of any electronic commu-
18 nication service provider necessary to effect the
19 acquisition, provided, however, that the applica-
20 tion is not required to identify the specific fa-
21 cilities, places, premises, or property at which
22 the acquisition authorized under this section
23 will be directed or conducted;

24 “(I) a statement of the facts concerning
25 any previous applications that have been made

1 to any judge of the Foreign Intelligence Surveil-
2 lance Court involving the United States person
3 specified in the application and the action taken
4 on each previous application; and

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

9 “(2) OTHER REQUIREMENTS OF THE ATTOR-
10 NEY GENERAL.—The Attorney General may require
11 any other affidavit or certification from any other
12 officer in connection with the application.

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

17 “(c) ORDER.—

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

23 “(A) the application has been made by a
24 Federal officer and approved by the Attorney
25 General;

1 “(B) on the basis of the facts submitted by
2 the applicant, for the United States person who
3 is the target of the acquisition, there is prob-
4 able cause to believe that the target is—

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

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

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

14 “(D) the application that has been filed
15 contains all statements and certifications re-
16 quired by subsection (b) and the certification or
17 certifications are not clearly erroneous on the
18 basis of the statement made under subsection
19 (b)(1)(F)(v) and any other information fur-
20 nished under subsection (b)(3).

21 “(2) PROBABLE CAUSE.—In determining
22 whether or not probable cause exists for purposes of
23 paragraph (1)(B), a judge having jurisdiction under
24 subsection (a)(1) may consider past activities of the
25 target and facts and circumstances relating to cur-

1 rent or future activities of the target. No United
2 States person may be considered a foreign power,
3 agent of a foreign power, or officer or employee of
4 a foreign power solely upon the basis of activities
5 protected by the first amendment to the Constitution
6 of the United States.

7 “(3) REVIEW.—

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

12 “(B) REVIEW OF PROBABLE CAUSE.—If
13 the judge determines that the facts submitted
14 under subsection (b) are insufficient to estab-
15 lish probable cause under paragraph (1)(B), the
16 judge shall enter an order so stating and pro-
17 vide a written statement for the record of the
18 reasons for such determination. The Govern-
19 ment may appeal an order under this subpara-
20 graph pursuant to subsection (f).

21 “(C) REVIEW OF MINIMIZATION PROCE-
22 DURES.—If the judge determines that the pro-
23 posed minimization procedures referred to in
24 paragraph (1)(C) do not meet the definition of
25 minimization procedures under section 101(h)

1 or section 301(4), as appropriate, the judge
2 shall enter an order so stating and provide a
3 written statement for the record of the reasons
4 for such determination. The Government may
5 appeal an order under this subparagraph pursu-
6 ant to subsection (f).

7 “(D) REVIEW OF CERTIFICATION.—If the
8 judge determines that an application required
9 by subsection (b) does not contain all of the re-
10 quired elements, or that the certification or cer-
11 tifications are clearly erroneous on the basis of
12 the statement made under subsection
13 (b)(1)(F)(v) and any other information fur-
14 nished under subsection (b)(3), the judge shall
15 enter an order so stating and provide a written
16 statement for the record of the reasons for such
17 determination. The Government may appeal an
18 order under this subparagraph pursuant to sub-
19 section (f).

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

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

1 the application pursuant to subsection
2 (b)(1)(B);

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

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

10 “(D) a summary of the means by which
11 the acquisition will be conducted and whether
12 physical entry is required to effect the acqui-
13 sition; and

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

16 “(5) DIRECTIVES.—An order approving an ac-
17 quisition under this subsection shall direct—

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

21 “(B) if applicable, an electronic commu-
22 nication service provider to provide to the Gov-
23 ernment forthwith all information, facilities, or
24 assistance necessary to accomplish the acquisi-
25 tion authorized under such order in a manner

1 that will protect the secrecy of the acquisition
2 and produce a minimum of interference with
3 the services that such electronic communication
4 service provider is providing to the target of the
5 acquisition;

6 “(C) if applicable, an electronic commu-
7 nication service provider to maintain under se-
8 curity procedures approved by the Attorney
9 General any records concerning the acquisition
10 or the aid furnished that such electronic com-
11 munication service provider wishes to maintain;
12 and

13 “(D) if applicable, that the Government
14 compensate, at the prevailing rate, such elec-
15 tronic communication service provider for pro-
16 viding such information, facilities, or assistance.

17 “(6) DURATION.—An order approved under this
18 subsection shall be effective for a period not to ex-
19 ceed 90 days and such order may be renewed for ad-
20 ditional 90-day periods upon submission of renewal
21 applications meeting the requirements of subsection
22 (b).

23 “(7) COMPLIANCE.—At or prior to the end of
24 the period of time for which an acquisition is ap-
25 proved by an order or extension under this section,

1 the judge may assess compliance with the minimiza-
2 tion procedures referred to in paragraph (1)(C) by
3 reviewing the circumstances under which informa-
4 tion concerning United States persons was acquired,
5 retained, or disseminated.

6 “(d) EMERGENCY AUTHORIZATION.—

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

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

17 “(B) the factual basis for issuance of an
18 order under this subsection to approve such ac-
19 quisition exists,

20 the Attorney General may authorize such acquisition
21 if a judge having jurisdiction under subsection (a)(1)
22 is informed by the Attorney General, or a designee
23 of the Attorney General, at the time of such author-
24 ization that the decision has been made to conduct
25 such acquisition and if an application in accordance

1 with this section is made to a judge of the Foreign
2 Intelligence Surveillance Court as soon as prac-
3 ticable, but not more than 7 days after the Attorney
4 General authorizes such acquisition.

5 “(2) MINIMIZATION PROCEDURES.—If the At-
6 torney General authorizes an acquisition under para-
7 graph (1), the Attorney General shall require that
8 the minimization procedures referred to in sub-
9 section (e)(1)(C) for the issuance of a judicial order
10 be followed.

11 “(3) TERMINATION OF EMERGENCY AUTHOR-
12 IZATION.—In the absence of a judicial order approv-
13 ing an acquisition under paragraph (1), such acqui-
14 sition shall terminate when the information sought is
15 obtained, when the application for the order is de-
16 nied, or after the expiration of 7 days from the time
17 of authorization by the Attorney General, whichever
18 is earliest.

19 “(4) USE OF INFORMATION.—If an application
20 for approval submitted pursuant to paragraph (1) is
21 denied, or in any other case where the acquisition is
22 terminated and no order is issued approving the ac-
23 quisition, no information obtained or evidence de-
24 rived from such acquisition, except under cir-
25 cumstances in which the target of the acquisition is

1 determined not to be a United States person, shall
2 be received in evidence or otherwise disclosed in any
3 trial, hearing, or other proceeding in or before any
4 court, grand jury, department, office, agency, regu-
5 latory body, legislative committee, or other authority
6 of the United States, a State, or political subdivision
7 thereof, and no information concerning any United
8 States person acquired from such acquisition shall
9 subsequently be used or disclosed in any other man-
10 ner by Federal officers or employees without the
11 consent of such person, except with the approval of
12 the Attorney General if the information indicates a
13 threat of death or serious bodily harm to any per-
14 son.

15 “(e) RELEASE FROM LIABILITY.—No cause of action
16 shall lie in any court against any electronic communication
17 service provider for providing any information, facilities,
18 or assistance in accordance with an order or request for
19 emergency assistance issued pursuant to subsections (c)
20 or (d).

21 “(f) APPEAL.—

22 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
23 SURVEILLANCE COURT OF REVIEW.—The Govern-
24 ment may file an appeal with the Foreign Intel-
25 ligence Surveillance Court of Review for review of an

1 order issued pursuant to subsection (c). The Court
2 of Review shall have jurisdiction to consider such ap-
3 peal and shall provide a written statement for the
4 record of the reasons for a decision under this para-
5 graph.

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

13 “(g) CONSTRUCTION.—Nothing in title I shall be con-
14 strued to require an application for a court order under
15 such title for an acquisition that is targeted in accordance
16 with this section at a United States person reasonably be-
17 lieved to be located outside the United States.

18 **“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED**
19 **STATES PERSONS OUTSIDE THE UNITED**
20 **STATES.**

21 “(a) JURISDICTION AND SCOPE.—

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

1 “(2) SCOPE.—No element of the intelligence
2 community may intentionally target, for the purpose
3 of acquiring foreign intelligence information, a
4 United States person reasonably believed to be lo-
5 cated outside the United States under circumstances
6 in which the targeted United States person has a
7 reasonable expectation of privacy and a warrant
8 would be required if the acquisition were conducted
9 inside the United States for law enforcement pur-
10 poses, unless a judge of the Foreign Intelligence
11 Surveillance Court has entered an order with respect
12 to such targeted United States person or the Attor-
13 ney General has authorized an emergency acquisition
14 pursuant to subsections (c) or (d) or any other pro-
15 vision of this Act.

16 “(3) LIMITATIONS.—

17 “(A) MOVING OR MISIDENTIFIED TAR-
18 GETS.—If a United States person targeted
19 under this subsection is reasonably believed to
20 be located in the United States during the ef-
21 fective period of an order issued pursuant to
22 subsection (c), an acquisition targeting such
23 United States person under this section shall
24 cease unless the targeted United States person
25 is again reasonably believed to be located out-

1 side the United States during the effective pe-
2 riod of such order.

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

9 “(C) CONSTRUCTION.—Nothing in this
10 paragraph shall be construed to limit the au-
11 thority of the Government to seek an order or
12 authorization under, or otherwise engage in any
13 activity that is authorized under, any other title
14 of this Act or chapter 119, 121, or 206 of title
15 18, United States Code.

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

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

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

4 “(3) a statement of the facts and circumstances
5 relied upon to justify the applicant’s belief that the
6 United States person who is the target of the acqui-
7 sition is—

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

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

13 “(4) a statement of proposed minimization pro-
14 cedures that meet the definition of minimization pro-
15 cedures under section 101(h) or section 301(4), as
16 appropriate;

17 “(5) a certification made by the Attorney Gen-
18 eral, an official specified in section 104(a)(6), or the
19 head of an element of the intelligence community
20 that—

21 “(A) the certifying official deems the infor-
22 mation sought to be foreign intelligence infor-
23 mation; and

1 “(B) a significant purpose of the acquisi-
2 tion is to obtain foreign intelligence informa-
3 tion;

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

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

14 “(c) ORDER.—

15 “(1) FINDINGS.—Upon an application made
16 pursuant to subsection (b), the Foreign Intelligence
17 Surveillance Court shall enter an ex parte order as
18 requested or as modified by the Court if the Court
19 finds that—

20 “(A) the application has been made by a
21 Federal officer and approved by the Attorney
22 General;

23 “(B) on the basis of the facts submitted by
24 the applicant, for the United States person who

1 is the target of the acquisition, there is prob-
2 able cause to believe that the target is—

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

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

8 “(C) the proposed minimization proce-
9 dures, with respect to their dissemination provi-
10 sions, meet the definition of minimization pro-
11 cedures under section 101(h) or section 301(4),
12 as appropriate; and

13 “(D) the application that has been filed
14 contains all statements and certifications re-
15 quired by subsection (b) and the certification
16 provided under subsection (b)(5) is not clearly
17 erroneous on the basis of the information fur-
18 nished under subsection (b).

19 “(2) PROBABLE CAUSE.—In determining
20 whether or not probable cause exists for purposes of
21 an order under paragraph (1)(B), a judge having ju-
22 risdiction under subsection (a)(1) may consider past
23 activities of the target and facts and circumstances
24 relating to current or future activities of the target.
25 No United States person may be considered a for-

1 eign power, agent of a foreign power, or officer or
2 employee of a foreign power solely upon the basis of
3 activities protected by the first amendment to the
4 Constitution of the United States.

5 “(3) REVIEW.—

6 “(A) LIMITATIONS ON REVIEW.—Review
7 by a judge having jurisdiction under subsection
8 (a)(1) shall be limited to that required to make
9 the findings described in paragraph (1). The
10 judge shall not have jurisdiction to review the
11 means by which an acquisition under this sec-
12 tion may be conducted.

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

22 “(C) REVIEW OF MINIMIZATION PROCE-
23 DURES.—If the judge determines that the mini-
24 mization procedures applicable to dissemination
25 of information obtained through an acquisition

1 under this subsection do not meet the definition
2 of minimization procedures under section
3 101(h) or section 301(4), as appropriate, the
4 judge shall enter an order so stating and pro-
5 vide a written statement for the record of the
6 reasons for such determination. The Govern-
7 ment may appeal an order under this clause
8 pursuant to subsection (e).

9 “(D) SCOPE OF REVIEW OF CERTIFI-
10 CATION.—If the judge determines that an appli-
11 cation under subsection (b) does not contain all
12 the required elements, or that the certification
13 provided under subsection (b)(5) is clearly erro-
14 neous on the basis of the information furnished
15 under subsection (b), the judge shall enter an
16 order so stating and provide a written state-
17 ment for the record of the reasons for such de-
18 termination. The Government may appeal an
19 order under this subparagraph pursuant to sub-
20 section (e).

21 “(4) DURATION.—An order under this para-
22 graph shall be effective for a period not to exceed 90
23 days and such order may be renewed for additional
24 90-day periods upon submission of renewal applica-
25 tions meeting the requirements of subsection (b).

1 “(5) COMPLIANCE.—At or prior to the end of
2 the period of time for which an order or extension
3 is granted under this section, the judge may assess
4 compliance with the minimization procedures re-
5 ferred to in paragraph (1)(C) by reviewing the cir-
6 cumstances under which information concerning
7 United States persons was disseminated, provided
8 that the judge may not inquire into the cir-
9 cumstances relating to the conduct of the acquisi-
10 tion.

11 “(d) EMERGENCY AUTHORIZATION.—

12 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
13 TION.—Notwithstanding any other provision of this
14 section, if the Attorney General reasonably deter-
15 mines that—

16 “(A) an emergency situation exists with re-
17 spect to the acquisition of foreign intelligence
18 information for which an order may be obtained
19 under subsection (c) before an order under that
20 subsection can, with due diligence, be obtained,
21 and

22 “(B) the factual basis for the issuance of
23 an order under this section exists,
24 the Attorney General may authorize the emergency
25 acquisition if a judge having jurisdiction under sub-

1 section (a)(1) is informed by the Attorney General
2 or a designee of the Attorney General at the time of
3 such authorization that the decision has been made
4 to conduct such acquisition and if an application in
5 accordance with this section is made to a judge of
6 the Foreign Intelligence Surveillance Court as soon
7 as practicable, but not more than 7 days after the
8 Attorney General authorizes such acquisition.

9 “(2) MINIMIZATION PROCEDURES.—If the At-
10 torney General authorizes an emergency acquisition
11 under paragraph (1), the Attorney General shall re-
12 quire that the minimization procedures referred to in
13 subsection (c)(1)(C) be followed.

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

22 “(4) USE OF INFORMATION.—If an application
23 submitted to the Court pursuant to paragraph (1) is
24 denied, or in any other case where the acquisition is
25 terminated and no order with respect to the target

1 of the acquisition is issued under subsection (c), no
2 information obtained or evidence derived from such
3 acquisition, except under circumstances in which the
4 target of the acquisition is determined not to be a
5 United States person, shall be received in evidence
6 or otherwise disclosed in any trial, hearing, or other
7 proceeding in or before any court, grand jury, de-
8 partment, office, agency, regulatory body, legislative
9 committee, or other authority of the United States,
10 a State, or political subdivision thereof, and no in-
11 formation concerning any United States person ac-
12 quired from such acquisition shall subsequently be
13 used or disclosed in any other manner by Federal of-
14 ficers or employees without the consent of such per-
15 son, except with the approval of the Attorney Gen-
16 eral if the information indicates a threat of death or
17 serious bodily harm to any person.

18 “(e) APPEAL.—

19 “(1) APPEAL TO THE COURT OF REVIEW.—The
20 Government may file an appeal with the Foreign In-
21 telligence Surveillance Court of Review for review of
22 an order issued pursuant to subsection (c). The
23 Court of Review shall have jurisdiction to consider
24 such appeal and shall provide a written statement

1 for the record of the reasons for a decision under
2 this paragraph.

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

10 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-
11 THORIZATIONS.**

12 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
13 quisition targeting a United States person under section
14 703 or section 704 is proposed to be conducted both inside
15 and outside the United States, a judge having jurisdiction
16 under section 703(a)(1) or section 704(a)(1) may issue si-
17 multaneously, upon the request of the Government in a
18 joint application complying with the requirements of sec-
19 tion 703(b) and section 704(b), orders under section
20 703(c) and section 704(c), as appropriate.

21 “(b) CONCURRENT AUTHORIZATION.—If an order
22 authorizing electronic surveillance or physical search has
23 been obtained under section 105 or section 304 and that
24 order is still in effect, during the effective period of that
25 order, the Attorney General may authorize, without an

1 order under section 703 or section 704, the targeting of
2 that United States person for the purpose of acquiring for-
3 eign intelligence information while such person is reason-
4 ably believed to be located outside the United States.

5 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE**
6 **VII.**

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

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

18 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

19 “(a) SEMIANNUAL REPORT.—Not less frequently
20 than once every 6 months, the Attorney General shall fully
21 inform, in a manner consistent with national security, the
22 congressional intelligence committees and the Committees
23 on the Judiciary of the Senate and the House of Rep-
24 resentatives, consistent with the Rules of the House of
25 Representatives, the Standing Rules of the Senate, and

1 Senate Resolution 400 of the 94th Congress or any suc-
2 cessor Senate resolution, concerning the implementation
3 of this title.

4 “(b) CONTENT.—Each report made under subsection
5 (a) shall include—

6 “(1) with respect to section 702—

7 “(A) any certifications made under section
8 702(g) during the reporting period;

9 “(B) with respect to each determination
10 made under section 702(c)(2), the reasons for
11 exercising the authority under such section;

12 “(C) any directives issued under section
13 702(h) during the reporting period;

14 “(D) a description of the judicial review
15 during the reporting period of any such certifi-
16 cations and targeting and minimization proce-
17 dures required by subsections (d) and (e) of
18 section 702 and utilized with respect to such
19 acquisition, including a copy of any order or
20 pleading in connection with such review that
21 contains a significant legal interpretation of the
22 provisions of section 702;

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

1 “(F) any compliance reviews conducted by
2 the Attorney General or the Director of Na-
3 tional Intelligence of acquisitions authorized
4 under section 702(a);

5 “(G) a description of any incidents of non-
6 compliance with a directive issued by the Attor-
7 ney General and the Director of National Intel-
8 ligence under section 702(h), including—

9 “(i) incidents of noncompliance by an
10 element of the intelligence community with
11 procedures and guidelines adopted in ac-
12 cordance with subsections (d), (e), and (f)
13 of section 702; and

14 “(ii) incidents of noncompliance by a
15 specified person to whom the Attorney
16 General and Director of National Intel-
17 ligence issued a directive under section
18 702(h); and

19 “(H) any procedures implementing section
20 702;

21 “(2) with respect to section 703—

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

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

25 “(i) granted;

1 “(ii) modified; or

2 “(iii) denied; and

3 “(C) the total number of emergency acqui-
4 sitions authorized by the Attorney General
5 under section 703(d) and the total number of
6 subsequent orders approving or denying such
7 acquisitions; and

8 “(3) with respect to section 704—

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

11 “(B) the total number of such orders

12 “(i) granted;

13 “(ii) modified; or

14 “(iii) denied; and

15 “(C) the total number of emergency acqui-
16 sitions authorized by the Attorney General
17 under section 704(d) and the total number of
18 subsequent orders approving or denying such
19 applications.

20 **“SEC. 708. SAVINGS PROVISION.**

21 “Nothing in this title shall be construed to limit the
22 authority of the Government to seek an order or author-
23 ization under, or otherwise engage in any activity that is
24 authorized under, any other title of this Act or chapter
25 119, 121, or 206 of title 18, United States Code.”.

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

- 4 (1) by striking the item relating to title VII;
5 (2) by striking the item relating to section 701;
6 and
7 (3) by adding at the end the following:

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

- “Sec. 701. Definitions.
“Sec. 702. Procedures for targeting certain persons outside the United States
other than United States persons.
“Sec. 703. Certain acquisitions inside the United States of United States per-
sons outside the United States.
“Sec. 704. Other acquisitions targeting United States persons outside the
United States.
“Sec. 705. Joint applications and concurrent authorizations.
“Sec. 706. Use of information acquired under title VII.
“Sec. 707. Congressional oversight.
“Sec. 708. Savings provision.”.

8 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) TITLE 18, UNITED STATES CODE.—Section
10 2511(2)(a)(ii)(A) of title 18, United States Code, is
11 amended by inserting “or a court order pursuant to
12 section 704 of the Foreign Intelligence Surveillance
13 Act of 1978” after “assistance”.

14 (2) FOREIGN INTELLIGENCE SURVEILLANCE
15 ACT OF 1978.—Section 601(a)(1) of the Foreign In-
16 telligence Surveillance Act of 1978 (50 U.S.C.
17 1871(a)(1)) is amended—

18 (A) in subparagraph (C); by striking
19 “and”; and

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

3 “(E) acquisitions under section 703; and

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

5 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
6 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
7 **TION OF CERTAIN COMMUNICATIONS MAY BE**
8 **CONDUCTED.**

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

13 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
14 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
15 TAIN COMMUNICATIONS MAY BE CONDUCTED

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

22 “(b) Only an express statutory authorization for elec-
23 tronic surveillance or the interception of domestic wire,
24 oral, or electronic communications, other than as an
25 amendment to this Act or chapters 119, 121, or 206 of

1 title 18, United States Code, shall constitute an additional
2 exclusive means for the purpose of subsection (a).”.

3 (b) OFFENSE.—Section 109(a) of the Foreign Intel-
4 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
5 amended by striking “authorized by statute” each place
6 it appears in such section and inserting “authorized by
7 this Act, chapter 119, 121, or 206 of title 18, United
8 States Code, or any express statutory authorization that
9 is an additional exclusive means for conducting electronic
10 surveillance under section 112.”; and

11 (c) CONFORMING AMENDMENTS.—

12 (1) TITLE 18, UNITED STATES CODE.—Section
13 2511(2)(a) of title 18, United States Code, is
14 amended by adding at the end the following:

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

22 (2) TABLE OF CONTENTS.—The table of con-
23 tents in the first section of the Foreign Intelligence
24 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)