

1 formation concerning any United States person ac-
2 quired from such acquisition shall subsequently be
3 used or disclosed in any other manner by Federal of-
4 ficers or employees without the consent of such per-
5 son, except with the approval of the Attorney Gen-
6 eral if the information indicates a threat of death or
7 serious bodily harm to any person.

8 “(e) APPEAL.—

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

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

1 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-**
2 **THORIZATIONS.**

3 “(a) **JOINT APPLICATIONS AND ORDERS.**—If an ac-
4 quisition targeting a United States person under section
5 703 or section 704 is proposed to be conducted both inside
6 and outside the United States, a judge having jurisdiction
7 under section 703(a)(1) or section 704(a)(1) may issue si-
8 multaneously, upon the request of the Government in a
9 joint application complying with the requirements of sec-
10 tion 703(b) and section 704(b), orders under section
11 703(c) and section 704(c), as appropriate.

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

21 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE**
22 **VII.**

23 “(a) **INFORMATION ACQUIRED UNDER SECTION**
24 **702.**—Information acquired from an acquisition con-
25 ducted under section 702 shall be deemed to be informa-
26 tion acquired from an electronic surveillance pursuant to

1 title I for purposes of section 106, except for the purposes
2 of subsection (j) of such section.

3 “(b) INFORMATION ACQUIRED UNDER SECTION
4 703.—Information acquired from an acquisition con-
5 ducted under section 703 shall be deemed to be informa-
6 tion acquired from an electronic surveillance pursuant to
7 title I for purposes of section 106.

8 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

9 “(a) SEMIANNUAL REPORT.—Not less frequently
10 than once every 6 months, the Attorney General shall fully
11 inform, in a manner consistent with national security, the
12 congressional intelligence committees and the Committees
13 on the Judiciary of the Senate and the House of Rep-
14 resentatives, consistent with the Rules of the House of
15 Representatives and the Standing Rules of the Senate,
16 concerning the implementation of this title.

17 “(b) CONTENT.—Each report made under subsection
18 (a) shall include—

19 “(1) with respect to section 702—

20 “(A) any certifications made under section
21 702(g) during the reporting period;

22 “(B) with respect to each determination
23 made under section 702(c)(1)(A)(ii), the rea-
24 sons for exercising the authority under such
25 section;

1 “(C) any directives issued under section
2 702(h) during the reporting period;

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

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

15 “(F) any compliance reviews conducted by
16 the Attorney General or the Director of Na-
17 tional Intelligence of acquisitions authorized
18 under section 702(a);

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

23 “(i) incidents of noncompliance by an
24 element of the intelligence community with
25 procedures and guidelines adopted in ac-

1 cordance with subsections (d), (e), and (f)
2 of section 702; and
3 “(ii) incidents of noncompliance by a
4 specified person to whom the Attorney
5 General and Director of National Intel-
6 ligence issued a directive under section
7 702(h); and
8 “(H) any procedures implementing section
9 702;
10 “(2) with respect to section 703—
11 “(A) the total number of applications made
12 for orders under section 703(b);
13 “(B) the total number of such orders—
14 “(i) granted;
15 “(ii) modified; or
16 “(iii) denied; and
17 “(C) the total number of emergency acqui-
18 sitions authorized by the Attorney General
19 under section 703(d) and the total number of
20 subsequent orders approving or denying such
21 acquisitions; and
22 “(3) with respect to section 704—
23 “(A) the total number of applications made
24 for orders under 704(b);
25 “(B) the total number of such orders

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

9 **“SEC. 708. SAVINGS PROVISION.**

10 “Nothing in this title shall be construed to limit the
11 authority of the Government to seek an order or author-
12 ization under, or otherwise engage in any activity that is
13 authorized under, any other title of this Act or chapter
14 119, 121, or 206 of title 18, United States Code.”.

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

- 18 (1) by striking the item relating to title VII;
19 (2) by striking the item relating to section 701;
20 and
21 (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.”.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

11 (A) in subparagraph (C), by striking
12 “and”; and

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

15 “(E) acquisitions under section 703; and

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

17 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
18 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
19 **TION OF CERTAIN COMMUNICATIONS MAY BE**
20 **CONDUCTED.**

21 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
22 the Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1801 et seq.) is amended by adding at the end
2 the following new section:

3 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
4 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
5 TAIN COMMUNICATIONS MAY BE CONDUCTED

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

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

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

26 (c) CONFORMING AMENDMENTS.—

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

4 “(iii) If a certification under subpara-
5 graph (ii)(B) for assistance to obtain for-
6 eign intelligence information is based on
7 statutory authority, the certification shall
8 identify the specific statutory provision,
9 and shall certify that the statutory require-
10 ments have been met.”; and

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

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

16 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
17 **ORDERS UNDER THE FOREIGN INTEL-**
18 **LIGENCE SURVEILLANCE ACT OF 1978.**

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

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

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

7 “(1) a copy of any decision, order, or opinion
8 issued by the Foreign Intelligence Surveillance Court
9 or the Foreign Intelligence Surveillance Court of Re-
10 view that includes significant construction or inter-
11 pretation of any provision of this Act, and any
12 pleadings, applications, or memoranda of law associ-
13 ated with such decision, order, or opinion, not later
14 than 45 days after such decision, order, or opinion
15 is issued; and

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

23 “(d) PROTECTION OF NATIONAL SECURITY.—The
24 Attorney General, in consultation with the Director of Na-
25 tional Intelligence, may authorize redactions of materials

1 described in subsection (c) that are provided to the com-
2 mittees of Congress referred to in subsection (a), if such
3 redactions are necessary to protect the national security
4 of the United States and are limited to sensitive sources
5 and methods information or the identities of targets.”.

6 (e) DEFINITIONS.—Such section 601, as amended by
7 subsections (a) and (b), is further amended by adding at
8 the end the following:

9 “(e) DEFINITIONS.—In this section:

10 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
11 COURT.—The term ‘Foreign Intelligence Surveillance
12 Court’ means the court established by section
13 103(a).

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

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

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

21 (1) in subsection (a)—

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

23 (B) by redesignating paragraphs (3)
24 through (10) as paragraphs (2) through (9), re-
25 spectively;

1 (C) in paragraph (5), as redesignated by
2 subparagraph (B) of this paragraph, by striking
3 “detailed”;

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

7 (i) by striking “Affairs or” and insert-
8 ing “Affairs,”; and

9 (ii) by striking “Senate—” and insert-
10 ing “Senate, or the Deputy Director of the
11 Federal Bureau of Investigation, if des-
12 ignated by the President as a certifying of-
13 ficial—”;

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

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

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

24 (2) by striking subsection (b);

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

3 (4) in paragraph (1)(A) of subsection (d), as re-
4 designated by paragraph (3) of this subsection, by
5 striking “or the Director of National Intelligence”
6 and inserting “the Director of National Intelligence,
7 or the Director of the Central Intelligence Agency”.

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

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

11 (1) in subsection (a)—

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

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

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

18 (3) in subsection (c)(1)—

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

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

23 (C) by striking subparagraph (F);

24 (4) by striking subsection (d);

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

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

5 “(e)(1) Notwithstanding any other provision of this
6 title, the Attorney General may authorize the emergency
7 employment of electronic surveillance if the Attorney Gen-
8 eral—

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

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

17 “(C) informs, either personally or through a
18 designee, a judge having jurisdiction under section
19 103 at the time of such authorization that the deci-
20 sion has been made to employ emergency electronic
21 surveillance; and

22 “(D) makes an application in accordance with
23 this title to a judge having jurisdiction under section
24 103 as soon as practicable, but not later than 7 days

1 after the Attorney General authorizes such surveil-
2 lance.

3 “(2) If the Attorney General authorizes the emer-
4 gency employment of electronic surveillance under para-
5 graph (1), the Attorney General shall require that the
6 minimization procedures required by this title for the
7 issuance of a judicial order be followed.

8 “(3) In the absence of a judicial order approving such
9 electronic surveillance, the surveillance shall terminate
10 when the information sought is obtained, when the appli-
11 cation for the order is denied, or after the expiration of
12 7 days from the time of authorization by the Attorney
13 General, whichever is earliest.

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

16 “(5) In the event that such application for approval
17 is denied, or in any other case where the electronic surveil-
18 lance is terminated and no order is issued approving the
19 surveillance, no information obtained or evidence derived
20 from such surveillance shall be received in evidence or oth-
21 erwise disclosed in any trial, hearing, or other proceeding
22 in or before any court, grand jury, department, office,
23 agency, regulatory body, legislative committee, or other
24 authority of the United States, a State, or political sub-
25 division thereof, and no information concerning any

1 United States person acquired from such surveillance shall
2 subsequently be used or disclosed in any other manner by
3 Federal officers or employees without the consent of such
4 person, except with the approval of the Attorney General
5 if the information indicates a threat of death or serious
6 bodily harm to any person.

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

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

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

18 **SEC. 106. USE OF INFORMATION.**

19 Subsection (i) of section 106 of the Foreign Intel-
20 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is
21 amended by striking “radio communication” and inserting
22 “communication”.

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

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

5 (1) in subsection (a)—

6 (A) by striking paragraph (2);

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

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

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

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

19 (i) by striking “Affairs or” and insert-
20 ing “Affairs,”; and

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

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

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

8 (1) in subsection (a)—

9 (A) by striking paragraph (1);

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

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

16 (2) by amending subsection (e) to read as fol-
17 lows:

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

21 “(A) reasonably determines that an emergency
22 situation exists with respect to the employment of a
23 physical search to obtain foreign intelligence infor-
24 mation before an order authorizing such physical
25 search can with due diligence be obtained;

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

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

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

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

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

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

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

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

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

- 1 (1) in section 304(a)(4), as redesignated by
2 subsection (b) of this section, by striking
3 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and
4 (2) in section 305(k)(2), by striking
5 “303(a)(7)” and inserting “303(a)(6)”.

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

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

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

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

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

20 (b) EN BANC AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

18 (a) **DEFINITIONS.**—

19 (1) **FOREIGN POWER.**—Subsection (a) of sec-
20 tion 101 of the Foreign Intelligence Surveillance Act
21 of 1978 (50 U.S.C. 1801(a)) is amended—

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

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

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

3 “(7) an entity not substantially composed of
4 United States persons that is engaged in the inter-
5 national proliferation of weapons of mass destruc-
6 tion.”.

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

9 (A) in subparagraph (B), by striking “or”
10 at the end;

11 (B) in subparagraph (C), by striking “or”
12 at the end; and

13 (C) by adding at the end the following new
14 subparagraphs:

15 “(D) engages in the international prolifera-
16 tion of weapons of mass destruction, or activi-
17 ties in preparation therefor; or

18 “(E) engages in the international prolifera-
19 tion of weapons of mass destruction, or activi-
20 ties in preparation therefor for or on behalf of
21 a foreign power; or”.

22 (3) FOREIGN INTELLIGENCE INFORMATION.—
23 Subsection (e)(1)(B) of such section 101 is amended
24 by striking “sabotage or international terrorism”
25 and inserting “sabotage, international terrorism, or

1 the international proliferation of weapons of mass
2 destruction”.

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

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

7 “(1) any explosive, incendiary, or poison gas de-
8 vice that is designed, intended, or has the capability
9 to cause a mass casualty incident;

10 “(2) any weapon that is designed, intended, or
11 has the capability to cause death or serious bodily
12 injury to a significant number of persons through
13 the release, dissemination, or impact of toxic or poi-
14 sonous chemicals or their precursors;

15 “(3) any weapon involving a biological agent,
16 toxin, or vector (as such terms are defined in section
17 178 of title 18, United States Code) that is de-
18 signed, intended, or has the capability of causing
19 death, illness, or serious bodily injury to a signifi-
20 cant number of persons; or

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

25 (b) USE OF INFORMATION.—

1 (1) IN GENERAL.—Section 106(k)(1)(B) of the
2 Foreign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
4 otage or international terrorism” and inserting “sab-
5 otage, international terrorism, or the international
6 proliferation of weapons of mass destruction”.

7 (2) PHYSICAL SEARCHES.—Section
8 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
9 is amended by striking “sabotage or international
10 terrorism” and inserting “sabotage, international
11 terrorism, or the international proliferation of weap-
12 ons of mass destruction”.

13 (c) TECHNICAL AND CONFORMING AMENDMENT.—
14 Section 301(1) of the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting
16 “weapon of mass destruction,” after “person,”.

17 **TITLE II—PROTECTIONS FOR**
18 **ELECTRONIC COMMUNICA-**
19 **TION SERVICE PROVIDERS**

20 **SEC. 201. PROCEDURES FOR IMPLEMENTING STATUTORY**
21 **DEFENSES UNDER THE FOREIGN INTEL-**
22 **LIGENCE SURVEILLANCE ACT OF 1978.**

23 The Foreign Intelligence Surveillance Act of 1978
24 (50 U.S.C. 1801 et seq.), as amended by section 101, is

1 further amended by adding at the end the following new
2 title:

3 **“TITLE VIII—PROTECTION OF**
4 **PERSONS ASSISTING THE**
5 **GOVERNMENT**

6 **“SEC. 801. DEFINITIONS.**

7 “In this title:

8 “(1) ASSISTANCE.—The term ‘assistance’
9 means the provision of, or the provision of access to,
10 information (including communication contents,
11 communications records, or other information relat-
12 ing to a customer or communication), facilities, or
13 another form of assistance.

14 “(2) CONGRESSIONAL INTELLIGENCE COMMIT-
15 TEES.—The term ‘congressional intelligence commit-
16 tees’ means—

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

19 “(B) the Permanent Select Committee on
20 Intelligence of the House of Representatives.

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

23 “(4) COVERED CIVIL ACTION.—The term ‘cov-
24 ered civil action’ means a civil action filed in a Fed-
25 eral or State court that—

1 “(A) alleges that an electronic communica-
2 tion service provider furnished assistance to an
3 element of the intelligence community; and

4 “(B) seeks monetary or other relief from
5 the electronic surveillance communication serv-
6 ice provider related to the provision of such as-
7 sistance.

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

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

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

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

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

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

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

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

11 “(7) PERSON.—The term ‘person’ means—

12 “(A) an electronic communication service
13 provider; or

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

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

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

23 “(iii) a directive under section
24 102(a)(4), 105B(e), as added by section 2

1 of the Protect America Act of 2007 (Public
2 Law 110-55), or 702(h).

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

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

12 “(a) REQUIREMENT FOR CERTIFICATION.—Notwith-
13 standing any other provision of law, no civil action may
14 lie or be maintained in a Federal or State court against
15 any person for providing assistance to an element of the
16 intelligence community, and shall be promptly dismissed,
17 if the Attorney General certifies to the district court of
18 the United States that—

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

22 “(2) any assistance by that person was provided
23 pursuant to a certification in writing under section
24 2511(2)(a)(ii)(B) or 2709(b) of title 18, United
25 States Code;

1 “(3) any assistance by that person was provided
2 pursuant to a directive under sections 102(a)(4),
3 105B(e), as added by section 2 of the Protect Amer-
4 ica Act of 2007 (Public Law 110-55), or 702(h) di-
5 recting such assistance;

6 “(4) in the case of a covered civil action, the as-
7 sistance alleged to have been provided by the elec-
8 tronic communication service provider was—

9 “(A) in connection with an intelligence ac-
10 tivity involving communications that was—

11 “(i) authorized by the President dur-
12 ing the period beginning on September 11,
13 2001, and ending on January 17, 2007;
14 and

15 “(ii) designed to detect or prevent a
16 terrorist attack, or activities in preparation
17 for a terrorist attack, against the United
18 States; and

19 “(B) the subject of a written request or di-
20 rective, or a series of such requests or direc-
21 tives, from the Attorney General or the head of
22 an element of the intelligence community (or
23 the deputy of such person) to the electronic
24 communication service provider indicating that
25 the activity was—

1 “(i) authorized by the President; and

2 “(ii) determined to be lawful; or

3 “(5) the person did not provide the alleged as-
4 sistance.

5 “(b) JUDICIAL REVIEW.—

6 “(1) REVIEW OF CERTIFICATIONS.—A certifi-
7 cation made pursuant to subsection (a) shall be
8 given effect unless the court finds that such certifi-
9 cation is not supported by substantial evidence pro-
10 vided to the court pursuant to subsection (a), para-
11 graph (2), and subsection (d).

12 “(2) SUPPLEMENTAL MATERIALS.—In its re-
13 view of a certification made pursuant to subsection
14 (a), the court may examine the court order, certifi-
15 cation, or directive described in subsection (a), any
16 relevant court order, certification, written request or
17 directive submitted pursuant to subsection (d).

18 “(c) LIMITATIONS ON DISCLOSURE.—If the Attorney
19 General files a declaration under section 1746 of title 28,
20 United States Code, that disclosure of a certification made
21 pursuant to subsection (a) or the supplemental materials
22 provided pursuant to subsection (b) or (d) would harm the
23 national security of the United States, the court shall—

24 “(1) review such certification and the supple-
25 mental materials in camera and ex parte; and

1 “(2) limit any public disclosure concerning such
2 certification and the supplemental materials, includ-
3 ing any public order following such in camera and
4 ex parte review, to a statement that the conditions
5 for dismissal of subsection (a) have been met, or
6 that the court has been unable to determine that
7 they have been met, and a description of the legal
8 standards that govern the order, without disclosing
9 the paragraph of subsection (a) that is the basis for
10 the certification.

11 “(d) **ROLE OF THE PARTIES.**—Any plaintiff or de-
12 fendant in a civil action may submit any relevant court
13 order, certification, written request, or directive to the dis-
14 trict court referred to in subsection (a) for review and
15 shall be permitted to participate in the briefing or argu-
16 ment of any legal issue in a judicial proceeding conducted
17 pursuant to this section, but only to the extent that such
18 participation does not require the disclosure of classified
19 information to such party. To the extent that classified
20 information is relevant to the proceeding or would be re-
21 vealed in the determination of an issue, the court shall
22 review such information in camera and ex parte, and make
23 any part of the court’s written order that would reveal
24 classified information under seal.

1 “(e) NONDELEGATION.—The authority and duties of
2 the Attorney General under this section shall be performed
3 by the Attorney General or a designee in a position not
4 lower than Deputy Attorney General.

5 “(f) APPEAL.—The courts of appeals shall have juris-
6 diction of appeals from interlocutory orders of the district
7 courts of the United States granting or denying a motion
8 to dismiss or for summary judgment under this section.

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

15 “(h) RELATIONSHIP TO OTHER LAWS.—Nothing in
16 this section may be construed to limit any otherwise avail-
17 able immunity, privilege, or defense under any other provi-
18 sion of law.

19 “(i) APPLICABILITY.—This section shall apply to a
20 civil action pending on or filed after the date of enactment
21 of the FISA Amendments Act of 2008.

22 **“SEC. 803. PREEMPTION.**

23 “(a) IN GENERAL.—No State shall have authority
24 to—

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

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

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

11 “(4) commence or maintain a civil action or
12 other proceeding to enforce a requirement that an
13 electronic communication service provider disclose
14 information concerning alleged assistance to an ele-
15 ment of the intelligence community.

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

19 “(c) JURISDICTION.—The district courts of the
20 United States shall have jurisdiction over any civil action
21 brought by the United States to enforce the provisions of
22 this section.

23 “(d) APPLICATION.—This section shall apply to any
24 investigation, action, or proceeding that is pending on or

1 commenced after the date of enactment of the FISA
2 Amendments Act of 2008.

3 **“SEC. 804. REPORTING.**

4 “(a) SEMIANNUAL REPORT.—Not less frequently
5 than once every 6 months, the Attorney General shall fully
6 inform, in a manner consistent with national security and
7 the Rules of the House of Representatives and the Stand-
8 ing Rules of the Senate, the congressional intelligence
9 committees, the Committee on the Judiciary of the Senate,
10 and the Committee on the Judiciary of the House of Rep-
11 resentatives concerning the implementation of this title.

12 “(b) CONTENT.—Each report made under subsection
13 (a) shall include—

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

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

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

19 **SEC. 202. TECHNICAL AMENDMENTS.**

20 The table of contents in the first section of the For-
21 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
22 1801 et seq.), as amended by section 101(b), is further
23 amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE
GOVERNMENT

“Sec. 801. Definitions

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.
“Sec. 804. Reporting.”.

1 **TITLE III—REVIEW OF PREVIOUS**
2 **ACTIONS**

3 **SEC. 301. REVIEW OF PREVIOUS ACTIONS.**

4 (a) DEFINITIONS.—In this section:

5 (1) APPROPRIATE COMMITTEES OF CON-
6 GRESS.—The term “appropriate committees of Con-
7 gress” means—

8 (A) the Select Committee on Intelligence
9 and the Committee on the Judiciary of the Sen-
10 ate; and

11 (B) the Permanent Select Committee on
12 Intelligence and the Committee on the Judici-
13 ary of the House of Representatives.

14 (2) FOREIGN INTELLIGENCE SURVEILLANCE
15 COURT.—The term “Foreign Intelligence Surveil-
16 lance Court” means the court established by section
17 103(a) of the Foreign Intelligence Surveillance Act
18 of 1978 (50 U.S.C. 1803(a)).

19 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND
20 PROGRAM.—The terms “President’s Surveillance
21 Program” and “Program” mean the intelligence ac-
22 tivity involving communications that was authorized
23 by the President during the period beginning on
24 September 11, 2001, and ending on January 17,

1 2007, including the program referred to by the
2 President in a radio address on December 17, 2005
3 (commonly known as the Terrorist Surveillance Pro-
4 gram).

5 (b) REVIEWS.—

6 (1) REQUIREMENT TO CONDUCT.—The Inspec-
7 tors General of the Department of Justice, the Of-
8 fice of the Director of National Intelligence, the Na-
9 tional Security Agency, the Department of Defense,
10 and any other element of the intelligence community
11 that participated in the President's Surveillance Pro-
12 gram, shall complete a comprehensive review of, with
13 respect to the oversight authority and responsibility
14 of each such Inspector General—

15 (A) all of the facts necessary to describe
16 the establishment, implementation, product, and
17 use of the product of the Program;

18 (B) access to legal reviews of the Program
19 and access to information about the Program;

20 (C) communications with, and participa-
21 tion of, individuals and entities in the private
22 sector related to the Program;

23 (D) interaction with the Foreign Intel-
24 ligence Surveillance Court and transition to
25 court orders related to the Program; and

1 (E) any other matters identified by any
2 such Inspector General that would enable that
3 Inspector General to complete a review of the
4 Program, with respect to such Department or
5 element.

6 (2) COOPERATION AND COORDINATION.—

7 (A) COOPERATION.—Each Inspector Gen-
8 eral required to conduct a review under para-
9 graph (1) shall—

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

13 (ii) utilize to the extent practicable,
14 and not unnecessarily duplicate or delay,
15 such reviews or audits that have been com-
16 pleted or are being undertaken by any such
17 Inspector General or by any other office of
18 the Executive Branch related to the Pro-
19 gram.

20 (B) INTEGRATION OF OTHER REVIEWS.—

21 The Office of Professional Responsibility of the
22 Department of Justice shall provide the report
23 of any investigation conducted by such Office
24 on matters relating to the Program, including
25 any investigation of the process through which

1 legal reviews of the Program were conducted
2 and the substance of such reviews, to the In-
3 spector General of the Department of Justice,
4 who shall integrate the factual findings and
5 conclusions of such investigation into its review

6 (C) COORDINATION.—The Inspectors Gen-
7 eral shall designate one of the Inspectors Gen-
8 eral required to conduct a review under para-
9 graph (1) that is appointed by the President, by
10 and with the advice and consent of the Senate,
11 to coordinate the conduct of the reviews and the
12 preparation of the reports.

13 (c) REPORTS.—

14 (1) PRELIMINARY REPORTS.—Not later than 60
15 days after the date of the enactment of this Act, the
16 Inspectors General of the Department of Justice, the
17 Office of the Director of National Intelligence, the
18 National Security Agency, the Department of De-
19 fense, and any other Inspector General required to
20 conduct a review under subsection (b)(1), shall sub-
21 mit to the appropriate committees of Congress an
22 interim report that describes the planned scope of
23 such review.

24 (2) FINAL REPORT.—Not later than 1 year
25 after the date of the enactment of this Act, the In-

1 spectors General of the Department of Justice, the
2 Office of the Director of National Intelligence, the
3 National Security Agency, and any other Inspector
4 General required to conduct a review under sub-
5 section (b)(1), shall submit to the appropriate com-
6 mittees of Congress, to the extent practicable, a
7 comprehensive report on such reviews that includes
8 any recommendations of any such Inspectors Gen-
9 eral within the oversight authority and responsibility
10 of any such Inspector General with respect to the re-
11 views.

12 (3) FORM.—A report submitted under this sub-
13 section shall be submitted in unclassified form, but
14 may include a classified annex. The unclassified re-
15 port shall not disclose the name or identity of any
16 individual or entity of the private sector that partici-
17 pated in the Program or with whom there was com-
18 munication about the Program, to the extent that
19 information is classified.

20 (d) RESOURCES.—

21 (1) EXPEDITED SECURITY CLEARANCE.—The
22 Director of National Intelligence shall ensure that
23 the process for the investigation and adjudication of
24 an application by an Inspector General or any ap-
25 propriate staff of an Inspector General for a security

1 clearance necessary for the conduct of the review
2 under subsection (b)(1) is carried out as expedi-
3 tiously as possible.

4 (2) ADDITIONAL PERSONNEL FOR THE INSPEC-
5 TORS GENERAL.—An Inspector General required to
6 conduct a review under subsection (b)(1) and submit
7 a report under subsection (c) is authorized to hire
8 such additional personnel as may be necessary to
9 carry out such review and prepare such report in a
10 prompt and timely manner. Personnel authorized to
11 be hired under this paragraph—

12 (A) shall perform such duties relating to
13 such a review as the relevant Inspector General
14 shall direct; and

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

17 **TITLE IV—OTHER PROVISIONS**

18 **SEC. 401. SEVERABILITY.**

19 If any provision of this Act, any amendment made
20 by this Act, or the application thereof to any person or
21 circumstances is held invalid, the validity of the remainder
22 of the Act, any such amendments, and of the application
23 of such provisions to other persons and circumstances
24 shall not be affected thereby.

1 **SEC. 402. EFFECTIVE DATE.**

2 Except as provided in section 404, the amendments
3 made by this Act shall take effect on the date of the enact-
4 ment of this Act.

5 **SEC. 403. REPEALS.**

6 (a) **REPEAL OF PROTECT AMERICA ACT OF 2007**
7 **PROVISIONS.—**

8 (1) **AMENDMENTS TO FISA.—**

9 (A) **IN GENERAL.—**Except as provided in
10 section 404, sections 105A, 105B, and 105C of
11 the Foreign Intelligence Surveillance Act of
12 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are
13 repealed.

14 (B) **TECHNICAL AND CONFORMING AMEND-**
15 **MENTS.—**

16 (i) **TABLE OF CONTENTS.—**The table
17 of contents in the first section of the For-
18 eign Intelligence Surveillance Act of 1978
19 (50 U.S.C. 1801 et seq.) is amended by
20 striking the items relating to sections
21 105A, 105B, and 105C.

22 (ii) **CONFORMING AMENDMENTS.—**Ex-
23 cept as provided in section 404, section
24 103(e) of the Foreign Intelligence Surveil-
25 lance Act of 1978 (50 U.S.C. 1803(e)) is
26 amended—

1 (I) in paragraph (1), by striking
2 “105B(h) or 501(f)(1)” and inserting
3 “501(f)(1) or 702(h)(4)”; and
4 (II) in paragraph (2), by striking
5 “105B(h) or 501(f)(1)” and inserting
6 “501(f)(1) or 702(h)(4)”.

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

11 (3) TRANSITION PROCEDURES.—Except as pro-
12 vided in section 404, subsection (b) of section 6 of
13 the Protect America Act of 2007 (Public Law 110-
14 55; 121 Stat. 556) is repealed.

15 (b) FISA AMENDMENTS ACT OF 2008.—

16 (1) IN GENERAL.—Except as provided in sec-
17 tion 404, effective December 31, 2012, title VII of
18 the Foreign Intelligence Surveillance Act of 1978, as
19 amended by section 101(a), is repealed.

20 (2) TECHNICAL AND CONFORMING AMEND-
21 MENTS.—Effective December 31, 2012—

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

1 (B) except as provided in section 404, sec-
2 tion 601(a)(1) of such Act (50 U.S.C.
3 1871(a)(1)) is amended to read as such section
4 read on the day before the date of the enact-
5 ment of this Act; and

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

11 **SEC. 404. TRANSITION PROCEDURES.**

12 (a) **TRANSITION PROCEDURES FOR PROTECT AMER-**
13 **ICA ACT OF 2007 PROVISIONS.—**

14 (1) **CONTINUED EFFECT OF ORDERS, AUTHOR-**
15 **IZATIONS, DIRECTIVES.—**Notwithstanding any other
16 provision of law, any order, authorization, or direc-
17 tive issued or made pursuant to section 105B of the
18 Foreign Intelligence Surveillance Act of 1978, as
19 added by section 2 of the Protect America Act of
20 2007 (Public Law 110-55; 121 Stat. 552), shall con-
21 tinue in effect until the expiration of such order, au-
22 thorization, or directive.

23 (2) **APPLICABILITY OF PROTECT AMERICA ACT**
24 **OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS,**
25 **DIRECTIVES.—**Notwithstanding any other provision

1 of this Act, any amendment made by this Act or the
2 Foreign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1801 et seq.)—

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

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

18 (i) the expiration of such order, au-
19 thorization, or directive; or

20 (ii) the date on which final judgment
21 is entered for any petition or other litiga-
22 tion relating to such order, authorization,
23 or directive.

24 (3) USE OF INFORMATION.—Information ac-
25 quired from an acquisition conducted pursuant to an

1 order, authorization, or directive referred to in para-
2 graph (1) shall be deemed to be information ac-
3 quired from an electronic surveillance pursuant to
4 title I of the Foreign Intelligence Surveillance Act of
5 1978 (50 U.S.C. 1801 et seq.) for purposes of sec-
6 tion 106 of such Act (50 U.S.C. 1806), except for
7 purposes of subsection (j) of such section.

8 (4) PROTECTION FROM LIABILITY.—Subsection
9 (l) of section 105B of the Foreign Intelligence Sur-
10 veillance Act of 1978, as added by section 2 of the
11 Protect America Act of 2007, shall continue to apply
12 with respect to any directives issued pursuant to
13 such section 105B.

14 (5) JURISDICTION OF FOREIGN INTELLIGENCE
15 SURVEILLANCE COURT.—Notwithstanding any other
16 provision of this Act or of the Foreign Intelligence
17 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
18 section 103(e) of the Foreign Intelligence Surveil-
19 lance Act (50 U.S.C. 1803(e)), as amended by sec-
20 tion 5(a) of the Protect America Act of 2007 (Public
21 Law 110-55; 121 Stat. 556), shall continue to apply
22 with respect to a directive issued pursuant to section
23 105B of the Foreign Intelligence Surveillance Act of
24 1978, as added by section 2 of the Protect America
25 Act of 2007, until the later of—

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

3 or

4 (B) the date on which final judgment is
5 entered for any petition or other litigation relat-
6 ing to such order, authorization, or directive.

7 (6) REPORTING REQUIREMENTS.—

8 (A) CONTINUED APPLICABILITY.—Not-
9 withstanding any other provision of this Act,
10 any amendment made by this Act, the Protect
11 America Act of 2007 (Public Law 110-55), or
12 the Foreign Intelligence Surveillance Act of
13 1978 (50 U.S.C. 1801 et seq.), section 4 of the
14 Protect America Act of 2007 shall continue to
15 apply until the date that the certification de-
16 scribed in subparagraph (B) is submitted.

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

19 (i) made by the Attorney General;

20 (ii) submitted as part of a semi-an-
21 nual report required by section 4 of the
22 Protect America Act of 2007;

23 (iii) that states that there will be no
24 further acquisitions carried out under sec-
25 tion 105B of the Foreign Intelligence Sur-

1 veillance Act of 1978, as added by section
2 2 of the Protect America Act of 2007,
3 after the date of such certification; and

4 (iv) that states that the information
5 required to be included under such section
6 4 relating to any acquisition conducted
7 under such section 105B has been included
8 in a semi-annual report required by such
9 section 4.

10 (7) REAUTHORIZATION OF ORDERS, AUTHOR-
11 IZATIONS, AND DIRECTIVES.—If the Attorney Gen-
12 eral and the Director of National Intelligence seek to
13 replace an authorization made pursuant to section
14 105B of the Foreign Intelligence Surveillance Act of
15 1978, as added by section 2 of the Protect America
16 Act of 2007 (Public Law 110-55; 121 Stat. 522), by
17 filing a certification pursuant to section 702(i)(5)(A)
18 of the Foreign Intelligence Surveillance Act of 1978
19 (as added by section 101(a) of this Act), that au-
20 thorization, and any directives issues thereunder and
21 any order related thereto, shall remain in effect until
22 the Court issues an order with respect to that cer-
23 tification under section 702(i)(3) of the Foreign In-
24 telligence Surveillance Act of 1978 (as so added) at

1 which time the provision of that section and of sec-
2 tion 702(i)(4) of such Act shall apply.

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

6 (b) TRANSITION PROCEDURES FOR FISA AMEND-
7 MENTS ACT OF 2008 PROVISIONS.—

8 (1) ORDERS IN EFFECT ON DECEMBER 31,
9 2012.—Notwithstanding any other provision of this
10 Act, any amendment made by this Act, or the For-
11 eign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1801 et seq.), any order, authorization, or di-
13 rective issued or made under title VII of the Foreign
14 Intelligence Surveillance Act of 1978, as amended by
15 section 101(a), shall continue in effect until the date
16 of the expiration of such order, authorization, or di-
17 rective.

18 (2) APPLICABILITY OF TITLE VII OF FISA TO
19 CONTINUED ORDERS, AUTHORIZATIONS, DIREC-
20 TIVES.—Notwithstanding any other provision of this
21 Act, any amendment made by this Act, or the For-
22 eign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1801 et seq.), with respect to any order, au-
24 thorization, or directive referred to in paragraph (1),

1 title VII of such Act, as amended by section 101(a),
2 shall continue to apply until the later of—

3 (A) the expiration of such order, authoriza-
4 tion, or directive; or

5 (B) the date on which final judgment is
6 entered for any petition or other litigation relat-
7 ing to such order, authorization, or directive.

8 (3) CHALLENGE OF DIRECTIVES; PROTECTION
9 FROM LIABILITY; USE OF INFORMATION.—Notwith-
10 standing any other provision of this Act or of the
11 Foreign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1801 et seq.)—

13 (A) section 103(e) of such Act, as amended
14 by section 113, shall continue to apply with re-
15 spect to any directive issued pursuant to section
16 702(h) of such Act, as added by section 101(a);

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

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

1 (D) section 706 of such Act (as so added)
2 shall continue to apply to an acquisition con-
3 ducted under section 702 or 703 of such Act
4 (as so added); and

5 (E) section 2511(2)(a)(ii)(A) of title 18,
6 United States Code, as amended by section
7 101(c)(1), shall continue to apply to an order
8 issued pursuant to section 704 of the Foreign
9 Intelligence Surveillance Act of 1978, as added
10 by section 101(a).

11 (4) REPORTING REQUIREMENTS.—

12 (A) CONTINUED APPLICABILITY.—Not-
13 withstanding any other provision of this Act or
14 of the Foreign Intelligence Surveillance Act of
15 1978 (50 U.S.C. 1801 et seq.), section 601(a)
16 of such Act (50 U.S.C. 1871(a)), as amended
17 by section 101(c)(2), and sections 702(l) and
18 707 of such Act, as added by section 101(a),
19 shall continue to apply until the date that the
20 certification described in subparagraph (B) is
21 submitted.

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

24 (i) made by the Attorney General;

1 (ii) submitted to the Select Committee
2 on Intelligence of the Senate, the Perma-
3 nent Select Committee on Intelligence of
4 the House of Representatives, and the
5 Committees on the Judiciary of the Senate
6 and the House of Representatives;

7 (iii) that states that there will be no
8 further acquisitions carried out under title
9 VII of the Foreign Intelligence Surveil-
10 lance Act of 1978, as amended by section
11 101(a), after the date of such certification;
12 and

13 (iv) that states that the information
14 required to be included in a review, assess-
15 ment, or report under section 601 of such
16 Act, as amended by section 101(e), or sec-
17 tion 702(l) or 707 of such Act, as added
18 by section 101(a), relating to any acquisi-
19 tion conducted under title VII of such Act,
20 as amended by section 101(a), has been in-
21 cluded in a review, assessment, or report
22 under such section 601, 702(l), or 707.

23 (5) TRANSITION PROCEDURES CONCERNING
24 THE TARGETING OF UNITED STATES PERSONS OVER-
25 SEAS.—Any authorization in effect on the date of

1 enactment of this Act under section 2.5 of Executive
2 Order 12333 to intentionally target a United States
3 person reasonably believed to be located outside the
4 United States shall continue in effect, and shall con-
5 stitute a sufficient basis for conducting such an ac-
6 quisition targeting a United States person located
7 outside the United States until the earlier of—

- 8 (A) the date that authorization expires; or
9 (B) the date that is 90 days after the date
10 of the enactment of this Act.