

(45 PAGES)

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2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

7 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

13 Sec.104.Applications for court orders.

14 Sec.105.Issuance of an order.

15 Sec.106.Use of information.

16 Sec.107.Amendments for physical searches

WITHHOLD

Exemption 5

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

18 Sec.109.Foreign Intelligence Surveillance Court.

19 Sec.110.Weapons of mass destruction.

20 TITLE II—PROTECTIONS FOR ELECTRONIC  
21 COMMUNICATION SERVICE PROVIDERS

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

24 Sec.202.Technical amendments.

25 TITLE III—REVIEW OF PREVIOUS ACTIONS

26 Sec.301.Review of previous actions.

27 TITLE IV—OTHER PROVISIONS

28 Sec.401.Severability.

29 Sec.402.Effective date.

30 Sec.403.Repeals.

31 Sec.404.Transition procedures.

32 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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1 SEC. 101. ADDITIONAL PROCEDURES REGARDING  
2 CERTAIN PERSONS OUTSIDE THE UNITED STATES.

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

5 (1) by striking title VII; and

6 (2) by adding after title VI the following new title at the end:

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

9 “SEC. 701. DEFINITIONS.

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

14 “(b) Additional Definitions.—

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

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

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

20 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign  
21 Intelligence Surveillance Court’ and ‘Court’ mean the court established by under section  
22 103(a).

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

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

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

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

32 “(C) a provider of a remote computing service, as that term is defined in section  
33 2711 of title 18, United States Code;

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

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

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

5           **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN**  
6           **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**  
7           **UNITED STATES PERSONS.**

8           “(a) Authorization.—Notwithstanding any other provision of law, upon the issuance of an  
9           order in accordance with subsection (i)(3) or a determination under subsection (c)(2), the  
10          Attorney General and the Director of National Intelligence may authorize jointly, for a period of  
11          up to 1 year from the effective date of the authorization, the targeting of persons reasonably  
12          believed to be located outside the United States to acquire foreign intelligence information.

13          “(b) Limitations.—An acquisition authorized under subsection (a)—

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

16                  “(2) may not intentionally target a person reasonably believed to be located outside the  
17                  United States if the purpose of such acquisition is to target a particular, known person  
18                  reasonably believed to be in the United States;

19                  “(3) may not intentionally target a United States person reasonably believed to be located  
20                  outside the United States;

21                  “(4) may not intentionally acquire any communication as to which the sender and all  
22                  intended recipients are known at the time of the acquisition to be located in the United  
23                  States; and

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

26          “(c) Conduct of Acquisition.—

27                  “(1) IN GENERAL.—An acquisition authorized under subsection (a) ~~may~~ **shall** be  
28                  conducted only in accordance with—

29                          ~~“(A) a certification in accordance with subsection (g), as soon as such certification is~~  
30                          ~~submitted in accordance with such subsection; and~~

31                          ~~“(B) the targeting and minimization procedures adopted in accordance with~~  
32                          ~~subsections (d) and (e); and~~

33                          **“(B) upon submission of a certification in accordance with subsection (g), such**  
34                          **certification.;**

35  
36                  “(2) DETERMINATION.—A determination under this paragraph **and for purposes of**  
37                  **subsection (a)** is a determination by the Attorney General and the Director of National  
38                  Intelligence that exigent circumstances exist because, without immediate implementation of

1 an authorization under ~~paragraph (1)~~ subsection (a), intelligence important to the national  
2 security of the United States may be lost or not timely acquired and time does not permit the  
3 issuance of an order pursuant to subsection (i)(3) prior to the implementation of such  
4 authorization.

5 “(3) TIMING OF DETERMINATION.—The Attorney General and the Director of National  
6 Intelligence may make the determination under paragraph (2)—(2)—

7 “(A) before the submission of a certification under subsection (g); or

8 “(B) by amending a certification pursuant to subsection (i)(1)(C) at any time during  
9 which judicial review under subsection (i) of such certification is pending.

10 “(4) CONSTRUCTION. —Nothing in title I shall be construed to require an application for a  
11 court order under such title for an acquisition that is targeted in accordance with this section  
12 at a person reasonably believed to be located outside the United States.

13 “(d) Targeting Procedures.—

14 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director  
15 of National Intelligence, shall adopt targeting procedures that are reasonably designed to—

16 “(A) ensure that any acquisition authorized under subsection (a) is limited to  
17 targeting persons reasonably believed to be located outside the United States; and

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

21 “(2) JUDICIAL REVIEW.—The procedures ~~required by adopted in accordance with~~  
22 paragraph (1) shall be subject to judicial review pursuant to subsection (i).

23 “(e) Minimization Procedures.—

24 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director  
25 of National Intelligence, shall adopt minimization procedures that meet the definition of  
26 minimization procedures under section 101(h) or section 301(4), as appropriate, for  
27 acquisitions authorized under subsection (a).

28 “(2) JUDICIAL REVIEW.—The minimization procedures ~~required by adopted in~~  
29 ~~accordance with~~ paragraph (1) shall be subject to judicial review pursuant to subsection (i).

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

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

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

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

35 “(2) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines  
36 adopted ~~pursuant to in accordance with~~ paragraph (1) to—

37 “(A) the congressional intelligence committees;

38 “(B) the Committee on the Judiciary of the Senate;

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

2           “(D) the Foreign Intelligence Surveillance Court.

3           “(g) Certification.—

4           “(1) IN GENERAL.—

5           “(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an  
6           ~~acquisition authorized~~ **implementation of an authorization** under subsection (a), the  
7           Attorney General and the Director of National Intelligence shall provide to the Foreign  
8           Intelligence Surveillance Court, ~~under oath~~, a written certification and any supporting  
9           affidavit, ~~under oath and under seal~~, in accordance with this subsection.

10          “(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence  
11          make a determination under subsection (c)(2) and time does not permit the submission  
12          of a certification under this subsection prior to the **implementation of an** authorization  
13          referred to in such ~~under~~ subsection (a), the Attorney General and the Director of  
14          National Intelligence shall submit to the Court a certification for such authorization as  
15          soon as practicable but in no event later than 7 days after such determination is made.

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

17           “(A) attest that—

18           “(i) there are reasonable procedures in place that have been approved, have  
19           been submitted for approval, or will be submitted with the certification for  
20           approval by the Foreign Intelligence Surveillance Court— ~~Court to—~~

21           “(I) ~~for ensuring~~ **ensure that the an** acquisition authorized under  
22           subsection (a) is targeted at persons reasonably believed to be located outside  
23           the United States; and

24           “(II) ~~to prevent~~ the intentional acquisition of any communication as to  
25           which the sender and all intended recipients are known at the time of the  
26           acquisition to be located in the United States;

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

28           “(I) meet the definition of minimization procedures under section 101(h)  
29           or section 301(4), as appropriate; and

30           “(II) have been approved, have been submitted for approval, or will be  
31           submitted with the certification for approval by the Foreign Intelligence  
32           Surveillance Court;

33           “(iii) guidelines have been adopted in accordance with subsection (f) to ensure  
34           compliance with the limitations in subsection (b) and to ensure that applications  
35           for court orders are filed if as required by this Act;

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

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

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

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

4           “(B) include the procedures adopted in accordance with subsections (d) and (e);

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

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

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

10          “(D) include—

11          “(i) an effective date for the authorization that is at least 30 days after the  
12          submission of the written certification to the court; or

13          “(ii) if the acquisition has begun or the effective date is less than 30 days after  
14          the submission of the written certification to the court, the date the acquisition  
15          began or the effective date for the acquisition; and

16          “(E) if the Attorney General and the Director of National Intelligence make a  
17          determination under subsection ~~(e)(1)(A)(ii)(c)~~(2), include a statement that such  
18          determination has been made.

19          “(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of National  
20          Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by  
21          submitting an amended certification in accordance with this subsection to the Foreign  
22          Intelligence Surveillance Court for review pursuant to subsection (i).

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

26          “(5) MAINTENANCE OF CERTIFICATION.—The Attorney General or a designee of the  
27          Attorney General shall maintain a copy of a certification made under this subsection.

28          “(6) REVIEW.—~~THE REVIEW.~~—A certification ~~required by~~ submitted in accordance  
29          with this subsection shall be subject to judicial review pursuant to subsection (i).

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

31          “(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the  
32          Attorney General and the Director of National Intelligence may direct, in writing, an  
33          electronic communication service provider to—

34          “(A) immediately provide the Government with all information, facilities, or  
35          assistance necessary to accomplish the acquisition in a manner that will protect the  
36          secrecy of the acquisition and produce a minimum of interference with the services  
37          that such electronic communication service provider is providing to the target of the  
38          acquisition; and

39          “(B) maintain under security procedures approved by the Attorney General and the

1 Director of National Intelligence any records concerning the acquisition or the aid  
2 furnished that such electronic communication service provider wishes to maintain.

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

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

9 “(4) CHALLENGING OF DIRECTIVES.—

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

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

17 “(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set  
18 aside a directive may grant such petition only if the judge finds that the directive does  
19 not meet the requirements of this section, or is otherwise unlawful.

20 “(D) PROCEDURES FOR INITIAL REVIEW.—A judge shall conduct an initial review of a  
21 petition filed under subparagraph (A) not later than 5 days after being assigned such  
22 petition. If the judge determines that the petition does not consist of claims, defenses,  
23 or other legal contentions that are warranted by existing law or by a nonfrivolous  
24 argument for extending, modifying, or reversing existing law or for establishing new  
25 law, the judge shall immediately deny the petition and affirm the directive or any part  
26 of the directive that is the subject of the petition and order the recipient to comply with  
27 the directive or any part of it. Upon making ~~such~~ a determination **under this**  
28 **subparagraph** or promptly thereafter, the judge shall provide a written statement for  
29 the record of the reasons for a ~~such~~ determination ~~under this subparagraph~~.

30 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition  
31 described in subparagraph (A) requires plenary review, the judge shall affirm, modify,  
32 or set aside the directive that is the subject of that petition not later than 30 days after  
33 being assigned the petition. If the Court does not set aside the directive, the judge shall  
34 immediately affirm or affirm with modifications the directive, and order the recipient  
35 to comply with the directive in its entirety or as modified. The judge shall provide a  
36 written statement for the record of the reasons for a determination under this  
37 subparagraph.

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

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

42 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

20       “(6) APPEAL.—

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

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

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

34          “(1) IN GENERAL.—

35               “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
36               Intelligence Surveillance Court shall have jurisdiction to review any certification  
37               submitted in accordance with subsection (g) and the targeting and minimization  
38               procedures adopted in accordance with subsections (d) and (e), and any amendments to  
39               such certification or procedures.

40               “(B) TIME PERIOD FOR REVIEW.—The Court shall review the a certification  
41               submitted in accordance with subsection (g) and the targeting and minimization  
42               procedures adopted in accordance with subsections (d) and (e) and shall complete such

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1 review and issue an order under paragraph (3) not later than 30 days after the date on  
2 which such certification and procedures are submitted.

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

14 “(2) REVIEW.—The Court shall review the following:

15 “(A) CERTIFICATION.—A certification submitted in accordance with subsection (g)  
16 to determine whether the certification contains all the required elements.

17 “(B) TARGETING PROCEDURES.—The targeting procedures adopted in accordance  
18 with subsection (d) to assess whether the procedures are reasonably designed to—

19 “(i) ensure that the acquisition authorized under subsection (a) is limited to the  
20 targeting of persons reasonably believed to be located outside the United States;  
21 and

22 “(ii) prevent the intentional acquisition of any communication as to which the  
23 sender and all intended recipients are known at the time of the acquisition to be  
24 located in the United States.

25 “(C) MINIMIZATION PROCEDURES.—The minimization procedures ~~submitted~~  
26 **adopted** in accordance with subsection (e) to assess whether such procedures meet the  
27 definition of minimization procedures under section 101(h) or section 301(4), as  
28 appropriate.

29 “(3) ORDERS.—

30 “(A) APPROVAL.—If the Court finds that a certification submitted in accordance  
31 with subsection (g) contains all of the required elements and that the targeting and  
32 minimization procedures adopted in accordance with subsections (d) and (e) are  
33 consistent with the requirements of those subsections and with the fourth amendment  
34 to the Constitution of the United States, the Court shall enter an order approving the  
35 certification and the use, or continued use in the case of an acquisition authorized  
36 pursuant to a determination under subsection (c)(2), of the procedures for the  
37 acquisition.

38 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification submitted  
39 in accordance with subsection (g) does not contain all of the required elements, or that  
40 the procedures adopted in accordance with subsections (d) and (e) are not consistent  
41 with the requirements of those subsections or the fourth amendment to the Constitution  
42 of the United States, the Court shall issue an order directing the Government to, at the

1 Government's election and to the extent required by the Court's order—

2 "(i) correct any deficiency identified by the Court's order not later than 30 days  
3 after the date the Court issues the order; or

4 "(ii) cease, or not begin, the acquisition authorized under subsection (a).

5 "(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of ~~its orders~~ an order  
6 under this subsection, the Court shall provide, simultaneously with the ~~orders~~ order,  
7 for the record a written statement of ~~its the~~ reasons for the order.

8 "(4) APPEAL.—

9 "(A) APPEAL TO THE COURT OF REVIEW.—The Government may ~~appeal any order~~  
10 ~~under this section to file a petition with~~ the Foreign Intelligence Surveillance Court of  
11 Review, ~~which for review of an order under this subsection. The Court of Review~~  
12 shall have jurisdiction to ~~review~~ consider such ~~order~~ a petition. For any decision  
13 affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance  
14 Court, the Court of Review shall provide for the record a written statement of ~~its the~~  
15 reasons for the decision.

16 "(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any  
17 acquisition affected by an order under paragraph (3)(B) may continue—

18 "(i) during the pendency of any rehearing of the order by the Court en banc;  
19 and

20 "(ii) if the Government appeals an order under this section, until the Court of  
21 Review enters an order under subparagraph (C).

22 "(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of  
23 an appeal of an order under paragraph (3)(B) directing the correction of a deficiency,  
24 the Court of Review shall determine, and enter a corresponding order regarding,  
25 whether all or any part of the correction order, as issued or modified, shall be  
26 implemented during the pendency of the appeal.

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

32 "(5) SCHEDULE.—

33 "~~(A) Replacement of authorizations in effect.—If the Attorney General and the~~  
34 ~~Director of National Intelligence seek to replace an authorization issued pursuant to~~  
35 ~~section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section~~  
36 ~~2 of the Protect America Act of 2007 (Public Law 110-55) with an authorization under~~  
37 ~~this section, the Attorney General and the Director of National Intelligence shall, to the~~  
38 ~~extent practicable, submit to the Court the certification prepared in accordance with~~  
39 ~~subsection (g) and the procedures adopted in accordance with subsections (d) and (e) at~~  
40 ~~least 30 days before the expiration of such authorization.~~

41 "~~(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General~~

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1 and the Director of National Intelligence seek to reauthorize or replace an authorization  
2 issued pursuant to this section, the Attorney General and the Director of National  
3 Intelligence shall, to the extent practicable, submit to the Court the certification  
4 prepared in accordance with subsection (g) and the procedures adopted in accordance  
5 with subsections (d) and (e) at least 30 days prior to the expiration of such  
6 authorization.

7 ~~“(C)“(B)~~ REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the  
8 Attorney General and the Director of National Intelligence seek to **reauthorize or**  
9 **replace an authorization** made pursuant to this section by filing a certification pursuant  
10 to ~~paragraph (B)~~ **subparagraph (A)**, that authorization, and any directives issued  
11 thereunder and any order related thereto, shall remain in effect, **notwithstanding the**  
12 **expiration provided for in subsection (a)**, until the Court issues an order with respect  
13 to **that such certification under paragraph (3) at which time the provisions of that**  
14 **paragraph and paragraph (4) shall apply with respect to such certification.**

15 “(j) Judicial Proceedings.—

16 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be  
17 conducted as expeditiously as possible.

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

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

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

28 “(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In  
29 any proceedings under this section, the court shall, upon request of the Government, review  
30 ex parte and in camera any Government submission, or portions of a submission, which  
31 may include classified information.

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

35 “(l) Assessments and Reviews.—

36 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the  
37 Attorney General and Director of National Intelligence shall assess compliance with the  
38 targeting and minimization procedures adopted in accordance with subsections (d) and (e)  
39 and the guidelines adopted in accordance with subsection (f) and shall submit each such  
40 assessment to—

41 “(A) the Foreign Intelligence Surveillance Court; and

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1           “(B) consistent with the Rules of the House of Representatives, the Standing Rules  
2 of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate  
3 resolution—

4           “(i) the congressional intelligence committees; and

5           “(ii) the Committees on the Judiciary of the House of Representatives and the  
6 Senate.

7           “(2) AGENCY ASSESSMENT.—The ~~Inspecters~~ **Inspector** General of the Department of  
8 Justice and the **Inspector General** of each element of the intelligence community  
9 authorized to acquire foreign intelligence information under subsection (a), with respect to  
10 the department or element of such **Inspector General**—

11           “(A) are authorized to review the compliance with the targeting and minimization  
12 procedures adopted in accordance with subsections (d) and (e) and the guidelines  
13 adopted in accordance with subsection (f);

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

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

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

23           “(i) the Attorney General;

24           “(ii) the Director of National Intelligence; and

25           “(iii) consistent with the Rules of the House of Representatives, the Standing  
26 Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any  
27 successor Senate resolution—

28           “(I) the congressional intelligence committees; and

29           “(II) the Committees on the Judiciary of the House of Representatives and  
30 the Senate.

31           “(3) ANNUAL REVIEW.—

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

37           “(i) an accounting of the number of disseminated intelligence reports  
38 containing a reference to a United States person identity;

39           “(ii) an accounting of the number of United States person identities  
40 subsequently disseminated by that element in response to requests for identities

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

2 “(iii) the number of targets that were later determined to be located in the  
3 United States and, to the extent possible, whether their communications of such  
4 targets were reviewed; and

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

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

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

19 “(i) the Foreign Intelligence Surveillance Court;

20 “(ii) the Attorney General;

21 “(iii) the Director of National Intelligence; and

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

25 “(I) the congressional intelligence committees; and

26 “(II) the Committees on the Judiciary of the House of Representatives and  
27 the Senate.

28 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE**  
29 **UNITED STATES OF TARGETING UNITED STATES**  
30 **PERSONS OUTSIDE THE UNITED STATES.**

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

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

38 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably  
39 believed to be located in the United States during the effective period of an order issued

1 pursuant to subsection (c), an acquisition targeting such United States person under this  
2 section shall cease unless the targeted United States person is again reasonably believed to  
3 be located outside the United States while an order issued pursuant to subsection (c) is in  
4 effect. Nothing in this ~~paragraph~~ section shall be construed to limit the authority of the  
5 Government to seek an order or authorization under, or otherwise engage in any activity  
6 that is authorized under, any other title of this Act ~~or chapter 119, 121, or 206 of title 18,~~  
7 ~~United States Code.~~

8 “(b) Application.—

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

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

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

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

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

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

22 “(D) a statement of proposed minimization procedures that meet the definition of  
23 minimization procedures under section 101(h) or section 301(4), as appropriate;

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

26 “(F) a certification made by the Attorney General or an official specified in section  
27 104(a)(6) that—

28 “(i) the certifying official deems the information sought to be foreign  
29 intelligence information;

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

32 “(iii) such information cannot reasonably be obtained by normal investigative  
33 techniques;

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

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

37 “(I) the information sought is the type of foreign intelligence information  
38 designated; and

39 “(II) such information cannot reasonably be obtained by normal

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1                   investigative techniques;

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

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

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

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

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

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

20                  “(c) Order.—

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

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

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

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

30                  “(ii) a foreign power, an agent of a foreign power, or an officer or employee of  
31                  a foreign power;

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

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

38                  “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for  
39                  purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may  
40                  consider past activities of the target and facts and circumstances relating to current or future

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

4 “(3) REVIEW.—

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

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

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

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

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

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

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

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

35 “(D) a summary of the means by which the acquisition will be conducted and  
36 whether physical entry is required to effect the acquisition; and

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

38 “(5) DIRECTIVES.—An order approving an acquisition under this subsection shall direct—

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

1           “(B) if applicable, an electronic communication service provider to provide to the  
2           Government forthwith all information, facilities, or assistance necessary to accomplish  
3           the acquisition authorized under such order in a manner that will protect the secrecy of  
4           the acquisition and produce a minimum of interference with the services that such  
5           electronic communication service provider is providing to the target of the acquisition;

6           “(C) if applicable, an electronic communication service provider to maintain under  
7           security procedures approved by the Attorney General any records concerning the  
8           acquisition or the aid furnished that such electronic communication service provider  
9           wishes to maintain; and

10          “(D) if applicable, that the Government compensate, at the prevailing rate, such  
11          electronic communication service provider for providing such information, facilities,  
12          or assistance.

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

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

21          “(d) Emergency Authorization.—

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

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

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

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

35               “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an acquisition  
36               under paragraph (1), the Attorney General shall require that the minimization procedures  
37               referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

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

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1           “(4) USE OF INFORMATION.—If an application for approval submitted pursuant to  
2 paragraph (1) is denied, or in any other case where the acquisition is terminated and no  
3 order is issued approving the acquisition, no information obtained or evidence derived from  
4 such acquisition, except under circumstances in which the target of the acquisition is  
5 determined not to be a United States person, shall be received in evidence or otherwise  
6 disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,  
7 department, office, agency, regulatory body, legislative committee, or other authority of the  
8 United States, a State, or political subdivision thereof, and no information concerning any  
9 United States person acquired from such acquisition shall subsequently be used or disclosed  
10 in any other manner by Federal officers or employees without the consent of such person,  
11 except with the approval of the Attorney General if the information indicates a threat of  
12 death or serious bodily harm to any person.

13           “(e) Release From Liability.—No cause of action shall lie in any court against any electronic  
14 communication service provider for providing any information, facilities, or assistance in  
15 accordance with an order or request for emergency assistance issued pursuant to subsections  
16 subsection (c) or (d).

17           “(f) Appeal.—

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

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

27           “(g) Construction.—Nothing in title 4 Construction.—Except as provided in this section,  
28 nothing in this Act shall be construed to require an application for a court order under such title  
29 for an acquisition that is targeted in accordance with this section at a United States person  
30 reasonably believed to be located outside the United States.

## 31           “SEC. 704. OTHER ACQUISITIONS TARGETING UNITED 32 STATES PERSONS OUTSIDE THE UNITED STATES.

33           “(a) Jurisdiction and Scope.—

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

36           “(2) SCOPE.—No element of the intelligence community may intentionally target, for the  
37 purpose of acquiring foreign intelligence information, a United States person reasonably  
38 believed to be located outside the United States under circumstances in which the targeted  
39 United States person has a reasonable expectation of privacy and a warrant would be  
40 required if the acquisition were conducted inside the United States for law enforcement  
41 purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order  
42 with respect to such targeted United States person or the Attorney General has authorized an

1 emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

2 “(3) LIMITATIONS.—

3 “(A) MOVING OR MISIDENTIFIED TARGETS.—If a United States person targeted under  
4 this subsection is reasonably believed to be located in the United States during the  
5 effective period of an order issued pursuant to subsection (c), an acquisition targeting  
6 such United States person under this section shall cease unless the targeted United  
7 States person is again reasonably believed to be located outside the United States  
8 during the effective period of such order.

9 “(B) APPLICABILITY.—If an acquisition for foreign intelligence purposes is to be  
10 conducted inside the United States and could be authorized under section 703, the  
11 acquisition may only be conducted if authorized by under section 703 or in  
12 accordance with another provision of this Act other than this section.

13 “(C) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the  
14 authority of the Government to seek an order or authorization under, or otherwise  
15 engage in any activity that is authorized under, any other title of this Act or chapter  
16 119, 121, or 206 of title 18, United States Code.

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

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

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

25 “(3) a statement of the facts and circumstances relied upon to justify the applicant’s belief  
26 that the United States person who is the target of the acquisition is—

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

28 “(B) a foreign power, an agent of a foreign power, or an officer or employee of a  
29 foreign power;

30 “(4) a statement of proposed minimization procedures that meet the definition of  
31 minimization procedures under section 101(h) or section 301(4), as appropriate;

32 “(5) a certification made by the Attorney General, an official specified in section  
33 104(a)(6), or the head of an element of the intelligence community that—

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

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

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

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

3           “(c) Order.—

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

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

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

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

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

15               “(C) the proposed minimization procedures, with respect to their dissemination  
16 provisions, meet the definition of minimization procedures under section 101(h) or  
17 section 301(4), as appropriate; and

18               “(D) the application that has been filed contains all statements and certifications  
19 required by subsection (b) and the certification provided under subsection (b)(5) is not  
20 clearly erroneous on the basis of the information furnished under subsection (b).

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

28           “(3) REVIEW.—

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

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

38               “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the  
39 minimization procedures applicable to dissemination of information obtained through  
40 an acquisition under this subsection do not meet the definition of minimization  
41 procedures under section 101(h) or section 301(4), as appropriate, the judge shall enter

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1 an order so stating and provide a written statement for the record of the reasons for  
2 such determination. The Government may appeal an order under this ~~el~~ause  
3 subparagraph pursuant to subsection (e).

4 “(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that an  
5 application under subsection (b) does not contain all the required elements, or that the  
6 certification provided under subsection (b)(5) is clearly erroneous on the basis of the  
7 information furnished under subsection (b), the judge shall enter an order so stating  
8 and provide a written statement for the record of the reasons for such determination.  
9 The Government may appeal an order under this subparagraph pursuant to subsection  
10 (e).

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

14 “(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or  
15 extension is granted under this section, the judge may assess compliance with the  
16 minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances  
17 under which information concerning United States persons was disseminated, provided that  
18 the judge may not inquire into the circumstances relating to the conduct of the acquisition.

19 “(d) Emergency Authorization.—

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

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

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

32 “(2) MINIMIZATION PROCEDURES. —If the Attorney General authorizes an emergency  
33 acquisition under paragraph (1), the Attorney General shall require that the minimization  
34 procedures referred to in subsection (c)(1)(C) be followed.

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

40 “(4) USE OF INFORMATION.—If an application submitted to the Court pursuant to  
41 paragraph (1) is denied, or in any other case where the acquisition is terminated and no  
42 order with respect to the target of the acquisition is issued under subsection (c), no

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1 information obtained or evidence derived from such acquisition, except under  
2 circumstances in which the target of the acquisition is determined not to be a United States  
3 person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other  
4 proceeding in or before any court, grand jury, department, office, agency, regulatory body,  
5 legislative committee, or other authority of the United States, a State, or political  
6 subdivision thereof, and no information concerning any United States person acquired from  
7 such acquisition shall subsequently be used or disclosed in any other manner by Federal  
8 officers or employees without the consent of such person, except with the approval of the  
9 Attorney General if the information indicates a threat of death or serious bodily harm to any  
10 person.

11 “(e) Appeal.—

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

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

21 “SEC. 705. JOINT APPLICATIONS AND CONCURRENT  
22 AUTHORIZATIONS.

23 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under  
24 section 703 or section 704 is proposed to be conducted both inside and outside the United States,  
25 a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue  
26 simultaneously, upon the request of the Government in a joint application complying with the  
27 requirements of section 703(b) and section 704(b), orders under section 703(c) and section  
28 704(c), as appropriate.

29 “(b) Concurrent Authorization.—If an order authorizing electronic surveillance or physical  
30 search has been obtained under section 105 or section 304 and that order is still in effect, during  
31 the effective period of that order, the Attorney General may authorize, without an order under  
32 section 703 or section 704, the targeting of that United States person for the purpose of acquiring  
33 foreign intelligence information while such person is reasonably believed to be located outside  
34 the United States.

35 “SEC. 706. USE OF INFORMATION ACQUIRED UNDER  
36 TITLE VII.

37 “(a) Information Acquired Under Section 702.—Information acquired from an acquisition  
38 conducted under section 702 shall be deemed to be information acquired from an electronic  
39 surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection  
40 (j) of such section.

41 “(b) Information Acquired Under Section 703.—Information acquired from an acquisition

1 conducted under section 703 shall be deemed to be information acquired from an electronic  
2 surveillance pursuant to title I for purposes of section 106.

3 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

4 **“(a) Semiannual Report.**— Not less frequently than once every 6 months, the Attorney General  
5 shall fully inform, in a manner consistent with national security, the congressional intelligence  
6 committees and the Committees on the Judiciary of the Senate and the House of Representatives,  
7 consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and  
8 Senate Resolution 400 of the 94th Congress or any successor Senate resolution, concerning the  
9 implementation of this title.

10 **“(b) Content.**—Each report made under subsection (a) shall include—

11 **“(1) with respect to section 702 —**

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

13 **“(B) with respect to each determination made under section 702(c)(2), the reasons**  
14 **for exercising the authority under such section;**

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

16 **“(D) a description of the judicial review during the reporting period of any such**  
17 **certifications and targeting and minimization procedures required by adopted in**  
18 **accordance with subsections (d) and (e) of section 702 and utilized with respect to**  
19 **such an acquisition under such section, including a copy of any order or pleading in**  
20 **connection with such review that contains a significant legal interpretation of the**  
21 **provisions of section 702;**

22 **“(E) any actions taken to challenge or enforce a directive under paragraphs**  
23 **paragraph (4) or (5) of section 702(h);**

24 **“(F) any compliance reviews conducted by the Attorney General or the Director of**  
25 **National Intelligence of acquisitions authorized under section 702(a);**

26 **“(G) a description of any incidents of noncompliance with a directive issued by the**  
27 **Attorney General and the Director of National Intelligence under section 702(h),**  
28 **including—**

29 **“(i) incidents of noncompliance by an element of the intelligence community**  
30 **with procedures and guidelines adopted in accordance with subsections (d), (e),**  
31 **and (f) of section 702; and**

32 **“(ii) incidents of noncompliance by a specified person to whom the Attorney**  
33 **General and Director of National Intelligence issued a directive under section**  
34 **702(h); and**

35 **“(H) any procedures implementing section 702;**

36 **“(2) with respect to section 703—**

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

38 **“(B) the total number of such orders—**

- 1                   “(i) granted;  
2                   “(ii) modified; ~~or and~~  
3                   “(iii) denied; and  
4                   “(C) the total number of emergency acquisitions authorized by the Attorney General  
5                   under section 703(d) and the total number of subsequent orders approving or denying  
6                   such acquisitions; and  
7                   “(3) with respect to section 704—  
8                   “(A) the total number of applications made for orders under section 704(b);  
9                   “(B) the total number of such orders  
10                   “(i) granted;  
11                   “(ii) modified; ~~or and~~  
12                   “(iii) denied; and  
13                   “(C) the total number of emergency acquisitions authorized by the Attorney General  
14                   under section 704(d) and the total number of subsequent orders approving or denying  
15                   such applications.

16                   **“SEC. 708. SAVINGS PROVISION.**

17                   “Nothing in this title shall be construed to limit the authority of the Government to seek an  
18                   order or authorization under, or otherwise engage in any activity that is authorized under, any  
19                   other title of this Act ~~or chapter 119, 121, or 206 of title 18, United States Code.” Act.”.~~

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

- 22                   (1) by striking the item relating to title VII;  
23                   (2) by striking the item relating to section 701; and  
24                   (3) by adding at the end the following:

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

27                   “Sec. 701. Definitions.

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

30                   “Sec. 703. Certain acquisitions inside the United States ~~of targeting~~ United States persons outside  
31                   the United States.

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

33                   “Sec. 705. Joint applications and concurrent authorizations.

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

35                   “Sec. 707. Congressional oversight.

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1 "Sec. 708. Savings provision."

2 (c) Technical and Conforming Amendments.—

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

6 (2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 601(a)(1) of the  
7 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended—

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

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

10 "(E) acquisitions under section 703; and

11 "(F) acquisitions under section 704;"

12 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**  
13 **WHICH ELECTRONIC SURVEILLANCE AND**  
14 **INTERCEPTION OF CERTAIN COMMUNICATIONS MAY**  
15 **BE CONDUCTED.**

16 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of  
17 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

18 "statement of exclusive means by which electronic surveillance and interception of certain  
19 communications may be conducted

20 "Sec. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and  
21 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic  
22 surveillance and the interception of domestic wire, oral, or electronic communications may be  
23 conducted.

24 "(b) Only an express statutory authorization for electronic surveillance or the interception of  
25 domestic wire, oral, or electronic communications, other than as an amendment to this Act or  
26 chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive  
27 means for the purpose of subsection (a)."

28 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
29 1809(a)) is amended by striking "authorized by statute" each place it appears in such section and  
30 inserting "authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any  
31 express statutory authorization that is an additional exclusive means for conducting electronic  
32 surveillance under section 112."; and

33 (c) Conforming Amendments.—

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

36 "(iii) If a certification under subparagraph (ii)(B) for assistance to obtain  
37 foreign intelligence information is based on statutory authority, the certification  
38 shall identify the specific statutory provision, and shall certify that the statutory

1 requirements have been met.”; and

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

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

7 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN**  
8 **COURT ORDERS UNDER THE FOREIGN INTELLIGENCE**  
9 **SURVEILLANCE ACT OF 1978.**

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

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

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

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

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

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

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

33 “(e) Definitions.—In this section:

34 “(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term ‘Foreign Intelligence  
35 Surveillance Court’ means the court established by **under** section 103(a).

36 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The term ‘Foreign  
37 Intelligence Surveillance Court of Review’ means the court established by **under** section  
38 103(b).”.

1 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

4 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

22 (2) by striking subsection (b);

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

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

28 SEC. 105. ISSUANCE OF AN ORDER.

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

31 (1) in subsection (a)—

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

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

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

36 (3) in subsection (c)(1)—

- 1 (A) in subparagraph (D), by adding “and” at the end;  
2 (B) in subparagraph (E), by striking “; and” and inserting a period; and  
3 (C) by striking subparagraph (F);  
4 (4) by striking subsection (d);  
5 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),  
6 respectively;  
7 (6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read  
8 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

## 9 SEC. 106. USE OF INFORMATION.

10 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.  
11 1806) is amended by striking “radio communication” and inserting “communication”.

## 12 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

15 (1) in subsection (a)—

16 (A) by striking paragraph (2);

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

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

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

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

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

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

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

32 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
33 1824) is amended—

34 (1) in subsection (a)—

35 (A) by striking paragraph (1);

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

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

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

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

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

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

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

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

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

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

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

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

36 "~~(B)~~"(6) The Attorney General shall assess compliance with the requirements of ~~subparagraph~~  
37 ~~(A)~~ paragraph (5)."

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

40 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking  
41 "303(a)(7)(E)" and inserting "303(a)(6)(E)"; and

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

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

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

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

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

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

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

13 (b) En Banc Authority.—

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

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

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

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

22 “(i) en banc consideration is necessary to secure or maintain uniformity of the court’s  
23 decisions; or

24 “(ii) the proceeding involves a question of exceptional importance.

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

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

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

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

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

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

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

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

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

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

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

18 “(i) Nothing in this Act shall be construed to reduce or contravene the inherent authority of the  
19 court established by subsection (a) to determine, or enforce, compliance with an order or a rule  
20 of such court or with a procedure approved by such court.”.

## 21 SEC. 110. WEAPONS OF MASS DESTRUCTION.

22 (a) Definitions.—

23 (1) FOREIGN POWER.—Subsection (a) of section 101 of the Foreign Intelligence  
24 Surveillance Act of 1978 (50 U.S.C. 1801(a)) is amended—

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

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

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

28 “(7) an entity not substantially composed of United States persons that is engaged in the  
29 international proliferation of weapons of mass destruction.”.

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

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

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

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

34 “(D) engages in the international proliferation of weapons of mass destruction, or  
35 activities in preparation therefor; or

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

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

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

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

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

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

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

16 “(4) any weapon that is designed, intended, or has the capability of releasing to release  
17 radiation or radioactivity causing death, illness, or serious bodily injury to a significant  
18 number of persons.”.

19 (b) Use of Information.—

20 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of  
21 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international  
22 terrorism” and inserting “sabotage, international terrorism, or the international proliferation  
23 of weapons of mass destruction”.

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

27 (c) Technical and Conforming Amendment.—Section 301(1) of the Foreign Intelligence  
28 Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting “weapon of mass  
29 destruction,” after “person,”.

30 TITLE II—PROTECTIONS FOR ELECTRONIC  
31 COMMUNICATION SERVICE PROVIDERS

32 SEC. 201. PROCEDURES FOR IMPLEMENTING  
33 STATUTORY DEFENSES UNDER THE FOREIGN  
34 INTELLIGENCE SURVEILLANCE ACT OF 1978.

35 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by  
36 section 101, is further amended by adding at the end the following new title:

37 “TITLE VIII—PROTECTION OF PERSONS ASSISTING

1 THE GOVERNMENT

2 “SEC. 801. DEFINITIONS.

3 “In this title:

4 “(1) ASSISTANCE.—The term ‘assistance’ means the provision of, or the provision of  
5 access to, information (including communication contents, communications records, or  
6 other information relating to a customer or communication), facilities, or another form of  
7 assistance.

8 “(2) CIVIL ACTION.—The term ‘civil action’ includes a covered civil action.

9 “(3) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence  
10 committees’ means—

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

12 “(B) the Permanent Select Committee on Intelligence of the House of  
13 Representatives.

14 “(3)“(4) CONTENTS.—The term ‘contents’ has the meaning given that term in section  
15 101(n).

16 “(4)“(5) COVERED CIVIL ACTION.—The term ‘covered civil action’ means a civil action  
17 filed in a Federal or State court that—

18 “(A) alleges that an electronic communication service provider furnished assistance  
19 to an element of the intelligence community; and

20 “(B) seeks monetary or other relief from the electronic surveillance communication  
21 service provider related to the provision of such assistance.

22 “(5)“(6) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic  
23 communication service provider’ means—

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

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

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

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

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

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

37 “(6)“(7) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the

1 meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C.  
2 401a(4)).

3 ~~“(7)“(8) PERSON.—~~The term ‘person’ means—

4 “(A) an electronic communication service provider; or

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

7 “(i) an order of the court established under section 103(a) directing such  
8 assistance;

9 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title  
10 18, United States Code; or

11 “(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the  
12 Protect America Act of 2007 (Public Law 110-55), or 702(h).

13 ~~“(8)“(9) STATE.—~~The term ‘State’ means any State, political subdivision of a State, the  
14 Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of  
15 the United States, and includes any officer, public utility commission, or other body  
16 authorized to regulate an electronic communication service provider.

17 **“SEC. 802. PROCEDURES FOR IMPLEMENTING**  
18 **STATUTORY DEFENSES.**

19 **“(a) Requirement for Certification.—**Notwithstanding any other provision of law, a civil  
20 action may not lie or be maintained in a Federal or State court against any person for providing  
21 assistance to an element of the intelligence community, and shall be promptly dismissed, if the  
22 Attorney General certifies to the district court of the United States that—

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

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

27 **“(3) any assistance by that person was provided pursuant to a directive under sections**  
28 **section 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007**  
29 **(Public Law 110-55), or 702(h) directing such assistance;**

30 **“(4) in the case of a covered civil action, the assistance alleged to have been provided by**  
31 **the electronic communication service provider was—**

32 **“(A) in connection with an intelligence activity involving communications that**  
33 **was—**

34 **“(i) authorized by the President during the period beginning on September 11,**  
35 **2001, and ending on January 17, 2007; and**

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

38 **“(B) the subject of a written request or directive, or a series of such written requests**

1 or directives, from the Attorney General or the head of an element of the intelligence  
2 community (or the deputy of such person) to the electronic communication service  
3 provider indicating that the activity was—

4 “(i) authorized by the President; and

5 “(ii) determined to be lawful; or

6 “(5) the person did not provide the alleged assistance.

7 “(b) Judicial Review.—

8 “(1) REVIEW OF CERTIFICATIONS.—A certification made pursuant to subsection (a) shall  
9 be given effect unless the court finds that such certification is not supported by substantial  
10 evidence provided to the court pursuant to this section.

11 “(2) SUPPLEMENTAL MATERIALS.—In its review of a certification made pursuant to  
12 subsection (a), the court may examine the court order, certification, written request, or  
13 directive described in subsection (a) and any relevant court order, certification, written  
14 request, or directive submitted pursuant to subsection (d).

15 “(c) Limitations on Disclosure.—If the Attorney General files a declaration under section  
16 1746 of title 28, United States Code, that disclosure of a certification made pursuant to  
17 subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would  
18 harm the national security of the United States, the court shall—

19 “(1) review such certification and the supplemental materials in camera and ex parte; and

20 “(2) limit any public disclosure concerning such certification and the supplemental  
21 materials, including any public order following such in camera and ex parte review, to a  
22 statement as to whether the case is dismissed and a description of the legal standards that  
23 govern the order, without disclosing the paragraph of subsection (a) that is the basis for the  
24 certification.

25 “(d) Role of the Parties.—Any plaintiff or defendant in a civil action may submit any relevant  
26 court order, certification, written request, or directive to the district court referred to in  
27 subsection (a) for review and shall be permitted to participate in the briefing or argument of any  
28 legal issue in a judicial proceeding conducted pursuant to this section, but only to the extent that  
29 such participation does not require the disclosure of classified information to such party. To the  
30 extent that classified information is relevant to the proceeding or would be revealed in the  
31 determination of an issue, the court shall review such information in camera and ex parte, and  
32 shall issue any part of the court’s written order that would reveal classified information in  
33 camera and ex parte and maintain such part under seal.

34 “(e) Nondelegation.—The authority and duties of the Attorney General under this section shall  
35 be performed by the Attorney General or a designee in a position not lower than Deputy  
36 Attorney General.

37 “(f) Appeal.—The courts of appeals shall have jurisdiction of appeals from interlocutory  
38 orders of the district courts of the United States granting or denying a motion to dismiss or for  
39 summary judgment under this section.

40 “(g) Removal.—A civil action against a person for providing assistance to an element of the  
41 intelligence community that is brought in a State court shall be deemed to arise under the

1 Constitution and laws of the United States and shall be removable under section 1441 of title 28,  
2 United States Code.

3 “(h) Relationship to Other Laws.—Nothing in this section may shall be construed to limit any  
4 otherwise available immunity, privilege, or defense under any other provision of law.

5 “(i) Applicability.—This section shall apply to a civil action pending on or filed after the date  
6 of enactment of the FISA Amendments Act of 2008.

7 “SEC. 803. PREEMPTION.

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

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

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

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

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

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

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

23 “(d) Application.—This section shall apply to any investigation, action, or proceeding that is  
24 pending on or commenced after the date of enactment of the FISA Amendments Act of 2008.

25 “SEC. 804. REPORTING.

26 “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General  
27 shall fully inform, in a manner consistent with national security, the Rules of the House of  
28 Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th  
29 Congress or any successor Senate resolution, the congressional intelligence committees, the  
30 Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of  
31 Representatives concerning the implementation of this title.

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

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

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

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

36 SEC. 202. TECHNICAL AMENDMENTS.

37 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978

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1 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end  
2 the following:

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

5 “Sec.801.Definitions

6 “Sec.802.Procedures for implementing statutory defenses.

7 “Sec.803.Preemption.

8 “Sec.804.Reporting.”.

9 TITLE III—REVIEW OF PREVIOUS ACTIONS

10 SEC. 301. REVIEW OF PREVIOUS ACTIONS.

11 (a) Definitions.—In this section:

12 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of  
13 Congress” means -

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

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

18 (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence  
19 Surveillance Court” means the court established by under section 103(a) of the Foreign  
20 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

21 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND PROGRAM.—The terms “President’s  
22 Surveillance Program” and “Program” mean the intelligence activity involving  
23 communications that was authorized by the President during the period beginning on  
24 September 11, 2001, and ending on January 17, 2007, including the program referred to by  
25 the President in a radio address on December 17, 2005 (commonly known as the Terrorist  
26 Surveillance Program).

27 (b) Reviews.—

28 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice,  
29 the Office of the Director of National Intelligence, the National Security Agency, the  
30 Department of Defense, and any other element of the intelligence community that  
31 participated in the President’s Surveillance Program, shall complete a comprehensive  
32 review of, with respect to the oversight authority and responsibility of each such Inspector  
33 General—

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

36 (B) access to legal reviews of the Program and access to information about the  
37 Program;

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

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

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

8 (2) COOPERATION AND COORDINATION.—

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

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

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

17 (B) INTEGRATION OF OTHER REVIEWS.—The Office of Professional Responsibility of  
18 the Department of Justice shall provide the report of any investigation conducted by  
19 such Office on matters relating to the Program, including any investigation of the  
20 process through which legal reviews of the Program were conducted and the substance  
21 of such reviews, to the Inspector General of the Department of Justice, who shall  
22 integrate the factual findings and conclusions of such investigation into its review.

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

27 (c) Reports.—

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

34 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the  
35 Inspectors General of the Department of Justice, the Office of the Director of National  
36 Intelligence, the National Security Agency, **the Department of Defense**, and any other  
37 Inspector General required to conduct a review under subsection (b)(1), shall submit to the  
38 appropriate committees of Congress, to the extent practicable, a comprehensive report on  
39 such reviews that includes any recommendations of any such Inspectors General within the  
40 oversight authority and responsibility of any such Inspector General with respect to the  
41 reviews.

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

6 (d) Resources.—

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

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

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

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

20 (3) TRANSFER OF PERSONNEL.—The Attorney General, the Secretary of Defense, the  
21 Director of National Intelligence, the Director of the National Security Agency, and or the  
22 head of any other element of the intelligence community that participated in the President's  
23 Surveillance Program may transfer personnel to the relevant Office of the Inspector General  
24 required to conduct a review under subsection (b)(1) and submit a report under subsection  
25 (c) and, in addition to any other personnel authorized by law, are authorized to fill any  
26 vacancy caused by such a transfer. Personnel transferred under this paragraph shall perform  
27 such duties relating to such review as the relevant Inspector General shall direct.

28 **TITLE IV—OTHER PROVISIONS**

29 **SEC. 401. SEVERABILITY.**

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

34 **SEC. 402. EFFECTIVE DATE.**

35 Except as provided in section 404, the amendments made by this Act shall take effect on the  
36 date of the enactment of this Act.

37 **SEC. 403. REPEALS.**

38 (a) Repeal of Protect America Act of 2007 Provisions.—

1 (1) AMENDMENTS TO FISA.—

2 (A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and  
3 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,  
4 and 1805c) are repealed.

5 (B) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

21 (b) FISA Amendments Act of 2008.—

22 (1) IN GENERAL.—Except as provided in section 404, effective December 31, 2012, title  
23 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), is  
24 repealed.

25 (2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2012—

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

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

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

34 SEC. 404. TRANSITION PROCEDURES.

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

36 (1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—NOTWITHSTANDING  
37 DIRECTIVES.—**Except as provided in paragraph (7), notwithstanding any other**  
38 **provision of law, except as provided in paragraph (7); any order, authorization, or directive**  
39 **issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act of**

1 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121  
2 Stat. 552), shall continue in effect until the expiration of such order, authorization, or  
3 directive.

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

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

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

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

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

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

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

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

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

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

39 (6) REPORTING REQUIREMENTS.—

40 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act,  
41 any amendment made by this Act, the Protect America Act of 2007 (Public Law 110-

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

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

6 (i) made by the Attorney General;

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

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

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

16 (7) REAUTHORIZATION REPLACEMENT OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—  
17 IF DIRECTIVES.—

18 (A) IN GENERAL.—If the Attorney General and the Director of National  
19 Intelligence seek to replace an authorization issued pursuant to section 105B of  
20 the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the  
21 Protect America Act of 2007 (Public Law 110-55), with an authorization under  
22 section 702 of the Foreign Intelligence Surveillance Act of 1978 (as added by  
23 section 101(a) of this Act), the Attorney General and the Director of National  
24 Intelligence shall, to the extent practicable, submit to the Foreign Intelligence  
25 Surveillance Court (as such term is defined in section 701(b)(2) of such Act (as so  
26 added)) a certification prepared in accordance with subsection (g) of such section  
27 702 and the procedures adopted in accordance with subsections (d) and (e) of  
28 such section 702 at least 30 days before the expiration of such authorization.

29 (B) CONTINUATION OF EXISTING ORDERS.—If the Attorney General and the  
30 Director of National Intelligence seek to replace an authorization made pursuant to  
31 section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section  
32 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 522), by filing a  
33 certification pursuant to section 702(i)(5)(A) of the Foreign Intelligence Surveillance  
34 Act of 1978 (as added by section 101(a) of this Act) in accordance with paragraph  
35 (A), that authorization, and any directives issued thereunder and any order related  
36 thereto, shall remain in effect until the Court issues an order with respect to that  
37 certification under section 702(i)(3), notwithstanding the expiration provided for in  
38 subsection (a) of such section 105B, until the Foreign Intelligence Surveillance  
39 Court (as such term is defined in section 701(b)(2) of the Foreign Intelligence  
40 Surveillance Act of 1978 (as so added)) issues an order with respect to that  
41 certification under section 702(i)(3) of such Act (as so added) at which time the  
42 provisions of that section and of section 702(i)(4) of such Act (as so added) shall  
43 apply.

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

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

4 (1) ORDERS IN EFFECT ON DECEMBER 31, 2012.—Notwithstanding any other provision of  
5 this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of  
6 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under  
7 title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a),  
8 shall continue in effect until the date of the expiration of such order, authorization, or  
9 directive.

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

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

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

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

21 (A) section 103(e) of such Act, as amended by section ~~403(a)(1)(B)(ii)~~, shall  
22 continue to apply with respect to any directive issued pursuant to section 702(h) of  
23 such Act, as added by section 101(a);

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

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

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

30 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section  
31 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the  
32 Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

33 (4) REPORTING REQUIREMENTS.—

34 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or  
35 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section  
36 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections  
37 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until  
38 the date that the certification described in subparagraph (B) is submitted.

39 (B) CERTIFICATION.—The certification described in this subparagraph is a  
40 certification—

1 (i) made by the Attorney General;

2 (ii) submitted to the Select Committee on Intelligence of the Senate, the  
3 Permanent Select Committee on Intelligence of the House of Representatives, and  
4 the Committees on the Judiciary of the Senate and the House of Representatives;

5 (iii) that states that there will be no further acquisitions carried out under title  
6 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section  
7 101(a), after the date of such certification; and

8 (iv) that states that the information required to be included in a review,  
9 assessment, or report under section 601 of such Act, as amended by section  
10 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating  
11 to any acquisition conducted under title VII of such Act, as amended by section  
12 101(a), has been included in a review, assessment, or report under such section  
13 601, 702(l), or 707.

14 (5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS  
15 OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section  
16 2.5 of Executive Order 12333 to intentionally target a United States person reasonably  
17 believed to be located outside the United States shall continue in effect, and shall constitute  
18 a sufficient basis for conducting such an acquisition targeting a United States person located  
19 outside the United States until the earlier of—

20 (A) the date that authorization expires; or

21 (B) the date that is 90 days after the date of the enactment of this Act.