

**WITHHOLD**

**Exemption 5**

**[STAFF WORKING DRAFT]**

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

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

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

Sec. 1. Short title; table of contents.

**TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

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

**TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS**

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

**TITLE III—REVIEW OF PREVIOUS ACTIONS**

- Sec. 301. Review of previous actions.

**TITLE IV—OTHER PROVISIONS**

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

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1                   **TITLE I—FOREIGN**  
2           **INTELLIGENCE SURVEILLANCE**

3   **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**  
4                   **PERSONS OUTSIDE THE UNITED STATES.**

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

7                   (1) by striking title VII; and

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

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

13   **“SEC. 701. DEFINITIONS.**

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

20           “(b) ADDITIONAL DEFINITIONS.—

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

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

1                   “(B) the Permanent Select Committee on  
2                   Intelligence of the House of Representatives.

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

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

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

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

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

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

24                         “(D) any other communication service pro-  
25                         vider who has access to wire or electronic com-

1           munications either as such communications are  
2           transmitted or as such communications are  
3           stored; or

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

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

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

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

23       “(b) LIMITATIONS.—An acquisition authorized under  
24       subsection (a)—

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

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

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

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

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

19          “(c) CONDUCT OF ACQUISITION.—

20                 “(1) IN GENERAL.—An acquisition authorized  
21                 under subsection (a) shall be conducted only in ac-  
22                 cordance with—

23                         “(A) the targeting and minimization proce-  
24                         dures adopted in accordance with subsections  
25                         (d) and (e); and

1           “(B) upon submission of a certification in  
2           accordance with subsection (g), such certifi-  
3           cation.

4           “(2) DETERMINATION.—A determination under  
5           this paragraph and for purposes of subsection (a) is  
6           a determination by the Attorney General and the Di-  
7           rector of National Intelligence that exigent cir-  
8           cumstances exist because, without immediate imple-  
9           mentation of an authorization under subsection (a),  
10          intelligence important to the national security of the  
11          United States may be lost or not timely acquired  
12          and time does not permit the issuance of an order  
13          pursuant to subsection (i)(3) prior to the implemen-  
14          tation of such authorization.

15          “(3) TIMING OF DETERMINATION.—The Attor-  
16          ney General and the Director of National Intel-  
17          ligence may make the determination under para-  
18          graph (2)—

19                 “(A) before the submission of a certifi-  
20                 cation in accordance with subsection (g); or

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

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

7           “(d) TARGETING PROCEDURES.—

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

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

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

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

24           “(e) MINIMIZATION PROCEDURES.—

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

8           “(2) JUDICIAL REVIEW.—The minimization  
9           procedures adopted in accordance with paragraph  
10          (1) shall be subject to judicial review pursuant to  
11          subsection (i).

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

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

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

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

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

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



1           “(B) the Committees on the Judiciary of  
2           the Senate and the House of Representatives;  
3           and

4           “(C) the Foreign Intelligence Surveillance  
5           Court.

6           “(g) CERTIFICATION.—

7           “(1) IN GENERAL.—

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

16          “(B) EXCEPTION.—If the Attorney Gen-  
17          eral and the Director of National Intelligence  
18          make a determination under subsection (c)(2)  
19          and time does not permit the submission of a  
20          certification under this subsection prior to the  
21          implementation of an authorization under sub-  
22          section (a), the Attorney General and the Direc-  
23          tor of National Intelligence shall submit to the  
24          Court a certification for such authorization as

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

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

5                   “(A) attest that—

6                           “(i) there are procedures in place that  
7                           have been approved, have been submitted  
8                           for approval, or will be submitted with the  
9                           certification for approval by the Foreign  
10                          Intelligence Surveillance Court that are  
11                          reasonably designed to—

12                                   “(I) ensure that an acquisition  
13                                   authorized under subsection (a) is  
14                                   limited to targeting persons reason-  
15                                   ably believed to be located outside the  
16                                   United States; and

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

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

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

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

9                   “(iii) guidelines have been adopted in  
10                  accordance with subsection (f) to ensure  
11                  compliance with the limitations in sub-  
12                  section (b) and to ensure that an applica-  
13                  tion for a court order is filed as required  
14                  by this Act;

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

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

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

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

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

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

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

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

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

15 “(D) include—

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

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

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

6           “(3) CHANGE IN EFFECTIVE DATE.—The At-  
7           torney General and the Director of National Intel-  
8           ligence may advance or delay the effective date re-  
9           ferred to in paragraph (2)(D) by submitting an  
10          amended certification in accordance with subsection  
11          (i)(1)(C) to the Foreign Intelligence Surveillance  
12          Court for review pursuant to subsection (i).

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

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

22          “(6) REVIEW.—A certification submitted in ac-  
23          cordance with this subsection shall be subject to ju-  
24          dicial review pursuant to subsection (i).

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

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

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

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

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

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

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

8 “(4) CHALLENGING OF DIRECTIVES.—

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

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

22 “(C) STANDARDS FOR REVIEW.—A judge  
23 considering a petition filed under subparagraph  
24 (A) may grant such petition only if the judge  
25 finds that the directive does not meet the re-

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

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

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



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

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

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

16 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

1 “(6) APPEAL.—

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

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

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

25 “(1) IN GENERAL.—

1           “(A) REVIEW BY THE FOREIGN INTEL-  
2           LIGENCE SURVEILLANCE COURT.—The Foreign  
3           Intelligence Surveillance Court shall have juris-  
4           diction to review a certification submitted in ac-  
5           cordance with subsection (g) and the targeting  
6           and minimization procedures adopted in accord-  
7           ance with subsections (d) and (e), and amend-  
8           ments to such certification or such procedures.

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

18          “(C) AMENDMENTS.—The Attorney Gen-  
19          eral and the Director of National Intelligence  
20          may amend a certification submitted in accord-  
21          ance with subsection (g) or the targeting and  
22          minimization procedures adopted in accordance  
23          with subsections (d) and (e) as necessary at any  
24          time, including if the Court is conducting or  
25          has completed review of such certification or

1           such procedures, and shall submit the amended  
2           certification or amended procedures to the  
3           Court not later than 7 days after amending  
4           such certification or such procedures. The  
5           Court shall review any amendment under this  
6           subparagraph under the procedures set forth in  
7           this subsection. The Attorney General and the  
8           Director of National Intelligence may authorize  
9           the use of an amended certification or amended  
10          procedures pending the Court's review of such  
11          amended certification or amended procedures.

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

14                 “(A) CERTIFICATION.—A certification sub-  
15                 mitted in accordance with subsection (g) to de-  
16                 termine whether the certification contains all  
17                 the required elements.

18                 “(B) TARGETING PROCEDURES.—The tar-  
19                 geting procedures adopted in accordance with  
20                 subsection (d) to assess whether the procedures  
21                 are reasonably designed to—

22                         “(i) ensure that an acquisition author-  
23                         ized under subsection (a) is limited to tar-  
24                         geting persons reasonably believed to be lo-  
25                         cated outside the United States; and

1                   “(ii) prevent the intentional acqui-  
2                   tion of any communication as to which the  
3                   sender and all intended recipients are  
4                   known at the time of the acquisition to be  
5                   located in the United States.

6                   “(C) MINIMIZATION PROCEDURES.—The  
7                   minimization procedures adopted in accordance  
8                   with subsection (e) to assess whether such pro-  
9                   cedures meet the definition of minimization pro-  
10                  cedures under section 101(h) or section 301(4),  
11                  as appropriate.

12                  “(3) ORDERS.—

13                  “(A) APPROVAL.—If the Court finds that  
14                  a certification submitted in accordance with  
15                  subsection (g) contains all the required ele-  
16                  ments and that the targeting and minimization  
17                  procedures adopted in accordance with sub-  
18                  sections (d) and (e) are consistent with the re-  
19                  quirements of those subsections and with the  
20                  fourth amendment to the Constitution of the  
21                  United States, the Court shall enter an order  
22                  approving the certification and the use, or con-  
23                  tinued use in the case of an acquisition author-  
24                  ized pursuant to a determination under sub-

1 section (e)(2), of the procedures for the acquisi-  
2 tion.

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

15 “(i) correct any deficiency identified  
16 by the Court’s order not later than 30 days  
17 after the date on which the Court issues  
18 the order; or

19 “(ii) cease, or not begin, the imple-  
20 mentation of the authorization for which  
21 such certification was submitted.

22 “(C) REQUIREMENT FOR WRITTEN STATE-  
23 MENT.—In support of an order under this sub-  
24 section, the Court shall provide, simultaneously

1 with the order, for the record a written state-  
2 ment of the reasons for the order.

3 “(4) APPEAL.—

4 “(A) APPEAL TO THE COURT OF RE-  
5 VIEW.—The Government may file a petition  
6 with the Foreign Intelligence Surveillance Court  
7 of Review for review of an order under this sub-  
8 section. The Court of Review shall have juris-  
9 diction to consider such petition. For any deci-  
10 sion under this subparagraph affirming, revers-  
11 ing, or modifying an order of the Foreign Intel-  
12 ligence Surveillance Court, the Court of Review  
13 shall provide for the record a written statement  
14 of the reasons for the decision.

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

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

22 “(ii) if the Government files a petition  
23 for review of an order under this section,  
24 until the Court of Review enters an order  
25 under subparagraph (C).



1           “(C) IMPLEMENTATION PENDING AP-  
2           PEAL.—Not later than 60 days after the filing  
3           of a petition for review of an order under para-  
4           graph (3)(B) directing the correction of a defi-  
5           ciency, the Court of Review shall determine,  
6           and enter a corresponding order regarding,  
7           whether all or any part of the correction order,  
8           as issued or modified, shall be implemented  
9           during the pendency of the review.

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

18           “(5) SCHEDULE.—

19           “(A) REAUTHORIZATION OF AUTHORIZA-  
20           TIONS IN EFFECT.—If the Attorney General  
21           and the Director of National Intelligence seek  
22           to reauthorize or replace an authorization  
23           issued under subsection (a), the Attorney Gen-  
24           eral and the Director of National Intelligence  
25           shall, to the extent practicable, submit to the

1 Court the certification prepared in accordance  
2 with subsection (g) and the procedures adopted  
3 in accordance with subsections (d) and (e) at  
4 least 30 days prior to the expiration of such au-  
5 thorization.

6 “(B) REAUTHORIZATION OF ORDERS, AU-  
7 THORIZATIONS, AND DIRECTIVES.—If the At-  
8 torney General and the Director of National In-  
9 telligence seek to reauthorize or replace an au-  
10 thorization issued under subsection (a) by filing  
11 a certification pursuant to subparagraph (A),  
12 that authorization, and any directives issued  
13 thereunder and any order related thereto, shall  
14 remain in effect, notwithstanding the expiration  
15 provided for in subsection (a), until the Court  
16 issues an order with respect to such certifi-  
17 cation under paragraph (3) at which time the  
18 provisions of that paragraph and paragraph (4)  
19 shall apply with respect to such certification.

20 “(j) JUDICIAL PROCEEDINGS.—

21 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Ju-  
22 dicial proceedings under this section shall be con-  
23 ducted as expeditiously as possible.

24 “(2) TIME LIMITS.—A time limit for a judicial  
25 decision in this section shall apply unless the Court,

1 the Court of Review, or any judge of either the  
2 Court or the Court of Review, by order for reasons  
3 stated, extends that time as necessary for good  
4 cause in a manner consistent with national security.

5 “(k) MAINTENANCE AND SECURITY OF RECORDS  
6 AND PROCEEDINGS.—

7 “(1) STANDARDS.—The Foreign Intelligence  
8 Surveillance Court shall maintain a record of a pro-  
9 ceeding under this section, including petitions, ap-  
10 peals, orders, and statements of reasons for a deci-  
11 sion, under security measures adopted by the Chief  
12 Justice of the United States, in consultation with  
13 the Attorney General and the Director of National  
14 Intelligence.

15 “(2) FILING AND REVIEW.—All petitions under  
16 this section shall be filed under seal. In any pro-  
17 ceedings under this section, the Court shall, upon re-  
18 quest of the Government, review ex parte and in  
19 camera any Government submission, or portions of  
20 a submission, which may include classified informa-  
21 tion.

22 “(3) RETENTION OF RECORDS.—The Attorney  
23 General and the Director of National Intelligence  
24 shall retain a directive or an order issued under this  
25 section for a period of not less than 10 years from

1 the date on which such directive or such order is  
2 issued.

3 “(I) ASSESSMENTS AND REVIEWS.—

4 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-  
5 quently than once every 6 months, the Attorney  
6 General and Director of National Intelligence shall  
7 assess compliance with the targeting and minimiza-  
8 tion procedures adopted in accordance with sub-  
9 sections (d) and (e) and the guidelines adopted in  
10 accordance with subsection (f) and shall submit each  
11 assessment to—

12 “(A) the Foreign Intelligence Surveillance  
13 Court; and

14 “(B) consistent with the Rules of the  
15 House of Representatives, the Standing Rules  
16 of the Senate, and Senate Resolution 400 of the  
17 94th Congress or any successor Senate resolu-  
18 tion—

19 “(i) the congressional intelligence  
20 committees; and

21 “(ii) the Committees on the Judiciary  
22 of the House of Representatives and the  
23 Senate.

24 “(2) AGENCY ASSESSMENT.—The Inspector  
25 General of the Department of Justice and the In-

1       spector General of each element of the intelligence  
2       community authorized to acquire foreign intelligence  
3       information under subsection (a), with respect to the  
4       department or element of such Inspector General—

5               “(A) are authorized to review compliance  
6               with the targeting and minimization procedures  
7               adopted in accordance with subsections (d) and  
8               (e) and the guidelines adopted in accordance  
9               with subsection (f);

10              “(B) with respect to acquisitions author-  
11              ized under subsection (a), shall review the num-  
12              ber of disseminated intelligence reports con-  
13              taining a reference to a United States-person  
14              identity and the number of United States-per-  
15              son identities subsequently disseminated by the  
16              element concerned in response to requests for  
17              identities that were not referred to by name or  
18              title in the original reporting;

19              “(C) with respect to acquisitions author-  
20              ized under subsection (a), shall review the num-  
21              ber of targets that were later determined to be  
22              located in the United States and, to the extent  
23              possible, whether communications of such tar-  
24              gets were reviewed; and

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

1 “(i) the Attorney General;

2 “(ii) the Director of National Intel-  
3 ligence; and

4 “(iii) consistent with the Rules of the  
5 House of Representatives, the Standing  
6 Rules of the Senate, and Senate Resolution  
7 400 of the 94th Congress or any successor  
8 Senate resolution—

9 “(I) the congressional intelligence  
10 committees; and

11 “(II) the Committees on the Ju-  
12 diciary of the House of Representa-  
13 tives and the Senate.

14 “(3) ANNUAL REVIEW.—

15 “(A) REQUIREMENT TO CONDUCT.—The  
16 head of each element of the intelligence commu-  
17 nity conducting an acquisition authorized under  
18 subsection (a) shall conduct an annual review to  
19 determine whether there is reason to believe  
20 that foreign intelligence information has been  
21 or will be obtained from the acquisition. The  
22 annual review shall provide, with respect to ac-  
23 quisitions authorized under subsection (a)—

24 “(i) an accounting of the number of  
25 disseminated intelligence reports con-

1           taining a reference to a United States-per-  
2           son identity;  
3           “(ii) an accounting of the number of  
4           United States-person identities subse-  
5           quently disseminated by that element in re-  
6           sponse to requests for identities that were  
7           not referred to by name or title in the  
8           original reporting;  
9           “(iii) the number of targets that were  
10          later determined to be located in the  
11          United States and, to the extent possible,  
12          whether communications of such targets  
13          were reviewed; and  
14          “(iv) a description of any procedures  
15          developed by the head of such element of  
16          the intelligence community and approved  
17          by the Director of National Intelligence to  
18          assess, in a manner consistent with na-  
19          tional security, operational requirements  
20          and the privacy interests of United States  
21          persons, the extent to which the acquisi-  
22          tions authorized under subsection (a) ac-  
23          quire the communications of United States  
24          persons, and the results of any such as-  
25          sessment.

1           “(B) USE OF REVIEW.—The head of each  
2           element of the intelligence community that con-  
3           ducts an annual review under subparagraph (A)  
4           shall use each such review to evaluate the ade-  
5           quacy of the minimization procedures utilized  
6           by such element and, as appropriate, the appli-  
7           cation of the minimization procedures to a par-  
8           ticular acquisition authorized under subsection  
9           (a).

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

14                   “(i) the Foreign Intelligence Surveil-  
15                   lance Court;

16                   “(ii) the Attorney General;

17                   “(iii) the Director of National Intel-  
18                   ligence; and

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

24                           “(I) the congressional intelligence  
25                           committees; and



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

4   **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**  
5                   **STATES TARGETING UNITED STATES PER-**  
6                   **SONS OUTSIDE THE UNITED STATES.**

7                   “(a) JURISDICTION OF THE FOREIGN INTELLIGENCE  
8 SURVEILLANCE COURT.—

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

20                   “(2) LIMITATION.—If a United States person  
21 targeted under this subsection is reasonably believed  
22 to be located in the United States during the effec-  
23 tive period of an order issued pursuant to subsection  
24 (c), an acquisition targeting such United States per-  
25 son under this section shall cease unless the targeted

1 United States person is again reasonably believed to  
2 be located outside the United States while an order  
3 issued pursuant to subsection (c) is in effect. Noth-  
4 ing in this section shall be construed to limit the au-  
5 thority of the Government to seek an order or au-  
6 thorization under, or otherwise engage in any activ-  
7 ity that is authorized under, any other title of this  
8 Act.

9 “(b) APPLICATION.—

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

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

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

24 “(C) a statement of the facts and cir-  
25 cumstances relied upon to justify the appli-

1           cant's belief that the United States person who  
2           is the target of the acquisition is—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(c) ORDER.—

22 “(1) FINDINGS.—Upon an application made  
23 pursuant to subsection (b), the Foreign Intelligence  
24 Surveillance Court shall enter an ex parte order as

1 requested or as modified by the Court approving the  
2 acquisition if the Court finds that—

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

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

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

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

15 “(C) the proposed minimization procedures  
16 meet the definition of minimization procedures  
17 under section 101(h) or 301(4), as appropriate;  
18 and

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

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

12           “(3) REVIEW.—

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

17           “(B) REVIEW OF PROBABLE CAUSE.—If  
18 the judge determines that the facts submitted  
19 under subsection (b) are insufficient to estab-  
20 lish probable cause under paragraph (1)(B), the  
21 judge shall enter an order so stating and pro-  
22 vide a written statement for the record of the  
23 reasons for the determination. The Government  
24 may appeal an order under this subparagraph  
25 pursuant to subsection (f).

1           “(C) REVIEW OF MINIMIZATION PROCE-  
2           DURES.—If the judge determines that the pro-  
3           posed minimization procedures referred to in  
4           paragraph (1)(C) do not meet the definition of  
5           minimization procedures under section 101(h)  
6           or 301(4), as appropriate, the judge shall enter  
7           an order so stating and provide a written state-  
8           ment for the record of the reasons for the de-  
9           termination. The Government may appeal an  
10          order under this subparagraph pursuant to sub-  
11          section (f).

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



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

3           “(A) the identity, if known, or a descrip-  
4 tion of the United States person who is the tar-  
5 get of the acquisition identified or described in  
6 the application pursuant to subsection  
7 (b)(1)(B);

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

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

15           “(D) a summary of the means by which  
16 the acquisition will be conducted and whether  
17 physical entry is required to effect the acquisi-  
18 tion; and

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

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

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

1           “(B) if applicable, an electronic commu-  
2           nication service provider to provide to the Gov-  
3           ernment forthwith all information, facilities, or  
4           assistance necessary to accomplish the acquisi-  
5           tion authorized under such order in a manner  
6           that will protect the secrecy of the acquisition  
7           and produce a minimum of interference with  
8           the services that such electronic communication  
9           service provider is providing to the target of the  
10          acquisition;

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

18          “(D) if applicable, that the Government  
19          compensate, at the prevailing rate, such elec-  
20          tronic communication service provider for pro-  
21          viding such information, facilities, or assistance.

22          “(6) DURATION.—An order approved under this  
23          subsection shall be effective for a period not to ex-  
24          ceed 90 days and such order may be renewed for ad-  
25          ditional 90-day periods upon submission of renewal

1 applications meeting the requirements of subsection  
2 (b).

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

11 “(d) EMERGENCY AUTHORIZATION.—

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

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

22 “(B) the factual basis for issuance of an  
23 order under this subsection to approve such ac-  
24 quisition exists,

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

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

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

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

22          “(e) RELEASE FROM LIABILITY.—No cause of action  
23          shall lie in any court against any electronic communication  
24          service provider for providing any information, facilities,  
25          or assistance in accordance with an order or request for

1 emergency assistance issued pursuant to subsection (c) or  
2 (d), respectively.

3 “(f) APPEAL.—

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

13 “(2) CERTIORARI TO THE SUPREME COURT.—

14 The Government may file a petition for a writ of  
15 certiorari for review of a decision of the Court of Re-  
16 view issued under paragraph (1). The record for  
17 such review shall be transmitted under seal to the  
18 Supreme Court of the United States, which shall  
19 have jurisdiction to review such decision.

20 “(g) CONSTRUCTION.—Except as provided in this  
21 section, nothing in this Act shall be construed to require  
22 an application for a court order for an acquisition that  
23 is targeted in accordance with this section at a United  
24 States person reasonably believed to be located outside the  
25 United States.

1 "SEC. 704. OTHER ACQUISITIONS TARGETING UNITED  
2 STATES PERSONS OUTSIDE THE UNITED  
3 STATES.

4 "(a) JURISDICTION AND SCOPE.—

5 "(1) JURISDICTION.—The Foreign Intelligence  
6 Surveillance Court shall have jurisdiction to enter an  
7 order pursuant to subsection (c).

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

23 "(3) LIMITATIONS.—

24 "(A) MOVING OR MISIDENTIFIED TAR-  
25 GETS.—If a United States person targeted  
26 under this subsection is reasonably believed to

1           be located in the United States during the ef-  
2           fective period of an order issued pursuant to  
3           subsection (c), an acquisition targeting such  
4           United States person under this section shall  
5           cease unless the targeted United States person  
6           is again reasonably believed to be located out-  
7           side the United States during the effective pe-  
8           riod of such order.

9           “(B) APPLICABILITY.—If an acquisition  
10          for foreign intelligence purposes is to be con-  
11          ducted inside the United States and could be  
12          authorized under section 703, the acquisition  
13          may only be conducted if authorized under sec-  
14          tion 703 or in accordance with another provi-  
15          sion of this Act other than this section.

16          “(C) CONSTRUCTION.—Nothing in this  
17          paragraph shall be construed to limit the au-  
18          thority of the Government to seek an order or  
19          authorization under, or otherwise engage in any  
20          activity that is authorized under, any other title  
21          of this Act.

22          “(b) APPLICATION.—Each application for an order  
23          under this section shall be made by a Federal officer in  
24          writing upon oath or affirmation to a judge having juris-  
25          diction under subsection (a)(1). Each application shall re-



1 quire the approval of the Attorney General based upon the  
2 Attorney General's finding that it satisfies the criteria and  
3 requirements of such application as set forth in this sec-  
4 tion and shall include—

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

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

10           “(3) a statement of the facts and circumstances  
11 relied upon to justify the applicant's belief that the  
12 United States person who is the target of the acqui-  
13 sition is—

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

16                   “(B) a foreign power, an agent of a foreign  
17 power, or an officer or employee of a foreign  
18 power;

19           “(4) a statement of proposed minimization pro-  
20 cedures that meet the definition of minimization pro-  
21 cedures under section 101(h) or 301(4), as appro-  
22 priate;

23           “(5) a certification made by the Attorney Gen-  
24 eral, an official specified in section 104(a)(6), or the

1 head of an element of the intelligence community  
2 that—

3 “(A) the certifying official deems the infor-  
4 mation sought to be foreign intelligence infor-  
5 mation; and

6 “(B) a significant purpose of the acquisi-  
7 tion is to obtain foreign intelligence informa-  
8 tion;

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

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

19 “(c) ORDER.—

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

1           “(A) the application has been made by a  
2           Federal officer and approved by the Attorney  
3           General;

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

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

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

13           “(C) the proposed minimization proce-  
14           dures, with respect to their dissemination provi-  
15           sions, meet the definition of minimization pro-  
16           cedures under section 101(h) or 301(4), as ap-  
17           propriate; and

18           “(D) the application that has been filed  
19           contains all statements and certifications re-  
20           quired by subsection (b) and the certification  
21           provided under subsection (b)(5) is not clearly  
22           erroneous on the basis of the information fur-  
23           nished under subsection (b).

24           “(2) PROBABLE CAUSE.—In determining  
25           whether or not probable cause exists for purposes of

1 paragraph (1)(B), a judge having jurisdiction under  
2 subsection (a)(1) may consider past activities of the  
3 target and facts and circumstances relating to cur-  
4 rent or future activities of the target. No United  
5 States person may be considered a foreign power,  
6 agent of a foreign power, or officer or employee of  
7 a foreign power solely upon the basis of activities  
8 protected by the first amendment to the Constitution  
9 of the United States.

10 “(3) REVIEW.—

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

18 “(B) REVIEW OF PROBABLE CAUSE.—If  
19 the judge determines that the facts submitted  
20 under subsection (b) are insufficient to estab-  
21 lish probable cause to issue an order under this  
22 subsection, the judge shall enter an order so  
23 stating and provide a written statement for the  
24 record of the reasons for such determination.

1           The Government may appeal an order under  
2           this subparagraph pursuant to subsection (e).

3                   “(C) REVIEW OF MINIMIZATION PROCE-  
4                   DURES.—If the judge determines that the mini-  
5                   mization procedures applicable to dissemination  
6                   of information obtained through an acquisition  
7                   under this subsection do not meet the definition  
8                   of minimization procedures under section  
9                   101(h) or 301(4), as appropriate, the judge  
10                  shall enter an order so stating and provide a  
11                  written statement for the record of the reasons  
12                  for such determination. The Government may  
13                  appeal an order under this subparagraph pursu-  
14                  ant to subsection (e).

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

1           order under this subparagraph pursuant to sub-  
2           section (e).

3           “(4) DURATION.—An order under this para-  
4           graph shall be effective for a period not to exceed 90  
5           days and such order may be renewed for additional  
6           90-day periods upon submission of renewal applica-  
7           tions meeting the requirements of subsection (b).

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

18          “(d) EMERGENCY AUTHORIZATION.—

19                 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-  
20                 TION.—Notwithstanding any other provision of this  
21                 section, if the Attorney General reasonably deter-  
22                 mines that—

23                         “(A) an emergency situation exists with re-  
24                         spect to the acquisition of foreign intelligence  
25                         information for which an order may be obtained

1 under subsection (c) before an order under that  
2 subsection can, with due diligence, be obtained,  
3 and

4 “(B) the factual basis for the issuance of  
5 an order under this section exists,

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

16 “(2) MINIMIZATION PROCEDURES.—If the At-  
17 torney General authorizes an emergency acquisition  
18 under paragraph (1), the Attorney General shall re-  
19 quire that the minimization procedures referred to in  
20 subsection (c)(1)(C) be followed.

21 “(3) TERMINATION OF EMERGENCY AUTHOR-  
22 IZATION.—In the absence of an order under sub-  
23 section (c), an emergency acquisition under para-  
24 graph (1) shall terminate when the information  
25 sought is obtained, if the application for the order