

(41 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.

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

WITHHOLD

Exemption 5

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 at the end the following:

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 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 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) shall be conducted  
28                 only in accordance with—

29                         “(A) the targeting and minimization procedures adopted in accordance with  
30                         subsections (d) and (e); and

31                         “(B) upon submission of a certification in accordance with subsection (g), such  
32                         certification.

33                 “(2) DETERMINATION.—A determination under this paragraph and for purposes of  
34                 subsection (a) is a determination by the Attorney General and the Director of National  
35                 Intelligence that exigent circumstances exist because, without immediate implementation of  
36                 an authorization under subsection (a), intelligence important to the national security of the  
37                 United States may be lost or not timely acquired and time does not permit the issuance of an  
38                 order pursuant to subsection (i)(3) prior to the implementation of such authorization.

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

3           “(A) before the submission of a certification ~~under in accordance with subsection~~  
4 (g); or

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

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

10          “(d) Targeting Procedures.— Procedures.—

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

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

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

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

20          “(e) Minimization Procedures.—

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

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

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

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

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

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

32           “(2) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines  
33 adopted in accordance with paragraph (1) to—

34           “(A) the congressional intelligence committees;

35           “(B) the ~~Committee Committees~~ on the Judiciary of the Senate and;

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

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

1 “(g) Certification.—

2 “(1) IN GENERAL.—

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

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

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

15 “(A) attest that—

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

19 “(I) ensure that an acquisition authorized under subsection (a) is ~~targeted~~  
20 **at limited to targeting** persons reasonably believed to be located outside the  
21 United States; and

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

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

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

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

31 “(iii) guidelines have been adopted in accordance with subsection (f) to ensure  
32 compliance with the limitations in subsection (b) and to ensure that ~~applications~~  
33 **an application** for a court ~~orders are order~~ is filed as required by this Act;

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

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

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

1           “(vii) the acquisition complies with the limitations in subsection (b);  
2           “(B) include the procedures adopted in accordance with subsections (d) and (e);  
3           “(C) be supported, as appropriate, by the affidavit of any appropriate official in the  
4           area of national security who is—  
5           “(i) appointed by the President, by and with the advice and consent of the  
6           Senate; or  
7           “(ii) the head of an element of the intelligence community;  
8           “(D) include—  
9           “(i) an effective date for the authorization that is at least 30 days after the  
10           submission of the written certification to the court; or  
11           “(ii) if the acquisition has begun or the effective date is less than 30 days after  
12           the submission of the written certification to the court, the date the acquisition  
13           began or the effective date for the acquisition; and  
14           “(E) if the Attorney General and the Director of National Intelligence make a  
15           determination under subsection (c)(2), include a statement that such determination has  
16           been made.  
17           “(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of National  
18           Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by  
19           submitting an amended certification in accordance with this subsection (i)(1)(C) to the  
20           Foreign Intelligence Surveillance Court for review pursuant to subsection (i).  
21           “(4) LIMITATION.—A certification made under this subsection is not required to identify  
22           the specific facilities, places, premises, or property at which the an acquisition authorized  
23           under subsection (a) will be directed or conducted.  
24           “(5) MAINTENANCE OF CERTIFICATION.—The Attorney General or a designee of the  
25           Attorney General shall maintain a copy of a certification made under this subsection.  
26           “(6) REVIEW.—A certification submitted in accordance with this subsection shall be  
27           subject to judicial review pursuant to subsection (i).  
28           “(h) Directives and Judicial Review of Directives.—  
29           “(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the  
30           Attorney General and the Director of National Intelligence may direct, in writing, an  
31           electronic communication service provider to—  
32           “(A) immediately provide the Government with all information, facilities, or  
33           assistance necessary to accomplish the acquisition in a manner that will protect the  
34           secrecy of the acquisition and produce a minimum of interference with the services  
35           that such electronic communication service provider is providing to the target of the  
36           acquisition; and  
37           “(B) maintain under security procedures approved by the Attorney General and the  
38           Director of National Intelligence any records concerning the acquisition or the aid  
39           furnished that such electronic communication service provider wishes to maintain.

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

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

7           “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

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

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

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

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

41           “(5) ENFORCEMENT OF DIRECTIVES. —

42           “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to

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

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

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

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

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

19 “(6) APPEAL.—

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

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

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

33 “(1) IN GENERAL.—

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

39 “(B) TIME PERIOD FOR REVIEW.—The Court shall review a certification submitted in  
40 accordance with subsection (g) and the targeting and minimization procedures adopted  
41 in accordance with subsections (d) and (e) and shall complete such review and issue an  
42 order under paragraph (3) not later than 30 days after the date on which such



1 certification and such procedures are submitted.

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

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

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

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

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

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

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

27 “(3) ORDERS.—

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

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

42 “(i) correct any deficiency identified by the Court’s order not later than 30 days

1 after the date on which the Court issues the order; or

2 “(ii) cease, or not begin, the acquisition authorized under subsection (a).  
3 **implementation of the authorization for which such certification was**  
4 **submitted.**

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

8 “(4) APPEAL.—

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

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

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

19 “(ii) if the Government ~~appeals~~ **files a petition for review** of an order under  
20 this section, until the Court of Review enters an order under subparagraph (C).

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

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

31 “(5) SCHEDULE.—

32 “(A) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General  
33 and the Director of National Intelligence seek to reauthorize or replace an authorization  
34 issued ~~pursuant to this section~~ **under subsection (a)**, the Attorney General and the  
35 Director of National Intelligence shall, to the extent practicable, submit to the Court  
36 the certification prepared in accordance with subsection (g) and the procedures adopted  
37 in accordance with subsections (d) and (e) at least 30 days prior to the expiration of  
38 such authorization.

39 “(B) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the  
40 Attorney General and the Director of National Intelligence seek to reauthorize or  
41 replace an authorization ~~made pursuant to this section~~ **issued under subsection (a)** by

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1 filing a certification pursuant to subparagraph (A), that authorization, and any  
2 directives issued thereunder and any order related thereto, shall remain in effect,  
3 notwithstanding the expiration provided for in subsection (a), until the Court issues an  
4 order with respect to such certification under paragraph (3) at which time the  
5 provisions of that paragraph and paragraph (4) shall apply with respect to such  
6 certification.

7 “(j) Judicial Proceedings.—

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

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

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

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

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

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

28 “(l) Assessments and Reviews.—

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

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

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

38 “(i) the congressional intelligence committees; and

39 “(ii) the Committees on the Judiciary of the House of Representatives and the  
40 Senate.

1           “(2) AGENCY ASSESSMENT.—The Inspector General of the Department of Justice and the  
2 Inspector General of each element of the intelligence community authorized to acquire  
3 foreign intelligence information under subsection (a), with respect to the department or  
4 element of such Inspector General—

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

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

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

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

17           “(i) the Attorney General;

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

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

22           “(I) the congressional intelligence committees; and

23           “(II) the Committees on the Judiciary of the House of Representatives and  
24 the Senate.

25           “(3) ANNUAL REVIEW.—

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

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

33           “(ii) an accounting of the number of United States-person identities  
34 subsequently disseminated by that element in response to requests for identities  
35 that were not referred to by name or title in the original reporting;

36           “(iii) the number of targets that were later determined to be located in the  
37 United States and, to the extent possible, whether communications of such targets  
38 were reviewed; and

39           “(iv) a description of any procedures developed by the head of such element of  
40 the intelligence community and approved by the Director of National Intelligence

1 to assess, in a manner consistent with national security, operational requirements  
2 and the privacy interests of United States persons, the extent to which the  
3 acquisitions authorized under subsection (a) acquire the communications of  
4 United States persons, and the results of any such assessment.

5 “(B) USE OF REVIEW.—The head of each element of the intelligence community that  
6 conducts an annual review under subparagraph (A) shall use each such review to  
7 evaluate the adequacy of the minimization procedures utilized by such element ~~or~~ and,  
8 as appropriate, the application of the minimization procedures to a particular  
9 acquisition authorized under subsection (a).

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

13 “(i) the Foreign Intelligence Surveillance Court;

14 “(ii) the Attorney General;

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

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

19 “(I) the congressional intelligence committees; and

20 “(II) the Committees on the Judiciary of the House of Representatives and  
21 the Senate.

22 “SEC. 703. CERTAIN ACQUISITIONS INSIDE THE  
23 UNITED STATES TARGETING UNITED STATES  
24 PERSONS OUTSIDE THE UNITED STATES.

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

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

32 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably  
33 believed to be located in the United States during the effective period of an order issued  
34 pursuant to subsection (c), an acquisition targeting such United States person under this  
35 section shall cease unless the targeted United States person is again reasonably believed to  
36 be located outside the United States while an order issued pursuant to subsection (c) is in  
37 effect. Nothing in this section shall be construed to limit the authority of the Government to  
38 seek an order or authorization under, or otherwise engage in any activity that is authorized  
39 under, any other title of this Act.

1 “(b) Application.—

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

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

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

10 “(C) a statement of the facts and circumstances relied upon to justify the applicant’s  
11 belief that the United States person who is the target of the acquisition 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 “(D) a statement of proposed minimization procedures that meet the definition of  
16 minimization procedures under section 101(h) or section 301(4), as appropriate;

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

19 “(F) a certification made by the Attorney General or an official specified in section  
20 104(a)(6) that—

21 “(i) the certifying official deems the information sought to be foreign  
22 intelligence information;

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

25 “(iii) such information cannot reasonably be obtained by normal investigative  
26 techniques;

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

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

30 “(I) the information sought is the type of foreign intelligence information  
31 designated; and

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

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

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

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

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

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

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

13          “(c) Order.—

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

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

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

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

23           “(ii) a foreign power, an agent of a foreign power, or an officer or employee of  
24           a foreign power;

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

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

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

37          “(3) REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

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

39               “(C) if applicable, an electronic communication service provider to maintain under  
40               security procedures approved by the Attorney General any records concerning the  
41               acquisition or the aid furnished that such electronic communication service provider



1 wishes to maintain; and

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

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

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

13 “(d) Emergency Authorization.—

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

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

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

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

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

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

35 “(4) USE OF INFORMATION.—If an application for approval submitted pursuant to  
36 paragraph (1) is denied, or in any other case where the acquisition is terminated and no  
37 order is issued approving the acquisition, no information obtained or evidence derived from  
38 such acquisition, except under circumstances in which the target of the acquisition is  
39 determined not to be a United States person, shall be received in evidence or otherwise  
40 disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,  
41 department, office, agency, regulatory body, legislative committee, or other authority of the  
42 United States, a State, or political subdivision thereof, and no information concerning any

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

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

9 “(f) Appeal.—

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

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

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

22 **“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED**  
23 **STATES PERSONS OUTSIDE THE UNITED STATES.**

24 “(a) Jurisdiction and Scope.—

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

27 “(2) SCOPE.—No element of the intelligence community may intentionally target, for the  
28 purpose of acquiring foreign intelligence information, a United States person reasonably  
29 believed to be located outside the United States under circumstances in which the targeted  
30 United States person has a reasonable expectation of privacy and a warrant would be  
31 required if the acquisition were conducted inside the United States for law enforcement  
32 purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order  
33 with respect to such targeted United States person or the Attorney General has authorized an  
34 emergency acquisition pursuant to ~~subsections~~ subsection (c) or (d), respectively, or any  
35 other provision of this Act.

36 “(3) LIMITATIONS.—

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

1 during the effective period of such order.

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

6 “(C) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the  
7 authority of the Government to seek an order or authorization under, or otherwise  
8 engage in any activity that is authorized under, any other title of this Act.

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

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

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

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

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

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

22 “(4) 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 “(5) a certification made by the Attorney General, an official specified in section  
25 104(a)(6), or the head of an element of the intelligence community that—

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

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

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

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

35 “(c) Order.—

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

39 “(A) the application has been made by a Federal officer and approved by the

1 Attorney General;

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

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

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

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

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

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

20 “(3) REVIEW.—

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

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

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

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

1 (e).

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

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

10 “(d) Emergency Authorization.—

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

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

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

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

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

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

1 person.

2 “(e) Appeal.—

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

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

12 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT**  
13 **AUTHORIZATIONS.**

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

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

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

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

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

35 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

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

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1 Senate Resolution 400 of the 94th Congress or any successor Senate resolution, concerning the  
2 implementation of this title.

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

4 “(1) with respect to section 702—

5 “(A) any certifications ~~made under~~ **submitted in accordance with** section 702(g)  
6 during the reporting period;

7 “(B) with respect to each determination ~~made~~ under section 702(c)(2), the reasons  
8 for exercising the authority under such section;

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

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

15 “(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5)  
16 of section 702(h);

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

19 “(G) a description of any incidents of ~~noncompliance~~ **noncompliance**—

20 “(i) with a directive issued by the Attorney General and the Director of  
21 National Intelligence under section 702(h), ~~including~~ **including**—

22 “~~(i)~~ incidents of noncompliance by a specified person to whom the Attorney  
23 General and Director of National Intelligence issued a directive under section  
24 702(h); and

25 “(ii) by an element of the intelligence community with procedures and  
26 guidelines adopted in accordance with subsections (d), (e), and (f) of section 702;  
27 ~~and~~

28 “~~(ii) incidents of noncompliance by a specified person to whom the Attorney~~  
29 ~~General and Director of National Intelligence issued a directive under section~~  
30 ~~702(h); and~~

31 “(H) any procedures implementing section 702;

32 “(2) with respect to section 703—

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

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

35 “(i) granted;

36 “(ii) modified; and

37 “(iii) denied; and

1           “(C) the total number of emergency acquisitions authorized by the Attorney General  
2           under section 703(d) and the total number of subsequent orders approving or denying  
3           such acquisitions; and

4           “(3) with respect to section 704—

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

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

7           “(i) granted;

8           “(ii) modified; and

9           “(iii) denied; and

10           “(C) the total number of emergency acquisitions authorized by the Attorney General  
11           under section 704(d) and the total number of subsequent orders approving or denying  
12           such applications.

### 13   “SEC. 708. SAVINGS PROVISION.

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

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

19           (1) by striking the item relating to title VII;

20           (2) by striking the item relating to section 701; and

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

### 22   “TITLE VII—ADDITIONAL PROCEDURES REGARDING 23   CERTAIN PERSONS OUTSIDE THE UNITED STATES

24   “Sec. 701. Definitions.

25   “Sec. 702. Procedures for targeting certain persons outside the United States other than United  
26   States persons.

27   “Sec. 703. Certain acquisitions inside the United States targeting United States persons outside the  
28   United States.

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

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

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

32   “Sec. 707. Congressional oversight.

33   “Sec. 708. Savings provision.”.

34   (c) Technical and Conforming Amendments.—

35   (1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a)(ii)(A) of title 18, United States



1 Code, is amended by inserting “or a court order pursuant to section 704 of the Foreign  
2 Intelligence Surveillance Act of 1978” after “assistance”.

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

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

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

7 “(E) acquisitions under section 703; and

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

9 SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY  
10 WHICH ELECTRONIC SURVEILLANCE AND  
11 INTERCEPTION OF CERTAIN COMMUNICATIONS MAY  
12 BE CONDUCTED.

13 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of  
14 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

15 “statement of exclusive means by which electronic surveillance and interception of certain  
16 communications may be conducted

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

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

25 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
26 1809(a)) is amended by striking “authorized by statute” each place it appears and inserting  
27 “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express  
28 statutory authorization that is an additional exclusive means for conducting electronic  
29 surveillance under section 112.”; and

30 (c) Conforming Amendments.—

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

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

37 (2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign  
38 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after

1 the item relating to section 111, the following new item:

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

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

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

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

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

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

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

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

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

30 “(e) Definitions.—In this section:

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

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

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

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

1 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

19 (2) by striking subsection (b);

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

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

## 25 SEC. 105. ISSUANCE OF AN ORDER.

26 ~~Section(a) In General.~~—Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50  
27 U.S.C. 1805) is amended—

28 (1) in subsection (a)—

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

30 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),  
31 respectively;

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

33 (3) in subsection (c)(1)—

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

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

36 (C) by striking subparagraph (F);

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1 (4) by striking subsection (d);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (b) **Conforming Amendment.**—Section 108(a)(2)(C) of the Foreign Intelligence  
7 Surveillance Act of 1978 (50 U.S.C. 1808(a)(2)(C)) is amended by striking “105(f)” and  
8 inserting “105(e)”;

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

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

39 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking  
40 “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”.

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 **under** subsection (a) to determine, or enforce, compliance with an order or a  
20 rule 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 to cause death, illness, or serious bodily injury to a significant number of persons;  
15 or

16 “(4) any weapon that is designed, intended, or has the capability to release radiation or  
17 radioactivity causing death, illness, or serious bodily injury to a significant number of  
18 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 Amendments.—The  
28 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended is further  
29 amended—

30 (1) in paragraph (2) of section 105(d) (50 U.S.C. 1805(d)), as redesignated by section  
31 105(a)(5) of this Act, by striking “section 101(a) (5) or (6)” and inserting “paragraph  
32 (5), (6), or (7) of section 101(a)”;

33 (2) in section 301(1) (50 U.S.C. 1821(1)), by inserting “weapon of mass destruction,”  
34 after “person,”; and

35 (3) in section 304(d)(2) (50 U.S.C. 1824(d)(2)), by striking “section 101(a) (5) or (6)”  
36 and inserting “paragraph (5), (6), or (7) of section 101(a)”.

37 TITLE II—PROTECTIONS FOR ELECTRONIC  
38 COMMUNICATION SERVICE PROVIDERS

1 SEC. 201. PROCEDURES FOR IMPLEMENTING  
2 STATUTORY DEFENSES UNDER THE FOREIGN  
3 INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

6 "TITLE VIII—PROTECTION OF PERSONS ASSISTING  
7 THE GOVERNMENT

8 "SEC. 801. DEFINITIONS.

9 "In this title:

10 "(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of  
11 access to, information (including communication contents, communications records, or  
12 other information relating to a customer or communication), facilities, or another form of  
13 assistance.

14 "(2) CIVIL ACTION.—The term 'civil action' includes a covered civil action.

15 "(3) 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 "(4) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).

21 "(5) COVERED CIVIL ACTION.—The term 'covered civil action' means a civil action filed  
22 in a Federal or State court that—

23 "(A) alleges that an electronic communication service provider furnished assistance  
24 to an element of the intelligence community; and

25 "(B) seeks monetary or other relief from the electronic communication service  
26 provider related to the provision of such assistance.

27 "(6) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic  
28 communication service provider' means—

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

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

33 "(C) a provider of a remote computing service, as that term is defined in section  
34 2711 of title 18, United States Code;

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

1 communications are stored;

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

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

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

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

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

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

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

14 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title  
15 18, United States Code; or

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

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

22 “SEC. 802. PROCEDURES FOR IMPLEMENTING  
23 STATUTORY DEFENSES.

24 “(a) Requirement for Certification.—Notwithstanding any other provision of law, a civil  
25 action may not lie or be maintained in a Federal or State court against any person for providing  
26 assistance to an element of the intelligence community, and shall be promptly dismissed, if the  
27 Attorney General certifies to the district court of the United States in which such action is  
28 pending that—

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

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

33 “(3) any assistance by that person was provided pursuant to a directive under section  
34 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law  
35 110-55), or 702(h) directing such assistance;

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

38 “(A) in connection with an intelligence activity involving communications that

1 was—

2 “(i) authorized by the President during the period beginning on September 11,  
3 2001, and ending on January 17, 2007; and

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

6 “(B) the subject of a written request or directive, or a series of written requests or  
7 directives, from the Attorney General or the head of an element of the intelligence  
8 community (or the deputy of such person) to the electronic communication service  
9 provider indicating that the activity was—

10 “(i) authorized by the President; and

11 “(ii) determined to be lawful; or

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

13 “(b) Judicial Review.—

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

17 “(2) SUPPLEMENTAL MATERIALS.—In its review of a certification ~~made pursuant to~~ under  
18 subsection (a), the court may examine the court order, certification, written request, or  
19 directive described in subsection (a) and any relevant court order, certification, written  
20 request, or directive submitted pursuant to subsection (d).

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

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

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

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

40 “(e) Nondelegation.—The authority and duties of the Attorney General under this section shall

1 be performed by the Attorney General or a designee in a position not lower than (or Acting  
2 Attorney General) or the Deputy Attorney General.

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

6 “(g) Removal.—A civil action against a person for providing assistance to an element of the  
7 intelligence community that is brought in a State court shall be deemed to arise under the  
8 Constitution and laws of the United States and shall be removable under section 1441 of title 28,  
9 United States Code.

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

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

#### 14 “SEC. 803. PREEMPTION.

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

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

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

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

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

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

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

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

#### 32 “SEC. 804. REPORTING.

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

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

- 1           “(1) any certifications made under section 802;  
2           “(2) a description of the judicial review of the certifications made under section 802; and  
3           “(3) any actions taken to enforce the provisions of section 803.”.

4   **SEC. 202. TECHNICAL AMENDMENTS.**

5       The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978  
6       (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end  
7       the following:

8   **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**  
9   **THE GOVERNMENT**

- 10   “Sec.801.Definitions.  
11   “Sec.802.Procedures for implementing statutory defenses.  
12   “Sec.803.Preemption.  
13   “Sec.804.Reporting.”.

14   **TITLE III—REVIEW OF PREVIOUS ACTIONS**

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

16   (a) Definitions.—In this section:

17       (1) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of  
18       Congress” means—

19           (A) the Select Committee on Intelligence and the Committee on the Judiciary of the  
20           Senate; and

21           (B) the Permanent Select Committee on Intelligence and the Committee on the  
22           Judiciary of the House of Representatives.

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

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

32   (b) Reviews.—

33       (1) **REQUIREMENT TO CONDUCT.**—The Inspectors General of the Department of Justice,  
34       the Office of the Director of National Intelligence, the National Security Agency, the  
35       Department of Defense, and any other element of the intelligence community that  
36       participated in the President’s Surveillance Program, shall complete a comprehensive

1 review of, with respect to the oversight authority and responsibility of each such Inspector  
2 General—

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

5 (B) access to legal reviews of the Program and access to information about the  
6 Program;

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

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

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

14 (2) COOPERATION AND COORDINATION.--

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

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

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

23 (B) INTEGRATION OF OTHER REVIEWS.—The Counsel of the Office of Professional  
24 Responsibility of the Department of Justice shall provide the report of any  
25 investigation conducted by such Office on matters relating to the Program, including  
26 any investigation of the process through which legal reviews of the Program were  
27 conducted and the substance of such reviews, to the Inspector General of the  
28 Department of Justice, who shall integrate the factual findings and conclusions of such  
29 investigation into its review.

30 (C) COORDINATION.--The Inspectors General shall designate one of the Inspectors  
31 General required to conduct a review under paragraph (1) that is appointed by the  
32 President, by and with the advice and consent of the Senate, to coordinate the conduct  
33 of the reviews and the preparation of the reports.

34 (c) Reports.—

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

1 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the  
2 Inspectors General of the Department of Justice, the Office of the Director of National  
3 Intelligence, the National Security Agency, the Department of Defense, and any other  
4 Inspector General required to conduct a review under subsection (b)(1), shall submit to the  
5 appropriate committees of Congress, ~~to the extent practicable in a manner consistent with~~  
6 **national security**, a comprehensive report on such reviews that includes any  
7 recommendations of any such Inspectors General within the oversight authority and  
8 responsibility of any such Inspector General with respect to the reviews.

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

14 (d) Resources.—

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

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

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

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

28 (3) TRANSFER OF PERSONNEL.—The Attorney General, the Secretary of Defense, the  
29 Director of National Intelligence, the Director of the National Security Agency, or the head  
30 of any other element of the intelligence community may transfer personnel to the relevant  
31 Office of the Inspector General required to conduct a review under subsection (b)(1) and  
32 submit a report under subsection (c) and, in addition to any other personnel authorized by  
33 law, are authorized to fill any vacancy caused by such a transfer. Personnel transferred  
34 under this paragraph shall perform such duties relating to such review as the relevant  
35 Inspector General shall direct.

36 TITLE IV—OTHER PROVISIONS

37 SEC. 401. SEVERABILITY.

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



1 (B) CERTIFICATION.—The certification described in this subparagraph is a  
2 certification—

3 (i) made by the Attorney General;

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

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

10 (iv) that states that the information required to be included in a review,  
11 assessment, or report under section 601 of such Act, as amended by section  
12 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating  
13 to any acquisition conducted under title VII of such Act, as amended by section  
14 101(a), has been included in a review, assessment, or report under such section  
15 601, 702(l), or 707.

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

22 (A) the date that authorization expires; or

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

(41 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.

WITHHOLD

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.

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

Exemption 5

Deleted: 6/18/2008

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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 at the end the following:

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 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 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) shall be conducted  
28               only in accordance with—

29                       “(A) the targeting and minimization procedures adopted in accordance with  
30                       subsections (d) and (e); and

31                       “(B) upon submission of a certification in accordance with subsection (g), such  
32                       certification.

33               “(2) DETERMINATION.—A determination under this paragraph and for purposes of  
34               subsection (a) is a determination by the Attorney General and the Director of National  
35               Intelligence that exigent circumstances exist because, without immediate implementation of  
36               an authorization under subsection (a), intelligence important to the national security of the  
37               United States may be lost or not timely acquired and time does not permit the issuance of an  
38               order pursuant to subsection (i)(3) prior to the implementation of such authorization.

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

3           “(A) before the submission of a certification ~~under in accordance with subsection~~  
4 (g); or

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

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

10          “(d) Targeting Procedures.— Procedures.—

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

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

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

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

20          “(e) Minimization Procedures.—

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

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

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

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

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

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

32           “(2) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines  
33 adopted in accordance with paragraph (1) to—

34           “(A) the congressional intelligence committees;

35           “(B) the ~~Committee~~ Committees on the Judiciary of the Senate and;

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

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

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1 “(g) Certification.--

2 “(1) IN GENERAL.—

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

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

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

15 “(A) attest that—

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

19 “(I) ensure that an acquisition authorized under subsection (a) is ~~targeted-~~  
20 ~~at limited to targeting~~ persons reasonably believed to be located outside the  
21 United States; and

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

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

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

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

31 “(iii) guidelines have been adopted in accordance with subsection (f) to ensure  
32 compliance with the limitations in subsection (b) and to ensure that ~~applications~~  
33 ~~an application for a court orders are order~~ is filed as required by this Act;

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

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

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

- 1           “(vii) the acquisition complies with the limitations in subsection (b);  
2           “(B) include the procedures adopted in accordance with subsections (d) and (e);  
3           “(C) be supported, as appropriate, by the affidavit of any appropriate official in the  
4 area of national security who is—  
5           “(i) appointed by the President, by and with the advice and consent of the  
6 Senate; or  
7           “(ii) the head of an element of the intelligence community;  
8           “(D) include—  
9           “(i) an effective date for the authorization that is at least 30 days after the  
10 submission of the written certification to the court; or  
11           “(ii) if the acquisition has begun or the effective date is less than 30 days after  
12 the submission of the written certification to the court, the date the acquisition  
13 began or the effective date for the acquisition; and  
14           “(E) if the Attorney General and the Director of National Intelligence make a  
15 determination under subsection (c)(2), include a statement that such determination has  
16 been made.  
17           “(3) CHANGE IN EFFECTIVE DATE. —The Attorney General and the Director of National  
18 Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by  
19 submitting an amended certification in accordance with this subsection (i)(1)(C) to the  
20 Foreign Intelligence Surveillance Court for review pursuant to subsection (i).  
21           “(4) LIMITATION.—A certification made under this subsection is not required to identify  
22 the specific facilities, places, premises, or property at which the an acquisition authorized  
23 under subsection (a) will be directed or conducted.  
24           “(5) MAINTENANCE OF CERTIFICATION.—The Attorney General or a designee of the  
25 Attorney General shall maintain a copy of a certification made under this subsection.  
26           “(6) REVIEW.—A certification submitted in accordance with this subsection shall be  
27 subject to judicial review pursuant to subsection (i).  
28           “(h) Directives and Judicial Review of Directives.—  
29           “(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the  
30 Attorney General and the Director of National Intelligence may direct, in writing, an  
31 electronic communication service provider to—  
32           “(A) immediately provide the Government with all information, facilities, or  
33 assistance necessary to accomplish the acquisition in a manner that will protect the  
34 secrecy of the acquisition and produce a minimum of interference with the services  
35 that such electronic communication service provider is providing to the target of the  
36 acquisition; and  
37           “(B) maintain under security procedures approved by the Attorney General and the  
38 Director of National Intelligence any records concerning the acquisition or the aid  
39 furnished that such electronic communication service provider wishes to maintain.

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

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

7           “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

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

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

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

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

41           “(5) ENFORCEMENT OF DIRECTIVES. —

42           “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to

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

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

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

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

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

19 “(6) APPEAL.—

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

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

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

33 “(1) IN GENERAL.—

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

39 “(B) TIME PERIOD FOR REVIEW.—The Court shall review a certification submitted in  
40 accordance with subsection (g) and the targeting and minimization procedures adopted  
41 in accordance with subsections (d) and (e) and shall complete such review and issue an  
42 order under paragraph (3) not later than 30 days after the date on which such

1 certification and such procedures are submitted.

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

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

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

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

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

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

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

27 “(3) ORDERS.—

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

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

42 “(i) correct any deficiency identified by the Court’s order not later than 30 days

1 after the date on which the Court issues the order; or

2 “(ii) cease, or not begin, the acquisition authorized under subsection (a).  
3 **implementation of the authorization for which such certification was**  
4 **submitted.**

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

8 “(4) APPEAL.—

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

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

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

19 “(ii) if the Government ~~appeals~~ **files a petition for review** of an order under  
20 this section, until the Court of Review enters an order under subparagraph (C).

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

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

31 “(5) SCHEDULE.—

32 “(A) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General  
33 and the Director of National Intelligence seek to reauthorize or replace an authorization  
34 issued ~~pursuant to this section~~ **under subsection (a)**, the Attorney General and the  
35 Director of National Intelligence shall, to the extent practicable, submit to the Court  
36 the certification prepared in accordance with subsection (g) and the procedures adopted  
37 in accordance with subsections (d) and (e) at least 30 days prior to the expiration of  
38 such authorization.

39 “(B) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the  
40 Attorney General and the Director of National Intelligence seek to reauthorize or  
41 replace an authorization ~~made pursuant to this section~~ **issued under subsection (a)** by

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1 filing a certification pursuant to subparagraph (A), that authorization, and any  
2 directives issued thereunder and any order related thereto, shall remain in effect,  
3 notwithstanding the expiration provided for in subsection (a), until the Court issues an  
4 order with respect to such certification under paragraph (3) at which time the  
5 provisions of that paragraph and paragraph (4) shall apply with respect to such  
6 certification.

7 “(j) Judicial Proceedings.—

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

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

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

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

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

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

28 “(l) Assessments and Reviews.—

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

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

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

38 “(i) the congressional intelligence committees; and

39 “(ii) the Committees on the Judiciary of the House of Representatives and the  
40 Senate.

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1           “(2) AGENCY ASSESSMENT.—The Inspector General of the Department of Justice and the  
2 Inspector General of each element of the intelligence community authorized to acquire  
3 foreign intelligence information under subsection (a), with respect to the department or  
4 element of such Inspector General—

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

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

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

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

17           “(i) the Attorney General;

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

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

22           “(I) the congressional intelligence committees; and

23           “(II) the Committees on the Judiciary of the House of Representatives and  
24 the Senate.

25           “(3) ANNUAL REVIEW.—

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

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

33           “(ii) an accounting of the number of United States-person identities  
34 subsequently disseminated by that element in response to requests for identities  
35 that were not referred to by name or title in the original reporting;

36           “(iii) the number of targets that were later determined to be located in the  
37 United States and, to the extent possible, whether communications of such targets  
38 were reviewed; and

39           “(iv) a description of any procedures developed by the head of such element of  
40 the intelligence community and approved by the Director of National Intelligence

1 to assess, in a manner consistent with national security, operational requirements  
2 and the privacy interests of United States persons, the extent to which the  
3 acquisitions authorized under subsection (a) acquire the communications of  
4 United States persons, and the results of any such assessment.

5 “(B) USE OF REVIEW.—The head of each element of the intelligence community that  
6 conducts an annual review under subparagraph (A) shall use each such review to  
7 evaluate the adequacy of the minimization procedures utilized by such element ~~or~~ and,  
8 as appropriate, the application of the minimization procedures to a particular  
9 acquisition authorized under subsection (a).

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

13 “(i) the Foreign Intelligence Surveillance Court;

14 “(ii) the Attorney General;

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

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

19 “(I) the congressional intelligence committees; and

20 “(II) the Committees on the Judiciary of the House of Representatives and  
21 the Senate.

22 “SEC. 703. CERTAIN ACQUISITIONS INSIDE THE  
23 UNITED STATES TARGETING UNITED STATES  
24 PERSONS OUTSIDE THE UNITED STATES.

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

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

32 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably  
33 believed to be located in the United States during the effective period of an order issued  
34 pursuant to subsection (c), an acquisition targeting such United States person under this  
35 section shall cease unless the targeted United States person is again reasonably believed to  
36 be located outside the United States while an order issued pursuant to subsection (c) is in  
37 effect. Nothing in this section shall be construed to limit the authority of the Government to  
38 seek an order or authorization under, or otherwise engage in any activity that is authorized  
39 under, any other title of this Act.

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1 “(b) Application.—

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

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

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

10 “(C) a statement of the facts and circumstances relied upon to justify the applicant’s  
11 belief that the United States person who is the target of the acquisition 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 “(D) a statement of proposed minimization procedures that meet the definition of  
16 minimization procedures under section 101(h) or ~~section~~ 301(4), as appropriate;

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

19 “(F) a certification made by the Attorney General or an official specified in section  
20 104(a)(6) that—

21 “(i) the certifying official deems the information sought to be foreign  
22 intelligence information;

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

25 “(iii) such information cannot reasonably be obtained by normal investigative  
26 techniques;

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

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

30 “(I) the information sought is the type of foreign intelligence information  
31 designated; and

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

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

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

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

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

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

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

13          “(c) Order.—

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

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

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

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

23           “(ii) a foreign power, an agent of a foreign power, or an officer or employee of  
24           a foreign power;

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

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

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

37          “(3) REVIEW.—

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



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

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

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

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

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

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

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

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

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

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

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

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

39           “(C) if applicable, an electronic communication service provider to maintain under  
40 security procedures approved by the Attorney General any records concerning the  
41 acquisition or the aid furnished that such electronic communication service provider

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1 wishes to maintain; and

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

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

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

13 “(d) Emergency Authorization.—

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

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

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

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

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

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

35 “(4) USE OF INFORMATION.—If an application for approval submitted pursuant to  
36 paragraph (1) is denied, or in any other case where the acquisition is terminated and no  
37 order is issued approving the acquisition, no information obtained or evidence derived from  
38 such acquisition, except under circumstances in which the target of the acquisition is  
39 determined not to be a United States person, shall be received in evidence or otherwise  
40 disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,  
41 department, office, agency, regulatory body, legislative committee, or other authority of the  
42 United States, a State, or political subdivision thereof, and no information concerning any

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

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

9 “(f) Appeal.—

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

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

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

## 22 “SEC. 704. OTHER ACQUISITIONS TARGETING UNITED 23 STATES PERSONS OUTSIDE THE UNITED STATES.

24 “(a) Jurisdiction and Scope.—

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

27 “(2) SCOPE.—No element of the intelligence community may intentionally target, for the  
28 purpose of acquiring foreign intelligence information, a United States person reasonably  
29 believed to be located outside the United States under circumstances in which the targeted  
30 United States person has a reasonable expectation of privacy and a warrant would be  
31 required if the acquisition were conducted inside the United States for law enforcement  
32 purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order  
33 with respect to such targeted United States person or the Attorney General has authorized an  
34 emergency acquisition pursuant to ~~subsections~~ subsection (c) or (d), respectively, or any  
35 other provision of this Act.

36 “(3) LIMITATIONS.—

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

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1 during the effective period of such order.

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

6 “(C) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the  
7 authority of the Government to seek an order or authorization under, or otherwise  
8 engage in any activity that is authorized under, any other title of this Act.

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

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

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

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

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

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

22 “(4) 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 “(5) a certification made by the Attorney General, an official specified in section  
25 104(a)(6), or the head of an element of the intelligence community that—

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

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

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

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

35 “(c) Order.—

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

39 “(A) the application has been made by a Federal officer and approved by the

1 Attorney General;

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

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

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

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

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

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

20 “(3) REVIEW.—

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

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

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

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

1 (e).

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

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

10 “(d) Emergency Authorization.—

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

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

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

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

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

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

1 person.

2 “(e) Appeal.—

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

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

12 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT**  
13 **AUTHORIZATIONS.**

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

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

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

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

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

35 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

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

1 Senate Resolution 400 of the 94th Congress or any successor Senate resolution, concerning the  
2 implementation of this title.

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

4 “(1) with respect to section 702—

5 “(A) any certifications ~~made under~~ **submitted in accordance with** section 702(g)  
6 during the reporting period;

7 “(B) with respect to each determination ~~made~~ under section 702(c)(2), the reasons  
8 for exercising the authority under such section;

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

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

15 “(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5)  
16 of section 702(h);

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

19 “(G) a description of any incidents of ~~noncompliance~~ **noncompliance—**

20 “(i) with a directive issued by the Attorney General and the Director of  
21 National Intelligence under section 702(h), ~~including including—~~

22 “~~(i)~~ **(i) incidents of noncompliance by a specified person to whom the Attorney**  
23 **General and Director of National Intelligence issued a directive under section**  
24 **702(h); and**

25 “~~(ii)~~ **(ii) by an element of the intelligence community with procedures and**  
26 **guidelines adopted in accordance with subsections (d), (e), and (f) of section 702;**  
27 **and**

28 “~~(ii) incidents of noncompliance by a specified person to whom the Attorney~~  
29 ~~General and Director of National Intelligence issued a directive under section~~  
30 ~~702(h); and~~

31 “(H) any procedures implementing section 702;

32 “(2) with respect to section 703—

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

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

35 “(i) granted;

36 “(ii) modified; and

37 “(iii) denied; and



1           “(C) the total number of emergency acquisitions authorized by the Attorney General  
2           under section 703(d) and the total number of subsequent orders approving or denying  
3           such acquisitions; and

4           “(3) with respect to section 704—

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

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

7           “(i) granted;

8           “(ii) modified; and

9           “(iii) denied; and

10           “(C) the total number of emergency acquisitions authorized by the Attorney General  
11           under section 704(d) and the total number of subsequent orders approving or denying  
12           such applications.

### 13   “SEC. 708. SAVINGS PROVISION.

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

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

19           (1) by striking the item relating to title VII;

20           (2) by striking the item relating to section 701; and

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

## 22   “TITLE VII—ADDITIONAL PROCEDURES REGARDING 23   CERTAIN PERSONS OUTSIDE THE UNITED STATES

24   “Sec. 701. Definitions.

25   “Sec. 702. Procedures for targeting certain persons outside the United States other than United  
26   States persons.

27   “Sec. 703. Certain acquisitions inside the United States targeting United States persons outside the  
28   United States.

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

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

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

32   “Sec. 707. Congressional oversight.

33   “Sec. 708. Savings provision.”.

34   (c) Technical and Conforming Amendments.—

35   (1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a)(ii)(A) of title 18, United States

1 Code, is amended by inserting “or a court order pursuant to section 704 of the Foreign  
2 Intelligence Surveillance Act of 1978” after “assistance”.

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

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

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

7 “(E) acquisitions under section 703; and

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

9 SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY  
10 WHICH ELECTRONIC SURVEILLANCE AND  
11 INTERCEPTION OF CERTAIN COMMUNICATIONS MAY  
12 BE CONDUCTED.

13 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of  
14 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

15 “statement of exclusive means by which electronic surveillance and interception of certain  
16 communications may be conducted

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

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

25 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
26 1809(a)) is amended by striking “authorized by statute” each place it appears and inserting  
27 “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express  
28 statutory authorization that is an additional exclusive means for conducting electronic  
29 surveillance under section 112.”; and

30 (c) Conforming Amendments.—

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

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

37 (2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign  
38 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after

1 the item relating to section 111, the following new item:

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

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

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

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

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

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

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

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

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

30 “(e) Definitions.—In this section:

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

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

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

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

Deleted: 8/18/2008

- 1 (1) in subsection (a)—  
2 (A) by striking paragraphs (2) and (11);  
3 (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9),  
4 respectively;  
5 (C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by  
6 striking “detailed”;  
7 (D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the  
8 matter preceding subparagraph (A)—  
9 (i) by striking “Affairs or” and inserting “Affairs,”; and  
10 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the  
11 Federal Bureau of Investigation, if designated by the President as a certifying  
12 official—”;  
13 (E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by  
14 striking “statement of” and inserting “summary statement of”;  
15 (F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by  
16 adding “and” at the end; and  
17 (G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by  
18 striking “; and” and inserting a period;  
19 (2) by striking subsection (b);  
20 (3) by redesignating subsections (c) through (e) as subsections (b) through (d),  
21 respectively; and  
22 (4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this  
23 subsection, by striking “or the Director of National Intelligence” and inserting “the Director  
24 of National Intelligence, or the Director of the Central Intelligence Agency”.

## 25 SEC. 105. ISSUANCE OF AN ORDER.

26 **Section(a) In General.**—Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50  
27 U.S.C. 1805) is amended—

- 28 (1) in subsection (a)—  
29 (A) by striking paragraph (1); and  
30 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),  
31 respectively;  
32 (2) in subsection (b), by striking “(a)(3)” and inserting “(a)(2)”;  
33 (3) in subsection (c)(1)—  
34 (A) in subparagraph (D), by adding “and” at the end;  
35 (B) in subparagraph (E), by striking “; and” and inserting a period; and  
36 (C) by striking subparagraph (F);

1 (4) by striking subsection (d);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (b) Conforming Amendment.—Section 108(a)(2)(C) of the Foreign Intelligence  
7 Surveillance Act of 1978 (50 U.S.C. 1808(a)(2)(C)) is amended by striking “105(f)” and  
8 inserting “105(e)”;

## 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) 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 "(6) The Attorney General shall assess compliance with the requirements of paragraph (5)."

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

39 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking  
40 "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”.



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 **under** subsection (a) to determine; or enforce; compliance with an order or a  
20 rule 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 to cause death, illness, or serious bodily injury to a significant number of persons;  
15 or

16 “(4) any weapon that is designed, intended, or has the capability to release radiation or  
17 radioactivity causing death, illness, or serious bodily injury to a significant number of  
18 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 **Amendments**.—The  
28 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended is further  
29 amended—

30 (1) in paragraph (2) of section 105(d) (50 U.S.C. 1805(d)), as redesignated by section  
31 105(a)(5) of this Act, by striking “section 101(a) (5) or (6)” and inserting “paragraph  
32 (5), (6), or (7) of section 101(a)”;

33 (2) in section 301(1) (50 U.S.C. 1821(1)), by inserting “weapon of mass destruction,”  
34 after “person,”; and

35 (3) in section 304(d)(2) (50 U.S.C. 1824(d)(2)), by striking “section 101(a) (5) or (6)”  
36 and inserting “paragraph (5), (6), or (7) of section 101(a)”.

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

1 SEC. 201. PROCEDURES FOR IMPLEMENTING  
2 STATUTORY DEFENSES UNDER THE FOREIGN  
3 INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

6 "TITLE VIII—PROTECTION OF PERSONS ASSISTING  
7 THE GOVERNMENT

8 "SEC. 801. DEFINITIONS.

9 "In this title:

10 "(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of  
11 access to, information (including communication contents, communications records, or  
12 other information relating to a customer or communication), facilities, or another form of  
13 assistance.

14 "(2) CIVIL ACTION.—The term 'civil action' includes a covered civil action.

15 "(3) 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 "(4) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).

21 "(5) COVERED CIVIL ACTION.—The term 'covered civil action' means a civil action filed  
22 in a Federal or State court that—

23 "(A) alleges that an electronic communication service provider furnished assistance  
24 to an element of the intelligence community; and

25 "(B) seeks monetary or other relief from the electronic communication service  
26 provider related to the provision of such assistance.

27 "(6) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic  
28 communication service provider' means —

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

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

33 "(C) a provider of a remote computing service, as that term is defined in section  
34 2711 of title 18, United States Code;

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

1 communications are stored;

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

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

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

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

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

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

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

14 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title  
15 18, United States Code; or

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

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

22 **“SEC. 802. PROCEDURES FOR IMPLEMENTING**  
23 **STATUTORY DEFENSES.**

24 “(a) Requirement for Certification.—Notwithstanding any other provision of law, a civil  
25 action may not lie or be maintained in a Federal or State court against any person for providing  
26 assistance to an element of the intelligence community, and shall be promptly dismissed, if the  
27 Attorney General certifies to the district court of the United States in which such action is  
28 pending that—

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

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

33 “(3) any assistance by that person was provided pursuant to a directive under section  
34 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law  
35 110-55), or 702(h) directing such assistance;

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

38 “(A) in connection with an intelligence activity involving communications that

1 was—

2 “(i) authorized by the President during the period beginning on September 11,  
3 2001, and ending on January 17, 2007; and

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

6 “(B) the subject of a written request or directive, or a series of written requests or  
7 directives, from the Attorney General or the head of an element of the intelligence  
8 community (or the deputy of such person) to the electronic communication service  
9 provider indicating that the activity was—

10 “(i) authorized by the President; and

11 “(ii) determined to be lawful; or

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

13 “(b) Judicial Review.—

14 “(1) REVIEW OF CERTIFICATIONS.—A certification ~~made pursuant to~~ **under** subsection (a)  
15 shall be given effect unless the court finds that such certification is not supported by  
16 substantial evidence provided to the court pursuant to this section.

17 “(2) SUPPLEMENTAL MATERIALS.—In its review of a certification ~~made pursuant to~~ **under**  
18 subsection (a), the court may examine the court order, certification, written request, or  
19 directive described in subsection (a) and any relevant court order, certification, written  
20 request, or directive submitted pursuant to subsection (d).

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

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

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

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

40 “(e) Nondelegation.—The authority and duties of the Attorney General under this section shall

1 be performed by the Attorney General ~~or a designee in a position not lower than~~ (or Acting  
2 Attorney General) or the Deputy Attorney General.

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

6 “(g) Removal.—A civil action against a person for providing assistance to an element of the  
7 intelligence community that is brought in a State court shall be deemed to arise under the  
8 Constitution and laws of the United States and shall be removable under section 1441 of title 28,  
9 United States Code.

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

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

#### 14 “SEC. 803. PREEMPTION.

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

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

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

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

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

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

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

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

#### 32 “SEC. 804. REPORTING.

33 “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General  
34 shall ~~fully inform~~, in a manner consistent with national security, the Rules of the House of  
35 Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th  
36 Congress or any successor Senate resolution, **fully inform** the congressional intelligence  
37 committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of  
38 the House of Representatives concerning the implementation of this title.

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

- 1           “(1) any certifications made under section 802;  
2           “(2) a description of the judicial review of the certifications made under section 802; and  
3           “(3) any actions taken to enforce the provisions of section 803.”.

#### 4   **SEC. 202. TECHNICAL AMENDMENTS.**

5       The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978  
6       (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end  
7       the following:

#### 8   **“TITLE VIII—PROTECTION OF PERSONS ASSISTING 9    THE GOVERNMENT**

- 10   “Sec.801.Definitions.  
11   “Sec.802.Procedures for implementing statutory defenses.  
12   “Sec.803.Preemption.  
13   “Sec.804.Reporting.”.

#### 14   **TITLE III—REVIEW OF PREVIOUS ACTIONS**

#### 15   **SEC. 301. REVIEW OF PREVIOUS ACTIONS.**

16   (a) Definitions.—In this section:

17       (1) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of  
18       Congress” means—

19           (A) the Select Committee on Intelligence and the Committee on the Judiciary of the  
20           Senate; and

21           (B) the Permanent Select Committee on Intelligence and the Committee on the  
22           Judiciary of the House of Representatives.

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

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

32   (b) Reviews.—

33       (1) **REQUIREMENT TO CONDUCT.**—The Inspectors General of the Department of Justice,  
34       the Office of the Director of National Intelligence, the National Security Agency, the  
35       Department of Defense, and any other element of the intelligence community that  
36       participated in the President’s Surveillance Program, shall complete a comprehensive

1 review of, with respect to the oversight authority and responsibility of each such Inspector  
2 General—

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

5 (B) access to legal reviews of the Program and access to information about the  
6 Program;

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

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

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

14 (2) COOPERATION AND COORDINATION.—

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

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

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

23 (B) INTEGRATION OF OTHER REVIEWS.—The Counsel of the Office of Professional  
24 Responsibility of the Department of Justice shall provide the report of any  
25 investigation conducted by such Office on matters relating to the Program, including  
26 any investigation of the process through which legal reviews of the Program were  
27 conducted and the substance of such reviews, to the Inspector General of the  
28 Department of Justice, who shall integrate the factual findings and conclusions of such  
29 investigation into its review.

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

34 (c) Reports.—

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



1 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the  
2 Inspectors General of the Department of Justice, the Office of the Director of National  
3 Intelligence, the National Security Agency, the Department of Defense, and any other  
4 Inspector General required to conduct a review under subsection (b)(1), shall submit to the  
5 appropriate committees of Congress, ~~to the extent practicable in a manner consistent with~~  
6 **national security**, a comprehensive report on such reviews that includes any  
7 recommendations of any such Inspectors General within the oversight authority and  
8 responsibility of any such Inspector General with respect to the reviews.

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

14 (d) Resources.—

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

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

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

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

28 (3) TRANSFER OF PERSONNEL.—The Attorney General, the Secretary of Defense, the  
29 Director of National Intelligence, the Director of the National Security Agency, or the head  
30 of any other element of the intelligence community may transfer personnel to the relevant  
31 Office of the Inspector General required to conduct a review under subsection (b)(1) and  
32 submit a report under subsection (c) and, in addition to any other personnel authorized by  
33 law, are authorized to fill any vacancy caused by such a transfer. Personnel transferred  
34 under this paragraph shall perform such duties relating to such review as the relevant  
35 Inspector General shall direct.

36 TITLE IV—OTHER PROVISIONS

37 SEC. 401. SEVERABILITY.

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

1 (B) CERTIFICATION.—The certification described in this subparagraph is a  
2 certification—

3 (i) made by the Attorney General;

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

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

10 (iv) that states that the information required to be included in a review,  
11 assessment, or report under section 601 of such Act, as amended by section  
12 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating  
13 to any acquisition conducted under title VII of such Act, as amended by section  
14 101(a), has been included in a review, assessment, or report under such section  
15 601, 702(l), or 707.

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

22 (A) the date that authorization expires; or

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