

1 **Purpose: To provide a complete substitute.**

2
3

4 **S. 2248**

5 ~~Be it enacted by the Senate and House of Representatives of the United States of America~~
6 ~~in Congress assembled,~~

7

8 **** 1** To amend the Foreign Intelligence Surveillance Act of
9 1978, to modernize and streamline the provisions of that
10 Act, and for other purposes.

11

12 **Referred to the Committee on _____ and ordered**
13 **to be printed**

14 **Ordered to lie on the table and to be printed**

15 **AMENDMENT INTENDED TO BE PROPOSED BY MR.**
16 **ROCKEFELLER (for himself and Mr. BOND)**

17 **Viz:**

18 **Strike all after the enacting clause and insert the following:**

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

20 (a) Short Title.—This Act may be cited as the “Foreign Intelligence Surveillance Act
21 of 1978 Amendments Act of 2007” **2008**” or the “FISA Amendments Act of 2007”
22 **2008**”.

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

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

25 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

26 ~~Sec.101.Targeting the communications of~~ **Sec.101.Additional procedures regarding**
27 **certain persons outside the United States.**

28 **Sec.102.Statement of exclusive means by which electronic surveillance and interception**
29 **of domestic communications may be conducted.**

30 **Sec.103.Submittal to Congress of certain court orders under the Foreign Intelligence**
31 **Surveillance Act of 1978.**

32 **Sec.104.Applications for court orders.**

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- 1 Sec.105.Issuance of an order.
- 2 Sec.106.Use of information.
- 3 Sec.107.Amendments for physical searches.
- 4 Sec.108.Amendments for emergency pen registers and trap and trace devices.
- 5 Sec.109.Foreign Intelligence Surveillance Court.
- 6 Sec.110.Technical and conforming amendments.

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

- 9 Sec.201.Definitions.
- 10 Sec.202.Limitations on civil actions for electronic communication service providers.
- 11 Sec.203.Procedures for implementing statutory defenses under the Foreign Intelligence
- 12 Surveillance Act of 1978.
- 13 Sec.204.Preemption of State investigations.
- 14 Sec.205.Technical amendments.

15 **TITLE III—OTHER PROVISIONS**

- 16 Sec.301.Severability.
- 17 Sec.302.Effective date; repeal; transition procedures.

18 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

19 ~~SEC. 101. TARGETING THE COMMUNICATIONS OF~~
20 **ADDITIONAL PROCEDURES REGARDING**
21 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

24 (1) by striking title VII; and

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

26 ~~“TITLE VII—ADDITIONAL PROCEDURES FOR~~
27 ~~TARGETING COMMUNICATIONS OF REGARDING~~
28 **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

29 **“SEC. 701. LIMITATION ON DEFINITION OF**
30 **ELECTRONIC SURVEILLANCE.**

31 “Nothing in the definition of electronic surveillance under section 101(f) shall be

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1 construed to encompass surveillance that is targeted in accordance with this title at a
2 person reasonably believed to be located outside the United States.

3 “SEC. 702. DEFINITIONS.

4 “(a) In General.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’,
5 ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’,
6 ‘minimization procedures’, ‘person’, ‘United States’, and ‘United States person’ shall
7 have the meanings given such terms in section 101, except as specifically provided in this
8 title.

9 “(b) Additional Definitions.—

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

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

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

15 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign
16 Intelligence Surveillance Court’ and ‘Court’ mean the court established by section
17 103(a).

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

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

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

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

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

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

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

34 “(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the
35 intelligence community’ means an element of the intelligence community specified
36 in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C.
37 401a(4)).

38 “SEC. 703. PROCEDURES FOR ACQUIRING THE

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1 **COMMUNICATIONS OF TARGETING CERTAIN**
2 **PERSONS OUTSIDE THE UNITED STATES OTHER**
3 **THAN UNITED STATES PERSONS.**

4 “(a) Authorization.—Notwithstanding any other law, the Attorney General and the
5 Director of National Intelligence may authorize jointly, for periods of up to 1 year, the
6 targeting of persons reasonably believed to be located outside the United States to acquire
7 foreign intelligence information.

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

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

11 “(2) may not intentionally target a person reasonably believed to be located
12 outside the United States if the purpose of such acquisition is to target for
13 surveillance a particular, known person reasonably believed to be in the United
14 States, except in accordance with title I; and or title III;

15 ~~“(3)“(3) may not intentionally target a United States person reasonably~~
16 ~~believed to be located outside the United States, except in accordance with~~
17 ~~sections 704, 705, or 706; and~~

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

20 “(c) ~~United States Persons Located Outside the United States.—~~

21 ~~“(1) Acquisition inside the united states of united states persons outside the united~~
22 ~~states.—An acquisition authorized by subsection (a) that occurs inside the United States~~
23 ~~may not target a United States person except in accordance with the provisions of title I.~~

24 ~~“(2) Acquisition outside the united states of united states persons outside the united~~
25 ~~states.—An acquisition by an electronic, mechanical, or other surveillance device outside~~
26 ~~the United States may not intentionally target a United States person reasonably believed~~
27 ~~to be outside the United States to acquire the contents of a wire or radio communication~~
28 ~~sent by or intended to be received by that United States person under circumstances in~~
29 ~~which a person has a reasonable expectation of privacy and a warrant would be required~~
30 ~~for law enforcement purposes if the technique were used inside the United States~~
31 ~~unless—~~

32 ~~“(A) the Attorney General or the Attorney General’s designee submits an application~~
33 ~~to the Foreign Intelligence Surveillance Court that includes a statement of the facts and~~
34 ~~circumstances relied upon by the applicant to justify the Attorney General’s belief that~~
35 ~~the target of the acquisition is a foreign power or an agent of a foreign power; and~~

36 ~~“(B) the Foreign Intelligence Surveillance Court—~~

37 ~~“(i) finds on the basis of the facts submitted by the applicant there is probable cause to~~
38 ~~believe that the target of the electronic surveillance is a foreign power or an agent of a~~
39 ~~foreign power; and~~

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1 ~~“(ii) issues an ex parte order as requested or as modified approving the targeting of that~~
2 ~~United States person.~~

3 ~~“(3) Procedures.—~~

4 ~~“(A) Submittal to foreign intelligence surveillance court.— Not later than 30 days after~~
5 ~~the date of the enactment of this title, the Attorney General shall submit to the Foreign~~
6 ~~Intelligence Surveillance Court the procedures to be utilized in determining whether a~~
7 ~~target reasonably believed to be outside the United States is a United States person.~~

8 ~~“(B) Approval by foreign intelligence surveillance court.— The procedures submitted~~
9 ~~under subparagraph (A) shall be utilized as described in that subparagraph only upon the~~
10 ~~approval of the Foreign Intelligence Surveillance Court.~~

11 ~~“(C) Utilization in targeting.— Any targeting of persons authorized by subsection (a)~~
12 ~~shall utilize the procedures submitted under subparagraph (A) as approved by the Foreign~~
13 ~~Intelligence Surveillance Court under subparagraph (B).~~

14 ~~“(d) Conduct of Acquisition.— An acquisition authorized under subsection (a) may be~~
15 ~~conducted only in accordance with—~~

16 ~~“(1) a certification made by the Attorney General and the Director of National~~
17 ~~Intelligence pursuant to subsection ~~(g)~~(f); and~~

18 ~~“(2) the targeting and minimization procedures required pursuant to subsections~~
19 ~~~~(e)~~(d) and ~~(f)~~(e).~~

20 ~~“(e)“(d) Targeting Procedures.—~~

21 ~~“(1) REQUIREMENT TO ADOPT.— The Attorney General, in consultation with the~~
22 ~~Director of National Intelligence, shall adopt targeting procedures that are~~
23 ~~reasonably designed to ensure that any acquisition authorized under subsection (a) is~~
24 ~~limited to targeting persons reasonably believed to be located outside the United~~
25 ~~States.~~

26 ~~“(2) JUDICIAL REVIEW.— The procedures referred to in paragraph (1) shall be~~
27 ~~subject to judicial review pursuant to subsection ~~(i)~~(h).~~

28 ~~“(f)“(e) Minimization Procedures.—~~

29 ~~“(1) REQUIREMENT TO ADOPT.— The Attorney General, in consultation with the~~
30 ~~Director of National Intelligence, shall adopt, consistent with the requirements of~~
31 ~~section 101(h) or section 301(4), minimization procedures for acquisitions~~
32 ~~authorized under subsection (a).~~

33 ~~“(2) JUDICIAL REVIEW.— The minimization procedures required by this subsection~~
34 ~~shall be subject to judicial review pursuant to subsection ~~(i)~~(h).~~

35 ~~“(g)“(f) Certification.—~~

36 ~~“(1) IN GENERAL.—~~

37 ~~“(A) REQUIREMENT.— Subject to subparagraph (B), prior to the initiation of~~
38 ~~an acquisition authorized under subsection (a), the Attorney General and the~~
39 ~~Director of National Intelligence shall provide, under oath, a written~~
40 ~~certification, as described in this subsection.~~

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1 “(B) EXCEPTION.—If the Attorney General and the Director of National
2 Intelligence determine that immediate action by the Government is required
3 and time does not permit the preparation of a certification under this subsection
4 prior to the initiation of an acquisition, the Attorney General and the Director of
5 National Intelligence shall prepare such certification, including such
6 determination, as soon as possible but in no event more than 168 hours after
7 such determination is made.

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

9 “(A) attest that—

10 “(i) there are reasonable procedures in place for determining that the
11 acquisition authorized under subsection (a) is targeted at persons
12 reasonably believed to be located outside the United States and that such
13 procedures have been approved by, or will ~~promptly~~ be submitted **in not**
14 **more than 5 days** for approval by, the Foreign Intelligence Surveillance
15 Court pursuant to subsection ~~(i)(h)~~;

16 “(ii) the procedures referred to in clause (i) are consistent with the
17 requirements of the fourth amendment to the Constitution of the United
18 States and do not permit the intentional targeting of any person who is
19 known at the time of acquisition to be located in the United States;

20 “(iii) a significant purpose of the acquisition is to obtain foreign
21 intelligence information;

22 “(iv) the minimization procedures to be used with respect to such
23 acquisition—

24 “(I) meet the definition of minimization procedures under section
25 101(h) or section 301(4); and

26 “(II) have been approved by, or will ~~promptly~~ be submitted **in not**
27 **more than 5 days** for approval by, the Foreign Intelligence
28 Surveillance Court pursuant to subsection ~~(i)(h)~~;

29 “(v) the acquisition involves obtaining the foreign intelligence
30 information from or with the assistance of an electronic communication
31 service provider; and

32 “(vi) the acquisition does not constitute electronic surveillance, as
33 limited by section 701; and

34 “(B) be supported, as appropriate, by the affidavit of any appropriate official
35 in the area of national security who is—

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

38 “(ii) the head of any element of the intelligence community.

39 “(3) LIMITATION.—A certification made under this subsection is not required to
40 identify the specific facilities, places, premises, or property at which the acquisition

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1 authorized under subsection (a) will be directed or conducted.

2 “(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a
3 certification made under this subsection, and any supporting affidavit, under seal to
4 the Foreign Intelligence Surveillance Court as soon as possible, but in no event more
5 than 5 days after such certification is made. Such certification shall be maintained
6 under security measures adopted by the Chief Justice of the United States and the
7 Attorney General, in consultation with the Director of National Intelligence.

8 “(5) REVIEW.—The certification required by this subsection shall be subject to
9 judicial review pursuant to subsection ~~(f)~~-(h).

10 ~~“(h)”~~“(g) Directives and Judicial Review of Directives.—

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

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

19 “(B) maintain under security procedures approved by the Attorney General
20 and the Director of National Intelligence any records concerning the acquisition
21 or the aid furnished that such electronic communication service provider wishes
22 to maintain.

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

26 “(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of
27 action shall lie in any court against any electronic communication service provider
28 for providing any information, facilities, or assistance in accordance with a directive
29 issued pursuant to paragraph (1).

30 “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

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1 unlawful. If the judge does not modify or set aside the directive, the judge shall
2 immediately affirm such directive, and order the recipient to comply with the
3 directive. The judge shall provide a written statement for the record of the
4 reasons for a determination under this paragraph.

5 “(D) CONTINUED EFFECT.—Any directive not explicitly modified or set aside
6 under this paragraph shall remain in full effect.

7 “(E) CONTEMPT OF COURT.—**Failure to obey an order of the Court**
8 **issued under this paragraph may be punished by the Court as contempt of**
9 **court.**

10 “(5) ENFORCEMENT OF DIRECTIVES.—

11 “(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive
12 issued pursuant to paragraph (1), the Attorney General may file a petition for an
13 order to compel compliance with the directive with the Foreign Intelligence
14 Surveillance Court, **which shall have jurisdiction to review such a petition.**

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

18 “(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an
19 order requiring the electronic communication service provider to comply with
20 the directive if the judge finds that the directive was issued in accordance with
21 paragraph (1), meets the requirements of this section, and is otherwise lawful.
22 The judge shall provide a written statement for the record of the reasons for a
23 determination under this paragraph.

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

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

29 “(6) APPEAL.—

30 “(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic
31 communication service provider receiving a directive issued pursuant to
32 paragraph (1) may file a petition with the Foreign Intelligence Surveillance
33 Court of Review for review of the decision issued pursuant to paragraph (4) or
34 (5) not later than 7 days after the issuance of such decision. The Court of
35 Review shall have jurisdiction to consider such a petition and shall provide a
36 written statement for the record of the reasons for a decision under this
37 paragraph.

38 “(B) CERTIORARI TO THE SUPREME COURT.—The Government or an
39 electronic communication service provider receiving a directive issued pursuant
40 to paragraph (1) may file a petition for a writ of certiorari for review of the
41 decision of the Court of Review issued under subparagraph (A). The record for
42 such review shall be transmitted under seal to the Supreme Court of the United

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1 States, which shall have jurisdiction to review such decision.

2 ~~“(i) Judicial Review.—”~~“(h) **Judicial Review of Certifications and Procedures.**—

3 “(1) IN GENERAL.—

4 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The
5 Foreign Intelligence Surveillance Court shall have jurisdiction to review any
6 certification required by subsection ~~(d)~~ ~~or~~ (c) and the targeting and
7 minimization procedures adopted pursuant to subsections ~~(e)~~(d) and ~~(f)~~(e).

8 “(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the
9 Court any such certification or procedure, or amendment thereto, not later than
10 5 days after making or amending the certification or adopting or amending the
11 procedures.

12 “(2) CERTIFICATIONS.—The Court shall review a certification provided under
13 subsection ~~(g)~~(f) to determine whether the certification contains all the required
14 elements.

15 “(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures
16 required by subsection ~~(e)~~(d) to assess whether the procedures are reasonably
17 designed to ensure that the acquisition authorized under subsection (a) is limited to
18 the targeting of persons reasonably believed to be located outside the United States.

19 “(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization
20 procedures required by subsection ~~(f)~~(e) to assess whether such procedures meet the
21 definition of minimization procedures under section 101(h) or **section 301(4)**.

22 “(5) ORDERS.—

23 “(A) APPROVAL.—If the Court finds that a certification required by
24 subsection ~~(g)~~(f) contains all of the required elements and that the targeting and
25 minimization procedures required by subsections ~~(e)~~(d) and ~~(f)~~(e) are
26 consistent with the requirements of those subsections and with the fourth
27 amendment to the Constitution of the United States, the Court shall enter an
28 order approving the continued use of the procedures for the acquisition
29 authorized under subsection (a).

30 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification
31 required by subsection ~~(g)~~(f) does not contain all of the required elements, or
32 that the procedures required by subsections ~~(e)~~(d) and ~~(f)~~(e) are not consistent
33 with the requirements of those subsections or the fourth amendment to the
34 Constitution of the United States, the Court shall issue an order directing the
35 Government to, at the Government’s election and to the extent required by the
36 Court’s order—

37 “(i) correct any deficiency identified by the Court’s order not later than
38 30 days after the date the Court issues the order; or

39 “(ii) cease the acquisition authorized under subsection (a).

40 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders
41 under this subsection, the Court shall provide, simultaneously with the orders,

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1 for the record a written statement of its reasons.

2 “(6) APPEAL.—

3 “(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any
4 order under this section to the Foreign Intelligence Surveillance Court of
5 Review, which shall have jurisdiction to review such order. For any decision
6 affirming, reversing, or modifying an order of the Foreign Intelligence
7 Surveillance Court, the Court of Review shall provide for the record a written
8 statement of its reasons.

9 “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any
10 acquisitions affected by an order under paragraph (5)(B) may continue—

11 “(i) during the ~~pending~~ pendency of any rehearing of the order by the
12 Court en banc; and

13 “(ii) during the pendency of any appeal of the order to the Foreign
14 Intelligence Surveillance Court of Review.

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

20 “~~(j)~~“(i) Expedited Judicial Proceedings.—Judicial proceedings under this section shall
21 be conducted as expeditiously as possible.

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

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

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

32 “(3) RETENTION OF RECORDS.—A directive made or an order granted under this
33 section shall be retained for a period of not less than 10 years from the date on
34 which such directive or such order is made.

35 “~~(l)~~ Oversight.—“(k) Assessments and Reviews.—

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

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

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1 “(B) the congressional intelligence committees.

2 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice
3 and of any element of the intelligence community authorized to acquire foreign
4 intelligence information under subsection (a)—**(a) with respect to their**
5 **department, agency, or element—**

6 “(A) are authorized to review the compliance ~~of their agency or element~~ with
7 the targeting and minimization procedures required by subsections ~~(e)~~(d) and
8 ~~(f)~~(e);

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

15 “(C) with respect to acquisitions authorized under subsection (a), shall
16 review the number of targets that were later determined to be located in the
17 United States and ~~the number of persons located in the United States whose,~~ to
18 **the extent possible, whether their** communications were reviewed; and

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

20 “(i) the Attorney General;

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

22 “(iii) the congressional intelligence committees.

23 “(3) ANNUAL REVIEW.—

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

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

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

36
37 “(iii) the number of targets that were later determined to be located in
38 the United States and ~~the number of persons located in the United States~~
39 ~~whose,~~ **to the extent possible, whether their** communications were
40 reviewed; **and**

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

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

13 ~~“(C) PROVISION OF REVIEW TO FOREIGN INTELLIGENCE SURVEILLANCE
14 COURT.—THE HEAD OF EACH ELEMENT OF THE INTELLIGENCE COMMUNITY THAT
15 CONDUCTS AN ANNUAL REVIEW UNDER SUBPARAGRAPH (A) SHALL PROVIDE
16 SUCH REVIEW TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.~~

17 ~~“(4) REPORTS TO CONGRESS.—REVIEW.—The head of each element of the
18 intelligence community that conducts an annual review under
19 subparagraph (A) shall provide such review to—~~

20 ~~“(i) the Foreign Intelligence Surveillance Court;~~

21 ~~“(ii) the Attorney General;~~

22 ~~“(iii) the Director of National Intelligence; and~~

23 ~~“(iv) the congressional intelligence committees.~~

24 **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE**
25 **UNITED STATES OF UNITED STATES PERSONS**
26 **OUTSIDE THE UNITED STATES.**

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

28 “(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have
29 jurisdiction to enter an order approving the targeting of a United States person
30 reasonably believed to be located outside the United States to acquire foreign
31 intelligence information, if such acquisition constitutes electronic surveillance
32 (as defined in section 101(f), regardless of the limitation of section 701) or the
33 acquisition of stored electronic communications or stored electronic data that
34 requires an order under this Act, and such acquisition is conducted within the
35 United States.

36 “(2) LIMITATION.—In the event that a United States person targeted under
37 this subsection is reasonably believed to be located in the United States during
38 the pendency of an order issued pursuant to subsection (c), such acquisition
39 shall cease until authority, other than under this section, is obtained pursuant
40 to this Act or the targeted United States person is again reasonably believed to

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1 be located outside the United States during the pendency of an order issued
2 pursuant to subsection (c).

3 **“(b) Application.—**

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

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

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

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

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

18 **“(ii) a foreign power, an agent of a foreign power, or an officer or**
19 **employee of a foreign power;**

20 **“(D) a statement of the proposed minimization procedures consistent**
21 **with the requirements of section 101(h) or section 301(4);**

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

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

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

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

30 **“(iii) such information cannot reasonably be obtained by normal**
31 **investigative techniques;**

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

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

35 **“(I) the information sought is the type of foreign intelligence**
36 **information designated; and**

37 **“(II) such information cannot reasonably be obtained by**
38 **normal investigative techniques;**

39 **“(G) a summary statement of the means by which the acquisition will be**

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1 conducted and whether physical entry is required to effect the acquisition;

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

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

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

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

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

20 “(c) Order.—

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

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

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

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

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

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

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

40 “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists

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1 for purposes of an order under paragraph (1), a judge having jurisdiction
2 under subsection (a)(1) may consider past activities of the target, as well as
3 facts and circumstances relating to current or future activities of the target.
4 However, no United States person may be considered a foreign power, agent of
5 a foreign power, or officer or employee of a foreign power solely upon the basis
6 of activities protected by the first amendment to the Constitution of the United
7 States.

8 **“(3) REVIEW.—**

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

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

18 **“(C) REVIEW OF MINIMIZATION PROCEDURES.—**If the judge determines
19 that the proposed minimization procedures required under paragraph
20 (1)(C) do not meet the definition of minimization procedures under section
21 101(h) or section 301(4), the judge shall enter an order so stating and
22 provide a written statement for the record of the reasons for such
23 determination. The Government may appeal an order under this clause
24 pursuant to subsection (f).

25 **“(D) REVIEW OF CERTIFICATION.—**If the judge determines that an
26 application required by subsection (2) does not contain all of the required
27 elements, or that the certification or certifications are clearly erroneous on
28 the basis of the statement made under subsection (b)(1)(F)(v) and any
29 other information furnished under subsection (b)(3), the judge shall enter
30 an order so stating and provide a written statement for the record of the
31 reasons for such determination. The Government may appeal an order
32 under this clause pursuant to subsection (f).

33 **“(4) SPECIFICATIONS.—**An order approving an acquisition under this
34 subsection shall specify—

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

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

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

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1 “(D) the means by which the acquisition will be conducted and whether
2 physical entry is required to effect the acquisition; and

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

4 “(5) DIRECTIONS.—An order approving acquisitions under this subsection
5 shall direct—

6 “(A) that the minimization procedures be followed;

7 “(B) an electronic communication service provider to provide to the
8 Government forthwith all information, facilities, or assistance necessary to
9 accomplish the acquisition authorized under this subsection in a manner
10 that will protect the secrecy of the acquisition and produce a minimum of
11 interference with the services that such electronic communication service
12 provider is providing to the target;

13 “(C) an electronic communication service provider to maintain under
14 security procedures approved by the Attorney General any records
15 concerning the acquisition or the aid furnished that such electronic
16 communication service provider wishes to maintain; and

17 “(D) that the Government compensate, at the prevailing rate, such
18 electronic communication service provider for providing such information,
19 facilities, or assistance.

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

24 “(7) COMPLIANCE.—At or prior to the end of the period of time for which an
25 acquisition is approved by an order or extension under this section, the judge
26 may assess compliance with the minimization procedures by reviewing the
27 circumstances under which information concerning United States persons was
28 acquired, retained, or disseminated.

29 “(d) Emergency Authorization.—

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

33 “(A) an emergency situation exists with respect to the acquisition of
34 foreign intelligence information for which an order may be obtained under
35 subsection (c) before an order authorizing such acquisition can with due
36 diligence be obtained; and

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

39 the Attorney General may authorize the emergency acquisition if a judge
40 having jurisdiction under subsection (a)(1) is informed by the Attorney
41 General, or a designee of the Attorney General, at the time of such

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1 authorization that the decision has been made to conduct such acquisition and
2 if an application in accordance with this subsection is made to a judge of the
3 Foreign Intelligence Surveillance Court as soon as practicable, but not more
4 than 168 hours after the Attorney General authorizes such acquisition.

5 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such
6 emergency acquisition, the Attorney General shall require that the
7 minimization procedures required by this subsection for the issuance of a
8 judicial order be followed.

9 “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a
10 judicial order approving such acquisition, the acquisition shall terminate when
11 the information sought is obtained, when the application for the order is
12 denied, or after the expiration of 168 hours from the time of authorization by
13 the Attorney General, whichever is earliest.

14 “(4) USE OF INFORMATION.—In the event that such application for approval
15 is denied, or in any other case where the acquisition is terminated and no order
16 is issued approving the acquisition, no information obtained or evidence
17 derived from such acquisition, except under circumstances in which the target
18 of the acquisition is determined not to be a United States person during the
19 pendency of the 168-hour emergency acquisition period, shall be received in
20 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or
21 before any court, grand jury, department, office, agency, regulatory body,
22 legislative committee, or other authority of the United States, a State, or
23 political subdivision thereof, and no information concerning any United States
24 person acquired from such acquisition shall subsequently be used or disclosed
25 in any other manner by Federal officers or employees without the consent of
26 such person, except with the approval of the Attorney General if the
27 information indicates a threat of death or serious bodily harm to any person.

28 “(e) Release From Liability.—Notwithstanding any other law, no cause of action
29 shall lie in any court against any electronic communication service provider for
30 providing any information, facilities, or assistance in accordance with an order or
31 request for emergency assistance issued pursuant to subsections (c) or (d).

32 “(f) Appeal.—

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

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

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1 **“SEC. 705. OTHER ACQUISITIONS TARGETING**
2 **UNITED STATES PERSONS OUTSIDE THE**
3 **UNITED STATES.**

4 **“(a) Jurisdiction and Scope.—**

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

7 **“(2) SCOPE.—**No element of the intelligence community may intentionally
8 target, for the purpose of acquiring foreign intelligence information, a United
9 States person reasonably believed to be located outside the United States under
10 circumstances in which the targeted United States person has a reasonable
11 expectation of privacy and a warrant would be required if the acquisition were
12 conducted inside the United States for law enforcement purposes, unless a
13 judge of the Foreign Intelligence Surveillance Court has entered an order or
14 the Attorney General has authorized an emergency acquisition pursuant to
15 subsections (c) or (d) or any other provision of this Act.

16 **“(3) LIMITATIONS.—**

17 **“(A) MOVING OR MISIDENTIFIED TARGETS.—**In the event that the
18 targeted United States person is reasonably believed to be in the United
19 States during the pendency of an order issued pursuant to subsection (c),
20 such acquisition shall cease until authority is obtained pursuant to this Act
21 or the targeted United States person is again reasonably believed to be
22 located outside the United States during the pendency of an order issued
23 pursuant to subsection (c).

24 **“(B) APPLICABILITY.—**If the acquisition is to be conducted inside the
25 United States and could be authorized under section 704, the procedures of
26 section 704 shall apply, unless an order or emergency acquisition authority
27 has been obtained under a provision of this Act other than under this
28 section.

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

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

37 **“(2) a statement of the facts and circumstances relied upon to justify the**
38 **applicant’s belief that the United States person who is the target of the**
39 **acquisition is—**

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

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1 “(B) a foreign power, an agent of a foreign power, or an officer or
2 employee of a foreign power;

3 “(3) a statement of the proposed minimization procedures consistent with the
4 requirements of section 101(h) or section 301(4);

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

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

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

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

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

19 “(c) Order.—

20 “(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a
21 judge having jurisdiction under subsection (a) finds that—

22 “(A) on the basis of the facts submitted by the applicant, for the United
23 States person who is the target of the acquisition, there is probable cause to
24 believe that the target is—

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

27 “(ii) a foreign power, an agent of a foreign power, or an officer or
28 employee of a foreign power;

29 “(B) the proposed minimization procedures, with respect to their
30 dissemination provisions, meet the definition of minimization procedures
31 under section 101(h) or section 301(4); and

32 “(C) the application which has been filed contains all statements and
33 certifications required by subsection (b) and the certification provided
34 under subsection (b)(4) is not clearly erroneous on the basis of the
35 information furnished under subsection (b),

36 the Court shall issue an ex parte order so stating.

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

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

5 **“(3) REVIEW.—**

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

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

17 **“(C) REVIEW OF MINIMIZATION PROCEDURES.—**If the judge determines
18 that the minimization procedures applicable to dissemination of
19 information obtained through an acquisition under this subsection do not
20 meet the definition of minimization procedures under section 101(h) or
21 section 301(4), the judge shall enter an order so stating and provide a
22 written statement for the record of the reasons for such determination.
23 The Government may appeal an order under this clause pursuant to
24 subsection (e).

25 **“(D) SCOPE OF REVIEW OF CERTIFICATION.—**If the judge determines that
26 the certification provided under subsection (b)(4) is clearly erroneous on
27 the basis of the information furnished under subsection (b), the judge shall
28 enter an order so stating and provide a written statement for the record of
29 the reasons for such determination. The Government may appeal an order
30 under this clause pursuant to subsection (e).

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

35 **“(5) COMPLIANCE.—**At or prior to the end of the period of time for which an
36 order or extension is granted under this section, the judge may assess
37 compliance with the minimization procedures by reviewing the circumstances
38 under which information concerning United States persons was disseminated,
39 provided that the judge may not inquire into the circumstances relating to the
40 conduct of the acquisition.

41 **“(d) Emergency Authorization.—**

42 **“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—**Notwithstanding any
43 other provision in this subsection, if the Attorney General reasonably

1 determines that—

2 “(A) an emergency situation exists with respect to the acquisition of
3 foreign intelligence information for which an order may be obtained under
4 subsection (c) before an order under that subsection may, with due
5 diligence, be obtained; and

6 “(B) the factual basis for issuance of an order under this section exists,
7 the Attorney General may authorize the emergency acquisition if a judge
8 having jurisdiction under subsection (a)(1) is informed by the Attorney General
9 or a designee of the Attorney General at the time of such authorization that the
10 decision has been made to conduct such acquisition and if an application in
11 accordance with this subsection is made to a judge of the Foreign Intelligence
12 Surveillance Court as soon as practicable, but not more than 168 hours after
13 the Attorney General authorizes such acquisition.

14 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such
15 emergency acquisition, the Attorney General shall require that the
16 minimization procedures required by this subsection be followed.

17 “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an
18 order under subsection (c), the acquisition shall terminate when the
19 information sought is obtained, if the application for the order is denied, or
20 after the expiration of 168 hours from the time of authorization by the Attorney
21 General, whichever is earliest.

22 “(4) USE OF INFORMATION.—In the event that such application is denied, or
23 in any other case where the acquisition is terminated and no order is issued
24 approving the acquisition, no information obtained or evidence derived from
25 such acquisition, except under circumstances in which the target of the
26 acquisition is determined not to be a United States person during the pendency
27 of the 168-hour emergency acquisition period, shall be received in evidence or
28 otherwise disclosed in any trial, hearing, or other proceeding in or before any
29 court, grand jury, department, office, agency, regulatory body, legislative
30 committee, or other authority of the United States, a State, or political
31 subdivision thereof, and no information concerning any United States person
32 acquired from such acquisition shall subsequently be used or disclosed in any
33 other manner by Federal officers or employees without the consent of such
34 person, except with the approval of the Attorney General if the information
35 indicates a threat of death or serious bodily harm to any person.

36 “(e) Appeal.—

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

42 “(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a
43 petition for a writ of certiorari for review of the decision of the Court of Review

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1 issued under paragraph (1). The record for such review shall be transmitted
2 under seal to the Supreme Court of the United States, which shall have
3 jurisdiction to review such decision.

4 **“SEC. 706. JOINT APPLICATIONS AND** 5 **CONCURRENT AUTHORIZATIONS.**

6 **“(a) Joint Applications and Orders.—**If an acquisition targeting a United States
7 person under section 704 or section 705 is proposed to be conducted both inside and
8 outside the United States, a judge having jurisdiction under section 704(a)(1) or
9 section 705(a)(1) may issue simultaneously, upon the request of the Government in a
10 joint application complying with the requirements of section 704(b) or section
11 705(b), orders under section 704(b) or section 705(b), as applicable.

12 **“(b) Concurrent Authorization.—**If an order authorizing electronic surveillance
13 or physical search has been obtained under section 105 or section 304 and that order
14 is still in effect, the Attorney General may authorize, without an order under section
15 704 or section 705, an acquisition of foreign intelligence information targeting that
16 United States person while such person is reasonably believed to be located outside
17 the United States.

18 **“SEC. 707. USE OF INFORMATION ACQUIRED** 19 **UNDER TITLE VII.**

20
21 ~~* 2 “(A) Semiannual report.— Not less frequently than once every 6 months, the~~
22 ~~Attorney General shall fully inform, in a manner consistent with national security, the~~
23 ~~congressional intelligence committees, the Committee on the Judiciary of the Senate, and~~
24 ~~the Committee on the Judiciary of the House of Representatives, concerning the~~
25 ~~implementation of this Act.~~

26 ~~“(B) Content.— Each report made under subparagraph (A) shall include—~~

27 ~~“(i) any certifications made under subsection (g) during the reporting period;~~

28 ~~“(ii) any directives issued under subsection (h) during the reporting period;~~

29
30 ~~* 3 “(iii) the judicial review during the reporting period of any such certifications and~~
31 ~~targeting and minimization procedures utilized with respect to such acquisition, including~~
32 ~~a copy of any order or pleading in connection with such review that contains a significant~~
33 ~~legal interpretation of the provisions of this Act;~~

34 ~~“(iv) any actions taken to challenge or enforce a directive under paragraphs (4) or (5)~~
35 ~~of subsections (h);~~

36
37 ~~* 4 “(v) any compliance reviews conducted by the Department of Justice or the Office~~
38 ~~of the Director of National Intelligence of acquisitions authorized under subsection (a);~~

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~~* 5 “(vi) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection (h), including—~~

~~* 6 “(I) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (e) and (f); and~~

~~* 7 “(II) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection (h);~~

~~“(vii) any procedures implementing this section; and~~

~~“(viii) any annual review conducted pursuant to paragraph (3).~~

~~“SEC. 704. USE OF INFORMATION ACQUIRED UNDER SECTION 703.~~

~~“Information“(a) Information Acquired Under Section 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.”.~~

~~section.~~

~~“(b) Information Acquired Under Section 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.~~

~~“SEC. 708. CONGRESSIONAL OVERSIGHT.~~

~~** 2 “(A)“(a) Semiannual report.—Not Report.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this Act title.~~

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

~~“(1) with respect to section 703—~~

~~“(A) any certifications made under subsection 703(f) during the reporting period;~~

~~“(B) any directives issued under subsection 703(g) during the reporting period;~~

~~** 3 “(iii)“(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this Act section;~~

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1 **“(D) any actions taken to challenge or enforce a directive under**
2 **paragraphs (4) or (5) of section 703(g);**

3 **** 4 ~~“(v)”~~“(E) any compliance reviews conducted by the Department of**
4 **Justice or the Office of the Director of National Intelligence of acquisitions**
5 **authorized under subsection ~~(a)~~ 703(a);**

6 **** 5 ~~“(vi)”~~“(F) a description of any incidents of noncompliance with a**
7 **directive issued by the Attorney General and the Director of National**
8 **Intelligence under subsection ~~(h)~~ 703(g), including—**

9 **** 6 ~~“(i)”~~“(i) incidents of noncompliance by an element of the**
10 **intelligence community with procedures adopted pursuant to subsections**
11 **~~(e)~~(d) and ~~(f)~~(e) of section 703; and**

12 **** 7 ~~“(ii)”~~“(ii) incidents of noncompliance by a specified person to**
13 **whom the Attorney General and Director of National Intelligence issued a**
14 **directive under subsection ~~(h)~~ 703(g); and**

15 **“(G) any procedures implementing this section;**

16 **“(2) with respect to section 704—**

17 **“(A) the total number of applications made for orders under section**
18 **704(b);**

19 **“(B) the total number of such orders either granted, modified, or**
20 **denied; and**

21 **“(C) the total number of emergency acquisitions authorized by the**
22 **Attorney General under section 704(d) and the total number of subsequent**
23 **orders approving or denying such acquisitions; and**

24 **“(3) with respect to section 705—**

25 **“(A) the total number of applications made for orders under 705(b);**

26 **“(B) the total number of such orders either granted, modified, or**
27 **denied; and**

28 **“(C) the total number of emergency acquisitions authorized by the**
29 **Attorney General under subsection 705(d) and the total number of**
30 **subsequent orders approving or denying such applications.”.**

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

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

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

35 **(3) by adding at the end the following:**

36 **“TITLE VII—ADDITIONAL PROCEDURES FOR**
37 **TARGETING COMMUNICATIONS OF REGARDING**

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1 **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

2 “Sec.701.Limitation on definition of electronic surveillance.

3 “Sec.702.Definitions.

4 “Sec.703.Procedures for acquiring the communications of targeting certain persons
5 outside the United States **other than United States persons.**

6 “Sec.704.Certain acquisitions inside the United States of United States persons
7 outside the United States.

8 “Sec.705.Other acquisitions targeting United States persons outside the United
9 States.

10 “Sec.706.Joint applications and concurrent authorizations.

11 “Sec.707.Use.

12 “Sec.704.Use of information acquired under ~~section 703.~~ title VII.

13 ~~(e) Sunset.~~—“Sec.708.Congressional oversight.”.

14 (c) **Technical and Conforming Amendments.—**

15 (1) **TITLE 18, UNITED STATES CODE.—**

16 (A) **SECTION 2232.—**Section 2232(e) of title 18, United States Code, is
17 amended by inserting “(as defined in section 101(f) of the Foreign
18 Intelligence Surveillance Act of 1978, regardless of the limitation of section
19 701 of that Act)” after “electronic surveillance”.

20 (B) **SECTION 2511.—**Section 2511(2)(a)(ii)(A) of title 18, United States
21 Code, is amended by inserting “or a court order pursuant to section 705 of
22 the Foreign Intelligence Surveillance Act of 1978” after “assistance”.

23 (2) **FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—**

24 (A) **SECTION 109.—**Section 109 of the Foreign Intelligence Surveillance
25 Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the
26 following:

27 “(e) **Definition.—**For the purpose of this section, the term ‘electronic surveillance’
28 means electronic surveillance as defined in section 101(f) of this Act regardless of
29 the limitation of section 701 of this Act.”.

30 (B) **SECTION 110.—**Section 110 of the Foreign Intelligence Surveillance
31 Act of 1978 (50 U.S.C. 1810) is amended by—

32 (i) adding an “(a)” before “Civil Action”,

33 (ii) redesignating subsections (a) through (c) as paragraphs (1)
34 through (3), respectively; and

35 (iii) adding at the end the following:

36 “(b) **Definition.—**For the purpose of this section, the term ‘electronic surveillance’
37 means electronic surveillance as defined in section 101(f) of this Act regardless of

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1 the limitation of section 701 of this Act.”

2 (C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence
3 Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking
4 subparagraphs (C) and (D) and inserting the following:

5 “(C) pen registers under section 402;

6 “(D) access to records under section 501;

7 “(E) acquisitions under section 704; and

8 “(F) acquisitions under section 705;”.

9 (d) Termination of Authority.—

10 (1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by
11 subsections (a)(2), (b), and ~~(b)(c)~~ shall cease to have effect on December 31, 2013.

12 (2) CONTINUING APPLICABILITY.—Section ~~703(h)(3)~~ 703(g)(3) of the Foreign
13 Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in
14 effect with respect to any directive issued pursuant to section ~~703(h)~~ 703(g) of that
15 Act (as so amended) during the period such directive was in effect. Section 704(e)
16 of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection
17 (a)) shall remain in effect with respect to an order or request for emergency
18 assistance under that section. The use of information acquired by an acquisition
19 conducted under section 703 of that Act (as so amended) shall continue to be
20 governed by the provisions of section ~~704~~ 707 of that Act (as so amended).

21 SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY
22 WHICH ELECTRONIC SURVEILLANCE AND
23 INTERCEPTION OF DOMESTIC COMMUNICATIONS
24 MAY BE CONDUCTED.

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

28 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC
29 SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS
30 MAY BE CONDUCTED

31 “Sec. 112. ~~Chapter 119 and 121~~ The procedures of chapters 119, 121, and 206 of
32 title 18, United States Code, and this Act shall be the exclusive means by which
33 electronic surveillance (as defined in section 101(f), regardless of the limitation of section
34 701) and the interception of domestic wire, oral, or electronic communications may be
35 conducted.”.

36 (b) Table of Contents.—The table of contents in the first section of the Foreign
37 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after
38 the item relating to section 111, the following:

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1 "Sec.112.Statement of exclusive means by which electronic surveillance and interception
2 of domestic communications may be conducted."

3 (c) **Conforming Amendments.**—Section 2511(2) of title 18, United States Code, is
4 amended in paragraph (f), by striking “, as defined in section 101 of such Act,” and
5 inserting “(as defined in section 101(f) of such Act regardless of the limitation of
6 section 701 of such Act)”.

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

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

14 (b) Reports by Attorney General on Certain Other Orders.—Such section 601, as
15 amended by subsection (a), is further amended by adding at the end the following new
16 subsection:

17 “(c) The Attorney General shall submit to the committees of Congress referred to in
18 subsection (a) a copy of any decision, order, or opinion issued by the ~~court established~~
19 ~~under section 103(a) or the court of review established under section 103(b)~~ **Foreign**
20 **Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of**
21 **Review** that includes significant construction or interpretation of any provision of this
22 Act not later than 45 days after such decision, order, or opinion is issued.”

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

25 “(d) **Definitions.**—In this section:

26 “(1) **FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.**—The term
27 “**Foreign Intelligence Surveillance Court**” means the court established by
28 section 103(a).

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

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

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

35 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

15 (2) by striking subsection (b);

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

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

22 SEC. 105. ISSUANCE OF AN ORDER.

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

25 (1) in subsection (a)—

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

27 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through
28 (4), respectively;

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

30 (3) in subsection (c)(1)—

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

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

33 (C) by striking subparagraph (F);

34 (4) by striking subsection (d);

35 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),
36 respectively;

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

3 “(e)(1) Notwithstanding any other provision of this title, the Attorney General may
4 authorize the emergency employment of electronic surveillance if the Attorney General—
5 **General reasonably—**

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

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

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

14 “(D) makes an application in accordance with this title to a judge having
15 jurisdiction under section 103 as soon as practicable, but not later than 168 hours
16 after the Attorney General authorizes such surveillance.

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

20 “(3) In the absence of a judicial order approving such electronic surveillance, the
21 surveillance shall terminate when the information sought is obtained, when the
22 application for the order is denied, or after the expiration of 168 hours from the time of
23 authorization by the Attorney General, whichever is earliest.

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

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

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

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

40 “(i) In any case in which the Government makes an application to a judge under this
41 title to conduct electronic surveillance involving communications and the judge grants

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1 such application, upon the request of the applicant, the judge shall also authorize the
2 installation and use of pen registers and trap and trace devices, and direct the disclosure
3 of the information set forth in section 402(d)(2).”.

4 SEC. 106. USE OF INFORMATION.

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

8 SEC. 107. AMENDMENTS FOR PHYSICAL 9 SEARCHES.

10 (a) Applications.—Section 303 of the Foreign Intelligence Surveillance Act of 1978
11 (50 U.S.C. 1823) is amended—

12 (1) in subsection (a)—

13 (A) by striking paragraph (2);

14 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through
15 (8), respectively;

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

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

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

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

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

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

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

31 (1) in subsection (a)—

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

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

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

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

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1 **General reasonably—**

2 “(A) determines that an emergency situation exists with respect to the
3 employment of a physical search to obtain foreign intelligence information before an
4 order authorizing such physical search can with due diligence be obtained;

5 “(B) determines that the factual basis for issuance of an order under this title to
6 approve such physical search exists;

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

10 “(D) makes an application in accordance with this title to a judge of the Foreign
11 Intelligence Surveillance Court as soon as practicable, but not more than 168 hours
12 after the Attorney General authorizes such physical search.

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

16 “(3) In the absence of a judicial order approving such physical search, the physical
17 search shall terminate when the information sought is obtained, when the application for
18 the order is denied, or after the expiration of 168 hours from the time of authorization by
19 the Attorney General, whichever is earliest.

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

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

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

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

37 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by
38 striking “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

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

40 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN**

1 **REGISTERS AND TRAP AND TRACE DEVICES.**

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

4 (1) in subsection (a)(2), by striking “48 hours” and inserting “168 hours”; and

5 (2) in subsection (c)(1)(C), by striking “48 hours” and inserting “168 hours”.

6 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE**
7 **COURT.**

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

11 (b) En Banc Authority.—

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

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

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

17 “(2)(A) The court established under this subsection may, on its own initiative, or upon
18 the request of the Government in any proceeding or a party under section 501(f) or
19 paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered
20 by a majority of the judges that constitute such court upon a determination that—

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

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

24 “(B) Any authority granted by this Act to a judge of the court established under this
25 subsection may be exercised by the court en banc. When exercising such authority, the
26 court en banc shall comply with any requirements of this Act on the exercise of such
27 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
31 1978 is further amended—

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

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

37 (c) Stay or Modification During an Appeal.—Section 103 of the Foreign Intelligence

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1 Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

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

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

4 “(f)(1) A judge of the court established under subsection (a), the court established
5 under subsection (b) or a judge of that court, or the Supreme Court of the United States or
6 a justice of that court, may, in accordance with the rules of their respective courts, enter a
7 stay of an order or an order modifying an order of the court established under subsection
8 (a) or the court established under subsection (b) entered under any title of this Act, while
9 the court established under subsection (a) conducts a rehearing, while an appeal is
10 pending to the court established under subsection (b), or while a petition of certiorari is
11 pending in the Supreme Court of the United States, or during the pendency of any review
12 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 SEC. 110. TECHNICAL AND CONFORMING 16 AMENDMENTS.

17 Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
18 1803(e)) is amended—

19 (1) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1)
20 or 703”; and

21 (2) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1)
22 or 703”.

23 TITLE II—PROTECTIONS FOR ELECTRONIC 24 COMMUNICATION SERVICE PROVIDERS

25 SEC. 201. DEFINITIONS.

26 In this title:

27 (1) ASSISTANCE.—The term “assistance” means the provision of, or the provision
28 of access to, information (including communication contents, communications
29 records, or other information relating to a customer or communication), facilities, or
30 another form of assistance.

31 (2) CONTENTS.—The term “contents” has the meaning given that term in section
32 101(n) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

33 (3) COVERED CIVIL ACTION.—The term “covered civil action” means a civil action
34 filed in a Federal or State court that—

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

37 (B) seeks monetary or other relief from the electronic communication service

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1 provider related to the provision of such assistance.

2 (4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term “electronic
3 communication service provider” means—

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

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

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

10 (D) any other communication service provider who has access to wire or
11 electronic communications either as such communications are transmitted or as
12 such communications are stored;

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

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

17 (5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term “element of the
18 intelligence community” means an element of the intelligence community specified
19 in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C.
20 401a(4)).

21 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR**
22 **ELECTRONIC COMMUNICATION SERVICE**
23 **PROVIDERS.**

24 (a) Limitations.—

25 (1) IN GENERAL.—Notwithstanding any other provision of law, a covered civil
26 action shall not lie or be maintained in a Federal or State court, and shall be
27 promptly dismissed, if the Attorney General certifies to the court that—

28 (A) the assistance alleged to have been provided by the electronic
29 communication service provider was—

30 (i) in connection with an intelligence activity involving communications
31 that was—

32 (I) authorized by the President during the period beginning on
33 September 11, 2001, and ending on January 17, 2007; and

34 (II) designed to detect or prevent a terrorist attack, or activities in
35 preparation for a terrorist attack, against the United States; and

36 (ii) described in a written request or directive from the Attorney General
37 or the head of an element of the intelligence community (or the deputy of
38 such person) to the electronic communication service provider indicating

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1 that the activity was—

2 (I) authorized by the President; and

3 (II) determined to be lawful; or

4 (B) the electronic communication service provider did not provide the
5 alleged assistance.

6 (2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to
7 review by a court for abuse of discretion.

8 (b) Review of Certifications.—If the Attorney General files a declaration under section
9 1746 of title 28, United States Code, that disclosure of a certification made pursuant to
10 subsection (a) would harm the national security of the United States, the court shall—

11 (1) review such certification in camera and ex parte; and

12 (2) limit any public disclosure concerning such certification, including any public
13 order following such an ex parte review, to a statement that the conditions of
14 subsection (a) have been met, without disclosing the subparagraph of subsection
15 (a)(1) that is the basis for the certification.

16 (c) Nondelegation.—The authority and duties of the Attorney General under this
17 section shall be performed by the Attorney General (or Acting Attorney General) or a
18 designee in a position not lower than the Deputy Attorney General.

19 (d) Civil Actions in State Court.—A covered civil action that is brought in a State court
20 shall be deemed to arise under the Constitution and laws of the United States and shall be
21 removable under section 1441 of title 28, United States Code.

22 (e) Rule of Construction.—Nothing in this section may be construed to limit any
23 otherwise available immunity, privilege, or defense under any other provision of law.

24 (f) Effective Date and Application.—This section shall apply to any covered civil
25 action that is pending on or filed after the date of enactment of this Act.

26 **SEC. 203. PROCEDURES FOR IMPLEMENTING**
27 **STATUTORY DEFENSES UNDER THE FOREIGN**
28 **INTELLIGENCE SURVEILLANCE ACT OF 1978.**

29 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as
30 amended by section 101, is further amended by adding after title VII the following new
31 title:

32 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**
33 **THE GOVERNMENT**

34 **“SEC. 801. DEFINITIONS.**

35 “In this title:

36 “(1) ASSISTANCE.—The term ‘assistance’ means the provision of, or the provision

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1 of access to, information (including communication contents, communications
2 records, or other information relating to a customer or communication), facilities, or
3 another form of assistance.

4 “(2) ATTORNEY GENERAL.—The term ‘Attorney General’ has the meaning give
5 that term in section 101(g).

6 “(3) CONTENTS.—The term ‘contents’ has the meaning given that term in section
7 101(n).

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

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

12 “(B) a provider of electronic ~~communications~~ **communication** service, as
13 that term is defined in section 2510 of title 18, United States Code;

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

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

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

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

23 “(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the
24 intelligence community’ means an element of the intelligence community as
25 specified or designated under section 3(4) of the National Security Act of 1947 (50
26 U.S.C. 401a(4)).

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

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

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

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

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

35 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the
36 day before the date of the enactment of the FISA Amendments Act of
37 ~~2007~~ **2008** or 703(h).

38 “(7) STATE.—The term ‘State’ means any State, political subdivision of a State,
39 the Commonwealth of Puerto Rico, the District of Columbia, and any territory or

1 possession of the United States, and includes any officer, public utility commission,
2 or other body authorized to regulate an electronic communication service provider.

3 “SEC. 802. PROCEDURES FOR IMPLEMENTING
4 STATUTORY DEFENSES.

5 “(a) Requirement for Certification.—

6 “(1) IN GENERAL.—Notwithstanding any other provision of law, no civil action
7 may lie or be maintained in a Federal or State court against any person for providing
8 assistance to an element of the intelligence community, and shall be promptly
9 dismissed, if the Attorney General certifies to the court that—

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

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

15 “(C) any assistance by that person was provided pursuant to a directive under
16 sections 102(a)(4), 105B(e), as in effect on the day before the date of the
17 enactment of the FISA Amendments Act of ~~2007~~ 2008, or 703(h) directing
18 such assistance; or

19 “(D) the person did not provide the alleged assistance.

20 “(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to
21 review by a court for abuse of discretion.

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

26 “(1) review such certification in camera and ex parte; and

27 “(2) limit any public disclosure concerning such certification, including any
28 public order following such an ex parte review, to a statement that the conditions of
29 subsection (a) have been met, without disclosing the subparagraph of subsection
30 (a)(1) that is the basis for the certification.

31 “(c) Removal.—A civil action against a person for providing assistance to an element
32 of the intelligence community that is brought in a State court shall be deemed to arise
33 under the Constitution and laws of the United States and shall be removable under section
34 1441 of title 28, United States Code.

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

37 “(e) Applicability.—This section shall apply to a civil action pending on or filed after
38 the date of enactment of the FISA Amendments Act of ~~2007.~~ 2008.”

1 SEC. 204. PREEMPTION OF STATE
2 INVESTIGATIONS.

3 Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as
4 added by section 203 of this Act, is amended by adding at the end the following new
5 section:

6 “SEC. 803. PREEMPTION.

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

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

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

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

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

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

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

22 “(d) Application.—This section shall apply to any investigation, action, or proceeding
23 that is pending on or filed after the date of enactment of the FISA Amendments Act of
24 2007.” 2008.”.

25 SEC. 205. TECHNICAL AMENDMENTS.

26 The table of contents in the first section of the Foreign Intelligence Surveillance Act of
27 1978 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by
28 adding at the end the following:

29 “TITLE VIII—PROTECTION OF PERSONS ASSISTING
30 THE GOVERNMENT

31 “Sec.801.Definitions.

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

33 “Sec.803.Preemption.”.

34 TITLE III—OTHER PROVISIONS

35 SEC. 301. SEVERABILITY.

Deleted: 1/23/2008

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

5 SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION 6 PROCEDURES.

7 (a) In General.—Except as provided in subsection (c), the amendments made by this
8 Act shall take effect on the date of the enactment of this Act.

9 (b) Repeal.—

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

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

16 (c) Transitions Procedures.—

17 (1) PROTECTION FROM LIABILITY.—Notwithstanding subsection (b)(1), subsection
18 (1) of section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain
19 in effect with respect to any directives issued pursuant to such section 105B for
20 information, facilities, or assistance provided during the period such directive was or
21 is in effect.

22 (2) ORDERS IN EFFECT.—

23 (A) ORDERS IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other
24 provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

25 (i) any order in effect on the date of enactment of this Act issued
26 pursuant to the Foreign Intelligence Surveillance Act of 1978 or section
27 6(b) of the Protect America Act of 2007 (Public Law 110–55; 121 Stat.
28 556) shall remain in effect until the date of expiration of such order; and

29 (ii) at the request of the applicant, the court established under section
30 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
31 1803(a)) shall reauthorize such order if the facts and circumstances
32 continue to justify issuance of such order under the provisions of such Act,
33 as in effect on the day before the date of the enactment of the Protect
34 America Act of 2007, except as amended by sections 102, 103, 104, 105,
35 106, 107, 108, and 109 of this Act.

36 (B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title
37 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by
38 section 101 of this Act, in effect on December 31, 2013, shall continue in effect
39 until the date of the expiration of such order. Any such order shall be governed
40 by the applicable provisions of the Foreign Intelligence Surveillance Act of

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1 1978, as so amended.

2 (3) AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—

3 (A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.—
4 Notwithstanding any other provision of this Act or of the Foreign Intelligence
5 Surveillance Act of 1978, any authorization or directive in effect on the date of
6 the enactment of this Act issued pursuant to the Protect America Act of 2007,
7 or any amendment made by that Act, shall remain in effect until the date of
8 expiration of such authorization or directive. Any such authorization or
9 directive shall be governed by the applicable provisions of the Protect America
10 Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except
11 as provided in paragraph (4) of this subsection, any acquisition pursuant to such
12 authorization or directive shall be deemed not to constitute electronic
13 surveillance (as that term is defined in section 101(f) of the Foreign Intelligence
14 Surveillance Act of 1978 (50 U.S.C. 1801(f)), as construed in accordance with
15 section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
16 1805a)).

17 (B) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DECEMBER 31, 2013.—
18 Any authorization or directive issued under title VII of the Foreign Intelligence
19 Surveillance Act of 1978, as amended by section 101 of this Act, in effect on
20 December 31, 2013, shall continue in effect until the date of the expiration of
21 such authorization or directive. Any such authorization or directive shall be
22 governed by the applicable provisions of the Foreign Intelligence Surveillance
23 Act of 1978, as so amended, and, except as provided in section ~~704~~ 707 of the
24 Foreign Intelligence Surveillance Act of 1978, as so amended, any acquisition
25 pursuant to such authorization or directive shall be deemed not to constitute
26 electronic surveillance (as that term is defined in section 101(f) of the Foreign
27 Intelligence Surveillance Act of 1978, to the extent that such section 101(f) is
28 limited by section 701 of the Foreign Intelligence Surveillance Act of 1978, as
29 so amended).

30 (4) USE OF INFORMATION ACQUIRED UNDER PROTECT AMERICA ACT.—Information
31 acquired from an acquisition conducted under the Protect America Act of 2007, and
32 the amendments made by that Act, shall be deemed to be information acquired from
33 an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance
34 Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of that Act (50
35 U.S.C. 1806), except for purposes of subsection (j) of such section.

36 (5) NEW ORDERS.—Notwithstanding any other provision of this Act or of the
37 Foreign Intelligence Surveillance Act of 1978—

38 (A) the government may file an application for an order under the Foreign
39 Intelligence Surveillance Act of 1978, as in effect on the day before the date of
40 the enactment of the Protect America Act of 2007, except as amended by
41 sections 102, 103, 104, 105, 106, 107, 108, and 109 of this Act; and

42 (B) the court established under section 103(a) of the Foreign Intelligence
43 Surveillance Act of 1978 shall enter an order granting such an application if the

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1 application meets the requirements of such Act, as in effect on the day before
2 the date of the enactment of the Protect America Act of 2007, except as
3 amended by sections 102, 103, 104, 105, 106, 107, 108, and 109 of this Act.

4 (6) EXTANT AUTHORIZATIONS.—At the request of the applicant, the court
5 established under section 103(a) of the Foreign Intelligence Surveillance Act of
6 1978 shall extinguish any extant authorization to conduct electronic surveillance or
7 physical search entered pursuant to such Act.

8 (7) APPLICABLE PROVISIONS.—Any surveillance conducted pursuant to an order
9 entered pursuant to this subsection shall be subject to the provisions of the Foreign
10 Intelligence Surveillance Act of 1978, as in effect on the day before the date of the
11 enactment of the Protect America Act of 2007, except as amended by sections 102,
12 103, 104, 105, 106, 107, 108, and 109 of this Act.66514 Act.

13 ~~Calendar No. 453~~(8) **TRANSITION PROCEDURES CONCERNING THE TARGETING**
14 **OF UNITED STATES PERSONS OVERSEAS.**—Any authorization in effect on the date
15 of enactment of this Act under section 2.5 of Executive Order 12333 to
16 intentionally target a United States person reasonably believed to be located
17 outside the United States shall remain in effect, and shall constitute a sufficient
18 basis for conducting such an acquisition targeting a United States person
19 located outside the United States until the earlier of—

20 ~~110th~~ CONGRESS(A) the date that authorization expires; or

21 1st Session

22 S. 2248

23 [Report No. 110209]

24
25 ~~A BILL~~(B) the date that is 90 days after the date of the enactment of this
26 Act.

27
28 * 1 To amend the Foreign Intelligence Surveillance Act of 1978, to
29 modernize and streamline the provisions of that Act, and for other purposes.

30 October 26, 2007

31 Read twice and placed on the calendar