

AMENDMENT NO.

Calendar No.

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.**S. 2248**

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by

Viz:

1 On page 2, line 5, strike “Targeting the communica-
2 tions of”, and insert “Additional Procedures regarding”

3 On page 3, strike lines 1 through 5 and insert the
4 following:

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES REGARDING CERTAIN**
3 **PERSONS OUTSIDE THE**
4 **UNITED STATES”.**

5 On page 4, beginning on line 20, strike “communica-
6 tions” and insert “communication”.

7 On page 5, strike lines 15 through 17 and insert the
8 following:

9 **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**
10 **SONS OUTSIDE THE UNITED STATES OTHER**
11 **THAN UNITED STATES PERSONS.”.**

12 On page 6, line 5, insert “located” after “be”.

13 On page 6, line 9, strike “and”.

14 On page 6, between lines 9 and 10, insert the fol-
15 lowing:

16 “(3) may not intentionally target a United
17 States person reasonably believed to be located out-
18 side the United States, except in accordance with
19 sections 704 or 705; and”.

- 1 On page 6, line 10, strike “(3)” and insert “(4)”.
- 2 Beginning on page 6, strike line 13 and all that fol-
3 lows through page 8, line 24.
- 4 On page 9, line 1, strike “(d)” and insert “(c)”.
- 5 On page 9, line 6, strike “(g)” and insert “(f)”.
- 6 On page 9, line 8, strike “(e) and (f)” and insert “(d)
7 and (e)”.
- 8 On page 9, line 9, strike “(e)” and insert “(d)”.
- 9 On page 9, line 19, strike “(i)” and insert “(h)”.
- 10 On page 9, line 20, strike “(f)” and insert “(e)”.
- 11 On page 10, line 5, strike “(i)” and insert “(h)”.
- 12 On page 10, line 6, strike “(g)” and insert “(f)”.
- 13 On page 11, line 12, strike “(i)” and insert “(h)”.

- 1 On page 12, line 8, strike "(i)" and insert "(h)".
- 2 On page 13, line 15, strike "(i)" and insert "(h)".
- 3 On page 13, line 16, strike "(h)" and insert "(g)".
- 4 On page 18, line 5, strike "(i)" and insert "(h)".
- 5 On page 18, line 11, strike "(d) or" and insert "(c)
6 and the".
- 7 On page 18, beginning on line 12, strike "(e) and
8 (f)" and insert "(d) and (e)".
- 9 On page 18, line 21, strike "(g)" and insert "(f)".
- 10 On page 19, line 1, strike "(e)" and insert "(d)".
- 11 On page 19, line 8, strike "(f)" and insert "(e)".
- 12 On page 19, line 13, strike "(g)" and insert "(f)".
- 13 On page 19, line 16, strike "(e) and (f)" and insert
14 "(d) and (e)".

1 On page 19, line 25, strike “(g)” and insert “(f)”.

2 On page 20, line 2, strike “(e) and (f)” and insert
3 “(d) and (e)”.

4 On page 21, strike line 11 through line 13, and insert
5 the following:

6 “(ii) or, if the Government appeals an
7 order under this section, until the Court of
8 Review enters an order under subsection
9 (C).

10 “(C) IMPLEMENTATION PENDING AP-
11 PEAL.—No later than 30 days after an appeal
12 to it of an order under paragraph (5)(B) direct-
13 ing the correction of a deficiency, the Court of
14 Review shall determine, and enter a cor-
15 responding order, whether all or any part of the
16 correction order, as issued or modified, shall be
17 implemented during the pendency of the ap-
18 peal.”.

19 On page 21, line 14, strike “(C)” and insert “(D)”.

20 On page 21, line 22, strike “(j)” and insert “(i)”.

1 On page 21, line 25, strike “(k)” and insert “(j)”.

2 On page 22, line 20, strike “(l) OVERSIGHT.—” and
3 insert “(k) ASSESSMENTS AND REVIEWS.—”

4 On page 23, line 11, strike “(a)—” and insert “(a)
5 with respect to their department, agency, or element—”.

6 On page 23, line 13, strike “of their agency or ele-
7 ment”.

8 On page 23, line 15, strike “(e) and (f)” and insert
9 “(d) and (e)”.

10 On page 24, line 5, strike “persons located in the
11 United States” and insert “such targets located in the
12 United States”.

13 On page 25, line 8, strike “and”.

14 On page 25, beginning on line 11, strike “persons
15 located in the United States whose communications were
16 reviewed” and insert “such targets located in the United
17 States whose communications were reviewed; and

1 “(iv) a description of the system de-
2 veloped by the Director of National Intel-
3 ligence to assess, in a manner consistent
4 with national security, operational require-
5 ments and the privacy interests of United
6 States persons, the extent to which the ac-
7 quisitions authorized under subsection (a)
8 acquire the communications of United
9 States persons, as well as any results of
10 that assessment.”.

11 Beginning on page 26, strike line 3 and all that fol-
12 lows through page 28, line 17, and insert the following:

13 **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED**
14 **STATES OF UNITED STATES PERSONS OUT-**
15 **SIDE THE UNITED STATES.**

16 “(a) JURISDICTION OF THE FOREIGN INTELLIGENCE
17 SURVEILLANCE COURT.—

18 “(1) IN GENERAL.—The Foreign Intelligence
19 Surveillance Court shall have jurisdiction to enter an
20 order approving the targeting of a United States
21 person reasonably believed to be located outside the
22 United States to acquire foreign intelligence infor-
23 mation, if such acquisition constitutes electronic sur-
24 veillance (as defined in section 101(f), regardless of

1 the limitation of section 701) or the acquisition of
2 stored electronic communications that requires an
3 order under this Act, and such acquisition is con-
4 ducted within the United States.

5 “(2) LIMITATION.—In the event that a United
6 States person targeted under this subsection is rea-
7 sonably believed to be located in the United States
8 during the pendency of an order issued pursuant to
9 subsection (c), such acquisition shall cease until au-
10 thority, other than under this section, is obtained
11 pursuant to this Act or the targeted United States
12 person is again reasonably believed to be located out-
13 side the United States during the pendency of an
14 order issued pursuant to subsection (c).

15 “(b) APPLICATION.—

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

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

3 “(B) the identity, if known, or a descrip-
4 tion of the United States person target of the
5 acquisition;

6 “(C) a statement of the facts and cir-
7 cumstances relied upon to justify the appli-
8 cant’s belief that the target of acquisition is—

9 “(i) a United States person reason-
10 ably believed to be located outside the
11 United States; and

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

15 “(D) a statement of the proposed mini-
16 mization procedures consistent with the require-
17 ments of section 101(h) or section 301(4);

18 “(E) a description of the nature of the in-
19 formation sought and the type of communica-
20 tions to be acquired;

21 “(F) a certification made by the Attorney
22 General or an official specified in section
23 104(a)(6) that—

1 “(i) the certifying official deems the
2 information sought to be foreign intel-
3 ligence information;

4 “(ii) a significant purpose of the ac-
5 quisition is to obtain foreign intelligence
6 information;

7 “(iii) such information cannot reason-
8 ably be obtained by normal investigative
9 techniques;

10 “(iv) designates the type of foreign in-
11 telligence information being sought accord-
12 ing to the categories described in section
13 101(e); and

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

16 “(I) the information sought is
17 the type of foreign intelligence infor-
18 mation designated; and

19 “(II) such information cannot
20 reasonably be obtained by normal in-
21 vestigative techniques.

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

1 “(H) the identity of any electronic commu-
2 nication service provider necessary to effect the
3 acquisition, provided, however, that the applica-
4 tion is not required to identify the specific fa-
5 cilities, places, premises, or property at which
6 the acquisition authorized under this section
7 will be directed or conducted;

8 “(I) a summary statement of the facts con-
9 cerning any previous applications that have
10 been made to any judge of the Foreign Intel-
11 ligence Surveillance Court involving the United
12 States person specified in the application and
13 the action taken on each previous application;
14 and

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

19 “(2) OTHER REQUIREMENTS OF THE ATTOR-
20 NEY GENERAL.—The Attorney General may require
21 any other affidavit or certification from any other
22 officer in connection with the application.

23 “(3) OTHER REQUIREMENTS OF THE JUDGE.—
24 The judge may require the applicant to furnish such

1 other information as may be necessary to make the
2 findings required by subsection (e)(1).

3 “(c) ORDER.—

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

9 “(A) the application has been made by a
10 Federal officer and approved by the Attorney
11 General;

12 “(B) on the basis of the facts submitted by
13 the applicant, there is probable cause to believe
14 that the specified target of the acquisition is—

15 “(i) a United States person reason-
16 ably believed to be located outside the
17 United States; and

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

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

24 “(D) the application which has been filed
25 contains all statements and certifications re-

1 quired by subsection (b) and the certification or
2 certifications are not clearly erroneous on the
3 basis of the statement made under subsection
4 (b) (1)(F) and any other information furnished
5 under subsection (b)(3).

6 “(2) PROBABLE CAUSE.—In determining
7 whether or not probable cause exists for purposes of
8 an order under paragraph (1), a judge having juris-
9 diction under subsection (a)(1) may consider past
10 activities of the target, as well as facts and cir-
11 cumstances relating to current or future activities of
12 the target. However, no United States person may
13 be considered a foreign power, agent of a foreign
14 power, or officer or employee of a foreign power
15 solely upon the basis of activities protected by the
16 first amendment to the Constitution of the United
17 States.

18 “(3) REVIEW.—

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

23 “(B) REVIEW OF PROBABLE CAUSE.—If
24 the judge determines that the facts submitted
25 under subsection (b) are insufficient to estab-

1 lish probable cause to issue an order under
2 paragraph (1)(A), the judge shall enter an
3 order so stating and provide a written state-
4 ment for the record of the reasons for such de-
5 termination. The Government may appeal an
6 order under this clause pursuant to subsection
7 (f).

8 “(C) REVIEW OF MINIMIZATION PROCE-
9 DURES.—If the judge determines that the pro-
10 posed minimization procedures required under
11 paragraph (1)(B) do not meet the definition of
12 minimization procedures under section 101(h)
13 or section 301(4), the judge shall enter an
14 order so stating and provide a written state-
15 ment for the record of the reasons for such de-
16 termination. The Government may appeal an
17 order under this clause pursuant to subsection
18 (f).

19 “(D) REVIEW OF CERTIFICATION.—If the
20 judge determines that an application required
21 by subsection (2) does not contain all of the re-
22 quired elements, or that the certification or cer-
23 tifications are clearly erroneous on the basis of
24 the statement made under subsection
25 (b)(1)(F)(v) and any other information fur-

1 nished under subsection (b)(3), the judge shall
2 enter an order so stating and provide a written
3 statement for the record of the reasons for such
4 determination. The Government may appeal an
5 order under this clause pursuant to subsection
6 (f).

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

9 “(A) the identity, if known, or a descrip-
10 tion of the United States person target of the
11 acquisition identified or described in the appli-
12 cation pursuant to subsection (b)(1)(B);

13 “(B) the type of information and commu-
14 nications to be acquired;

15 “(C) the means by which the acquisition
16 will be conducted and whether physical entry is
17 required to effect the acquisition; and

18 “(D) the period of time during which the
19 acquisition is approved.

20 “(5) DIRECTIONS.—An order approving acquisi-
21 tions under this subsection shall direct—

22 “(A) that the minimization procedures be
23 followed;

24 “(B) an electronic communication service
25 provider to provide to the Government forthwith

1 all information, facilities, or assistance nec-
2 essary to accomplish the acquisition authorized
3 under this subsection in a manner that will pro-
4 tect the secrecy of the acquisition and produce
5 a minimum of interference with the services
6 that such electronic communication service pro-
7 vider is providing to the target;

8 “(C) an electronic communication service
9 provider to maintain under security procedures
10 approved by the Attorney General any records
11 concerning the acquisition or the aid furnished
12 that such electronic communication service pro-
13 viders wish to maintain; and

14 “(D) that the Government compensate, at
15 the prevailing rate, such electronic communica-
16 tion service provider for providing such infor-
17 mation, facilities, or assistance.

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

24 “(7) COMPLIANCE.—At or prior to the end of
25 the period of time for which an acquisition is ap-

1 proved by an order or extension under this section,
2 the judge may assess compliance with the minimiza-
3 tion procedures by reviewing the circumstances
4 under which information concerning United States
5 persons was acquired, retained, or disseminated.

6 “(d) EMERGENCY AUTHORIZATION.—

7 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
8 TION.—Notwithstanding any other provision of this
9 Act, if the Attorney General reasonably determines
10 that—

11 “(A) an emergency situation exists with re-
12 spect to the acquisition of foreign intelligence
13 information for which an order may be obtained
14 under subsection (c) before an order author-
15 izing such acquisition can with due diligence be
16 obtained; and

17 “(B) the factual basis for issuance of an
18 order under this subsection to approve such ac-
19 quisition exists,

20 the Attorney General may authorize the emergency
21 acquisition if a judge having jurisdiction under sub-
22 section (a)(1) is informed by the Attorney General,
23 or a designee of the Attorney General, at the time
24 of such authorization that the decision has been
25 made to conduct such acquisition and if an applica-

1 tion in accordance with this subsection is made to a
2 judge of the Foreign Intelligence Surveillance Court
3 as soon as practicable, but not more than 168 hours
4 after the Attorney General authorizes such acqui-
5 sition.

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

11 “(3) TERMINATION OF EMERGENCY AUTHOR-
12 IZATION.—In the absence of a judicial order approv-
13 ing such acquisition, the acquisition shall terminate
14 when the information sought is obtained, when the
15 application for the order is denied, or after the expi-
16 ration of 168 hours from the time of authorization
17 by the Attorney General, whichever is earliest.

18 “(4) USE OF INFORMATION.—In the event that
19 such application for approval is denied, or in any
20 other case where the acquisition is terminated and
21 no order is issued approving the acquisition, no in-
22 formation obtained or evidence derived from such ac-
23 quisition shall be received in evidence or otherwise
24 disclosed in any trial, hearing, or other proceeding
25 in or before any court, grand jury, department, of-

1 fice, agency, regulatory body, legislative committee,
2 or other authority of the United States, a State, or
3 political subdivision thereof, and no information con-
4 cerning any United States person acquired from
5 such acquisition shall subsequently be used or dis-
6 closed in any other manner by Federal officers or
7 employees without the consent of such person, ex-
8 cept with the approval of the Attorney General if the
9 information indicates a threat of death or serious
10 bodily harm to any person.

11 “(e) **RELEASE FROM LIABILITY.**—Notwithstanding
12 any other law, no cause of action shall lie in any court
13 against any electronic communication service provider for
14 providing any information, facilities, or assistance in ac-
15 cordance with an order or request for emergency assist-
16 ance issued pursuant to subsection (c).

17 “(f) **APPEAL.**—

18 “(1) **APPEAL TO THE FOREIGN INTELLIGENCE**
19 **SURVEILLANCE COURT OF REVIEW.**—The Govern-
20 ment may file an appeal with the Foreign Intel-
21 ligence Surveillance Court of Review for review of an
22 order issued pursuant to subsection (c). The Court
23 of Review shall have jurisdiction to consider such ap-
24 peal and shall provide a written statement for the

1 record of the reasons for a decision under this para-
2 graph.

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

10 **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**
11 **STATES PERSONS OUTSIDE THE UNITED**
12 **STATES.**

13 “(a) JURISDICTION AND SCOPE.—

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

17 “(2) SCOPE.—No element of the intelligence
18 community may intentionally target, for the purpose
19 of acquiring foreign intelligence information, a
20 United States person reasonably believed to be lo-
21 cated outside the United States under circumstances
22 in which the targeted United States person has a
23 reasonable expectation of privacy and a warrant
24 would be required if the acquisition were conducted
25 inside the United States for law enforcement pur-

1 poses, unless a judge of the Foreign Intelligence
2 Surveillance Court has entered an order or the At-
3 torney General has authorized an emergency acquisi-
4 tion pursuant to subsections (c) or (d) or any other
5 provision of this Act.

6 “(3) LIMITATIONS.—

7 “(A) MOVING OR MISIDENTIFIED TAR-
8 GETS.—In the event that the targeted United
9 States person is reasonably believed to be in the
10 United States during the pendency of an order
11 issued pursuant to subsection (c), such acquisi-
12 tion shall cease until authority is obtained pur-
13 suant to this Act or the targeted United States
14 person is again reasonably believed to be lo-
15 cated outside the United States during the
16 pendency of an order issued pursuant to sub-
17 section (c).

18 “(B) APPLICABILITY.—If the acquisition
19 could be authorized under section 704, the pro-
20 cedures of section 704 shall apply, unless an
21 order or emergency acquisition authority has
22 been obtained under a provision of this Act
23 other than under this section.

24 “(b) APPLICATION.—Each application for an order
25 under this section shall be made by a Federal officer in

1 writing upon oath or affirmation to a judge having juris-
2 diction under subsection (a)(1). Each application shall re-
3 quire the approval of the Attorney General based upon the
4 Attorney General's finding that it satisfies the criteria and
5 requirements of such application as set forth in this sec-
6 tion and shall include—

7 “(1) the identity, if known, or a description of
8 the specific United States person target of the acqui-
9 sition;

10 “(2) a statement of the facts and circumstances
11 relied upon to justify the applicant's belief that the
12 target of the acquisition is—

13 “(A) a United States person reasonably be-
14 lieved to be located outside the United States;
15 and

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

19 “(3) a statement of the proposed minimization
20 procedures consistent with the requirements of sec-
21 tion 101(h) or section 301(4);

22 “(4) a summary statement of the facts con-
23 cerning any previous applications that have been
24 made to any judge of the Foreign Intelligence Sur-
25 veillance Court involving the United States person

1 specified in the application and the action taken on
2 each previous application; and

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

7 “(c) ORDER.—

8 “(1) FINDINGS.—If, upon an application made
9 pursuant to subsection (b), a judge having jurisdic-
10 tion under subsection (a) finds that—

11 “(A) on the basis of the facts submitted by
12 the applicant there is probable cause to believe
13 that the specified target of the acquisition is—

14 “(i) a United States person reason-
15 ably believed to be located outside the
16 United States; and

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

20 “(B) the proposed minimization proce-
21 dures, with respect to their dissemination provi-
22 sions, meet the definition of minimization pro-
23 cedures under section 101(h) or section 301(4),
24 the Court shall issue an ex parte order so stating.

1 “(2) PROBABLE CAUSE.—In determining
2 whether or not probable cause exists for purposes of
3 an order under paragraph (1)(A), a judge having ju-
4 risdiction under subsection (a)(1) may consider past
5 activities of the target, as well as facts and cir-
6 cumstances relating to current or future activities of
7 the target. However, no United States person may
8 be considered a foreign power, agent of a foreign
9 power, or officer or employee of a foreign power
10 solely upon the basis of activities protected by the
11 first amendment to the Constitution of the United
12 States.

13 “(3) REVIEW.—

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

21 “(B) REVIEW OF PROBABLE CAUSE.—If
22 the judge determines that the facts submitted
23 under subsection (b) are insufficient to estab-
24 lish probable cause to issue an order under this
25 subsection, the judge shall enter an order so

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

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

17 “(4) DURATION.—An order under this para-
18 graph shall be effective for a period not to exceed 90
19 days and such authorization may be renewed for ad-
20 ditional 90-day periods upon submission of renewal
21 applications meeting the requirements of subsection
22 (b).

23 “(d) EMERGENCY AUTHORIZATION.—

24 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
25 TION.—Notwithstanding any other provision in this

1 subsection, if the Attorney General reasonably deter-
2 mines that—

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

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

22 “(2) MINIMIZATION PROCEDURES.—If the At-
23 torney General authorizes such emergency acquisi-
24 tion, the Attorney General shall require that the

1 minimization procedures required by this subsection
2 be followed.

3 “(3) TERMINATION OF EMERGENCY AUTHOR-
4 IZATION.—In the absence of an order under sub-
5 section (c), the acquisition shall terminate when the
6 information sought is obtained, if the application for
7 the order is denied, or after the expiration of 168
8 hours from the time of authorization by the Attor-
9 ney General, whichever is earliest.

10 “(4) USE OF INFORMATION.—In the event that
11 such application is denied, or in any other case
12 where the acquisition is terminated and no order is
13 issued approving the acquisition, no information ob-
14 tained or evidence derived from such acquisition
15 shall be received in evidence or otherwise disclosed
16 in any trial, hearing, or other proceeding in or be-
17 fore any court, grand jury, department, office, agen-
18 cy, regulatory body, legislative committee, or other
19 authority of the United States, a State, or political
20 subdivision thereof, and no information concerning
21 any United States person acquired from such acqui-
22 sition shall subsequently be used or disclosed in any
23 other manner by Federal officers or employees with-
24 out the consent of such person, except with the ap-
25 proval of the Attorney General if the information in-

1 dicates a threat of death or serious bodily harm to
2 any person.

3 “(e) APPEAL.—

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

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

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

19 “(f) JOINT APPLICATIONS AND ORDERS.—If an ac-
20 quisition targeting a United States person under section
21 704 or this section is proposed to be conducted both inside
22 and outside the United States, a judge having jurisdiction
23 under subsection (a) or section 704(a) may issue simulta-
24 neously, upon the request of the Government in a joint
25 application complying with the requirements of subsection

1 (b) or sections 704(b), orders authorizing the portion of
2 the proposed acquisition that will occur inside the United
3 States pursuant to the provisions of section 704 and an
4 order pertaining to the portion of the proposed acquisition
5 that will occur outside the United States pursuant to the
6 provisions of this section.

7 “(g) CONCURRENT AUTHORIZATION.—If an order
8 authorizing electronic surveillance or physical search has
9 been obtained under section 105 or 304 and that order
10 is still in effect, the Attorney General may authorize, with-
11 out an order under this section or section 704, an acquisi-
12 tion of foreign intelligence information targeting that
13 United States person while such person is reasonably be-
14 lieved to be located outside the United States.

15 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER THIS**
16 **TITLE.**

17 “(a) INFORMATION ACQUIRED UNDER SECTION
18 703.—Information acquired from an acquisition con-
19 ducted under section 703 shall be deemed to be informa-
20 tion acquired from an electronic surveillance pursuant to
21 title I for purposes of section 106, except for the purposes
22 of subsection (j) of such section.

23 “(b) INFORMATION ACQUIRED UNDER SECTION 704
24 OR 705.—Information acquired from an acquisition con-
25 ducted under section 704 or 705 shall be deemed to be

1 information acquired from an electronic surveillance pur-
2 suant to title I for purposes of section 106.

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

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

11 “(b) CONTENT.—Each report made under subpara-
12 graph (a) shall include—

13 “(1) with respect to section 703—

14 “(A) any certifications made under sub-
15 section 703(f) during the reporting period;

16 “(B) any directives issued under sub-
17 section 703(g) during the reporting period;

18 “(C) a description of the judicial review
19 during the reporting period of any such certifi-
20 cations and targeting and minimization proce-
21 dures utilized with respect to such acquisition,
22 including a copy of any order or pleading in
23 connection with such review that contains a sig-
24 nificant legal interpretation of the provisions of
25 this section;

1 “(D) any actions taken to challenge or en-
2 force a directive under paragraphs (4) or (5) of
3 section 703(g);

4 “(E) any compliance reviews conducted by
5 the Department of Justice or the Office of the
6 Director of National Intelligence of acquisitions
7 authorized under subsection 703(a);

8 “(F) a description of any incidents of non-
9 compliance with a directive issued by the Attor-
10 ney General and the Director of National Intel-
11 ligence under subsection 703(a), including—

12 “(i) incidents of noncompliance by an
13 element of the intelligence community with
14 procedures adopted pursuant to sub-
15 sections (d) and (e) of section 703; and

16 “(ii) incidents of noncompliance by a
17 specified person to whom the Attorney
18 General and Director of National Intel-
19 ligence issued a directive under subsection
20 703(g);

21 “(G) any procedures implementing this
22 section; and

23 “(H) any annual review conducted pursu-
24 ant to section 703(k)(3);

25 “(2) with respect to section 704—

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

3 “(B) the total number of such orders ei-
4 ther granted, modified, or denied;

5 “(C) the total number of emergency acqui-
6 sitions authorized by the Attorney General
7 under section 704(d) and the total number of
8 subsequent orders approving or denying such
9 acquisitions; and

10 “(D) a description of the judicial review
11 during the reporting period of any applications
12 under section 704, including a copy of any
13 order or pleading in connection with such re-
14 view that contains a significant legal interpreta-
15 tion of the provisions of this section; and

16 “(3) with respect to section 705—

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

19 “(B) the total number of such orders ei-
20 ther granted, modified, or denied;

21 “(C) the total number of emergency acqui-
22 sitions authorized by the Attorney General
23 under subsection 704(d) and the total number
24 of subsequent orders approving or denying such
25 applications; and

1 “(D) a description of the judicial review
2 during the reporting period of any applications
3 under subsection 704, including a copy of any
4 order or pleading in connection with such re-
5 view that contains a significant legal interpreta-
6 tion of the provisions of this section.”.

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

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

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

12 and

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

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

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

“Sec. 702. Definitions.

“Sec. 703. Procedures for targeting certain persons outside the United States.

“Sec. 704. Certain acquisitions inside the United States of United States per-
sons outside the United States.

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

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

“Sec. 707. Congressional oversight.”.

14 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

15 (1) TITLE 18, UNITED STATES CODE.—Section
16 2232(e) of title 18, United States Code, is amended
17 by inserting “(as defined in section 101(f) of the
18 Foreign Intelligence Surveillance Act of 1978, re-
19 gardless of the limitation of section 701 of that
20 Act)” after “electronic surveillance”.

1 (2) FOREIGN INTELLIGENCE SURVEILLANCE
2 ACT.—Section 601(a)(1) is amended by striking sub-
3 paragraphs (C) and (D) and inserting the following:

4 “(C) pen registers under section 402;

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

6 “(E) acquisitions under section 704; and

7 “(F) acquisitions under section 705;’”.

8 (d) TERMINATION OF AUTHORITY.—

9 On page 28, line 21, strike “2013” and insert
10 “2011”.

11 On page 29, line 7, insert “Section 704(e) of the For-
12 eign Intelligence Surveillance Act of 1978 (as amended by
13 subsection (a)) shall remain in effect with respect to an
14 order or request for emergency assistance under that sec-
15 tion.” after “fect.”

16 Beginning on page 29, strike line 11 and all that fol-
17 lows through page 30, line 6 and insert the following:

1 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
2 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
3 **TION OF CERTAIN COMMUNICATIONS MAY BE**
4 **CONDUCTED.**

5 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
6 the Foreign Intelligence Surveillance Act of 1978 (50
7 U.S.C. 1801 et seq.) is amended by adding at the end
8 the following new section:

9 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
10 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
11 TAIN COMMUNICATIONS MAY BE CONDUCTED

12 “SEC. 112. (a) Except as provided in subsection (b),
13 the procedures of chapters 119, 121 and 206 of title 18,
14 United States Code, and this Act shall be the exclusive
15 means by which electronic surveillance (as defined in sec-
16 tion 101(f), regardless of the limitation of section 701)
17 and the interception of domestic wire, oral, or electronic
18 communications may be conducted.

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

1 (b) OFFENSE.—Section 109 of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C. 1809) is
3 amended—

4 (1) in subsection (a), by striking “authorized by
5 statute” each place it appears and inserting “au-
6 thorized by this Act, chapter 119, 121, or 206 of
7 title 18, United States Code, or any express statu-
8 tory authorization that is an additional exclusive
9 means for conducting electronic surveillance under
10 section 112.”; and

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

12 “(e) DEFINITION.—For the purpose of this section,
13 the term ‘electronic surveillance’ means electronic surveil-
14 lance as defined in section 101(f) of this Act regardless
15 of the limitation of section 701 of this Act.”.

16 (c) CONFORMING AMENDMENTS.—

17 (1) TITLE 18, UNITED STATES CODE.—Section
18 2511(2) of title 18, United States Code, is amend-
19 ed—

20 (A) in paragraph (a), by adding at the end
21 the following:

22 “(iii) If a certification under subpara-
23 graph (ii)(B) for assistance to obtain for-
24 eign intelligence information is based on
25 statutory authority, the certification shall

1 identify the specific statutory provision,
2 and shall certify that the statutory require-
3 ments have been met.”; and

4 (B) in paragraph (f), by striking “, as de-
5 fined in section 101 of such Act,” and inserting
6 “(as defined in section 101(f) of such Act re-
7 gardless of the limitation of section 701 of such
8 Act)”.

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

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

14 On page 33, beginning on line 16, strike “General—
15 ” and insert “General reasonably—”.

16 On page 37, line 22, strike “General—” and insert
17 “General reasonably”

18 On page 49, beginning on line 15, strike “commu-
19 nications” and insert “communication”.

20 On page 61, after line 14, insert:

1 (8) TRANSITION PROCEDURES CONCERNING
2 THE TARGETING OF UNITED STATES PERSONS OVER-
3 SEAS.—Any authorization in effect on the date of
4 enactment of the FISA Amendments Act of 2007
5 under section 2.5 of Executive Order 12333 to in-
6 tentionally target a United States person reasonably
7 believed to be located outside the United States shall
8 remain in effect, and shall constitute a sufficient
9 basis for conducting such an acquisition targeting a
10 United States person located outside the United
11 States until the earlier of—

- 12 (A) the date that authorization expires; or
13 (B) the date that is 90 days after the date
14 of the enactment of the FISA Amendments Act
15 of 2007.