

1  
2 ~~AMENDMENT: Purpose: To provide a complete substitute.~~

3  
4  
5 ~~Strike out all after the enacting clause and insert: H. R. 3773~~

6  
7 **To amend the Foreign Intelligence Surveillance Act of 1978**  
8 **to establish a procedure for authorizing certain acquisitions**  
9 **of foreign intelligence, and for other purposes.**

10  
11 **Referred to the Committee on \_\_\_\_\_ and ordered to be**  
12 **printed**

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

14 **AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO**  
15 **BE PROPOSED BY MR. ROCKEFELLER**

16 **Viz:**

17 **In lieu of the matter proposed to be inserted by the amendment of the House of**  
18 **Representatives to the amendment of the Senate to the text of the bill, 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 of 1978  
21 Amendments Act of 2008” or the “FISA Amendments Act of 2008”.

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

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

24 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

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

26 Sec.102.Statement of exclusive means by which electronic surveillance and interception of  
27 **domestic certain** communications may be conducted.

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

30 Sec.104.Applications for court orders.

31 Sec.105.Issuance of an order.

32 Sec.106.Use of information.

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- 1 Sec.107.Amendments for physical searches.
- 2 Sec.108.Amendments for emergency pen registers and trap and trace devices.
- 3 Sec.109.Foreign Intelligence Surveillance Court.
- 4 **Sec.110.Review of previous actions.**
- 5 **Sec.111.Weapons** ~~Sec.110.Weapons~~ of mass destruction.

6  
7 ~~Sec.111.Technical and conforming amendments.~~

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

- 10 ~~Sec.201.Definitions.~~
- 11 ~~Sec.202.Limitations on civil actions for electronic communication service providers.~~
- 12 ~~Sec.203.Procedures~~ **Sec.201.Procedures** for implementing statutory defenses under the Foreign  
13 Intelligence Surveillance Act of 1978.
- 14 ~~Sec.204.Premption of State investigations.~~
- 15 ~~Sec.205.Technical amendments.~~
- 16 ~~TITLE III—OTHER PROVISIONS~~
- 17 ~~Sec.301.Severability.~~
- 18 ~~Sec.302.Effective date; repeal; transition~~ **Sec.202.Technical amendments.**

19 **TITLE III—COMMISSION ON INTELLIGENCE**  
20 **COLLECTION, PRIVACY PROTECTION, AND**  
21 **CHANGES IN INFORMATION TECHNOLOGY**

- 22 **Sec.301.Commission on Intelligence Collection, Privacy Protection, and Changes in**  
23 **Information Technology.**

24 **TITLE IV—OTHER PROVISIONS**

- 25 **Sec.401.Severability.**
- 26 **Sec.402.Effective date.**
- 27 **Sec.403.Repeals.**
- 28 **Sec.404.Transition procedures.**

29 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**  
30 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**  
31 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

3 (1) by striking title VII; and

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

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

7 ~~“SEC. 701. LIMITATION ON DEFINITION OF~~  
8 ~~ELECTRONIC SURVEILLANCE.~~

9 ~~“Nothing in the definition of electronic surveillance under~~  
10 ~~section 101(f) shall be construed to encompass surveillance that~~  
11 ~~is targeted in accordance with this title at a person reasonably~~  
12 ~~believed to be located outside the United States.~~

13 ~~“SEC. 702. DEFINITIONS.~~

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

18 ~~“(b) Additional Definitions.—~~

19 ~~“(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence~~  
20 ~~committees’ means—~~

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

22 ~~“(B) the Permanent Select Committee on Intelligence of the House of~~  
23 ~~Representatives.~~

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

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

29 ~~“(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic~~  
30 ~~communication service provider’ means—~~

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

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

35 ~~“(C) a provider of a remote computing service, as that term is defined in section~~

1 2711 of title 18, United States Code;

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

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

7 ~~“(5) ELEMENT OF THE INTELLIGENCE INTELLIGENCE COMMUNITY.—The term ‘element of~~  
8 ~~the intelligence community’ means an element of the intelligence community specified in or~~  
9 ~~designated under ‘intelligence community’ has the meaning given the term in section~~  
10 ~~3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).~~

11 **“SEC. 703 702. PROCEDURES FOR TARGETING CERTAIN**  
12 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**  
13 **UNITED STATES PERSONS.**

14 “(a) Authorization.—Notwithstanding any other law, provision of law, pursuant to an order  
15 issued in accordance with subsection (i)(3) or a determination under subsection  
16 (g)(1)(B)(ii), the Attorney General and the Director of National Intelligence may authorize  
17 jointly, for periods a period of up to 1 year from the effective date of the authorization, the  
18 targeting of persons reasonably believed to be located outside the United States to acquire  
19 foreign intelligence information.

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

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

23 “(2) may not intentionally target a person reasonably believed to be located outside the  
24 United States if the purpose of such acquisition is in order to target a particular, known  
25 person reasonably believed to be in the United States, ~~except in accordance with title I or~~  
26 ~~title III;~~

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

29 ~~“(4) shall~~“(4) may not intentionally acquire any communication as to which the sender  
30 and all intended recipients are known at the time of the acquisition to be located in the  
31 United States; and

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

34 “(c) Conduct of Acquisition.—An Acquisition.—

35 “(1) IN GENERAL.—An acquisition authorized under subsection (a) may be conducted  
36 only in accordance with—

37 ~~“(1) a~~“(A) the certification made by the Attorney General and the Director of  
38 National Intelligence pursuant to submitted in accordance with subsection (f);(g);  
39 and

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1           ~~“(2)“(B) the targeting and minimization procedures required pursuant to submitted~~  
2           **in accordance with** subsections (d) and (e).

3           **“(2) CONSTRUCTION.—Nothing in title I of this Act shall be construed to require an**  
4           **application under section 104 for an acquisition that is targeted in accordance with**  
5           **this section at a person reasonably believed to be located outside the United States.**

6           “(d) Targeting Procedures.—

7           “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director  
8           of National Intelligence, shall adopt targeting procedures that are reasonably designed to  
9           ensure that any acquisition authorized under subsection (a) is limited to targeting persons  
10          reasonably believed to be located outside the United States and does not result in the  
11          intentional acquisition of any communication as to which the sender and all intended  
12          recipients are known at the time of the acquisition to be located in the United States.

13          “(2) JUDICIAL REVIEW.—The procedures ~~referred to in~~ **required by** paragraph (1) shall be  
14          subject to judicial review pursuant to subsection ~~(h)~~(i).

15          “(e) Minimization Procedures.—

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

20          “(2) JUDICIAL REVIEW.—The minimization procedures required by ~~this subsection~~  
21          **paragraph (1)** shall be subject to judicial review pursuant to subsection ~~(h)~~(i).

22          ~~“(f)“(f) Guidelines for Compliance With Limitations.—~~

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

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

26                  “(B) that an application is filed under section 104 or section 303, as  
27                  **appropriate, if required by any other section of this Act.**

28          “(2) TRAINING.—The Director of National Intelligence shall establish a training  
29          program for appropriate intelligence community personnel to ensure that the  
30          guidelines adopted pursuant to paragraph (1) are properly implemented.

31          “(3) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the  
32          guidelines adopted pursuant to paragraph (1) to—

33                  “(A) the congressional intelligence committees;

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

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

36                  “(D) the Foreign Intelligence Surveillance Court.

37          “(g) Certification.—

38                  “(1) IN GENERAL.—

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1           “(A) REQUIREMENT.—~~SUBJECT TO SUBPARAGRAPH (B), PRIOR TO THE INITIATION OF~~  
2 ~~AN ACQUISITION AUTHORIZED~~ **REQUIREMENT.—In order to conduct an acquisition**  
3 **under subsection (a), the Attorney General and the Director of National Intelligence**  
4 **shall provide to the Foreign Intelligence Surveillance Court, under oath, a written**  
5 **certification, as described in- and any supporting affidavit, under seal, in**  
6 **accordance with this subsection.**

7           “(B) EXCEPTION.—**IF TIMING OF SUBMISSION TO THE COURT.—**

8           “(i) **IN GENERAL.—Except as provided in clause (ii), the Attorney General**  
9 **and the Director of National Intelligence determine that immediate action by the**  
10 **Government is required and time does not permit the preparation of a certification**  
11 **under this subsection prior to the initiation of an acquisition, the Attorney General**  
12 **and the Director of National Intelligence shall prepare such provide a copy of a**  
13 **certification made under this subsection to the Foreign Intelligence**  
14 **Surveillance Court prior to the initiation of an acquisition under subsection**  
15 **(a).**

16           “(ii) **EXCEPTION.—If the Attorney General and the Director of National**  
17 **Intelligence determine that there should be immediate implementation of the**  
18 **authorization and time does not permit the issuance of an order pursuant to**  
19 **subsection (i)(3) prior to the implementation of the authorization, the**  
20 **Attorney General and the Director of National Intelligence may authorize the**  
21 **acquisition and shall submit to the Foreign Intelligence Surveillance Court a**  
22 **certification, including such the determination under this subsection, as soon as**  
23 **possible but in no event more than 7 days after such determination is made.**

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

25           “(A) attest that—

26           “(i) there are reasonable procedures in place **that have been approved or**  
27 **submitted for approval to the Foreign Intelligence Surveillance Court, for**  
28 **determining that the acquisition authorized under subsection (a)(a)—**

29           “(I) **is targeted at persons reasonably believed to be located outside the**  
30 **United States and that such procedures have been approved by, or will be**  
31 **submitted in not more than 5 days for approval by, the Foreign Intelligence**  
32 **Surveillance Court pursuant to subsection (h);; and**

33           “(ii) ~~there are reasonable procedures in place for determining that the~~  
34 **acquisition authorized under subsection (a)“(II) does not result in the**  
35 **intentional acquisition of any communication as to which the sender and all**  
36 **intended recipients are known at the time of the acquisition to be located in**  
37 **the United States, and that such procedures have been approved by, or will**  
38 **be submitted in not more than 5 days for approval by, the Foreign**  
39 **Intelligence Surveillance Court pursuant to subsection (h);;**

40           “(iii) **the procedures referred to in clauses (i) and (ii) are consistent with the**  
41 **requirements of the fourth amendment to the Constitution of the United States and**  
42 **do not permit the intentional targeting of any person who is known at the time of**  
43 **acquisition to be located in the United States or the intentional acquisition of any**

1 communication as to which the sender and all intended recipients are known at  
2 the time of acquisition to be located in the United States; **“(ii) guidelines have**  
3 **been adopted in accordance with subsection (f) to ensure compliance with the**  
4 **limitations in subsection (b) and to ensure that applications are filed under**  
5 **section 104 or section 303, if required by this Act;**

6  
7 \* 1 ~~“(iv) a significant purpose of the acquisition is to obtain foreign intelligence~~  
8 ~~information;~~

9 ~~“(v)“(iii) the minimization procedures to be used with respect to such~~  
10 ~~acquisition—~~

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

13 ~~“(II) have been approved by, or will be submitted in not more than 5 days~~  
14 ~~for approval by, the Foreign Intelligence Surveillance Court pursuant to~~  
15 ~~subsection (h);~~

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

19 \*\* 1 ~~“(v)“(v) a significant purpose of the acquisition is to obtain foreign~~  
20 ~~intelligence information;~~

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

23 ~~“(vii) the acquisition does not constitute electronic surveillance, as limited by~~  
24 ~~section 704 complies with the limitations in subsection (b); and~~

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

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

28 **“(ii) the head of any an element of the intelligence community; and-**

29 ~~“(3)“(C) include—~~

30 **“(i) an effective date for the authorization that is between 30 and 60 days**  
31 **from the submission of the written certification to the court; or**

32 **“(ii) if the acquisition has begun or the effective date is less than 30 days**  
33 **from the submission of the written certification to the court—**

34 **“(I) the date the acquisition began or the effective date for the**  
35 **acquisition;**

36 **“(II) a description of why initiation of the acquisition is required in**  
37 **less than 30 days from the submission of the written certification to the**  
38 **court; and**

39 **“(III) if the acquisition is authorized under paragraph (1)(B)(ii), a**

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1 description of why there should be immediate implementation of the  
2 authorization and time does not permit the issuance of an order  
3 pursuant to subsection (i)(3) prior to the implementation of the  
4 authorization.

5 **“(3) CHANGE IN EFFECTIVE DATE.—**The Attorney General and the Director of  
6 National Intelligence may advance or delay the effective date described in paragraph  
7 (2)(C) by amending the certification pursuant to subsection (i)(C) to include the  
8 applicable requirements of paragraph (2)(C).

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

12 ~~“(4) Submission to the court.—~~The **“(5) MAINTENANCE OF CERTIFICATION.—**The  
13 Attorney General shall ~~transmit~~ **maintain** a copy of a certification made under this  
14 subsection, ~~and any supporting affidavit, under seal to the Foreign Intelligence Surveillance~~  
15 ~~Court as soon as possible, but in no event more than 5 days after such certification is made.~~  
16 ~~Such certification shall be maintained~~ under security measures adopted by the Chief Justice  
17 of the United States and the Attorney General, in consultation with the Director of National  
18 Intelligence.

19 ~~“(5)“(6) REVIEW.—~~The certification required by this subsection shall be subject to  
20 judicial review pursuant to subsection ~~(h)~~(i).

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

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

25 **“(A) immediately provide the Government with all information, facilities, or**  
26 **assistance necessary to accomplish the acquisition **authorized in accordance with****  
27 **this section in a manner that will protect the secrecy of the acquisition and produce a**  
28 **minimum of interference with the services that such electronic communication service**  
29 **provider is providing to the target of the acquisition; and**

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

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

36 ~~“(3) RELEASE FROM LIABILITY.—~~~~NOTWITHSTANDING ANY OTHER LAW, NO LIABILITY.—~~  
37 **No cause of action shall lie in any court against any electronic communication service**  
38 **provider for providing any information, facilities, or assistance in accordance with a**  
39 **directive issued pursuant to paragraph (1).**

40 **“(4) CHALLENGING OF DIRECTIVES.—**

41 **“(A) AUTHORITY TO CHALLENGE.—**An electronic communication service provider

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1 receiving a directive issued pursuant to paragraph (1) may challenge the directive by  
2 filing a petition with the Foreign Intelligence Surveillance Court, which shall have  
3 jurisdiction to review such a petition.

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

7 “(C) STANDARDS FOR REVIEW.—A JUDGE REVIEW.—The Foreign Intelligence  
8 Surveillance Court considering a petition to modify or set aside a directive may grant  
9 such petition only if the judge Court finds that the directive does not meet the  
10 requirements of this section, or is otherwise unlawful.

11 “(D) PROCEDURES FOR INITIAL REVIEW.—A JUDGE REVIEW.—The Foreign  
12 Intelligence Surveillance Court shall conduct an initial review of a petition filed  
13 under subparagraph (A) not later than 5 days after being assigned a such petition  
14 described in subparagraph (C). If the judge Court determines that the petition consists  
15 does not consist of claims, defenses, or other legal contentions that are not warranted  
16 by existing law or by a nonfrivolous argument for extending, modifying, or reversing  
17 existing law or for establishing new law, the judge Court shall immediately deny the  
18 petition and affirm the directive or any part of the directive that is the subject of the  
19 petition and order the recipient to comply with the directive or any part of it. Upon  
20 making such a determination or promptly thereafter, the judge Court shall provide a  
21 written statement for the record of the reasons for a determination under this  
22 subparagraph.

23 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge the Foreign Intelligence  
24 Surveillance Court determines that a petition described in filed under subparagraph  
25 (C)(A) requires plenary review, the judge Court shall affirm, modify, or set aside the  
26 directive that is the subject of that petition not later than 30 days after being assigned  
27 the petition, unless the judge, by order for reasons stated, extends that time as  
28 necessary to comport with the due process clause of the fifth amendment to the  
29 Constitution of the United States. Unless the judge sets. If the Court does not set  
30 aside the directive, the judge Court shall immediately affirm or affirm with  
31 modifications the directive or order that the directive be modified, and order the  
32 recipient to comply with the directive in its entirety or as modified. The judge Court  
33 shall provide a written statement for the records record of the reasons for a  
34 determination under this subparagraph.

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

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

39 “(5) ENFORCEMENT OF DIRECTIVES.—

40 “(A) ORDER TO COMPEL.—IN THE CASE OF A FAILURE COMPEL.—If an electronic  
41 communication service provider fails to comply with a directive issued pursuant to  
42 paragraph (1), the Attorney General may file a petition for an order to compel  
43 compliance the electronic communication service provider to comply with the

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1 directive with the Foreign Intelligence Surveillance Court, which shall have  
2 jurisdiction to review such a petition.

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

6 ~~“(C) STANDARDS FOR REVIEW.—A JUDGE PROCEDURES FOR REVIEW.—The~~  
7 **Foreign Intelligence Surveillance Court** considering a petition filed under  
8 subparagraph (A) shall issue an order requiring the electronic communication service  
9 provider to comply with the directive or any part of it, as issued or as modified, ~~if the~~  
10 ~~judge not later than 30 days after being assigned the petition if the Court finds that~~  
11 ~~the directive meets the requirements of this section, and is otherwise lawful. The~~  
12 **Court**

13 ~~“(D) Procedures for review.—The judge shall render a determination not later than~~  
14 ~~30 days after being assigned a petition filed under subparagraph (A), unless the judge,~~  
15 ~~by order for reasons stated, extends that time if necessary to comport with the due-~~  
16 ~~process clause of the fifth amendment to the Constitution of the United States. The~~  
17 ~~judge shall provide a written statement for the record of the reasons for a determination~~  
18 ~~under this paragraph.~~

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

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

23 “(6) APPEAL.—

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

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

36 ~~“(h)“(i) Judicial Review of Certifications and Procedures.—~~

37 “(1) IN GENERAL.—

38 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
39 Intelligence Surveillance Court shall have jurisdiction to review any certification  
40 ~~required by submitted in accordance with~~ subsection (e)(g) and the targeting and  
41 ~~minimization procedures adopted pursuant to submitted in accordance with~~  
42 ~~subsections (d) and (e), and any amendments to :~~

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1           ~~“(B) Submission to the court.—The Attorney General shall submit to the Court any~~  
2 such certification or procedure, or amendment thereto, not later than 5 days after  
3 making or amending the certification or adopting or amending the procedures.  
4 procedures.

5           ~~“(2) Certifications.—The Court shall review a certification provided under~~  
6 subsection (f)~~“(B) TIME PERIOD FOR REVIEW.—The Court shall review the~~  
7 certification submitted in accordance with subsection (g) and the targeting and  
8 minimization procedures submitted in accordance with subsections (d) and (e)  
9 and approve or deny an order under this subsection not later than 30 days after  
10 the date on which a certification is submitted.

11           ~~“(C) AMENDMENTS.—The Attorney General and the Director of National~~  
12 Intelligence may amend a certification submitted in accordance with subsection  
13 (g) or the targeting and minimization procedures submitted in accordance with  
14 subsections (d) and (e) as necessary after such certification or procedures have  
15 been submitted for review to the Foreign Intelligence Surveillance Court. If an  
16 amendment is submitted subsequent to the issuance of an order under subsection  
17 (i)(3) that significantly modifies such certification or procedures, the Attorney  
18 General and Director of National Intelligence shall seek approval of such  
19 amendment by the Court.

20           ~~“(2) REVIEW.—Court shall review the following:~~

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

23           ~~“(3)“(B) TARGETING PROCEDURES.—The Court shall review the targeting~~  
24 procedures ~~required by~~ submitted in accordance with subsection (d) to assess  
25 whether the procedures are reasonably designed to ensure that the acquisition  
26 authorized under subsection (a) is limited to the targeting of persons reasonably  
27 believed to be located outside the United States and does not result in the intentional  
28 acquisition of any communication as to which the sender and all intended recipients  
29 are known at the time of the acquisition to be located in the United States.

30           ~~“(4)“(C) MINIMIZATION PROCEDURES.—The Court shall review the minimization~~  
31 procedures ~~required by~~ submitted in accordance with subsection (e) to assess  
32 whether such procedures meet the definition of minimization procedures under section  
33 101(h) or section 301(4), as appropriate.-

34           ~~“(5)“(3) ORDERS.—~~

35           ~~“(A) APPROVAL.—If the Court finds that a certification required by submitted in~~  
36 accordance with subsection (f)(g) contains all of the required elements and that the  
37 targeting and minimization procedures ~~required by~~ submitted in accordance with  
38 subsections (d) and (e) are consistent with the requirements of those subsections and  
39 with the fourth amendment to the Constitution of the United States, the Court shall  
40 enter an order approving the ~~continued certification and~~ the use of the procedures for  
41 the acquisition ~~authorized under subsection (a).~~

42           ~~“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required~~  
43 by submitted in accordance with subsection (f)(g) does not contain all of the required

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1 elements, or that the procedures ~~required by~~ **submitted in accordance with**  
2 subsections (d) and (e) are not consistent with the requirements of those subsections or  
3 the fourth amendment to the Constitution of the United States, the Court shall issue an  
4 order directing the Government to, at the Government's election and to the extent  
5 required by the Court's order—

6 “(i) correct any deficiency identified by the ~~Court's order~~ **Court** not later than  
7 30 days after the date the Court issues the order; or

8 “(ii) cease, **or not begin**, the acquisition authorized under subsection (a).

9 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this  
10 subsection, the Court shall provide, simultaneously with the orders, for the record a  
11 written statement of its reasons.

12 ~~“(6)“(4) APPEAL.—~~

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

18 “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any  
19 ~~acquisitions~~ **acquisition** affected by an order under paragraph ~~(5)(B)(3)(B)~~ may  
20 continue—

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

23 “(ii) if the Government appeals an order under this section, ~~until subject to the~~  
24 **Court entry of Review** ~~enters~~ an order under subparagraph (C).

25 “(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of  
26 an appeal of an order **issued** under paragraph ~~(5)(B)(3)(B)~~ directing the correction of a  
27 deficiency, the Court of Review shall determine, and enter a corresponding order  
28 regarding, whether all or any part of the correction order, as issued or modified, shall  
29 be implemented during the pendency of the appeal.

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

35 “(5) SCHEDULE.—

36 “(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—When replacing an  
37 authorization issued pursuant to section 105B of the Foreign Intelligence  
38 Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007  
39 (Public Law 110-55) with an authorization under this section, the Attorney  
40 General and the Director of National Intelligence shall, to the extent practicable,  
41 submit to the Court the certification prepared in accordance with subsection (g)

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1 and the procedures adopted in accordance with subsections (d) and (e) at least 30  
2 days before the expiration of such authorization.

3 **“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—**When replacing an  
4 authorization issued pursuant to this section, the Attorney General and the  
5 Director of National Intelligence shall, to the extent practicable, submit to the  
6 Court the certification prepared in accordance with section (g) and the  
7 procedures adopted in accordance with subsections (d) and (e) at least 30 days  
8 prior to the expiration of such authorization.

9 **“(C) CONSOLIDATED SUBMISSIONS.—**The Attorney General and Director of  
10 National Intelligence shall, to the extent practicable, annually submit to the Court  
11 a consolidation of—

12 **“(i) certifications prepared in accordance with subsection (g) for**  
13 **reauthorization of authorizations in effect;**

14 **“(ii) the procedures adopted in accordance with subsections (d) and (e);**  
15 **and**

16 **“(iii) the annual review required by subsection (l)(3) for the preceding**  
17 **year.**

18 **“(D) TIMING OF REVIEWS.—**The Attorney General and the Director of National  
19 Intelligence shall schedule the completion of the annual review required by  
20 subsection (l)(3) and a semiannual assessment required by subsection (l)(1) so that  
21 they may be submitted to the Court at the time of the consolidated submission  
22 under subparagraph (C).

23 **“(E) CONSTRUCTION.—**The requirements of subparagraph (C) shall not be  
24 construed to preclude the Attorney General and the Director of National  
25 Intelligence from submitting certifications for additional authorizations at other  
26 times during the year as necessary.

27 **“(6) COMPLIANCE.—**At or before the end of the period of time for which an  
28 authorization under subsection (a) expires, the Foreign Intelligence Surveillance Court  
29 may assess compliance with the minimization procedures required under subsection  
30 (e) by reviewing the circumstances under which information concerning United States  
31 persons was acquired, retained, or disseminated.

32 **“(j) Judicial Proceedings.—**

33 **“(1) EXPEDITED PROCEEDINGS.—**~~Judicial~~~~“(i) Expedited Judicial Proceedings.—~~Judicial  
34 proceedings under this section shall be conducted as expeditiously as possible.

35 **“(2) TIME LIMITS.—**A time limit for a judicial decision in this section shall apply  
36 unless the Court, the Court of Review, or any judge of either the Court or the Court of  
37 Review, by order for reasons stated, extends that time for good cause.

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

39 **“(1) STANDARDS.—**~~A STANDARDS.—~~The Foreign Intelligence Surveillance Court  
40 shall maintain a record of a proceeding under this section, including petitions filed, orders  
41 granted, and statements of reasons for decision, ~~shall be maintained~~ under security measures

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1 adopted by the Chief Justice of the United States, in consultation with the Attorney General  
2 and the Director of National Intelligence.

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

7 “(3) RETENTION OF RECORDS.—~~A RECORDS.~~—**The Director of National Intelligence**  
8 **and the Attorney General shall retain a directive made or an order granted under this**  
9 **section ~~shall be retained~~ for a period of not less than 10 years from the date on which such**  
10 **directive or such order is made.**

11 ~~“(k)“(l)~~“(l) Assessments and Reviews.—

12 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the  
13 Attorney General and Director of National Intelligence shall assess compliance with the  
14 targeting and minimization procedures ~~required by subsections (e) and submitted in~~  
15 **accordance with subsections (d) and (e) and the guidelines adopted in accordance with**  
16 **subsection (f) and shall submit each such assessment to—**

17 “(A) the Foreign Intelligence Surveillance Court; ~~and~~

18  
19 “(B) the congressional intelligence committees;

20 ;

21 “(C) the Committee on the Judiciary of the Senate; and

22 “(D) the Committee on the Judiciary of the House of Representatives.

23 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of  
24 ~~any each~~ element of the intelligence community authorized to acquire foreign intelligence  
25 information under subsection (a) with respect to ~~their the~~ department, ~~agency, or element—~~  
26 **or element of such Inspector General—**

27 “(A) are authorized to review the compliance with the targeting and minimization  
28 procedures ~~required by~~ **submitted in accordance with subsections (d) and (e) and the**  
29 **guidelines submitted in accordance with subsection (f);**

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

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

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

39 “(i) the Attorney General;

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1                   “(ii) the Director of National Intelligence;~~and~~

2  
3                   “(iii) the congressional intelligence committees; and

4                   “(iv) the Committee on the Judiciary of the Senate; and

5                   “(v) the Committee on the Judiciary of the House of Representatives.

6  
7                   “(3) ANNUAL REVIEW.—

8                   “(A) REQUIREMENT TO CONDUCT.—The head of ~~an~~ **each** element of the intelligence  
9 community conducting an acquisition authorized under subsection (a) shall ~~direct the~~  
10 ~~element to~~ conduct an annual review to determine whether there is reason to believe  
11 that foreign intelligence information has been or will be obtained from the acquisition.  
12 The annual review shall provide, with respect to such acquisitions authorized under  
13 subsection (a)—

14                   “(i) ~~an accounting of~~ the number **and nature** of disseminated intelligence  
15 reports containing a reference to a United States person identity;

16                   “(ii) ~~an accounting of~~ the number **and nature** of United States person identities  
17 subsequently disseminated by that element in response to requests for identities  
18 that were not referred to by name or title in the original reporting;

19                   “(iii) the number of targets that were later determined to be located in the  
20 United States and, to the extent possible, whether their communications were  
21 reviewed; and

22                   “(iv) a description of any procedures developed by the head of ~~an~~ **such** element  
23 of the intelligence community and approved by the Director of National  
24 Intelligence to assess, in a manner consistent with national security, operational  
25 requirements and the privacy interests of United States persons, the extent to  
26 which the acquisitions authorized under subsection (a) acquire the  
27 communications of United States persons, ~~as well as~~ **and** the results of any such  
28 assessment.

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

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

37                   “(i) the Foreign Intelligence Surveillance Court;

38                   “(ii) the Attorney General;

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

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1  
2           “(iv) the congressional intelligence committees; and-  
3           ~~“SEC. 704“(v) the Committees on the Judiciary of the Senate; and~~  
4           “(vi) the Committee on the Judiciary of the House of Representatives.

5   **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE**  
6   **UNITED STATES OF UNITED STATES PERSONS**  
7   **OUTSIDE THE UNITED STATES.**

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

9       “(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to  
10    review an application and to enter an order approving the targeting of a United States  
11    person reasonably believed to be located outside the United States to acquire foreign  
12    intelligence information, if ~~such~~ the acquisition constitutes electronic surveillance ~~(as~~  
13    ~~defined in section 101(f), regardless of the limitation of section 701)~~ or the acquisition of  
14    stored electronic communications or stored electronic data that requires an order under this  
15    Act, and such acquisition is conducted within the United States.

16       “(2) ~~LIMITATION.—IN THE EVENT THAT~~ LIMITATION.—If a United States person targeted  
17    under this subsection is reasonably believed to be located in the United States during the  
18    pendency of an order issued pursuant to subsection (c), ~~such acquisition shall cease until~~  
19    ~~authority, other than the targeting of such United States person under this section, is~~  
20    ~~obtained pursuant to this Act or shall cease unless~~ the targeted United States person is  
21    again reasonably believed to be located outside the United States during the pendency of an  
22    order issued pursuant to subsection (c).

23   “(b) Application.—

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

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

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

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

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

35       “(ii) a foreign power, an agent of a foreign power, or an officer or employee of  
36    a foreign power;

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

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

3           “(F) a certification made by the Attorney General or an official specified in section  
4           104(a)(6) that—

5                 “(i) the certifying official deems the information sought to be foreign  
6                 intelligence information;

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

9                 “(iii) such information cannot reasonably be obtained by normal investigative  
10                techniques;

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

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

14                     “(I) the information sought is the type of foreign intelligence information  
15                     designated; and

16                     “(II) such information cannot reasonably be obtained by normal  
17                     investigative techniques;

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

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

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

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

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

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

36           “(4) CONSTRUCTION.—Nothing in title I of this Act shall be construed to require an  
37           application under section 104 for an acquisition that is targeted in accordance with  
38           this section at a United States person reasonably believed to be located outside the  
39           United States.

40           “(c) Order.—

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

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

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

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

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

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

14           “(D) the application ~~which~~ **that** has been filed contains all statements and  
15 certifications required by subsection (b) and the certification or certifications are not  
16 clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and  
17 any other information furnished under subsection (b)(3).

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

25           “(3) REVIEW.—

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

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

34           “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the  
35 proposed minimization procedures ~~required under~~ **referred to in** paragraph (1)(C) do  
36 not meet the definition of minimization procedures under section 101(h) or section  
37 301(4), **as appropriate**, the judge shall enter an order so stating and provide a written  
38 statement for the record of the reasons for such determination. The Government may  
39 appeal an order under this ~~clause~~ **subparagraph** pursuant to subsection (f).

40           “(D) REVIEW OF CERTIFICATION.—If the judge determines that an application  
41 required by subsection (b) does not contain all of the required elements, or that the

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1 certification or certifications are clearly erroneous on the basis of the statement made  
2 under subsection (b)(1)(F)(v) and any other information furnished under subsection  
3 (b)(3), the judge shall enter an order so stating and provide a written statement for the  
4 record of the reasons for such determination. The Government may appeal an order  
5 under this ~~clause~~ **subparagraph** pursuant to subsection (f).

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

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

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

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

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

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

18 “(5) DIRECTIONS.—An order approving ~~acquisitions~~ **an acquisition** under this subsection  
19 shall direct—

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

22 “(B) an electronic communication service provider to provide to the Government  
23 forthwith all information, facilities, or assistance necessary to accomplish the  
24 acquisition authorized under ~~this subsection~~ **such order** in a manner that will protect  
25 the secrecy of the acquisition and produce a minimum of interference with the services  
26 that such electronic communication service provider is providing to the target **of the**  
27 **acquisition;**

28 “(C) an electronic communication service provider to maintain under security  
29 procedures approved by the Attorney General any records concerning the acquisition  
30 or the aid furnished that such electronic communication service provider wishes to  
31 maintain; and

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

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

39 “(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition  
40 is approved by an order or extension under this section, the judge may assess compliance  
41 with the minimization procedures **referred to in paragraph (1)(C)** by reviewing the

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1 circumstances under which information concerning United States persons was acquired,  
2 retained, or disseminated.

3 “(d) Emergency Authorization.—

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

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

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

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

17 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes ~~such emergency~~  
18 an acquisition under paragraph (1), the Attorney General shall require that the  
19 minimization procedures ~~required by this section~~ referred to in subsection (c)(1)(C) for  
20 the issuance of a judicial order be followed.

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

26 “(4) USE OF INFORMATION.—~~IN THE EVENT THAT SUCH INFORMATION.~~—If an application  
27 for approval submitted pursuant to paragraph (1) is denied, or in any other case where  
28 the acquisition is terminated and no order is issued approving the acquisition, no  
29 information obtained or evidence derived from such acquisition, except under  
30 circumstances in which the target of the acquisition is determined not to be a United States  
31 person ~~during the pendency of the 7-day emergency acquisition period~~, shall be received in  
32 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any  
33 court, grand jury, department, office, agency, regulatory body, legislative committee, or  
34 other authority of the United States, a State, or political subdivision thereof, and no  
35 information concerning any United States person acquired from such acquisition shall  
36 subsequently be used or disclosed in any other manner by Federal officers or employees  
37 without the consent of such person, except with the approval of the Attorney General if the  
38 information indicates a threat of death or serious bodily harm to any person.

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

1 “(f) Appeal.—

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

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

11 **“SEC. 705 704. OTHER ACQUISITIONS TARGETING**  
12 **UNITED STATES PERSONS OUTSIDE THE UNITED**  
13 **STATES.**

14 “(a) Jurisdiction and Scope.—

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

17 “(2) SCOPE.—~~No element of the intelligence community department or agency of the~~  
18 **Federal Government** may intentionally target, for the purpose of acquiring foreign  
19 intelligence information, a United States person reasonably believed to be located outside  
20 the United States under circumstances in which the targeted United States person has a  
21 reasonable expectation of privacy and a warrant would be required if the acquisition were  
22 conducted inside the United States for law enforcement purposes, unless a judge of the  
23 Foreign Intelligence Surveillance Court has entered an order **with respect to such targeted**  
24 **United States person** or the Attorney General has authorized an emergency acquisition  
25 pursuant to subsections (c) or (d) or any other provision of this Act.

26 “(3) LIMITATIONS.—

27 “(A) MOVING OR MISIDENTIFIED TARGETS.—~~IN THE EVENT THAT THE TARGETS.—If~~  
28 **a targeted United States person is reasonably believed to be in the United States during**  
29 **the pendency of an order issued pursuant to subsection (c), such acquisition shall cease**  
30 **until authority is obtained pursuant to this Act or the targeting of such United States**  
31 **person under this section shall cease unless the targeted United States person is**  
32 **again reasonably believed to be located outside the United States during the pendency**  
33 **of an order issued pursuant to subsection (c).**

34 “(B) APPLICABILITY.—~~If the an acquisition is to be conducted inside the United~~  
35 **States and could be authorized under section 704, the procedures of section 704 shall**  
36 **apply, unless an order or emergency acquisition authority has been obtained under a**  
37 **703, the acquisition may only be conducted if authorized by section 703 or in**  
38 **accordance with another provision of this Act other than under this section.**

39 “(b) Application.—Each application for an order under this section shall be made by a Federal  
40 officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1).  
41 Each application shall require the approval of the Attorney General based upon the Attorney

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1 General's finding that it satisfies the criteria and requirements of such application as set forth in  
2 this section and shall include—

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

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

6 “~~(2)~~“(3) a statement of the facts and circumstances relied upon to justify the applicant's  
7 belief that the United States person who is the target of the acquisition is—

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

9 “(B) a foreign power, an agent of a foreign power, or an officer or employee of a  
10 foreign power;

11 “~~(3)~~“(4) a statement of the proposed minimization procedures that meet the definition of  
12 minimization procedures under section 101(h) or section 301(4), **as appropriate;**

13 “(4)“(5) a certification made by the Attorney General, an official specified in section  
14 104(a)(6), or the head of an element of the intelligence community that—

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

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

19 “~~(5)~~“(6) a statement of the facts concerning any previous applications that have been  
20 made to any judge of the Foreign Intelligence Surveillance Court involving the United  
21 States person specified in the application and the action taken on each previous application;  
22 and

23 “~~(6)~~“(7) a statement of the period of time for which the acquisition is required to be  
24 maintained, provided that such period of time shall not exceed 90 days per application.

25 “(c) Order.—

26 “(1) ~~FINDINGS.— IF, UPON FINDINGS.—~~Upon an application made pursuant to subsection  
27 (b), ~~a judge having jurisdiction under subsection (a) finds that—~~ **the Foreign Intelligence**  
28 **Surveillance Court shall enter an ex parte order as requested or as modified by the**  
29 **Court if the Court finds that—**

30 “~~(A)~~“(A) **the application has been made by a Federal officer and approved by**  
31 **the Attorney General;**

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

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

36 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of  
37 a foreign power;

38 “~~(B)~~“(C) the proposed minimization procedures, with respect to their dissemination  
39 provisions, meet the definition of minimization procedures under section 101(h) or

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1 section 301(4), as appropriate; and

2 ~~“(C)“(D)~~ the application ~~which that~~ has been filed contains all statements and  
3 certifications required by subsection (b) and the certification provided under subsection  
4 ~~(b)(4)(b)(5)~~ is not clearly erroneous on the basis of the information furnished under  
5 subsection (b).;

6 ~~the Court shall issue an ex parte order so stating.~~

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

14 “(3) REVIEW.—

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

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

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

31 “(D) SCOPE OF REVIEW OF CERTIFICATION.—~~If the judge determines Foreign~~  
32 **Intelligence Surveillance Court determines that an application under subsection**  
33 **(b) does not contain all the required elements, or** that the certification provided  
34 under subsection ~~(b)(4)(b)(5)~~ is clearly erroneous on the basis of the information  
35 furnished under subsection (b), the judge shall enter an order so stating and provide a  
36 written statement for the record of the reasons for such determination. The  
37 Government may appeal an order under this ~~subparagraph~~ clause pursuant to  
38 subsection (e).

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

42 “(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or

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1 extension is granted under this section, the judge may assess compliance with the  
2 minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances  
3 under which information concerning United States persons was disseminated, provided that  
4 the judge may not inquire into the circumstances relating to the conduct of the acquisition.

5 “(d) Emergency Authorization.—

6 “(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other  
7 provision in of this subsection section, if the Attorney General reasonably determines  
8 that—

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

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

19 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such an  
20 emergency acquisition under paragraph (1), the Attorney General shall require that the  
21 minimization procedures required by this section referred to in subsection (c)(1)(C) be  
22 followed.

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

28 “(4) USE OF INFORMATION.—~~IN THE EVENT THAT SUCH APPLICATION INFORMATION.—~~  
29 **an application submitted to the Court pursuant to paragraph (1) is denied, or in any**  
30 **other case where the acquisition is terminated and no order is issued approving the**  
31 **acquisition with respect to the target of the acquisition is issued under subsection (c),**  
32 **no information obtained or evidence derived from such acquisition, except under**  
33 **circumstances in which the target of the acquisition is determined not to be a United States**  
34 **person during the pendency of the 7 day emergency acquisition period, shall be received in**  
35 **evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any**  
36 **court, grand jury, department, office, agency, regulatory body, legislative committee, or**  
37 **other authority of the United States, a State, or political subdivision thereof, and no**  
38 **information concerning any United States person acquired from such acquisition shall**  
39 **subsequently be used or disclosed in any other manner by Federal officers or employees**  
40 **without the consent of such person, except with the approval of the Attorney General if the**  
41 **information indicates a threat of death or serious bodily harm to any person.**

42 “(e) Appeal.—

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

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

10   **“SEC. ~~706~~ 705. JOINT APPLICATIONS AND**  
11 **CONCURRENT AUTHORIZATIONS.**

12           “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under  
13 section ~~704~~ ~~703~~ or section ~~705~~ ~~704~~ is proposed to be conducted both inside and outside the  
14 United States, a judge having jurisdiction under section ~~704(a)(1)~~ ~~703(a)(1)~~ or section ~~705(a)(1)~~  
15 ~~704(a)(1)~~ may issue simultaneously, upon the request of the Government in a joint application  
16 complying with the requirements of section ~~704(b)~~ ~~or 703(b)~~ ~~and~~ section ~~705(b)~~ ~~704(b)~~, orders  
17 under section ~~704(e)~~ ~~or 703(c)~~ ~~and~~ section ~~705(e)~~, ~~704(c)~~, as ~~applicable~~ **appropriate**.

18           “(b) Concurrent Authorization.—If an order authorizing electronic surveillance or physical  
19 search has been obtained under section 105 or section 304 and that order is still in effect, **during**  
20 **the pendency of that order**, the Attorney General may authorize, without an order under section  
21 ~~704 or section 705, an acquisition of foreign intelligence information targeting 703 or section~~  
22 **704, the targeting of that United States person for the purpose of acquiring foreign**  
23 **intelligence information** while such person is reasonably believed to be located outside the  
24 United States.

25   **“SEC. ~~707~~ 706. USE OF INFORMATION ACQUIRED**  
26 **UNDER TITLE VII.**

27           “(a) Information Acquired Under Section ~~703~~.—~~Information 702~~.—**Information** acquired  
28 from an acquisition conducted under section ~~703~~ ~~702~~ shall be deemed to be information acquired  
29 from an electronic surveillance pursuant to title I for purposes of section 106, except for the  
30 purposes of subsection (j) of such section.

31           “(b) Information Acquired Under Section ~~704~~.—~~Information 703~~.—**Information** acquired  
32 from an acquisition conducted under section ~~704~~ ~~703~~ shall be deemed to be information acquired  
33 from an electronic surveillance pursuant to title I for purposes of section 106.

34   **“SEC. ~~708~~ 707. CONGRESSIONAL OVERSIGHT.**

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

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

1 “(1) with respect to section ~~703~~— **702**—

2 “(A) any certifications made under ~~subsection 703(f)~~ **section 702(g)** during the  
3 reporting period;

4 “(B) **with respect to each certification made under section 702(g)(1)(B)(ii), the**  
5 **reasons for exercising the authority under such paragraph;**

6 “(C) any directives issued under ~~subsection 703(g)~~ **section 702(h)** during the  
7 reporting period;

8 “~~(C)~~“(D) a description of the judicial review during the reporting period of any such  
9 certifications and targeting and minimization procedures **required by subsections (d)**  
10 **and (e) of section 702 and** utilized with respect to such acquisition, including a copy  
11 of any order or pleading in connection with such review that contains a significant  
12 legal interpretation of the provisions of ~~this~~ **section 702;**

13 “~~(D)~~“(E) any actions taken to challenge or enforce a directive under paragraphs (4)  
14 or (5) of section ~~703(g); 702(h);~~

15 “~~(E)~~“(F) any compliance reviews conducted by the ~~Department of Justice or the~~  
16 ~~Office of Attorney General or~~ the Director of National Intelligence of acquisitions  
17 authorized under ~~subsection 703(a); section 702(a);~~

18 “~~(F)~~“(G) a description of any incidents of noncompliance with a directive issued by  
19 the Attorney General and the Director of National Intelligence under ~~subsection 703(g)~~  
20 **section 702(h)**, including—

21 “(i) incidents of noncompliance by an element of the intelligence community  
22 with procedures ~~adopted pursuant to~~ **and guidelines submitted in accordance**  
23 **with subsections (d) and (e) and (f) of section 703; 702;** and

24 “(ii) incidents of noncompliance by a specified person to whom the Attorney  
25 General and Director of National Intelligence issued a directive under ~~subsection~~  
26 ~~703(g); section 702(h);~~ and

27 “~~(G)~~“(H) any procedures implementing ~~this~~ **section 702;**

28 “(2) with respect to section ~~704~~— **703**—

29 “(A) the total number of applications made for orders under section ~~704(b)~~ **703(b);**

30 “(B) the total number of such ~~orders either~~ **orders—**

31 “(i) granted;;

32 “(ii) modified;; or

33 “(iii) denied; and

34 “(C) the total number of emergency acquisitions authorized by the Attorney General  
35 under section ~~704(d)~~ **703(d)** and the total number of subsequent orders approving or  
36 denying such acquisitions; and

37 “(3) with respect to section ~~705~~— **704**—

38 “(A) the total number of applications made for orders under ~~705(b)~~ **704(b);**

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1 “(B) the total number of such orders

2 either“(i) granted;;

3 “(ii) modified; or

4 “(iii) denied; and

5 “(C) the total number of emergency acquisitions authorized by the Attorney General  
6 under ~~subsection 705(d)~~ **section 704(d)** and the total number of subsequent orders  
7 approving or denying such applications.”.

8 applications.

9 **“SEC. 708. SAVINGS PROVISION.**

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

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

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

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

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

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

20 ~~“Sec. 701. Limitation on definition of electronic surveillance.”~~ **“Sec. 701. Definitions.**

21 ~~“Sec. 702. Definitions.~~

22 ~~“Sec. 703. Procedures”~~ **“Sec. 702. Procedures** for targeting certain persons outside the United States  
23 other than United States persons.

24 ~~“Sec. 704. Certain”~~ **“Sec. 703. Certain** acquisitions inside the United States of United States persons  
25 outside the United States.

26 ~~“Sec. 705. Other”~~ **“Sec. 704. Other** acquisitions targeting United States persons outside the United  
27 States.

28 ~~“Sec. 706. Joint”~~ **“Sec. 705. Joint** applications and concurrent authorizations.

29 ~~“Sec. 707. Use”~~ **“Sec. 706. Use** of information acquired under title VII.

30 **“Sec. 707. Congressional oversight.**

31 ~~“Sec. 708. Savings provision.”~~ ~~“Sec. 708. Congressional oversight.”~~

32 (c) Technical and Conforming Amendments.—

33 (1) TITLE 18, UNITED STATES CODE.—~~Section eode.—~~

34 ~~(A) Section 2232.— Section 2232(e) of title 18, United States Code, is amended by~~  
35 ~~inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978,~~

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1 regardless of the limitation of section 701 of that Act” after “electronic surveillance”.

2 (B) Section 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended  
3 by inserting “or a court order pursuant to section 705 704 of the Foreign Intelligence  
4 Surveillance Act of 1978” after “assistance”.

5 (2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 601(a)(1) 1978.—

6 (A) Section 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50  
7 U.S.C. 1809) is amended 1871(a)(1) is amended—

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

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

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

13 (B) Section 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978  
14 (50 U.S.C. 1810) is amended by—

15 (i) adding an “(a)” before “Civil Action”;

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

18 (iii) adding at the end the following:

19 “(b) Definition.—For the purpose of this section, the term ‘electronic surveillance’  
20 means electronic surveillance as defined in section 101(f) of this Act regardless of the  
21 limitation of section 701 of this Act.”

22 (C) Section 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of  
23 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and  
24 inserting the following:

25 “(C) pen registers under section 402;

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

27 “(E) acquisitions under section 704; 703; and

28 “(F) acquisitions under section 704;”. 705;”.

29 (d) Termination of Authority.—

30 (1) In general.—Except as provided in paragraph (2), the amendments made by  
31 subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2013.

32 (2) Continuing applicability.—Section 703(g)(3) of the Foreign Intelligence  
33 Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with  
34 respect to any directive issued pursuant to section 703(g) of that Act (as so amended)  
35 for information, facilities, or assistance provided during the period such directive was  
36 or is in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as  
37 amended by subsection (a)) shall remain in effect with respect to an order or request  
38 for emergency assistance under that section. The use of information acquired by an

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1 acquisition conducted under section 703 of that Act (as so amended) shall continue to  
2 be governed by the provisions of section 707 of that Act (as so amended).

3 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**  
4 **WHICH ELECTRONIC SURVEILLANCE AND**  
5 **INTERCEPTION OF DOMESTIC CERTAIN**  
6 **COMMUNICATIONS MAY BE CONDUCTED.**

7 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of  
8 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

9 “statement of exclusive means by which electronic surveillance and interception of domestic  
10 **certain** communications may be conducted

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

16 (b) ~~Table of Contents.—The~~(b) **Only an express statutory authorization for electronic**  
17 **surveillance or the interception of domestic wire, oral, or electronic communications, other**  
18 **than as an amendment to this Act or chapters 119, 121, or 206 of title 18, United States**  
19 **Code, shall constitute an additional exclusive means for the purpose of subsection (a).”**

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

25 (c) **Conforming Amendments.—**

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

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

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

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

37 (c) ~~Conforming Amendments.—Section 2511(2) of title 18,~~  
38 ~~United States Code, is amended in paragraph (f), by striking “,~~

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1 ~~as defined in section 101 of such Act,” and inserting “(as~~  
2 ~~defined in section 101(f) of such Act regardless of the limitation~~  
3 ~~of section 701 of such Act)”.~~

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

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

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

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

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

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

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

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

30 “(e) Definitions.—In this section:

31 “(1) FOREIGN INTELLIGENCE SURVEILLANCE ~~COURT; COURT.~~—The term “~~Foreign~~  
32 ~~‘Foreign Intelligence Surveillance Court’~~ **Court**” means the court established by section  
33 103(a).

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

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

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

3 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

21 (2) by striking subsection (b);

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

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

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

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

30 (1) in subsection (a)—

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

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

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

35 (3) in subsection (c)(1)—

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

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- 1 (B) in subparagraph (E), by striking “; and” and inserting a period; and  
2 (C) by striking subparagraph (F);  
3 (4) by striking subsection (d);  
4 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),  
5 respectively;  
6 (6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read  
7 as follows:  
8 “(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize  
9 the emergency employment of electronic surveillance if the Attorney General—  
10 “(A) reasonably determines that an emergency situation exists with respect to the  
11 employment of electronic surveillance to obtain foreign intelligence information before an  
12 order authorizing such surveillance can with due diligence be obtained;  
13 “(B) ~~reasonably~~ **reasonably** determines that the factual basis for ~~the~~ issuance of an order  
14 under this title to approve such electronic surveillance exists;  
15 “(C) informs, either personally or through a designee, a judge having jurisdiction under  
16 section 103 at the time of such authorization that the decision has been made to employ  
17 emergency electronic surveillance; and  
18 “(D) makes an application in accordance with this title to a judge having jurisdiction  
19 under section 103 as soon as practicable, but not later than 7 days after the Attorney General  
20 authorizes such surveillance.  
21 “(2) If the Attorney General authorizes the emergency employment of electronic surveillance  
22 under paragraph (1), the Attorney General shall require that the minimization procedures  
23 required by this title for the issuance of a judicial order be followed.  
24 “(3) In the absence of a judicial order approving such electronic surveillance, the surveillance  
25 shall terminate when the information sought is obtained, when the application for the order is  
26 denied, or after the expiration of 7 days from the time of authorization by the Attorney General,  
27 whichever is earliest.  
28 “(4) A denial of the application made under this subsection may be reviewed as provided in  
29 section 103.  
30 “(5) In the event that such application for approval is denied, or in any other case where the  
31 electronic surveillance is terminated and no order is issued approving the surveillance, no  
32 information obtained or evidence derived from such surveillance shall be received in evidence or  
33 otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,  
34 department, office, agency, regulatory body, legislative committee, or other authority of the  
35 United States, a State, or political subdivision thereof, and no information concerning any United  
36 States person acquired from such surveillance shall subsequently be used or disclosed in any  
37 other manner by Federal officers or employees without the consent of such person, except with  
38 the approval of the Attorney General if the information indicates a threat of death or serious  
39 bodily harm to any person.  
40 “(6) The Attorney General shall assess compliance with the requirements of paragraph (5).”;

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1 and

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

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

8 **SEC. 106. USE OF INFORMATION.**

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

11 **SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.**

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

14 (1) in subsection (a)—

15 (A) by striking paragraph (2);

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

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

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

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

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

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

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

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

33 (1) in subsection (a)—

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

35  
36 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),  
37 respectively; and

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

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

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

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

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

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

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

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

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

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

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

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

39 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
40 1801 et seq.) is amended—

41 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking

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

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

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

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

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

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

14 (b) En Banc Authority.—

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

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

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

19 “(2)(A) The court established under this subsection ~~may~~, on its own initiative, or upon the  
20 request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or  
21 (5) of section ~~703(h)~~, 702(h), ~~may~~ hold a hearing or rehearing, en banc, when ordered by a  
22 majority of the judges that constitute such court upon a determination that—

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

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

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

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

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

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

36 (B) in section 302(c) (50 U.S.C. 1822(c)), by inserting “(except when sitting en

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1           banc)” after “except that no judge”.

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

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

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

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

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

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

19           ~~“(h)(1)“(i) Nothing in this Act shall be considered construed to reduce or contravene the~~  
20 ~~inherent authority of the Foreign Intelligence Surveillance Court court established by~~  
21 ~~subsection (a) to determine, or enforce, compliance with an order or a rule of such Court court~~  
22 ~~or with a procedure approved by such Court. court.”.~~

23           ~~“(2) In this subsection, the terms ‘Foreign Intelligence~~  
24 ~~Surveillance Court’ and ‘Court’ mean SEC. 110. REVIEW OF~~  
25 ~~PREVIOUS ACTIONS.~~

26           (a) Definitions.—In this section:

27           (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees  
28 of Congress” means—

29           (A) the Select Committee on Intelligence and the Committee on the Judiciary of  
30 the Senate; and

31           (B) the Permanent Select Committee on Intelligence and the Committee on the  
32 Judiciary of the House of Representatives.

33           (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence  
34 Surveillance Court” means the court established by ~~subsection (a).”.~~

35           ~~SEC. 110 section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50~~  
36 ~~U.S.C. 1803(a)).~~

37           (3) PRESIDENT’S SURVEILLANCE PROGRAM AND PROGRAM.—The terms “President’s  
38 Surveillance Program” and “Program” mean the intelligence activity involving

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1 communications that was authorized by the President during the period beginning on  
2 September 11, 2001, and ending on January 17, 2007, including the program referred  
3 to by the President in a radio address on December 17, 2005 (commonly known as the  
4 Terrorist Surveillance Program).

5 (b) Reviews.—

6 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of  
7 Justice, the Office of the Director of National Intelligence, the National Security  
8 Agency, and any other element of the intelligence community that participated in the  
9 President's Surveillance Program, shall complete a comprehensive review of, with  
10 respect to the oversight authority and responsibility of each such Inspector General—

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

13 (B) the procedures and substance of, and access to, the legal reviews of the  
14 Program;

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

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

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

22 (2) COOPERATION AND COORDINATION.—

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

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

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

31 (B) INTEGRATION OF OTHER REVIEWS.—The Office of Professional  
32 Responsibility of the Department of Justice shall provide the report of any  
33 investigation conducted by such Office on matters relating to the Program to the  
34 Inspector General of the Department of Justice, who shall integrate the factual  
35 findings and conclusions of such investigation into its review

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

40 (c) Reports.—

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

7 (2) **FINAL REPORT.**—Not later than 1 year after the date of the enactment of this Act,  
8 the Inspectors General of the Department of Justice, the Office of the Director of  
9 National Intelligence, the National Security Agency, and any other Inspector General  
10 required to conduct a review under subsection (b)(1), shall submit to the appropriate  
11 committees of Congress and the Commission established under section 301(a), to the  
12 extent practicable, a comprehensive report on such reviews that includes any  
13 recommendations of any such Inspectors General within the oversight authority and  
14 responsibility of any such Inspector General with respect to the reviews.

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

20 (d) **Resources.**—

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

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

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

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

34 **SEC. 111. WEAPONS OF MASS DESTRUCTION.**

35 (a) **Definitions.**—

36 (1) **FOREIGN POWER.**—Subsection (a)(4) of section 101 of the Foreign Intelligence  
37 Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) ~~is amended by inserting “;~~ is amended—

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

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

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

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1           “(7) **an entity not substantially composed of United States persons that is engaged in**  
2 the international proliferation of weapons of mass destruction,” after “international  
3 terrorism” **destruction.”**.

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

5           (A) in subparagraph (B), by striking “or” at the end; ~~and (B) in subparagraph (C), by~~  
6 striking “or” at the end; and

7           ~~(C)~~(B) by adding at the end the following new subparagraphs: **subparagraph**

8           “(D) engages in the international proliferation of weapons of mass destruction, or  
9 activities in preparation therefor; **or.”** ~~or~~

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

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

15           (4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by ~~inserting after~~  
16 ~~subsection (e) the adding at the end the following new subsection:~~

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

18           “(1) any ~~destructive device described in section 921(a)(4)(A) of title 18, United States~~  
19 ~~Code, explosive, incendiary, or poison gas device~~ that is intended or has the capability to  
20 cause ~~death or serious bodily injury to a significant number of people; a mass casualty~~  
21 **incident;**

22           “(2) any weapon that is designed or intended to cause death or serious bodily injury to a  
23 **significant number of persons** through the release, dissemination, or impact of toxic or  
24 poisonous chemicals or their precursors;

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

29           “(4) any weapon that is designed ~~to release, intended, or has the capability of releasing~~  
30 ~~radiation or radioactivity at a level dangerous to human life.”; causing death, illness, or~~  
31 **serious bodily injury to a significant number of persons.”.**

32           (b) Use of Information.—

33           (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of  
34 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international  
35 terrorism” and inserting “sabotage, international terrorism, or the international proliferation  
36 of weapons of mass destruction”.

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

40           (c) Technical and Conforming Amendment.—Section 301(1) of the Foreign Intelligence

1 Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting “~~weapon~~“**weapon of**  
2 ~~mass destruction~~”, **destruction**,” after “~~person~~”, “**person**,”.

3 ~~SEC. 111. TECHNICAL AND CONFORMING~~  
4 ~~AMENDMENTS.~~

5 ~~Section 103(e) of the Foreign Intelligence Surveillance Act of~~  
6 ~~1978 (50 U.S.C. 1803(e)) is amended—~~

7  
8 ~~\* 15 (1) in paragraph (1), by striking “105B(h) or 501(f)(1)” and~~  
9 ~~inserting “501(f)(1) or 703”;~~ and

10  
11 ~~\* 16 (2) in paragraph (2), by striking “105B(h) or 501(f)(1)” and~~  
12 ~~inserting “501(f)(1) or 703”.~~

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

15 **\*\* 2 SEC. 203 201. PROCEDURES FOR IMPLEMENTING**  
16 **STATUTORY DEFENSES UNDER THE FOREIGN**  
17 **INTELLIGENCE SURVEILLANCE ACT OF 1978.**

18 **\*\* 3** The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended  
19 by section 101, is further amended by adding after title VII the following new title:

20 ~~SEC. 201. DEFINITIONS.~~ **“TITLE VIII—PROTECTION OF**  
21 **PERSONS ASSISTING THE GOVERNMENT**

22 ~~In this title:~~ **“SEC. 801. DEFINITIONS.**

23 ~~(1)~~ **“In this title:**

24 **“(1) ASSISTANCE.—**The term “~~assistance~~” **‘assistance’** means the provision of, or the  
25 provision of access to, information (including communication contents, communications  
26 records, or other information relating to a customer or communication), facilities, or another  
27 form of assistance.

28 **(2) Contents.—**The term “~~contents~~” has the meaning given that term in section 101(n) of  
29 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)). **“(2)**

30 **CONGRESSIONAL INTELLIGENCE COMMITTEES.—**The term ‘**congressional intelligence**  
31 **committees’** means—

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1           ~~(3) Covered civil action.—The term “covered civil action” means a civil action filed~~  
2           ~~in a Federal or State court that—“(A) the Select Committee on Intelligence of the~~  
3           ~~Senate; and~~

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

6           ~~(B) seeks monetary or other relief from the electronic communication service~~  
7           ~~provider related to the provision of such assistance.“(B) the Permanent Select~~  
8           ~~Committee on Intelligence of the House of Representatives.~~

9           \*\* 4 “(3) CONTENTS.—The term ‘contents’ has the meaning given that term in section  
10           101(n).

11           ~~(4)“(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term “electronic~~  
12           ~~‘electronic communication service provider’ provider’ means—~~

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

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

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

19           ~~(D)“(D) any other communication service provider who has access to wire or~~  
20           ~~electronic communications either as such communications are transmitted or as such~~  
21           ~~communications are stored;~~

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

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

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

30           ~~SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC~~  
31           ~~COMMUNICATION SERVICE PROVIDERS.“(6) PERSON.—The term ‘person’~~  
32           ~~means—~~

33           ~~(a) Limitations.—~~

34           ~~(1) In general.—Notwithstanding any other provision of law, a covered civil action~~  
35           ~~shall not lie or be maintained in a Federal or State court, and shall be promptly~~  
36           ~~dismissed, if the Attorney General certifies to the court that—~~

37           ~~(A) the assistance alleged to have been provided by the“(A) an electronic~~  
38           ~~communication service provider was—; or~~

39           ~~\*\* 5 “(B) a landlord, custodian, or other person who may be authorized or required~~  
40           ~~to furnish assistance pursuant to—~~

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1           \*\* 6 “(i) an order of the court established under section 103(a) directing such  
2 assistance;

3           \*\* 7 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of  
4 title 18, United States Code; or

5           \*\* 8 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day  
6 before the date of the enactment of the FISA Amendments Act of 2008 or 703(h).

7           \*\* 9 “(7) STATE.—The term ‘State’ means any State, political subdivision of a State, the  
8 Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of  
9 the United States, and includes any officer, public utility commission, or other body  
10 authorized to regulate an electronic communication service provider.

## 11 **“SEC. 802. PROCEDURES FOR IMPLEMENTING** 12 **STATUTORY DEFENSES.**

13           \*\* 10 ~~“(1) In general.—~~Notwithstanding“(a) **General Requirement for Certification.—**  
14 **Notwithstanding** any other provision of law, no civil action may lie or be maintained in a  
15 Federal or State court against any person for providing assistance to an element of the  
16 intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the  
17 court that—

18           \*\* 11 ~~“(A)“(1) any assistance by that person was provided pursuant to an order of the~~  
19 court established under section 103(a) directing such assistance;

20           \*\* 12 ~~“(B)“(2) any assistance by that person was provided pursuant to a certification in~~  
21 writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

22           \*\* 13 ~~“(C)“(3) any assistance by that person was provided pursuant to a directive under~~  
23 sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the  
24 FISA Amendments Act of 2008, or 703(h) directing such assistance; or

25           “(4) **the person did not provide the alleged assistance.**

26           “(b) **Additional Limitation.—**Notwithstanding any other provision of law, no civil action  
27 may lie or be maintained in a Federal or State court against an electronic communication  
28 service provider for furnishing assistance to an element of the intelligence community, and  
29 shall be promptly dismissed, if the Attorney General certifies to the court that the  
30 assistance alleged to have been provided by the electronic communication service provider  
31 was—

32           “(1)(i) in connection with an intelligence activity involving communications that was—

33           ~~“(A) authorized by the President during the period beginning on September 11,~~  
34 2001, and ending on January 17, 2007; and

35           ~~“(B) designed to detect or prevent a terrorist attack, or activities in preparation~~  
36 for a terrorist attack, against the United States; and

37           ~~“(ii)“(2) described in a written request or directive, or a series of such requests or~~  
38 **directives**, from the Attorney General or the head of an element of the intelligence  
39 community (or the deputy of such person) to the electronic communication service provider

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1 indicating that the activity was—

2 ~~(A)~~“(A) authorized by the President; and

3 ~~(B)~~“(B) determined to be lawful; or.

4 ~~(B) the electronic communication service provider did not provide the alleged assistance.”(c)~~

5 **Judicial Review.—**

6 ~~(2) Review.—A“(1) REVIEW OF CERTIFICATIONS.—A certification made pursuant to~~  
7 ~~paragraph (1) shall be subject to review by a court subsection (a) or (b) shall be reviewed~~  
8 ~~for abuse of discretion and a determination of whether the certification is unsupported~~  
9 ~~by substantial evidence or otherwise not in accordance with law.~~

10 ~~“(2) SUPPLEMENTAL MATERIALS.—In its review of the certifications in subsections~~  
11 ~~(a) and (b), the court may examine the court order, certification, or directive described~~  
12 ~~in subsection (a) or the written request or directives, or series of such requests or~~  
13 ~~directives, described in subsection (b)(1)(B).~~

14 ~~“(d) Limitations on Disclosure.—If:~~

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

18 ~~(1)“(1) review such certification in camera and ex parte; and~~

19 ~~(2)“(2) limit any public disclosure concerning such certification, including any public~~  
20 ~~order following such an ex parte review, to a statement that the conditions of subsection (a)~~  
21 ~~have been met section 802 have been met and a description of the legal standards that~~  
22 ~~govern the order, without disclosing the subparagraph of subsection (a)(1) that is the basis~~  
23 ~~for the certification order.~~

24 ~~(e)“(e) Role of the Parties.—The court may ask any party to submit arguments on~~  
25 ~~relevant issues of law, if deemed appropriate by the court.~~

26 ~~“(f) Nondelegation.—The authority and duties of the Attorney General under this section shall~~  
27 ~~be performed by the Attorney General (or Acting Attorney General) or a designee in a position~~  
28 ~~not lower than the Deputy Attorney General.~~

29 ~~(d) Civil Actions in State Court.—A covered civil action that is brought in a State court shall~~  
30 ~~be deemed to arise under the Constitution and laws“(g) Appeal.—The courts of appeals shall~~  
31 ~~have jurisdiction of appeals from interlocutory orders of the district courts of the United~~  
32 ~~States and shall be removable under section 1441 of title 28, United States Code. granting or~~  
33 ~~denying a motion to dismiss under this section.~~

34 ~~\*\* 14 (e)“(h) Removal.—A civil action against a person for providing assistance to an~~  
35 ~~element of the intelligence community that is brought in a State court shall be deemed to arise~~  
36 ~~under the Constitution and laws of the United States and shall be removable under section 1441~~  
37 ~~of title 28, United States Code.~~

38 ~~(e) Rule of Construction.—Nothing“(i) Relationship to Other Laws.—Nothing in this~~  
39 ~~section may be construed to limit any otherwise available immunity, privilege, or defense under~~  
40 ~~any other provision of law.~~

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

3  
4 ~~\* 2 SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER~~  
5 ~~THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.~~

6  
7 ~~\* 3 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended~~  
8 ~~by section 101, is further amended by adding after title VII the following new title:~~

9 ~~“TITLE VIII PROTECTION OF PERSONS ASSISTING THE GOVERNMENT~~

10 ~~“SEC. 801. DEFINITIONS.~~

11 ~~“In this title:~~

12 ~~“(1) Assistance.—The term ‘assistance’ means the provision of, or the provision of access to,~~  
13 ~~information (including communication contents, communications records, or other information~~  
14 ~~relating to a customer or communication), facilities, or another form of assistance.~~

15 ~~“(2) Attorney general.—The term ‘Attorney General’ has the meaning give that term in~~  
16 ~~section 101(g).~~

17  
18 ~~\* 4 “(3) Contents.—The term ‘contents’ has the meaning given that term in section 101(n).~~

19 ~~“(4) Electronic communication service provider.—The term ‘electronic communication~~  
20 ~~service provider’ means —~~

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

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

25 ~~“(C) a provider of a remote computing service, as that term is defined in section 2711 of title~~  
26 ~~18, United States Code;~~

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

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

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

34 ~~“(5) Element of the intelligence community.—The term ‘element of the intelligence~~  
35 ~~community’ means an element of the intelligence community as specified or designated under~~  
36 ~~section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).~~

37 ~~“(6) Person.—The term ‘person’ means —~~

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1 ~~“(A) an electronic communication service provider; or~~  
2  
3 ~~\* 5 “(B) a landlord, custodian, or other person who may be authorized or required to furnish~~  
4 ~~assistance pursuant to—~~  
5  
6 ~~\* 6 “(i) an order of the court established under section 103(a) directing such assistance;~~  
7  
8 ~~\* 7 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United~~  
9 ~~States Code; or~~  
10  
11 ~~\* 8 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before the date of~~  
12 ~~the enactment of the FISA Amendments Act of 2008 or 703(h).~~  
13  
14 ~~\* 9 “(7) State.—The term ‘State’ means any State, political subdivision of a State, the~~  
15 ~~Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the~~  
16 ~~United States, and includes any officer, public utility commission, or other body authorized to~~  
17 ~~regulate an electronic communication service provider.~~  
18 ~~“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.~~  
19 ~~“(a) Requirement for Certification.—~~  
20  
21 ~~\* 10 “(1) In general.—Notwithstanding any other provision of law, no civil action may lie or~~  
22 ~~be maintained in a Federal or State court against any person for providing assistance to an~~  
23 ~~element of the intelligence community, and shall be promptly dismissed, if the Attorney General~~  
24 ~~certifies to the court that—~~  
25  
26 ~~\* 11 “(A) any assistance by that person was provided pursuant to an order of the court~~  
27 ~~established under section 103(a) directing such assistance;~~  
28  
29 ~~\* 12 “(B) any assistance by that person was provided pursuant to a certification in writing~~  
30 ~~under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;~~  
31  
32 ~~\* 13 “(C) any assistance by that person was provided pursuant to a directive under sections~~  
33 ~~102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA~~  
34 ~~Amendments Act of 2008, or 703(h) directing such assistance; or~~  
35 ~~“(D) the person did not provide the alleged assistance.~~  
36 ~~“(2) Review.—A certification made pursuant to paragraph (1) shall be subject to review by a~~  
37 ~~court for abuse of discretion.~~

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1 ~~“(b) Limitations on Disclosure.—If the Attorney General files a declaration under section-~~  
2 ~~1746 of title 28, United States Code, that disclosure of a certification made pursuant to-~~  
3 ~~subsection (a) would harm the national security of the United States, the court shall—~~

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

5 ~~“(2) limit any public disclosure concerning such certification, including any public order-~~  
6 ~~following such an ex parte review, to a statement that the conditions of subsection (a) have been-~~  
7 ~~met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the-~~  
8 ~~certification.~~

9  
10 ~~\* 14“(e) Removal.—A civil action against a person for providing assistance to an element of-~~  
11 ~~the intelligence community that is brought in a State court shall be deemed to arise under the-~~  
12 ~~Constitution and laws of the United States and shall be removable under section 1441 of title 28,-~~  
13 ~~United States Code.~~

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

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

18 ~~SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.~~

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

21 ~~“SEC. 803. PREEMPTION.~~

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

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

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

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

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

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

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

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

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1 **SEC. 205** ~~“SEC. 804. REPORTING.~~

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

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

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

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

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

12 **SEC. 202. TECHNICAL AMENDMENTS.**

13 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978  
14 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end  
15 the following:

16 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING  
17 THE GOVERNMENT**

18 **“Sec.801.Definitions.**

19 **“Sec.802.Procedures for implementing statutory defenses.**

20 **“Sec.803.Preemption.”**

21 ~~**TITLE III—OTHER PROVISIONS**~~

22 ~~**SEC. 301.**“Sec.803.Preemption.~~

23 ~~**“Sec.804.Reporting.”**~~

24 **TITLE III—COMMISSION ON INTELLIGENCE  
25 COLLECTION, PRIVACY PROTECTION, AND  
26 CHANGES IN INFORMATION TECHNOLOGY**

27 **SEC. 301. COMMISSION ON INTELLIGENCE  
28 COLLECTION, PRIVACY PROTECTION, AND  
29 CHANGES IN INFORMATION TECHNOLOGY.**

30 (a) Establishment of Commission.—There is established in the legislative branch a  
31 commission to be known as the “Commission on Intelligence Collection, Privacy  
32 Protection, and Changes in Information and Communications Technology” (in this section  
33 referred to as the “Commission”).

34 (b) Duties of Commission.—

1 (1) IN GENERAL.—The Commission shall—

2 (A) ascertain, evaluate, and report upon the facts and circumstances relating to  
3 an intelligence activity involving communications authorized by the President  
4 during the period between September 11, 2001 and January 17, 2007 and  
5 designed to detect or prevent a terrorist attack, or activities in preparation for a  
6 terrorist attack, against the United States;

7 (B) conduct a comprehensive examination of the legal framework for the  
8 collection of intelligence information in the United States or regarding United  
9 States persons both inside and outside the United States in light of the threats to  
10 the national security, recent and anticipated changes in information and  
11 communications technology that may affect the nature of that collection, and  
12 constitutional and privacy interests of United States persons; and

13 (C) report to the President and Congress the findings and conclusions of the  
14 Commission and any recommendations the Commission considers appropriate  
15 for changes or improvements in laws, policies, and practices relating to the  
16 collection of intelligence inside the United States and regarding United States  
17 persons in order to enhance national security, protect the privacy of United States  
18 persons, ensure compliance with the Constitution, and improve the effectiveness  
19 and accountability of intelligence programs.

20 (2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the  
21 duties of the Commission under this section in a manner consistent with the need to  
22 protect national security.

23 (3) RELATIONSHIP TO PREVIOUS INQUIRIES.—In fulfilling its duties under subsection  
24 (b)(1)(A), the Commission shall build upon the reports submitted under section 110,  
25 and avoid unnecessary duplication of the review under that section which was  
26 conducted by the Inspectors General of the Department of Justice, the Office of the  
27 Director of National Intelligence, the National Security Agency, and any other  
28 inspector general that participated in it, as well as any related findings, conclusions,  
29 and recommendations of the Office of Professional Responsibility of the Department  
30 of Justice

31 (c) Composition of Commission.—

32 (1) MEMBERS.—The Commission shall be composed of 10 members, of whom—

33 (A) 1 member, who shall serve as the chair of the Commission, shall be  
34 appointed by the President;

35 (B) 1 member, who shall serve as the vice chair of the Commission, shall be  
36 appointed jointly by the leader of the Senate and the leader of the House of  
37 Representatives who are not of the same party as the President;

38 (C) 2 members shall be appointed by the senior member of the leadership of the  
39 House of Representatives of the Democratic Party;

40 (D) 2 members shall be appointed by the senior member of the leadership of the  
41 House of Representatives of the Republican Party;

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1 (E) 2 members shall be appointed by the senior member of the leadership of the  
2 Senate of the Democratic Party; and

3 (F) 2 members shall be appointed by the senior member of the leadership of the  
4 Senate of the Republican Party.

5 (2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission  
6 may not be an officer or employee of the Federal Government.

7 (3) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the  
8 Commission should be prominent United States citizens with significant depth of  
9 experience in national security, intelligence, Constitutional law, civil liberties and  
10 privacy, and information and telecommunications technology matters.

11 (4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be  
12 appointed by June 1, 2009.

13 (5) INITIAL MEETING.—The Commission shall hold its first meeting and begin  
14 operations as soon as possible but not later than August 1, 2009.

15 (6) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet  
16 upon the call of the Chair.

17 (7) QUORUM.—A majority of the members of the Commission shall constitute a  
18 quorum, but the Commission may provide that a lesser number may hold hearings.

19 (8) VACANCIES.—Any vacancy in the Commission shall not affect its powers and  
20 shall be filled in the same manner in which the original appointment was made.

21 (d) Powers of Commission.—

22 (1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Chair,  
23 any subcommittee or member thereof may, for the purpose of carrying out this  
24 section, hold such hearings and sit and act at such times and places, take such  
25 testimony, receive such evidence, and administer such oaths as the Commission, such  
26 designated subcommittee, or designated member may determine advisable.

27 (2) SUBPOENAS.—

28 (A) AUTHORIZATION AND ISSUANCE.—

29 (i) IN GENERAL.—The Commission is authorized to subpoena witnesses to  
30 attend and testify and to produce evidence pertaining to any matter that the  
31 Commission is empowered to investigate under this section. The attendance  
32 of witnesses and the production of evidence may be required from any place  
33 within the United States at any designated place of hearing within the United  
34 States. The Commission may by rule delegate to the Chair and Vice Chair,  
35 acting jointly, the authority to authorize subpoenas under this paragraph.

36 (ii) ISSUANCE.—Subject to clause (i), subpoenas authorized under this  
37 paragraph may be issued under the signature of the Chair of the  
38 Commission, or by any member designated by the chair, or any member  
39 designated by the Chair or a member designated to sign the subpoena.

40 (B) ENFORCEMENT.—

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1 (i) JURISDICTION.—In the case of contumacy or failure to obey a subpoena  
2 issued under subparagraph (A), the United States district court for the  
3 judicial district in which the subpoenaed person resides, is served, or may be  
4 found, or where the subpoena is returnable, may issue an order requiring  
5 such person to appear at any designated place to testify or to produce  
6 documentary or other evidence. Any failure to obey the order of the court  
7 may be punished by the court as a contempt of that court.

8 (ii) IN GENERAL.—If a person refuses to obey a subpoena issued under  
9 subparagraph (A), the Commission, upon a majority vote, may apply, either  
10 through the Attorney General or another attorney of its choosing, to a United  
11 States district court for an order requiring that person to appear before the  
12 Commission to give testimony, produce evidence, or both, relating to the  
13 matter under investigation. The application may be made within the judicial  
14 district where the hearing is conducted or where that person is found,  
15 resides, or transacts business. Any failure to obey the order of the court may  
16 be punished by the court as civil contempt.

17 (iii) ADDITIONAL ENFORCEMENT.—In the case of the failure of a witness to  
18 comply with any subpoena or to testify when summoned under authority of  
19 this paragraph, the Commission, by majority vote, may certify a statement of  
20 fact attesting to such failure to the appropriate United States attorney, who  
21 shall bring the matter before the grand jury for its action, under the same  
22 statutory authority and procedures as if the United States attorney had  
23 received a certification under sections 102 through 104 of the Revised  
24 Statutes of the United States (2 U.S.C. 192 through 194).

25 (3) CONTRACTING.—The Commission may, to such extent and in such amounts as  
26 are provided in appropriations Acts, enter into contracts to enable the Commission to  
27 discharge its duties under this section.

28 (4) INFORMATION FROM FEDERAL AGENCIES.—

29 (A) IN GENERAL.—The Commission is authorized to secure directly from any  
30 department, bureau, agency, board, commission, office, independent  
31 establishment, or instrumentality of the executive branch documents,  
32 information, suggestions, estimates, and statistics for the purposes of this section.  
33 Each such department, bureau, agency, board, commission, office, independent  
34 establishment, or instrumentality shall furnish such documents, information,  
35 suggestions, estimates, and statistics directly to the Commission upon request  
36 made by the Chair, or any member designated by a majority of the Commission.

37 (B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall  
38 only be received, handled, stored, and disseminated by members of the  
39 Commission and its staff in a manner consistent with all applicable statutes,  
40 regulations, and Executive orders.

41 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

42 (A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General  
43 Services shall provide to the Commission on a reimbursable basis administrative

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1 support and other services for the performance of the Commission's functions.

2 (B) DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National  
3 Intelligence shall provide to the Commission appropriate space and technical  
4 facilities approved by the Commission and other services for the performance of  
5 the Commission's functions.

6 (C) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance  
7 prescribed in subparagraph (A), departments and agencies of the United States  
8 may provide to the Commission such services, funds, facilities, staff, and other  
9 support services as they may determine advisable and as may be authorized by  
10 law.

11 (6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of  
12 services or property.

13 (7) POSTAL SERVICES.—The Commission may use the United States mails in the  
14 same manner and under the same conditions as departments and agencies of the  
15 United States.

16 (e) Staff of Commission.—

17 (1) IN GENERAL.—

18 (A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with the  
19 Vice Chair and in accordance with rules agreed upon by the Commission, may  
20 appoint and fix the compensation of an executive director and such other  
21 personnel as may be necessary to enable the Commission to carry out its  
22 functions, without regard to the provisions of title 5, United States Code,  
23 governing appointments in the competitive service, and without regard to the  
24 provisions of chapter 51 and subchapter III of chapter 53 of such title relating to  
25 classification and General Schedule pay rates, except that no rate of pay fixed  
26 under this paragraph may exceed the equivalent of that payable for a position at  
27 level IV of the Executive Schedule under section 5316 of title 5, United States  
28 Code.

29 (B) PERSONNEL AS FEDERAL EMPLOYEES.—

30 (i) IN GENERAL.—The executive director and any personnel of the  
31 Commission who are employees shall be employees under section 2105 of title  
32 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A,  
33 89B, and 90 of that title.

34 (ii) MEMBERS OF COMMISSION.—Clause (i) shall not be construed to apply  
35 to members of the Commission.

36 (2) DETAILEES.—A Federal Government employee may be detailed to the  
37 Commission without reimbursement from the Commission, and such detailee shall  
38 retain the rights, status, and privileges of his or her regular employment without  
39 interruption.

40 (3) CONSULTANT SERVICES.—The Commission is authorized to procure the services  
41 of experts and consultants in accordance with section 3109 of title 5, United States

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1 Code, at rates not to exceed the daily rate paid a person occupying a position at level  
2 III of the Executive Schedule under section 5315 of title 5, United States Code.

3 (f) Security Clearances for Commission Members and Staff.—

4 (1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or  
5 departments shall cooperate with the Commission in expeditiously providing to the  
6 Commission members and staff appropriate security clearances to the extent possible  
7 pursuant to existing procedures and requirements. No person shall be provided with  
8 access to classified information under this section without the appropriate security  
9 clearances.

10 (2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission, and  
11 commission staff as authorized by the Chair and Vice Chair, who have obtained  
12 appropriate security clearances shall have access to classified information related to  
13 the intelligence activities within the scope of the examination of the Commission and  
14 any other related classified information that the members of the Commission  
15 determine relevant to carrying out the duties of the Commission under this section.

16 (g) Compensation and Travel Expenses.—

17 (1) COMPENSATION.—Each member of the Commission shall be compensated at the  
18 rate equal to the daily equivalent of the annual rate of basic pay in effect for a position  
19 at level III of the Executive Schedule under section 5315 of title 5, United States Code,  
20 for each day during which that member is engaged in the actual performance of the  
21 duties of the Commission.

22 (2) TRAVEL EXPENSES.—While away from their homes or regular places of business  
23 in the performance of services for the Commission, members of the Commission shall  
24 be allowed travel expenses, including per diem in lieu of subsistence, in the same  
25 manner as persons employed intermittently in the Government service are allowed  
26 expenses under section 5703(b) of title 5, United States Code.

27 (h) Nonapplicability of Federal Advisory Committee Act.—

28 (1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not  
29 apply to the Commission.

30 (2) PUBLIC MEETINGS.—The Commission shall hold public hearings and meetings to  
31 the extent appropriate.

32 (3) PUBLIC HEARINGS.—Any public hearing of the Commission shall be conducted in  
33 a manner consistent with the protection of information provided to or developed for or  
34 by the Commission as required by any applicable statute, regulation, or Executive  
35 order.

36 (i) Reports and Recommendations of Commission.—

37 (1) INTERIM REPORTS.—The Commission may submit to the President and Congress  
38 interim reports containing such findings, conclusions, and recommendations for  
39 corrective measures as have been agreed to by a majority of Commission members.

40 (2) FINAL REPORT.—Not later than 18 months after the date of its first meeting, the  
41 Commission shall submit to the President and Congress a final report containing such

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1 information, analysis, findings, conclusions, and recommendations as have been  
2 agreed to by a majority of Commission members and such minority and additional  
3 views as a member may wish to include.

4 (3) FORM.—The reports submitted under paragraphs (1) and (2) shall be submitted  
5 in unclassified form, but may include a classified annex.

6 (4) RECOMMENDATIONS FOR DECLASSIFICATION.—The Commission may make  
7 recommendations to the appropriate department or agency of the Federal  
8 Government regarding the declassification of documents or portions of documents.

9 (j) Termination.—

10 (1) IN GENERAL.—The Commission, and all the authorities of this section, shall  
11 terminate 90 days after the date on which the final report is submitted under  
12 subsection (i)(2).

13 (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use  
14 the 90-day period referred to in paragraph (1) for the purpose of concluding its  
15 activities, including providing testimony to committees of Congress concerning its  
16 report and disseminating the final report, except that nothing under this paragraph  
17 shall limit the ability of the Chair, the Vice Chair, or any member of the Commission  
18 to provide additional testimony to committees of Congress concerning the report after  
19 that time.

20 (k) Definitions.—In this section:

21 (1) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the  
22 meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C.  
23 401a(4)).

24 (2) UNITED STATES PERSON.—The term “United States person” has the meaning  
25 given the term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50  
26 U.S.C. 1801(i)).

27 (l) Funding.—

28 (1) IN GENERAL.—There are authorized to be appropriated such sums as may be  
29 necessary to carry out the activities of the Commission under this section.

30 (2) DURATION OF AVAILABILITY.—Amounts made available to the Commission  
31 under paragraph (1) shall remain available until the termination of the Commission.

32 (m) Effective Date.—This section shall take effect on January 21, 2009.

33 **TITLE IV—OTHER PROVISIONS**

34 **SEC. 401. SEVERABILITY.**

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

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1 ~~SEC. 302.~~ **402. EFFECTIVE DATE; REPEAL; TRANSITION**  
2 **PROCEDURES.**

3 ~~(a) In General.~~—Except ~~except~~ as provided in subsection (e) section 404, the amendments  
4 made by this Act shall take effect on the date of the enactment of this Act.

5 ~~(b) Repeal.~~— **SEC. 403. REPEALS.**

6 ~~(1)(a) Repeal of Protect America Act of 2007 Provisions.~~—

7 **(1) AMENDMENTS TO FISA.**—

8 **(A) IN GENERAL.**—Except as provided in subsection (e) section 404, sections 105A,  
9 105B, and 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
10 1805a, 1805b, and 1805c) are repealed.

11 **(B) TECHNICAL AND CONFORMING AMENDMENTS.**—

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

15 ~~(e) Transitions Procedures.~~—

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

21 ~~(2) Orders in effect.~~—

22 ~~(A) Orders in effect on date of enactment.~~—Notwithstanding any other  
23 provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

24 ~~(i) any order in effect on the date of enactment of this Act issued pursuant to~~  
25 ~~the Foreign Intelligence Surveillance Act of 1978 or section 6(b) of the Protect~~  
26 ~~America Act of 2007 (Public Law 11055; 121 Stat. 556) shall remain in effect~~  
27 ~~until the date of expiration of such order; and~~

28 ~~(ii) at the request of the applicant, the court established under section 103(a) of~~  
29 ~~the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall~~  
30 ~~reauthorize such order if the facts and circumstances continue to justify issuance~~  
31 ~~of such order under the provisions of such Act, as in effect on the day before the~~  
32 ~~date of the enactment of the Protect America Act of 2007, except as amended by~~  
33 ~~sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.~~

34 ~~(B) Orders in effect on december 31, 2013.~~—Any order issued under title VII  
35 of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101  
36 of this Act, in effect on December 31, 2013, shall continue in effect until the date  
37 of the expiration of such order. Any such order shall be governed by the  
38 applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so  
39 amended.

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1           (3) Authorizations and directives in effect.—

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

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

27          (4) Use of information acquired under protect america act.— Information  
28      acquired from an acquisition conducted under the Protect America Act of 2007,  
29      and the amendments made by that Act, shall be deemed to be information  
30      acquired from an electronic surveillance pursuant to title I of the Foreign  
31      Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of  
32      section 106 of that Act (50 U.S.C. 1806), except for purposes of subsection (j) of  
33      such section.

34          (5) New orders.— Notwithstanding any other provision of this Act or of the  
35      Foreign Intelligence Surveillance Act of 1978—

36          (A) the government may file an application for an order under the Foreign  
37      Intelligence Surveillance Act of 1978, as in effect on the day before the date of  
38      the enactment of the Protect America Act of 2007, except as amended by sections  
39      102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act; and

40          (B) the court established under section 103(a) of the Foreign Intelligence  
41      Surveillance Act of 1978 shall enter an order granting such an application if the  
42      application meets the requirements of such Act, as in effect on the day before the  
43      date of the enactment of the Protect America Act of 2007, except as amended by  
44      sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

1           ~~(6) Extant authorizations.—At the request of the applicant, the court established~~  
2           ~~under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall~~  
3           ~~extinguish any extant authorization to conduct electronic surveillance or physical~~  
4           ~~search entered pursuant to such Act.~~

5           ~~(7) Applicable provisions.—Any surveillance conducted pursuant to an order~~  
6           ~~entered pursuant to this subsection shall be subject to the provisions of the~~  
7           ~~Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the~~  
8           ~~date of the enactment of the Protect America Act of 2007, except as amended by~~  
9           ~~sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.(ii)~~

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

13                   \*\* 15 ~~(I)~~ in paragraph (1), by striking “105B(h) or 501(f)(1)” and  
14                   inserting “501(f)(1) or 703”; 702(h)(4)”; and

15                   \*\* 16 ~~(II)~~ in paragraph (2), by striking “105B(h) or 501(f)(1)” and  
16                   inserting “501(f)(1) or 703” 702(h)(4)”.

17           ~~(8)(2) REPORTING REQUIREMENTS.—Except as provided in section 404, section 4 of~~  
18           ~~the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 555) is repealed.~~

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

22           **(b) FISA Amendments Act of 2008.—**

23                   **(1) IN GENERAL.—Except as provided in section 404, effective December 31, 2011,**  
24                   **title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section**  
25                   **101(a), is repealed.**

26                   **(2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2011—**

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

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

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

## 35           **SEC. 404. TRANSITION PROCEDURES.**

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

37                   **(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—**  
38                   **Notwithstanding any other provision of law, any order, authorization, or directive**  
39                   **issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act**  
40                   **of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55;**

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1 121 Stat. 552), shall continue in effect until the expiration of such order, authorization,  
2 or directive.

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

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

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

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

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

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

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

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

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

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

40 (6) **REPORTING REQUIREMENTS.**—

41 (A) **CONTINUED APPLICABILITY.**—Notwithstanding any other provision of this

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1 Act, any amendment made by this Act, the Protect America Act of 2007 (Public  
2 Law 110-55), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801  
3 et seq.), section 4 of the Protect America Act of 2007 shall continue to apply until  
4 the date that the certification described in subparagraph (B) is submitted.

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

7 (i) made by the Attorney General;

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

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

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

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

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

20 (1) ORDERS IN EFFECT ON DECEMBER 31, 2011.—Notwithstanding any other  
21 provision of this Act, any amendment made by this Act, or the Foreign Intelligence  
22 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive  
23 issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978, as  
24 amended by section 101(a), shall continue in effect until the date of the expiration of  
25 such order, authorization, or directive.

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

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

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

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

38 (A) section 103(e) of such Act, as amended by section 113, shall continue to  
39 apply with respect to any directive issued pursuant to section 702(h) of such Act,  
40 as added by section 101(a);

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

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

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

8 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by  
9 section 101(c)(1), shall continue to apply to an order issued pursuant to section  
10 704 of the Foreign Intelligence Surveillance Act of 1978, as added by section  
11 101(a).

12 (4) REPORTING REQUIREMENTS.—

13 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this  
14 Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
15 seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section  
16 101(c)(2), and sections 702(l) and 707 of such Act, as added by section 101(a), shall  
17 continue to apply until the date that the certification described in subparagraph  
18 (B) is submitted.

19 (B) CERTIFICATION.—The certification described in this subparagraph is a  
20 certification—

21 (i) made by the Attorney General;

22 (ii) submitted to the Select Committee on Intelligence of the Senate, the  
23 Permanent Select Committee on Intelligence of the House of Representatives,  
24 and the Committees on the Judiciary of the Senate and the House of  
25 Representatives;

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

29 (iv) that states that the information required to be included in a review,  
30 assessment, or report under section 601 of such Act, as amended by section  
31 101(c), or section 702(l) or 707 of such Act, as added by section 101(a),  
32 relating to any acquisition conducted under title VII of such Act, as amended  
33 by section 101(a), has been included in a review, assessment, or report under  
34 such section 601, 702(l), or 707.

35 (5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS  
36 OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section  
37 2.5 of Executive Order 12333 to intentionally target a United States person reasonably  
38 believed to be located outside the United States shall ~~remain~~ continue in effect, and shall  
39 constitute a sufficient basis for conducting such an acquisition targeting a United States  
40 person located outside the United States until the earlier of—

41 (A) the date that authorization expires; or

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1 (B) the date that is 90 days after the date of the enactment of this Act.  
2 Attest:  
3 Secretary.66514  
4 ~~110th CONGRESS~~  
5 ~~2d Session~~  
6 ~~H.R. 3773~~  
7  
8 ~~AMENDMENT~~