

Deleted: Draft Copy

1

Deleted: Be it enacted by

2

House Amendment to the Senate Amendment to H.R. 3773

Formatted: Font: 18 pt

3

Offered by M .

Deleted: and House of Representatives

4

In lieu of the matter proposed to be inserted by the Senate, insert the following:

Deleted: United States of America in Congress assembled,

5

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

Deleted: SECTION

6

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

7

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

8

Sec.1.Short title; table of contents.

9

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

10

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

11

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

Deleted: domestic

12

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

13

Sec.104.Applications for court orders.

14

Sec.105.Issuance of an order.

15

Sec.106.Use of information.

16

Sec.107.Amendments for physical searches.

17

Sec.108.Amendments for emergency pen registers and trap and trace devices.

Deleted: Intelligence Surveillance Court.

18

Sec.109.Foreign intelligence surveillance court.

19

Sec.110.Review of previous actions.

Deleted: Sec.110.Weapons

20

Sec.111.Weapons of mass destruction.

21

Sec.112.Statute of limitations.

Deleted: Sec.111.Technical and conforming amendments.¶

22

TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

Deleted: S FOR

23

Sec.201.Statutory defenses.

Deleted: COMMUNICATION SERVICE PROVIDERS

24

Sec.202.Technical amendments.

Deleted: Sec.201.Definitions.¶ Sec.202.Limitations

25

TITLE III—COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES

Deleted: civil actions for electronic communication service providers.¶ Sec.203.Procedures for implementing statutory defenses under the Foreign Intelligence

26

Sec.301.Commission on Warrantless Electronic Surveillance Activities.

Deleted: of 1978.

27

Deleted: 6:16

Deleted: Draft Copy

1 **TITLE IV—OTHER PROVISIONS**

2 Sec.401.Severability.

Deleted: Sec.204.Preemption of State investigations.¶
Sec.205.Technical amendments.¶

3 Sec.402.Effective date.

Deleted: III—OTHER

4 Sec.403.Repeals.

Deleted: Sec.301.Severability.¶
Sec.302.Effective

5 Sec.404.Transition procedures.

Deleted: date; repeal; transition

6 Sec.405.No rights under the FISA Amendments Act of 2008 for undocumented aliens.

7 Sec.406.Surveillance to protect the United States.

8 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

9 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**
10 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

13 (1) by striking title VII; and

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

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

17 **“SEC. 701. DEFINITIONS.**

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

Deleted: LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.¶
“Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.¶
“SEC. 702.

22 “(b) Additional Definitions.—

Deleted: shall

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

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

26 “(B) the Permanent Select Committee on Intelligence of the House of
27 Representatives.

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

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

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

Deleted: 6:16

Deleted: Draft Copy

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

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

5 “(C) a provider of a remote computing service, as that term is defined in section
6 2711 of title 18, United States Code;

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

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

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

Deleted: ELEMENT OF THE INTELLIGENCE

Deleted: 'element of the

Deleted: means an element of the intelligence community specified in or designated under

Deleted: 703.

14 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN**
15 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**
16 **UNITED STATES PERSONS.**

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

Deleted: law,

Deleted: periods

Deleted: .

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

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

25 “(2) may not intentionally target a person reasonably believed to be located outside the
26 United States in order to target a particular, known person reasonably believed to be in the
27 United States;

Deleted: if the purpose of such acquisition is

Deleted: States, except in accordance with title I or title III;

28 “(3) may not intentionally target a United States person reasonably believed to be located
29 outside the United States;

Deleted: States, except in accordance with sections 704, 705, or 706;

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

Deleted: shall

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

35 “(c) Conduct of Acquisition.—An acquisition authorized under subsection (a) may be
36 conducted only in accordance with—

37 “(1) a certification made by the Attorney General and the Director of National
38 Intelligence pursuant to subsection (g) or a determination under paragraph (1)(B) of such

Deleted: 6:16

Deleted: Draft Copy

1 subsection, and

Deleted: (f);

2 "(2) the procedures and guidelines required pursuant to subsections (d), (e), and (f),

Deleted: targeting and minimization

Deleted: (e).

3 "(d) Targeting Procedures.—

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

Deleted: referred to in

10 "(2) JUDICIAL REVIEW.—The procedures required by paragraph (1) shall be subject to
11 judicial review pursuant to subsection (i).

Deleted: (h).

12 "(e) Minimization Procedures.—

13 "(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
14 of National Intelligence, shall adopt minimization procedures for acquisitions authorized
15 under subsection (a) that—

Deleted: that meet the definition of
minimization procedures under section
101(h) or section 301(4)

16 "(A) in the case of electronic surveillance, meet the definition of minimization
17 procedures under section 101(h); and

Deleted: .

18 "(B) in the case of a physical search, meet the definition of minimization procedures
19 under section 301(4).

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

Deleted: this subsection

Deleted: (h).

22 "(f) Guidelines for Compliance With Limitations.—

23 "(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
24 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 303, if required by this Act.

27 "(2) CRITERIA.—With respect to subsection (b)(2), the guidelines adopted pursuant to
28 paragraph (1) shall contain specific criteria for determining whether a significant purpose of
29 an acquisition is to acquire the communications of a specific United States person
30 reasonably believed to be located in the United States. Such criteria shall include
31 consideration of whether—

32 "(A) the department or agency of the Federal Government conducting the
33 acquisition has made an inquiry to another department or agency of the Federal
34 Government to gather information on the specific United States person;

35 "(B) the department or agency of the Federal Government conducting the
36 acquisition has provided information that identifies the specific United States person to
37 another department or agency of the Federal Government;

38 "(C) the department or agency of the Federal Government conducting the
39 acquisition determines that the specific United States person has been the subject of

Deleted: 6:16

1 ongoing interest or repeated investigation by a department or agency of the Federal
2 Government; and

3 “(D) the specific United States person is a natural person.

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

7 “(4) SUBMISSION TO CONGRESS AND FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The
8 Attorney General shall submit the guidelines adopted pursuant to paragraph (1) to—

9 “(A) the congressional intelligence committees;

10 “(B) the Committees on the Judiciary of the House of Representatives and the
11 Senate; and

12 “(C) the Foreign Intelligence Surveillance Court.

13 “(g) Certification.—

14 “(1) IN GENERAL.—

15 “(A) REQUIREMENT.—Subject to subparagraph (B), if the Attorney General and the
16 Director of National Intelligence seek to authorize an acquisition under this section, the
17 Attorney General and the Director of National Intelligence shall provide, under oath, a
18 written certification, as described in this subsection.

19 “(B) EMERGENCY AUTHORIZATION.—If the Attorney General and the Director of
20 National Intelligence determine that an emergency situation exists, immediate action
21 by the Government is required, and time does not permit the completion of judicial
22 review pursuant to subsection (i) prior to the initiation of an acquisition, the Attorney
23 General and the Director of National Intelligence may authorize the acquisition and
24 shall submit to the Foreign Intelligence Surveillance Court a certification under this
25 subsection as soon as possible but in no event more than 7 days after such
26 determination is made.

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

28 “(A) attest that—

29 “(i) there are reasonable procedures in place for determining that the
30 acquisition authorized under subsection (a)—

31 “(I) is targeted at persons reasonably believed to be located outside the
32 United States and such procedures have been submitted to the Foreign
33 Intelligence Surveillance Court; and

34 “(II) does not result in the intentional acquisition of any communication
35 as to which the sender and all intended recipients are known at the time of
36 the acquisition to be located in the United States, and such procedures have
37 been submitted to the Foreign Intelligence Surveillance Court;

38 “(ii) guidelines have been adopted in accordance with subsection (f) to ensure
39 compliance with the limitations in subsection (b) and to ensure that applications
40 are filed under section 104 or section 303, if required by this Act;

Deleted: prior to

Deleted: initiation

Deleted: authorized

Deleted: subsection (a),

Deleted: EXCEPTION.—If

Deleted: preparation

Deleted: a certification under this

Deleted: prepare such

Deleted: , including such determination,

Deleted: is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (b);

Formatted: Indent: Left: 96 pt

Deleted: “(ii) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a)

Deleted: that

Deleted: approved by, or will be

Deleted: in not more than 5 days for approval by,

Deleted: pursuant to subsection (i);

Deleted: 6:16

Deleted: Draft Copy

1 “(iii) the minimization procedures to be used with respect to such
2 acquisition—

3 “(I) meet the definition of minimization procedures under section 101(h)
4 or section 301(4) in accordance with subsection (e); and

5 “(II) have been submitted to the Foreign Intelligence Surveillance Court;

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

9 ** I “(v) a significant purpose of the acquisition is to obtain foreign
10 intelligence information;

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

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

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

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

17 “(ii) the head of an element of the intelligence community; and

18 “(C) include—

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

21 “(ii) if the acquisition has begun or will begin in less than 30 days from the
22 submission of the written certification to the court—

23 “(I) the date the acquisition began or the effective date for the acquisition;

24 “(II) a description of why implementation was required in less than 30
25 days from the submission of the written certification to the court; and

26 “(III) if the acquisition is authorized under paragraph (1)(B), the basis for
27 the determination that an emergency situation exists, immediate action by the
28 government is required, and time does not permit the completion of judicial
29 review prior to the initiation of the acquisition.

30 “(3) LIMITATION.—A certification made under this subsection is not required to identify
31 the specific facilities, places, premises, or property at which the acquisition authorized
32 under subsection (a) will be directed or conducted.

33 “(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a
34 certification made under this subsection, and any supporting affidavit, under seal to the
35 Foreign Intelligence Surveillance Court before the initiation of an acquisition under this
36 section, except in accordance with paragraph (1)(B). The Attorney General shall maintain
37 such certification under security measures adopted by the Chief Justice of the United States
38 and the Attorney General, in consultation with the Director of National Intelligence.

39 “(5) REVIEW.—A certification submitted pursuant to this subsection shall be subject to

Deleted: “(iii) the procedures referred to in clauses (i) and (ii) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States or the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States;”

Deleted: “(iv) a significant purpose of the acquisition is to obtain foreign intelligence information;”

Deleted: “(v)

Deleted: ;

Deleted: approved by, or will be

Deleted: in not more than 5 days for approval by,

Deleted: pursuant to subsection (h);

Deleted: does not constitute electronic surveillance, as limited by section 701; and

Deleted: y

Deleted: community.

Deleted: as soon as possible, but

Deleted: no event more than 5 days after

Deleted: is made. Such certification shall be maintained

Deleted: REVIEW.—The

Deleted: required by

Deleted: 6:16

Deleted: Draft Copy

1 judicial review pursuant to subsection (i).

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

Deleted: f
“(g)

3 ~~“(1) AUTHORITY.—Pursuant to an order issued in accordance with subsection (i)(3) or a~~
4 ~~determination under subsection (g)(1)(B), the Attorney General and the Director of National~~
5 ~~Intelligence may direct, in writing, an electronic communication service provider to—~~

Deleted: AUTHORITY.—With respect

Deleted: acquisition authorized

Deleted: (a).

6 ~~“(A) immediately provide the Government with all information, facilities, or~~
7 ~~assistance necessary to accomplish the acquisition authorized in accordance with this~~
8 ~~section in a manner that will protect the secrecy of the acquisition and produce a~~
9 ~~minimum of interference with the services that such electronic communication service~~
10 ~~provider is providing to the target of the acquisition; and~~

Deleted: ;

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

14 ~~“(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, a~~
15 ~~electronic communication service provider for providing information, facilities, or~~
16 ~~assistance pursuant to paragraph (1).~~

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

21 ~~“(4) CHALLENGING OF DIRECTIVES.—~~

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

26 ~~“(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed~~
27 ~~under subparagraph (A) to 1 of the judges serving in the pool established by section~~
28 ~~103(e)(1) not later than 24 hours after the filing of the petition.~~

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

Deleted: ,

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

Deleted: a

Deleted: described in subparagraph (C).

Deleted: consists

Deleted: not

Deleted: or by

Deleted: or f

Deleted: 6:16

Deleted: Draft Copy

1 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition filed
2 under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set
3 aside the directive that is the subject of that petition not later than 30 days after being
4 assigned the petition. If the judge does not set aside the directive, the judge shall
5 immediately affirm or modify the directive and order the recipient to comply with the
6 directive in its entirety or as modified. The judge shall provide a written statement for
7 the records of the reasons for a determination under this subparagraph.

Deleted: described in

Deleted: (C)

Deleted: petition, unless

Deleted: , by order for reasons stated, extends that time as necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States. Unless the judge sets

Deleted: affirm with modifications

Deleted: .

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

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

12 “(5) ENFORCEMENT OF DIRECTIVES.—

13 “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to
14 comply with a directive issued pursuant to paragraph (1), the Attorney General may
15 file a petition for an order to compel the electronic communication service provider to
16 comply with the directive with the Foreign Intelligence Surveillance Court, which shall
17 have jurisdiction to review such a petition.

Deleted: COMPEL.—In the case of a failure

Deleted: compliance

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

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

Deleted: STANDARDS

Deleted: .

Deleted: .

Deleted: ¶
“(D) PROCEDURES FOR REVIEW.—The judge shall render a determination not later than 30 days after being assigned a petition filed under subparagraph (A), unless the judge, by order for reasons stated, extends that time if necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States.

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

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

Formatted: Strikethrough

Deleted: “(E)

Deleted: “(F)

32 “(6) APPEAL.—

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

Deleted: the

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

Deleted: 6:16

Deleted: Draft Copy

1 transmitted under seal to the Supreme Court of the United States, which shall have
2 jurisdiction to review such decision.

Deleted: "(h)"

3 "(i) Judicial Review of Certifications and Procedures.—

4 "(1) IN GENERAL.—

5 "(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
6 Intelligence Surveillance Court shall have jurisdiction to review any certification
7 submitted pursuant to subsection (g) and the targeting and minimization procedures
8 required by subsections (d) and (e).

Deleted: required by

Deleted: (c)

Deleted: adopted pursuant to

Deleted: SUBMISSION TO THE COURT.—
The Attorney General shall submit to the
Court any such

Deleted: procedure, or amendment
thereto,

Deleted: 5

Deleted: making or amending

Deleted: or adopting or amending the
procedures.

Deleted: CERTIFICATIONS.—The

Formatted: Indent: Left: 48 pt

Deleted: a

Deleted: provided under

Deleted: (f)

Deleted: "(3)"

Deleted: Court shall review the

Deleted: "(4)"

Deleted: Court shall review the

Deleted: .

Deleted: "(5)"

Deleted: required by

Deleted: (f)

Deleted: targeting and minimization

Deleted: continued

Deleted: authorized under subsection
(a).

Deleted: required by

Deleted: (f)

Deleted: .

9 "(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted
10 pursuant to subsection (g) and the targeting and minimization procedures required by
11 subsections (d) and (e) and approve or deny an order under this subsection not later
12 than 30 days after the date on which a certification is submitted.

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

14 "(A) CERTIFICATIONS.—A certification submitted pursuant to subsection (g) to
15 determine whether the certification contains all the required elements.

16 "(B) TARGETING PROCEDURES.—The targeting procedures required by subsection
17 (d) to assess whether the procedures are reasonably designed to ensure that the
18 acquisition authorized under subsection (a) is limited to the targeting of persons
19 reasonably believed to be located outside the United States and does not result in the
20 intentional acquisition of any communication as to which the sender and all intended
21 recipients are known at the time of the acquisition to be located in the United States.

22 "(C) MINIMIZATION PROCEDURES.—The minimization procedures required by
23 subsection (e) to assess whether such procedures meet the definition of minimization
24 procedures under section 101(h) or section 301(4) in accordance with subsection (e).

25 "(3) ORDERS.—

26 "(A) APPROVAL.—If the Court finds that a certification submitted pursuant to
27 subsection (g) contains all of the required elements and that the procedures required by
28 subsections (d) and (e) are consistent with the requirements of those subsections and
29 with the fourth amendment to the Constitution of the United States, the Court shall
30 enter an order approving the certification and the use of the procedures for the
31 acquisition.

32 "(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification submitted
33 pursuant to subsection (g) does not contain all of the required elements or that the
34 procedures required by subsections (d) and (e) are not consistent with the requirements
35 of those subsections or the fourth amendment to the Constitution of the United
36 States—

37 "(i) in the case of a certification submitted in accordance with subsection
38 (g)(1)(A), the Court shall deny the order, identify any deficiency in the
39 certification or procedures, and provide the Government with an opportunity to
40 correct such deficiency; and

Formatted: Indent: Left: 72 pt

Deleted: 6:16

41 "(ii) in the case of a certification submitted in accordance with subsection

Deleted: Draft Copy

1 | (g)(1)(B), the Court shall issue an order directing the Government to, at the
2 | Government's election and to the extent required by the Court's order—

Deleted: States,

3 | (I) correct any deficiency identified by the Court not later than 30 days
4 | after the date the Court issues the order; or

Formatted: Indent: Left: 96 pt

Deleted: "(i)

Deleted: 's order

5 | (II) cease the acquisition authorized under subsection (g)(1)(B),

Deleted: "(ii)

Deleted: (a).

6 | (C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this
7 | subsection, the Court shall provide, simultaneously with the orders, for the record a
8 | written statement of its reasons.

Deleted: "(6)

9 | (4) APPEAL.—

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

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

Deleted: s

Deleted: (5)(B)

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

19 | (ii) if the Government appeals an order under this section, subject to
20 | subparagraph (C), until the Court of Review enters an order under subparagraph
21 | (A),

Deleted: (C).

22 | (C) IMPLEMENTATION OF EMERGENCY AUTHORITY PENDING APPEAL.—Not later than
23 | 60 days after the filing of an appeal of an order issued under paragraph (3)(B)(i),
24 | directing the correction of a deficiency, the Court of Review shall determine, and enter
25 | a corresponding order regarding whether all or any part of the correction order, as
26 | issued or modified, shall be implemented during the pendency of the appeal. The
27 | Government shall conduct an acquisition affected by such order issued under
28 | paragraph (3)(B)(i) in accordance with an order issued under this subparagraph or
29 | shall cease such acquisition.

Deleted: (5)(B)

Deleted: ,

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.—If the Attorney General and
37 | the Director of National Intelligence seek to replace an authorization issued pursuant to
38 | section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section
39 | 2 of the Protect America Act of 2007 (Public Law 110-55), the Attorney General and
40 | the Director of National Intelligence shall, to the extent practicable, submit to the
41 | Court a certification under subsection (g) and the procedures required by subsections

Deleted: 6:16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

(d), (e), and (f) at least 30 days before the expiration of such authorization.

“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to this section, the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court a certification under subsection (g) and the procedures required by subsections (d), (e), and (f) at least 30 days prior to the expiration of such authorization.

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

“(i) certifications under subsection (g) for reauthorization of authorizations in effect;

“(ii) the procedures required by subsections (d), (e), and (f); and

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

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

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

“(6) COMPLIANCE.—At or before the end of the period of time for which a certification submitted pursuant to subsection (g) and procedures required by subsection (d) and (e) are approved by an order under this section, the Foreign Intelligence Surveillance Court may assess compliance with the minimization procedures required by subsection (e) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

“(j) Judicial Proceedings.—

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

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

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

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

Deleted: Expedited

Formatted: Indent: Left: 24 pt

Deleted: “(j)

Deleted: “(1) STANDARDS.—A

Deleted: shall be maintained

Deleted: 6:16

Deleted: Draft Copy

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

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

Deleted: RECORDS.—A
Deleted: shall be retained
Deleted: “(k)

8 “(1) Assessments and Reviews.—

9 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the
10 Attorney General and Director of National Intelligence shall assess compliance with the
11 procedures and guidelines required by subsections (d), (e), and (f) and shall submit each
12 assessment to—

Deleted: targeting and minimization
Deleted: such

13 “(A) the congressional intelligence committees;

14 “(B) the Committees on the Judiciary of the House of Representatives and the
15 Senate; and

16 “(C) the Foreign Intelligence Surveillance Court.

Deleted: Court; and

17 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of
18 each element of the intelligence community authorized to acquire foreign intelligence
19 information under subsection (a), with respect to such Department or such element—

Deleted: “(B) the congressional intelligence committees.

20 “(A) are authorized to review compliance with the procedures and guidelines
21 required by subsections (d), (e), and (f);

Deleted: any

Deleted: their department, agency,

Deleted: the

Deleted: targeting and minimization

Deleted: (e);

Deleted: number of

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

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

Deleted: number of

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

31 “(i) the Attorney General;

32 “(ii) the Director of National Intelligence;

33 “(iii) the congressional intelligence committees;

34 “(iv) the Committees on the Judiciary of the House of Representatives and the
35 Senate; and

36 “(v) the Foreign Intelligence Surveillance Court.

Deleted: and

Deleted: committees.

37 “(3) ANNUAL REVIEW.—

38 “(A) REQUIREMENT TO CONDUCT.—The head of each element of the intelligence
39 community conducting an acquisition authorized under subsection (a) shall conduct an

Deleted: an

Deleted: direct the element to

Deleted: 6:16

Deleted: Draft Copy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

“(i) the number and nature of disseminated intelligence reports containing a reference to a United States person identity;

Deleted: an accounting of

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

Deleted: an accounting of

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

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

Deleted: an

Deleted: as well as

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

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

“(i) the Foreign Intelligence Surveillance Court;

“(ii) the Attorney General;

“(iii) the Director of National Intelligence;

“(iv) the congressional intelligence committees; and

“(v) the Committees on the Judiciary of the House of Representatives and the Senate.

Deleted: and

Deleted: committees.

“(m) Construction.—Nothing in this Act shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

Deleted: 704.

“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

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

Deleted: 6:16

Deleted: Draft Copy

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

Deleted: ,

Deleted: such

Deleted: (as defined in section 101(f), regardless of the limitation of section 701)

Deleted: ,

Deleted: LIMITATION.—In the event that

Deleted: until

7 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably
8 believed to be located in the United States during the pendency of an order issued pursuant
9 to subsection (c), such acquisition shall cease unless authority, other than under this section,
10 is obtained pursuant to this Act or the targeted United States person is again reasonably
11 believed to be located outside the United States during the pendency of an order issued
12 pursuant to subsection (c).

13 “(b) Application.—

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

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

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

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

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

25 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
26 a foreign power;

27 “(D) a statement of proposed minimization procedures that—

Deleted: the

28 “(i) in the case of electronic surveillance, meet the definition of minimization
29 procedures in section 101(h); and

Deleted: under

30 “(ii) in the case of a physical search, meet the definition of minimization
31 procedures in section 301(4);

Formatted: Indent: Left: 72 pt

Deleted: or

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

34 “(F) a certification made by the Attorney General or an official specified in section
35 104(a)(6) that—

36 “(i) the certifying official deems the information sought to be foreign
37 intelligence information;

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

40 “(iii) such information cannot reasonably be obtained by normal investigative

Deleted: 6:16

Deleted: Draft Copy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

techniques;

“(iv) identifies the type of foreign intelligence information being sought according to the categories described in each subparagraph of section 101(e); and

Deleted: designates

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

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

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

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

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

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

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

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

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

“(c) Order.—

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

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

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

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

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

“(C) the proposed minimization procedures—

Deleted: “(A) the application has been made by a Federal officer and approved by the Attorney General;”
Deleted: “(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—”
Deleted: “(i) a person reasonably believed to be located outside the United States; and”
Deleted: “(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;”

Deleted: meet the definition of minimization procedures under section 101(h) or section 301(4); and

Deleted: 6:16

Deleted: Draft Copy

1 “(i) in the case of electronic surveillance, meet the definition of minimization
2 procedures in section 101(h); and

3 “(ii) in the case of a physical search, meet the definition of minimization
4 procedures in section 301(4);

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

Deleted: which

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

Deleted: an order under

Deleted: (1),

Deleted: , as well as

Deleted: However, no

15 “(3) REVIEW.—

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

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

24 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
25 proposed minimization procedures referred to in paragraph (1)(C) do not meet the
26 definition of minimization procedures as required under such paragraph the judge shall
27 enter an order so stating and provide a written statement for the record of the reasons
28 for such determination. The Government may appeal an order under this subparagraph
29 pursuant to subsection (f).

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

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

Deleted: clause

Deleted: required by

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

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

42 “(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and

Deleted: 6:16

Deleted: Draft Copy

1 location of each of the facilities or places at which the acquisition will be directed;

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

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

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

Deleted: acquisitions

7 “(5) DIRECTIONS.—An order approving an acquisition under this subsection shall
8 direct—

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

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

Deleted: this subsection

Deleted: ;

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

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

Deleted: paragraph

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

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

31 “(d) Emergency Authorization.—

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

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

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

Deleted: the emergency

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

Deleted: 6:16

Deleted: Draft Copy

1 General, at the time of such authorization that the decision has been made to conduct such
2 acquisition and if an application in accordance with this section is made to a judge of the
3 Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days
4 after the Attorney General authorizes such acquisition.

Deleted: sub

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

Deleted: such emergency

Deleted: ,

Deleted: required by this section

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

Deleted: such

Deleted: , the

13 “(4) USE OF INFORMATION.—If an application for approval submitted pursuant to
14 paragraph (1) is denied, or in any other case where the acquisition is terminated and no
15 order is issued approving the acquisition, no information obtained or evidence derived from
16 such acquisition, except under circumstances in which the target of the acquisition is
17 determined not to be a United States person, shall be received in evidence or otherwise
18 disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,
19 department, office, agency, regulatory body, legislative committee, or other authority of the
20 United States, a State, or political subdivision thereof, and no information concerning any
21 United States person acquired from such acquisition shall subsequently be used or disclosed
22 in any other manner by Federal officers or employees without the consent of such person,
23 except with the approval of the Attorney General if the information indicates a threat of
24 death or serious bodily harm to any person.

Deleted: In the event that such

Deleted: during the pendency of the 7-
day emergency acquisition period,

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

29 “(f) Appeal.—

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

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

Deleted: the

Deleted: issued

39 “(g) Construction.—Nothing in this Act shall be construed to require an application under
40 section 104 for an acquisition that is targeted in accordance with this section at a person
41 reasonably believed to be located outside the United States.

Deleted: 705.

42 “SEC. 704. OTHER ACQUISITIONS TARGETING UNITED

Formatted: Font: 12 pt

Deleted: 6:16

STATES PERSONS OUTSIDE THE UNITED STATES.

“(a) Jurisdiction and Scope.—

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

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

Deleted: element

Deleted: intelligence community

Deleted: s

“(3) LIMITATIONS.—

“(A) MOVING OR MISIDENTIFIED TARGETS.—If a targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), acquisitions relating to such targeted United States Person shall cease unless authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of such order.

Deleted: TARGETS.—In the event that the

Deleted: acquisition

Deleted: until

Deleted: an

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

Deleted: issued pursuant to subsection (c).

Deleted: the

Deleted: 704, the procedures of section 704 shall apply, unless an order or emergency

Deleted: authority has been obtained

Deleted: a

Deleted: under

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

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

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

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

Deleted: “(2)

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

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

“(4) a statement of proposed minimization procedures that—

Deleted: “(3)

Deleted: the

“(A) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

Deleted: under

Deleted: 6:16

Deleted: Draft Copy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

“(B) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

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

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

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

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

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

“(c) Order.—

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

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

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

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

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

“(C) the proposed minimization procedures—

“(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

“(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

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

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

Formatted: Indent: Left: 48 pt

Deleted: or

Deleted: “(4)

Deleted: “(5)

Deleted: “(6)

Deleted: FINDINGS.—If, upon

Deleted: a judge having jurisdiction under subsection (a)

Deleted: “(A) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—
“(i) a person reasonably believed to be located outside the United States; and
“(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

Deleted: “(B)

Deleted: procedures, with respect to their dissemination provisions,

Deleted: under

Formatted: Indent: Left: 72 pt

Deleted: or

Deleted: and

Deleted: “(C)

Deleted: which

Deleted: (b)(4)

Deleted: (b),

Deleted: the Court shall issue an ex parte order so stating;

Deleted: (1)(A),

Deleted: , as well as

Deleted: However, no

Deleted: 6:16

Deleted: Draft Copy

1 “(3) REVIEW.—

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

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

Deleted:
Formatted: Not Small caps
Deleted: to issue an order
Deleted: this subsection,

11 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
12 proposed minimization procedures referred to in paragraph (1)(C) do not meet the
13 definition of minimization procedures as required under such paragraph, the judge
14 shall enter an order so stating and provide a written statement for the record of the
15 reasons for such determination. The Government may appeal an order under this clause
16 pursuant to subsection (e).

Deleted: applicable
Deleted: dissemination of information
obtained through an acquisition under this
subsection
Deleted: section 101(h) or section
301(4),

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

Deleted: (b)(4)
Deleted: subparagraph

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

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

31 “(d) Emergency Authorization.—

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

Deleted: in
Deleted: sub

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

37 “(B) the factual basis for the issuance of an order under this section exists,
38 the Attorney General may authorize such acquisition if a judge having jurisdiction under
39 subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General
40 at the time of such authorization that the decision has been made to conduct such
41 acquisition and if an application in accordance with this section is made to a judge of the
42 Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days

Deleted: the emergency
Deleted: sub
Deleted: 6:16

Deleted: Draft Copy

1 after the Attorney General authorizes such acquisition.

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

Deleted: such

Deleted: ,

Deleted: required by this section

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

10 “(4) USE OF INFORMATION.—If an application submitted pursuant to paragraph (1) is
11 denied, or in any other case where an acquisition under this section is terminated and no
12 order with respect to the target of the acquisition is issued under subsection (c), no
13 information obtained or evidence derived from such acquisition, except under
14 circumstances in which the target of the acquisition is determined not to be a United States
15 person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other
16 proceeding in or before any court, grand jury, department, office, agency, regulatory body,
17 legislative committee, or other authority of the United States, a State, or political
18 subdivision thereof, and no information concerning any United States person acquired from
19 such acquisition shall subsequently be used or disclosed in any other manner by Federal
20 officers or employees without the consent of such person, except with the approval of the
21 Attorney General if the information indicates a threat of death or serious bodily harm to any
22 person.

Deleted: In the event that such

Deleted: the

Deleted: is issued approving

Deleted: ,

Deleted: during the pendency of the 7-
day emergency acquisition period,

23 “(e) Appeal.—

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

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

Deleted: the

Deleted: 706.

Formatted: Font: 12 pt

Deleted: 704

Deleted: 705

Deleted: 704(a)(1)

Deleted: 705(a)(1)

Deleted: 704(b)

Deleted: or

Deleted: 705(b),

Deleted: 704(c)

Deleted: or

Deleted: 705(c),

Deleted: applicable.

Deleted: 6:16

33 “SEC. 705. JOINT APPLICATIONS AND CONCURRENT 34 AUTHORIZATIONS.

35 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under
36 section 703 or section 704 is proposed to be conducted both inside and outside the United
37 States, a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue
38 simultaneously, upon the request of the Government in a joint application complying with the
39 requirements of section 703(b) and section 704(b), orders under section 703(c) and section
40 704(c), as appropriate.

41 “(b) Concurrent Authorization.—

Deleted: Draft Copy

1 “(1) ELECTRONIC SURVEILLANCE.—If an order authorizing electronic surveillance has
2 been obtained under section 105 and that order is still in effect, during the pendency of that
3 order the Attorney General may authorize, without an order under section 703 or 704,
4 electronic surveillance for the purpose of acquiring foreign intelligence information
5 targeting that United States person while such person is reasonably believed to be located
6 outside the United States.

Deleted: If
Deleted: or physical search
Formatted: Indent: Left: 24 pt
Deleted: or section 304
Deleted: 704 or section 705, an acquisition of

7 “(2) PHYSICAL SEARCH.—If an order authorizing a physical search has been obtained
8 under section 304 and that order is still in effect, during the pendency of that order the
9 Attorney General may authorize, without an order under section 703 or 704, a physical
10 search for the purpose of acquiring foreign intelligence information targeting that United
11 States person while such person is reasonably believed to be located outside the United
12 States.

13 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER**
14 **TITLE VII.**

15 Information acquired pursuant to section 702 or 703 shall be considered information
16 acquired from an electronic surveillance pursuant to title I for purposes of section 106.

17 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

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

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

23 “(1) with respect to section 702—

24 “(A) any certifications made under section 702(g) during the reporting period;

25 “(B) with respect to each certification made under paragraph (1)(B) of such section,
26 the reasons for exercising the authority under such paragraph;

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

28 “(D) a description of the judicial review during the reporting period of any such
29 certifications and targeting and minimization procedures adopted pursuant to
30 subsections (d) and (e) of section 702 utilized with respect to such acquisition,
31 including a copy of any order or pleading in connection with such review that contains
32 a significant legal interpretation of the provisions of section 702;

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

35 “(F) any compliance reviews conducted by the Attorney General or the Director of
36 National Intelligence of acquisitions authorized under subsection 702(a);

37 “(G) a description of any incidents of noncompliance with a directive issued by the
38 Attorney General and the Director of National Intelligence under subsection 702(h),
39 including—

Deleted: 707.
Deleted: “(a)
Deleted: Acquired Under Section 703.—Information
Deleted: from an acquisition conducted under
Deleted: deemed to be
Deleted: 106, except for the purposes of subsection (j) of such section.
Deleted: “(b) Information Acquired Under Section 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.
Deleted: 708.
Deleted: ,
Deleted: , and the Committee on the Judiciary of
Deleted: subparagraph
Deleted: 703—
Deleted: subsection 703(f)
Deleted: subsection 703(g)
Deleted: “(C)
Deleted: this
Deleted: “(D)
Deleted: s
Deleted: 703(g);
Deleted: “(E)
Deleted: Department of Justice or the Office of
Deleted: 703(a);
Deleted: “(F)
Deleted: 703(g).
Deleted: 6:16

Deleted: Draft Copy

1 “(i) incidents of noncompliance by an element of the intelligence community
2 with procedures and guidelines adopted pursuant to subsections (d), (e), and (f) of
3 section 702; and

Deleted: and

Deleted: 703;

4 “(ii) incidents of noncompliance by a specified person to whom the Attorney
5 General and Director of National Intelligence issued a directive under subsection
6 702(h); and

Deleted: 703(g);

Deleted: “(G)

7 “(H) any procedures implementing section 702;

Deleted: this

8 “(2) with respect to section 703—

Deleted: 704—

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

Deleted: 704(b);

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

Deleted: either

11 “(i) granted;

Deleted: granted,

12 “(ii) modified; or

Deleted: modified,

13 “(iii) denied; and

Formatted: Indent: Left: 72 pt

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

Deleted: 704(d)

17 “(3) with respect to section 704—

Deleted: 705—

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

Deleted: 705(b);

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

Deleted: either

20 “(i) granted;

Deleted: granted,

21 “(ii) modified; or

Deleted: modified,

22 “(iii) denied; and

Formatted: Indent: Left: 72 pt

23 “(C) the total number of emergency acquisitions authorized by the Attorney General
24 under subsection 704(d) and the total number of subsequent orders approving or
25 denying such applications.

Deleted: 705(d)

Deleted: ”.

26 “SEC. 708. SAVINGS PROVISION.

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

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

Deleted: —

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

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

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

35 “TITLE VII—ADDITIONAL PROCEDURES REGARDING

Deleted: 6:16

CERTAIN PERSONS OUTSIDE THE UNITED STATES

“Sec. 701. Definitions.”

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

“Sec. 703. Certain acquisitions inside the United States of United States persons outside the United States.”

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

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

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

“Sec. 707. Congressional oversight.”

“Sec. 708. Savings provision.”

(c) Technical and Conforming Amendments.—

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

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

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

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

“(E) acquisitions under section 703; and

“(F) acquisitions under section 704;”.

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

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

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

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

“(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this Act or

Deleted: “Sec. 701. Limitation on definition of electronic surveillance.”
Deleted: “Sec. 702. Definitions.”
Deleted: “Sec. 703. Procedures

Deleted: “Sec. 704. Certain

Deleted: “Sec. 705. Other

Deleted: “Sec. 706. Joint

Formatted: Font: 12 pt

Deleted: “Sec. 707. Use

Formatted: Font: 12 pt

Deleted: “Sec. 708. Congressional

Deleted: “.

Formatted: Indent: Left: 24 pt

Deleted: ¶

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)” after “electronic surveillance.”
(B) SECTION 2511.—Section

Deleted: 705

Deleted: ¶

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:“(e) Definition.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”
(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—
(i) adding an “(a)” before “Civil Action”;
(ii) redesignating subsections (a) t ... [1]

Deleted: by striking subparagraphs (C) and (D) and inserting the following:

Deleted: “(C) pen registers under section 402;” ... [2]

Deleted: 704;

Deleted: 705;”.

Deleted: (d) Termination of Authority.—¶ ... [3]

Deleted: DOMESTIC

Deleted: domestic

Deleted: The

Deleted: (as defined in section 101(f), regardless of the limitation of sect ... [4]

Deleted: “.

Deleted: 6:16

1 chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive
2 means for the purpose of subsection (a).”

3 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
4 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and
5 inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any
6 express statutory authorization that is an additional exclusive means for conducting electronic
7 surveillance under section 112.”; and

8 (c) Conforming Amendments.—

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

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

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

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

20 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN**
21 **COURT ORDERS UNDER THE FOREIGN INTELLIGENCE**
22 **SURVEILLANCE ACT OF 1978.**

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

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

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

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

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

39 “(d) Protection of National Security.—The Attorney General, in consultation with the Director

Deleted: (b) Table of Contents.—The

Formatted: Indent: Left: 24 pt

Deleted: adding

Deleted: ,

Deleted: domestic

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

Deleted: 6:16

Deleted: Draft Copy

1 of National Intelligence, may authorize redactions of materials described in subsection (c) that
2 are provided to the committees of Congress referred to in subsection (a), if such redactions are
3 necessary to protect the national security of the United States and are limited to sensitive sources
4 and methods information or the identities of targets.”

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

7 “(e) Definitions.—In this section:

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

Deleted: COURT;

Deleted: “

Deleted: ”

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

Deleted: COURT OF REVIEW;

12 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

15 (1) in subsection (a)—

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

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

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

21 (D) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by
22 striking “statement of” and inserting “summary statement of”;

23 (E) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by
24 adding “and” at the end; and

25 (F) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by
26 striking “; and” and inserting a period;

Deleted: (D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—
(i) by striking “Affairs or” and inserting “Affairs,”; and
(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—”;
(E)

Deleted: (F)

Deleted: (G)

27 (2) by striking subsection (b);

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

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

33 SEC. 105. ISSUANCE OF AN ORDER.

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

36 (1) in subsection (a)—

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

Deleted: 6:16

1 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
2 respectively;
3 (2) in subsection (b), by striking “(a)(3)” and inserting “(a)(2)”;
4 (3) in subsection (c)(1)—
5 (A) in subparagraph (D), by adding “and” at the end;
6 (B) in subparagraph (E), by striking “; and” and inserting a period; and
7 (C) by striking subparagraph (F);
8 (4) by striking subsection (d);
9 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),
10 respectively;
11 (6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read
12 as follows:

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

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

Formatted: Indent: Left: 48 pt

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

Deleted: resonably

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

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

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

Formatted: Indent: Left: 24 pt

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

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

35 (5) In the event that such application for approval is denied, or in any other case where
36 the electronic surveillance is terminated and no order is issued approving the surveillance,
37 no information obtained or evidence derived from such surveillance shall be received in
38 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any
39 court, grand jury, department, office, agency, regulatory body, legislative committee, or

Deleted: 6:16

1 other authority of the United States, a State, or political subdivision thereof, and no
2 information concerning any United States person acquired from such surveillance shall
3 subsequently be used or disclosed in any other manner by Federal officers or employees
4 without the consent of such person, except with the approval of the Attorney General if the
5 information indicates a threat of death or serious bodily harm to any person.

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

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

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

14 SEC. 106. USE OF INFORMATION.

15 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.
16 1806) is amended by striking “radio communication” and inserting “communication”.

17 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

20 (1) in subsection (a)—

21 (A) by striking paragraph (2);

22 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),
23 respectively;

24 (C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by
25 striking “detailed”; and

26 (D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by
27 inserting “or is about to be” before “owned”; 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 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
36 respectively; and

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

Deleted: (E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—¶
(i) by striking “Affairs or” and inserting “Affairs.”; and¶
(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—”; and¶

Deleted: 6:16

Deleted: Draft Copy

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

Deleted: reasonably—

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

Formatted: Indent: Left: 48 pt

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

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

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

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

Formatted: Indent: Left: 24 pt

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

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

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

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

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

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

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

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

Deleted: 6:16

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

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

4 (1) in subsection (a)(2), by striking “48 hours” and inserting “7 days”; and

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

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

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

11 (b) En Banc Authority.—

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

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

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

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

Deleted: may,

Deleted: .

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

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

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

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

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

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

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

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

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

Deleted: 6:16

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

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

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

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

15 “(i) Nothing in this Act shall be construed to reduce or contravene the inherent authority of
16 the court established by subsection (a) to determine or enforce compliance with an order or a rule
17 of such court or with a procedure approved by such court.”.

- Deleted: “(h)(1)
- Deleted: considered
- Deleted: Foreign Intelligence Surveillance Court
- Deleted: ,
- Deleted: ,
- Deleted: Court
- Deleted: Court.
- Deleted: “(2)

18 **SEC. 110. INSPECTOR GENERAL REVIEW OF PREVIOUS**
19 **ACTIONS.**

20 (a) Definitions.—In this section:

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

23 (A) the Select Committee on Intelligence and the Committee on the Judiciary of the
24 Senate; and

Deleted: subsection,

25 (B) the Permanent Select Committee on Intelligence and the Committee on the
26 Judiciary of the House of Representatives.

27 (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence
28 Surveillance Court” means the court established by section 103(a) of the Foreign
29 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

Deleted: terms ‘

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

Formatted: Indent: Left: 24 pt

Deleted: Court’ and ‘Court’

Deleted: court established by subsection (a).”.

36 (b) Reviews.—

37 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice,
38 the Office of the Director of National Intelligence, the National Security Agency, and any
39 other element of the intelligence community that participated in the President’s Surveillance
40 Program shall complete a comprehensive review of, with respect to the oversight authority

Deleted: 6:16

1 and responsibility of each such Inspector General—

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

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

5 (C) communications with and participation of individuals and entities in the private
6 sector related to the Program;

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

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

12 (2) COOPERATION AND COORDINATION.—

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

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

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

21 (B) COORDINATION.—The Inspectors General shall designate one of the Inspectors
22 General required to conduct a review under paragraph (1) that is appointed by the
23 President, by and with the advice and consent of the Senate, to coordinate the conduct
24 of the reviews and the preparation of the reports.

25 (c) Reports.—

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

31 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the
32 Inspectors General of the Department of Justice, the Office of the Director of National
33 Intelligence, the National Security Agency, and any other Inspector General required to
34 conduct a review under subsection (b)(1) shall submit to the appropriate committees of
35 Congress and the Commission established under section 301(a) a comprehensive report on
36 such reviews that includes any recommendations of any such Inspectors General within the
37 oversight authority and responsibility of any such Inspector General.

38 (3) FORM.—A report submitted under this subsection shall be submitted in unclassified
39 form, but may include a classified annex. The unclassified report shall not disclose the name
40 or identity of any individual or entity of the private sector that participated in the Program

1 or with whom there was communication about the Program, to the extent that information is
2 classified.

3 (d) Resources.—

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

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

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

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

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

Deleted: 110.

18 (a) Definitions.—

19 (1) FOREIGN POWER.—Subsection (a) of section 101 of the Foreign Intelligence
20 Surveillance Act of 1978 (50 U.S.C. 1801(a)) is amended—

Deleted: (4)

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

Deleted: 1801(a)(4)

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

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

24 “(7) an entity not substantially composed of United States persons that is engaged in the
25 international proliferation of weapons of mass destruction.”

Deleted: “.

Deleted: destruction,” after
“international terrorism”.

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

27 (A) in subparagraph (B), by striking “or” at the end; and

28 (B) by adding at the end the following new subparagraph:

Deleted: in subparagraph (C), by
striking “or” at the end; and []
(C)

29 “(D) engages in the international proliferation of weapons of mass destruction, or
30 activities in preparation therefor; or”.

Deleted: subparagraphs:

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

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

34 (4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by adding at the end
35 the following new subsection:

Deleted: inserting after subsection (o)

Deleted: :

Deleted: destructive

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

Deleted: described in section
921(a)(4)(A) of title 18, United States
Code,

37 “(1) any explosive, incendiary, or poison gas device that is intended or has the capability

Deleted: 6:16

Deleted: Draft Copy

1 to cause a mass casualty incident;

Deleted: death or serious bodily injury to a significant number of people;

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

Deleted: ;

Deleted: to release

Deleted: at

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

Deleted: level dangerous to human life.”

Deleted: “weapon

Deleted: ’

Deleted: “person”,.

9 “(4) any weapon that is designed, intended, or has the capability of releasing radiation or
10 radioactivity causing death, illness, or serious bodily injury to a significant number of
11 persons.”

Deleted: SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.¶

Deleted: 103(e)

Deleted: 1803(e)

Deleted: —¶
(1) in paragraph (1),

Deleted: striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”; and¶
(2) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”¶
TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS¶
SEC. 201. DEFINITIONS.¶
In this title:¶
(1) ASSISTANCE.—The term “assistance” means

12 (b) Use of Information.—

13 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of
14 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international
15 terrorism” and inserting “sabotage, international terrorism, or the international proliferation
16 of weapons of mass destruction”.

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

20 (c) Technical and Conforming Amendment.—Section 301(1) of the Foreign Intelligence
21 Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting “weapon of mass
22 destruction,” after “person,”

23 **SEC. 112. STATUTE OF LIMITATIONS.**

24 (a) In General.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
25 1809) is amended by adding at the end the following new subsection:

26 “(e) Statute of Limitations.—No person shall be prosecuted, tried, or punished for any offense
27 under this section unless the indictment is found or the information is instituted not later than 10
28 years after the commission of the offense.”

29 (b) Application.—The amendment made by subsection (a) shall apply to any offense
30 committed before the date of the enactment of this Act if the statute of limitations applicable to
31 that offense has not run as of such date.

32 **TITLE II—PROTECTION OF PERSONS ASSISTING THE
33 GOVERNMENT**

34 **SEC. 201. STATUTORY DEFENSES.**

35 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by
36 adding after title VII the following:

37 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**

Deleted: provision of, or

Deleted: provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or a ... [5]

Deleted: (a) would harm the national security of the United States, the of ... [6]

Deleted: (1) review such certification in camera and ex parte; and¶ ... [7]

Deleted: have been met, without disclosing the subparagraph of sub ... [8]

Deleted: covered civil action that is pending on or filed after the

Deleted: .

Deleted: 203. PROCEDURES FOR IMPLEMENTING

Deleted: UNDER THE FOREIGN INTELLIGENCE SURVEILLAN ... [9]

Deleted: , as amended by section 101, is further

Deleted: new title:

Deleted: 6:16

1 THE GOVERNMENT

2 "SEC. 801. DEFINITIONS.

3 "In this title:

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

8 "(2) ATTORNEY GENERAL.—The term 'Attorney General' has the meaning given that term
9 in section 101(g).

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

11 "(4) COVERED CIVIL ACTION.—The term 'covered civil action' means a suit in Federal or
12 State court against any person for providing assistance to an element of the intelligence
13 community.

14 "(5) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic
15 communication service provider' means—

Deleted: "(4)

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

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

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

22 "(D) any other communication service provider who has access to wire or electronic
23 communications either as such communications are transmitted or as such
24 communications are stored;

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

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

29 "(6) INTELLIGENCE COMMUNITY.—The term 'intelligence community' has the meaning
30 given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

Deleted: "(5) ELEMENT OF THE INTELLIGENCE

Deleted: 'element of the

Deleted: means an element of the intelligence community as specified or designated under

Deleted: "(6)

31 "(7) PERSON.—The term 'person' means—

32 "(A) an electronic communication service provider; or

33 "(B) a landlord, custodian, or other person who may be authorized or required to
34 furnish assistance pursuant to—

35 "(i) an order of the court established under section 103(a) directing such
36 assistance;

37 "(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title

Deleted: 6:16

Deleted: Draft Copy

18, United States Code; or

“(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 703(h).

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

“SEC. 802. PROCEDURES FOR COVERED CIVIL ACTIONS.

“(a) Intervention by Government.—In any covered civil action, the court shall permit the Government to intervene. Whether or not the Government intervenes in the civil action, the Attorney General may submit any information in any form the Attorney General determines is appropriate and the court shall consider all such submissions.

“(b) Factual and Legal Determinations.—In any covered civil action, any party may submit to the court evidence, briefs, arguments, or other information on any matter with respect to which a privilege based on state secrets is asserted. The court shall review any such submission in accordance with the procedures set forth in section 106(f) and may, based on the review, make any appropriate determination of fact or law. The court may, on motion of the Attorney General, take any additional actions the court deems necessary to protect classified information. The court may, to the extent practicable and consistent with national security, request that any party present briefs and arguments on any legal question the court determines is raised by such a submission even if that party does not have full access to the submission. The court shall consider whether the employment of a special master or an expert witness, or both, would facilitate proceedings under this section.

“(c) Location of Review.—The court may conduct the review in a location and facility specified by the Attorney General as necessary to ensure security.

** 2 “(d) Removal.—A covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

“(e) Special Rule for Certain Cases.—For any covered civil action alleging that a person provided assistance to an element of the intelligence community pursuant to a request or directive during the period from September 11, 2001 through January 17, 2007, the Attorney General shall provide to the court any request or directive related to the allegations under the procedures set forth in subsection (b).

“(f) Applicability.—This section shall apply to a civil action pending on or filed after the date of the enactment of this Act.”

SEC. 202. TECHNICAL AMENDMENTS.

The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following:

Deleted: in effect on the day before the date

Deleted: enactment of the FISA Amendments

Deleted: 2008

Deleted: “(7)

Deleted: IMPLEMENTING STATUTORY DEFENSES.

Deleted: Requirement for Certification.—¶ (1)

Formatted: Not Small caps

Deleted: GENERAL.—Notwithstanding

Deleted: other provision of law, no

Deleted: may lie

Deleted: be maintained

Deleted: a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if

Deleted: certifies to the court that—¶ “(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;¶

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

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

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

“(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of ¶ [10]

Deleted: files a declaration under section 1746 of title 28, United S ¶ [11]

Deleted: “(1) review such certification in camera and ex parte; and¶ [12]

Deleted: “(d) Relationship to Other Laws.—Nothing in this section r ¶ [13]

Deleted: the FISA Amendments

Deleted: of 2008.”.

Deleted: SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.¶ [14]

Deleted: , as amended by section 101(b), is further

Deleted: 6:16

Deleted: Draft Copy

1 “TITLE VIII-PROTECTION OF PERSONS ASSISTING THE
2 GOVERNMENT

Deleted: VIII-PROTECTION

3 “Sec.801.Definitions,

Deleted: .

4 “Sec.802.Procedures for covered civil actions.”.

5 TITLE III—COMMISSION ON WARRANTLESS
6 ELECTRONIC SURVEILLANCE ACTIVITIES

7 SEC. 301. COMMISSION ON WARRANTLESS
8 ELECTRONIC SURVEILLANCE ACTIVITIES.

9 (a) Establishment of Commission.—There is established in the legislative branch a
10 commission to be known as the “Commission on Warrantless Electronic Surveillance Activities”
11 (in this section referred to as the “Commission”).

12 (b) Duties of Commission.—

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

14 (A) ascertain, evaluate, and report upon the facts and circumstances relating to
15 electronic surveillance activities conducted without a warrant between September 11,
16 2001 and January 17, 2007;

17 (B) evaluate the lawfulness of such activities;

18 (C) examine all programs and activities relating to intelligence collection inside the
19 United States or regarding United States persons that were in effect or operation on
20 September 11, 2001, and all such programs and activities undertaken since that date,
21 including the legal framework or justification for those activities; and

22 (D) report to the President and Congress the findings and conclusions of the
23 Commission and any recommendations the Commission considers appropriate.

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

27 (c) Composition of Commission.—

28 (1) MEMBERS.—The Commission shall be composed of 9 members, of whom—

29 (A) 5 members shall be appointed jointly by the majority leader of the Senate and
30 the Speaker of the House of Representatives; and

31 (B) 4 members shall be appointed jointly by the minority leader of the Senate and
32 the minority leader of the House of Representatives.

33 (2) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the
34 Commission should be prominent United States citizens with significant depth of
35 experience in national security, Constitutional law, and civil liberties.

36 (3) CHAIR; VICE CHAIR.—

Deleted: 6:16

1 (A) CHAIR.—The Chair of the Commission shall be jointly appointed by the
2 majority leader of the Senate and the Speaker of the House of Representatives from
3 among the members appointed under paragraph (1)(A).

4 (B) VICE CHAIR.—The Vice Chair of the Commission shall be jointly appointed by
5 the minority leader of the Senate and the minority leader of the House of
6 Representatives from among the members appointed under paragraph (1)(B).

7 (4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed
8 not later than 90 days after the date of the enactment of this Act.

9 (5) INITIAL MEETING.—The Commission shall hold its first meeting and begin operations
10 not later than 45 days after the date on which a majority of its members have been
11 appointed.

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

14 (7) QUORUM.—A majority of the members of the Commission shall constitute a quorum,
15 but a lesser number may hold hearings.

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

18 (d) Powers of Commission.—

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

24 (2) SUBPOENAS.—

25 (A) ISSUANCE.—

26 (i) IN GENERAL.—The Commission may issue subpoenas requiring the
27 attendance and testimony of witnesses and the production of any evidence relating
28 to any matter that the Commission is empowered to investigate under this section.
29 The attendance of witnesses and the production of evidence may be required from
30 any place within the United States at any designated place of hearing within the
31 United States.

32 (ii) SIGNATURE.—Subpoenas issued under this paragraph may be issued under
33 the signature of the Chair of the Commission, the chair of any subcommittee
34 created by a majority of the Commission, or any member designated by a majority
35 of the Commission and may be served by any person designated by such Chair,
36 subcommittee chair, or member.

37 (B) ENFORCEMENT.—

38 (i) IN GENERAL.—If a person refuses to obey a subpoena issued under
39 subparagraph (A), the Commission may apply to a United States district court for
40 an order requiring that person to appear before the Commission to give testimony.

1 produce evidence, or both, relating to the matter under investigation. The
2 application may be made within the judicial district where the hearing is
3 conducted or where that person is found, resides, or transacts business. Any
4 failure to obey the order of the court may be punished by the court as civil
5 contempt.

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

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

Formatted: Indent: Left: 72 pt,
First line: 12 pt

Deleted: implementing

Deleted: defenses.

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

24 (4) INFORMATION FROM FEDERAL AGENCIES.—

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

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

38 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

39 (A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services
40 shall provide to the Commission on a reimbursable basis administrative support and
41 other services for the performance of the Commission's functions.

42 (B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed
43 in subparagraph (A), departments and agencies of the United States may provide to the

Deleted: 6:16

1 Commission such services, funds, facilities, staff, and other support services as they
2 may determine advisable and as may be authorized by law.

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

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

7 (e) Staff of Commission.—

8 (1) IN GENERAL.—

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

19 (B) PERSONNEL AS FEDERAL EMPLOYEES.—

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

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

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

29 (3) CONSULTANT SERVICES.—The Commission is authorized to procure the services of
30 experts and consultants in accordance with section 3109 of title 5, United States Code, at
31 rates not to exceed the daily rate paid a person occupying a position at level IV of the
32 Executive Schedule under section 5315 of title 5, United States Code.

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

34 (1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or
35 departments shall cooperate with the Commission in expeditiously providing to the
36 Commission members and staff appropriate security clearances to the extent possible
37 pursuant to existing procedures and requirements, except that no person shall be provided
38 with access to classified information under this section without the appropriate security
39 clearances.

40 (2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission and
41 commission staff, as authorized by the Chair or the designee of the Chair, who have

1 obtained appropriate security clearances, shall have access to classified information related
2 to the surveillance activities within the scope of the examination of the Commission and any
3 other related classified information that the members of the Commission determine relevant
4 to carrying out the duties of the Commission under this section.

5 (3) FACILITIES AND RESOURCES.—The Director of National Intelligence shall provide the
6 Commission with appropriate space and technical facilities approved by the Commission.

7 (g) Compensation and Travel Expenses.—

8 (1) COMPENSATION.—Each member of the Commission may be compensated at a rate not
9 to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level
10 IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day
11 during which that member is engaged in the actual performance of the duties of the
12 Commission.

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

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

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

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

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

26 (i) Reports and Recommendations of Commission.—

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

30 (2) FINAL REPORT.—Not later than one year after the date of its first meeting, the
31 Commission, in consultation with appropriate representatives of the intelligence
32 community, shall submit to the President and Congress a final report containing such
33 information, analysis, findings, conclusions, and recommendations as have been agreed to
34 by a majority of Commission members.

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

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

40 (j) Termination.—

Deleted: Draft Copy

1 (1) IN GENERAL.—The Commission, and all the authorities of this section, shall terminate
2 60 days after the date on which the final report is submitted under subsection (i)(2).

3 (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the
4 60-day period referred to in paragraph (1) for the purpose of concluding its activities,
5 including providing testimony to committees of Congress concerning its report and
6 disseminating the final report.

7 (k) Definitions.—In this section:

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

10 (2) UNITED STATES PERSON.—The term “United States person” has the meaning given the
11 term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
12 1801(i)).

13 (l) Funding.—

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

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

18 **TITLE IV—OTHER PROVISIONS**

Deleted: “Sec.803.Preemption.”¶
Deleted: III—OTHER
Deleted: 301.

19 **SEC. 401. SEVERABILITY.**

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

24 **SEC. 402. EFFECTIVE DATE.**

25 Except as provided in section 404, the amendments made by this Act shall take effect on the
26 date of the enactment of this Act.

Deleted: 302.
Deleted: DATE; REPEAL;
TRANSITION PROCEDURES.
Deleted: (a) In General.—
Deleted: subsection (c),

27 **SEC. 403. REPEALS.**

28 (a) Repeal of Protect America Act of 2007 Provisions.—

29 (1) AMENDMENTS TO FISA.—

30 (A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and
31 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,
32 and 1805c) are repealed.

Deleted: (b) Repeal.—¶
Formatted: Indent: Left: 48 pt
Deleted: subsection (c),

33 (B) TECHNICAL AND CONFORMING AMENDMENTS.—

34 (i) TABLE OF CONTENTS.—The table of contents in the first section of the
35 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 nt) is amended by
36 striking the items relating to sections 105A, 105B, and 105C.

Formatted: Indent: Left: 72 pt
Deleted: (2)
Deleted: et seq.)
Deleted: 6:16

Deleted: Draft Copy

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

Deleted: (c) Transitions Procedures.—(1) PROTECTION FROM LIABILITY.—Notwithstanding subsection (b)(1), subsection (l) of

** 3 (I) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 702(h)(4)”; and

Deleted: 105B

Formatted: Indent: Left: 96 pt

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

Deleted: shall remain in effect with respect to any directives issued pursuant to such section 105B for information, facilities, or assistance provided during the period such directive was

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

Deleted: is in effect.

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

(b) FISA Amendments Act of 2008.—

(1) IN GENERAL.—Except as provided in section 404, effective December 31, 2009, title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2009—

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

Deleted: (2) ORDERS IN EFFECT.—1

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

Deleted: ORDERS IN EFFECT

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

Formatted: Not Small caps

Formatted: Not Small caps

Formatted: Not Small caps

SEC. 404. TRANSITION PROCEDURES.

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

(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of law, any order, authorization, or directive issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or directive.

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

Formatted: Indent: Left: 24 pt

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

Deleted: —

Deleted: (i) any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 or section 6(b)

Deleted: 110-55;

Deleted: 556)

Deleted: 6:16

Deleted: Draft Copy

1 (B) sections 105B and 105C of such Act (as so added) shall continue to apply with
2 respect to an order, authorization, or directive referred to in paragraph (1) until the
3 expiration of such order, authorization, or directive.

Formatted: Indent: Left: 48 pt

4 (3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant
5 to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be
6 information acquired from an electronic surveillance pursuant to title I of the Foreign
7 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106
8 of such Act (50 U.S.C. 1806).

Deleted: remain

Deleted: effect

Deleted: date of

Deleted: order; and

9 (4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign
10 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of
11 2007, shall continue to apply with respect to any directives issued pursuant to such section
12 105B.

Deleted: (ii) at the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall reauthorize such order if the facts and circumstances continue to justify issuance of such order under the provisions of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.¶
(B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such order. Any such order shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended.¶

13 (5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding
14 any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1801 et seq.), section 103(e), as amended by section 5(a) of the Protect America Act
16 of 2007 (Public Law 110-55: 121 Stat. 556), shall continue to apply with respect to a
17 directive issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of
18 1978, as added by section 2 of the Protect America Act of 2007, until the expiration of all
19 orders, authorizations, and directives issued or made pursuant to such section.

20 (6) REPORTING REQUIREMENTS.—

21 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act,
22 the Protect America Act of 2007 (Public Law 110-55), or the Foreign Intelligence
23 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the Protect America
24 Act of 2007 shall continue to apply until the date that the certification described in
25 subparagraph (B) is submitted.

Deleted: AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—¶

(A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, any authorization or directive in effect on the date of the enactment of this Act issued pursuant to the Protect America Act of 2007, or any amendment made by that Act, shall remain in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except as provided in paragraph (4) of this subsection, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 103(a)(15)).

26 (B) CERTIFICATION.—The certification described in this subparagraph is a
27 certification—

Deleted: ACQUIRED UNDER PROTECT AMERICA ACT.—Information

28 (i) made by the Attorney General;

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

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

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

Deleted: under the Protect America Act of 2007, and the amendments made by that Act,

38 (7) EFFECTIVE DATE.—Paragraphs (1) through (6) shall take effect as if enacted on
39 August 5, 2007.

Deleted: that

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

Deleted: 1806), except for purposes of subsection (j) of such section.

41 (1) ORDERS IN EFFECT ON DECEMBER 31, 2009.—Notwithstanding any other provision of

Deleted: 6:16

Deleted: Draft Copy

1 this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
2 any order, authorization, or directive issued or made under title VII of the Foreign
3 Intelligence Surveillance Act of 1978, as amended by section 101(a), shall continue in
4 effect until the date of the expiration of such order, authorization, or directive.

5 (2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS,
6 DIRECTIVES.—Notwithstanding any other provision of this Act or of the Foreign
7 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), with respect to any order,
8 authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by
9 section 101(a), shall continue to apply until the expiration of such order, authorization, or
10 directive.

Deleted: (5) NEW ORDERS.—
Notwithstanding

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

Deleted: —

Deleted: (A) the government may file
an application for an order under

Deleted: , as in effect on the day before
the date of the enactment of the Protect
America Act of 2007, except

Deleted: s 102, 103, 104, 105, 106,
107, 108, 109, and 110 of this Act; and

Deleted: the court established under

Deleted: 103(a)

Deleted: the Foreign Intelligence
Surveillance

Deleted: of 1978

Deleted: enter

Deleted: granting such an application if
the application meets the requirements of
such Act, as in effect on the day before
the date

Deleted: the enactment

Deleted: the Protect America

Deleted: 2007, except

Deleted: s 102, 103, 104, 105, 106,
107, 108, 109, and 110 of this Act.¶
(6) EXTANT AUTHORIZATIONS.—At the
request of the applicant, the court
established under section 103(a) of the
Foreign Intelligence Surveillance Act of
1978 shall extinguish any extant
authorization to conduct electronic
surveillance or physical search entered
pursuant to such Act.¶

(7) APPLICABLE PROVISIONS.—Any
surveillance conducted pursuant to an
order entered

Deleted: this subsection shall be subject
to the provisions

Deleted: in effect on the day before the
date of the enactment

Deleted: the Protect America Act

Formatted: Indent: Left: 72 pt

Deleted: 2007, except as amended by
sections 102, 103, 104, 105, 106, 107,
108, 109,

Deleted: 110 of this Act.

Deleted: 6:16

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

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

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

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

23 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section
24 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the
25 Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

26 (4) REPORTING REQUIREMENTS.—

27 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or
28 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section
29 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections
30 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until
31 the date that the certification described in subparagraph (B) is submitted.

32 (B) CERTIFICATION.—The certification described in this subparagraph is a
33 certification—

34 (i) made by the Attorney General;

35 (ii) submitted to the Select Committee on Intelligence of the Senate, the
36 Permanent Select Committee on Intelligence of the House of Representatives, and
37 the Committees on the Judiciary of the Senate and the House of Representatives;

38 (iii) that states that there will be no further acquisitions carried out under title
39 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section
40 101(a), after the date of such certification; and

Deleted: Draft Copy

1 (iv) that states that the information required to be included in a review,
2 assessment, or report under section 601 of such Act, as amended by section
3 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating
4 to any acquisition conducted under title VII of such Act, as amended by section
5 101(a), has been included in a review, assessment, or report under such section
6 601, 702(l), or 707.

7 (5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS
8 OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section
9 2.5 of Executive Order 12333 to intentionally target a United States person reasonably
10 believed to be located outside the United States shall continue in effect, and shall constitute
11 a sufficient basis for conducting such an acquisition targeting a United States person located
12 outside the United States until the earlier of—

Deleted: (8)

Deleted: remain

13 (A) the date that such authorization expires; or

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

15 SEC. 405. NO RIGHTS UNDER THE FISA AMENDMENTS
16 ACT OF 2008 FOR UNDOCUMENTED ALIENS.

17 This Act and the amendments made by this Act shall not be construed to prohibit surveillance
18 of, or grant any rights to, an alien not permitted to be in or remain in the United States.

19 SEC. 406. SURVEILLANCE TO PROTECT THE UNITED
20 STATES.

21 This Act and the amendments made by this Act shall not be construed to prohibit the
22 intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50
23 U.S.C. 401a(4))) from conducting lawful surveillance that is necessary to—

24 (1) prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist organization
25 from attacking the United States, any United States person, or any ally of the United States;

26 (2) ensure the safety and security of members of the United States Armed Forces or any
27 other officer or employee of the Federal Government involved in protecting the national
28 security of the United States; or

29 (3) protect the United States, any United States person, or any ally of the United States
30 from threats posed by weapons of mass destruction or other threats to national security.
31

Deleted: 6:16