

AMENDMENT NO.

Calendar No.

Purpose: To improve title I.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1 On page 2, strike line 7 and all that follows through
2 page 43, line 13, and insert the following:

3 **SEC. 101. TARGETING THE COMMUNICATIONS OF CERTAIN**
4 **PERSONS OUTSIDE THE UNITED STATES.**

5 (a) IN GENERAL.—The Foreign Intelligence Surveil-
6 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

7 (1) by striking title VII; and

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

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES FOR TARGETING COM-**
3 **MUNICATIONS OF CERTAIN**
4 **PERSONS OUTSIDE THE**
5 **UNITED STATES**

6 **“SEC. 701. DEFINITIONS.**

7 “In this title:

8 “(1) IN GENERAL.—The terms ‘agent of a for-

9 eign power’, ‘Attorney General’, ‘contents’, ‘elec-

10 tronic surveillance’, ‘foreign intelligence informa-

11 tion’, ‘foreign power’, ‘minimization procedures’,

12 ‘person’, ‘United States’, and ‘United States person’

13 shall have the meanings given such terms in section

14 101.

15 “(2) ADDITIONAL DEFINITIONS.—

16 “(A) CONGRESSIONAL INTELLIGENCE COM-

17 MITTEES.—The term ‘congressional intelligence

18 committees’ means—

19 “(i) the Select Committee on Intel-

20 ligence of the Senate; and

21 “(ii) the Permanent Select Committee

22 on Intelligence of the House of Represent-

23 atives.

24 “(B) FOREIGN INTELLIGENCE SURVEIL-

25 LANCE COURT; COURT.—The terms ‘Foreign In-

1 tellence Surveillance Court' and 'Court' mean
2 the court established by section 103(a).

3 "(C) FOREIGN INTELLIGENCE SURVEIL-
4 LANCE COURT OF REVIEW; COURT OF RE-
5 VIEW.—The terms 'Foreign Intelligence Surveil-
6 lance Court of Review' and 'Court of Review'
7 mean the court established by section 103(b).

8 "(D) ELECTRONIC COMMUNICATION SERV-
9 ICE PROVIDER.—The term 'electronic commu-
10 nication service provider' means—

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

15 "(ii) a provider of electronic commu-
16 nications service, as that term is defined in
17 section 2510 of title 18, United States
18 Code;

19 "(iii) a provider of a remote com-
20 puting service, as that term is defined in
21 section 2711 of title 18, United States
22 Code;

23 "(iv) any other communication service
24 provider who has access to wire or elec-
25 tronic communications either as such com-

1 munications are transmitted or as such
2 communications are stored; or

3 “(v) an officer, employee, or agent of
4 an entity described in clause (i), (ii), (iii),
5 or (iv).

6 “(E) ELEMENT OF THE INTELLIGENCE
7 COMMUNITY.—The term ‘element of the intel-
8 ligence community’ means an element of the in-
9 telligence community specified in or designated
10 under section 3(4) of the National Security Act
11 of 1947 (50 U.S.C. 401a(4)).

12 “SEC. 702. PROCEDURES FOR ACQUIRING THE COMMU-
13 NICATIONS OF CERTAIN PERSONS OUTSIDE
14 THE UNITED STATES.

15 “(a) AUTHORIZATION.—Notwithstanding any other
16 provision of law, including title I, the Attorney General
17 and the Director of National Intelligence may authorize
18 jointly, for periods of up to 1 year, the targeting of per-
19 sons reasonably believed to be located outside the United
20 States to acquire foreign intelligence information.

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

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

1 “(2) may not intentionally target a person rea-
2 sonably believed to be outside the United States if
3 the purpose of such acquisition is to target for sur-
4 veillance a particular, known person reasonably be-
5 lieved to be in the United States, except in accord-
6 ance with title I; and

7 “(3) shall be conducted in a manner consistent
8 with the fourth amendment to the Constitution of
9 the United States.

10 “(c) UNITED STATES PERSONS LOCATED OUTSIDE
11 THE UNITED STATES.—

12 “(1) ACQUISITION INSIDE THE UNITED STATES
13 OF UNITED STATES PERSONS OUTSIDE THE UNITED
14 STATES.—An acquisition authorized by subsection
15 (a) that occurs inside the United States may not
16 target a United States person except in accordance
17 with the provisions of title I.

18 “(2) ACQUISITION OUTSIDE THE UNITED
19 STATES OF UNITED STATES PERSONS OUTSIDE THE
20 UNITED STATES.—An acquisition by an electronic,
21 mechanical, or other surveillance device outside the
22 United States may not intentionally target a United
23 States person reasonably believed to be outside the
24 United States to acquire the contents of a wire or
25 radio communication sent by or intended to be re-

1 ceived by that United States person under cir-
2 cumstances in which a person has a reasonable ex-
3 pectation of privacy and a warrant would be re-
4 quired for law enforcement purposes if the technique
5 were used inside the United States unless—

6 “(A) the Attorney General submits an ap-
7 plication to the Foreign Intelligence Surveil-
8 lance Court that includes a statement of the
9 facts and circumstances relied upon by the ap-
10 plicant to justify the Attorney General’s belief
11 that the target of the acquisition is a foreign
12 power or an agent of a foreign power;

13 “(B) the Foreign Intelligence Surveillance
14 Court—

15 “(i) finds on the basis of the facts
16 submitted by the applicant there is prob-
17 able cause to believe that the target of the
18 acquisition is a foreign power or an agent
19 of a foreign power; and

20 “(ii) issues a determination as re-
21 quested or as modified approving the tar-
22 geting of that United States person;

23 “(C) the Attorney General has established
24 minimization procedures for such acquisition

1 that meet the definition of minimization proce-
2 dures under section 101(h); and

3 “(D) the Foreign Intelligence Surveillance
4 Court has determined that the minimization
5 procedures applicable to dissemination of infor-
6 mation obtained through such acquisition meet
7 the requirements of the definition of minimiza-
8 tion procedures under section 101(h) relating to
9 the dissemination of information.

10 “(3) EMERGENCY PROCEDURES.—

11 “(A) IN GENERAL.—Notwithstanding para-
12 graph (2), and in accordance with the require-
13 ments of this paragraph, the Attorney General
14 may authorize the emergency employment of an
15 acquisition under paragraph (2) if the Attorney
16 General—

17 “(i) reasonably determines that—

18 “(I) an emergency situation ex-
19 ists with respect to the employment of
20 that acquisition before a determina-
21 tion of probable cause to believe that
22 the target of the electronic surveil-
23 lance is a foreign power or an agent
24 of a foreign power can with due dili-
25 gence be obtained; and

1 “(II) the factual basis for
2 issuance of a determination under
3 paragraph (2) to approve such an ac-
4 quisition exists; and

5 “(ii) informs a judge of the Foreign
6 Intelligence Surveillance Court at the time
7 of the authorization of the emergency em-
8 ployment of an acquisition under para-
9 graph (2) that the decision has been made
10 to employ an emergency acquisition.

11 “(B) APPLICATION.—As soon as prac-
12 ticable, but not more than 72 hours after the
13 authorization of the emergency employment of
14 an acquisition under paragraph (2), the Attor-
15 ney General shall submit to the judge informed
16 under subparagraph (A)(ii) an application in
17 accordance with this subsection.

18 “(C) MINIMIZATION.—If the Attorney
19 General authorizes the emergency employment
20 of an acquisition under paragraph (2), the At-
21 torney General shall require that the minimiza-
22 tion procedures required by this section for the
23 issuance of a judicial order be followed.

24 “(D) TERMINATION.—In the absence of a
25 judicial determination finding such probable

1 cause finding probable cause to believe that the
2 target of the electronic surveillance is a foreign
3 power or an agent of a foreign power, the ac-
4 quisition shall terminate when the information
5 sought is obtained, when the application for a
6 determination is denied, or after the expiration
7 of 72 hours from the time of authorization by
8 the Attorney General, whichever is earliest.

9 “(E) USE OF INFORMATION.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii), if an application de-
12 scribed in subparagraph (B) is denied, or
13 in any other case where the emergency em-
14 ployment of an acquisition under para-
15 graph (2) is terminated and no judicial de-
16 termination finding probable cause to be-
17 lieve that the target of the electronic sur-
18 veillance is a foreign power or an agent of
19 a foreign power is issued, no information
20 obtained or evidence derived from such ac-
21 quisition shall be received in evidence or
22 otherwise disclosed in any trial, hearing, or
23 other proceeding in or before any court,
24 grand jury, department, office, agency,
25 regulatory body, legislative committee, or

1 other authority of the United States, a
2 State, or political subdivision thereof, and
3 no information concerning any United
4 States person acquired from such acquisi-
5 tion shall subsequently be used or disclosed
6 in any other manner by Federal officers or
7 employees without the consent of such
8 United States person.

9 “(ii) EXCEPTION.—Information de-
10 scribed in clause (i) may be disclosed with
11 the approval of the Attorney General if the
12 information indicates a threat of death or
13 serious bodily harm to any person.

14 “(F) REVIEW OF DENIALS.—The denial of
15 an application described in subparagraph (B)
16 may be reviewed as provided in section 103.

17 “(4) PROCEDURES.—

18 “(A) SUBMITTAL TO FOREIGN INTEL-
19 LIGENCE SURVEILLANCE COURT.—Not later
20 than 30 days after the date of the enactment of
21 this title, the Attorney General shall submit to
22 the Foreign Intelligence Surveillance Court the
23 procedures to be utilized in determining wheth-
24 er a target reasonably believed to be outside the
25 United States is a United States person.

1 “(B) APPROVAL BY FOREIGN INTEL-
2 LIGENCE SURVEILLANCE COURT.—The proce-
3 dures submitted under subparagraph (A) shall
4 be utilized as described in that subparagraph
5 only upon the approval of the Foreign Intel-
6 ligence Surveillance Court.

7 “(C) UTILIZATION IN TARGETING.—Any
8 targeting of persons authorized by subsection
9 (a) shall utilize the procedures submitted under
10 subparagraph (A) as approved by the Foreign
11 Intelligence Surveillance Court under subpara-
12 graph (B).

13 “(5) TRANSITION PROCEDURES CONCERNING
14 THE TARGETING OF UNITED STATES PERSONS OVER-
15 SEAS.—Any authorization in effect on the effective
16 date of this section pursuant to section 2.5 of Exec-
17 utive Order 12333 to intentionally target a United
18 States person reasonably believed to be located out-
19 side the United States, to acquire the contents of a
20 wire or radio communication sent by or intended to
21 be received by that United States person, shall re-
22 main in effect, and shall constitute a sufficient basis
23 for conducting such acquisition of a United States
24 person located outside the United States, until the

1 date that authorization expires or 90 days after the
2 effective date of this section, whichever is earlier.

3 “(d) CONDUCT OF ACQUISITION.—An acquisition au-
4 thorized under subsection (a) may be conducted only in
5 accordance with—

6 “(1) a certification made by the Attorney Gen-
7 eral and the Director of National Intelligence pursu-
8 ant to subsection (g); and

9 “(2) the targeting and minimization procedures
10 required pursuant to subsections (e) and (f).

11 “(e) TARGETING PROCEDURES.—

12 “(1) REQUIREMENT TO ADOPT.—The Attorney
13 General, in consultation with the Director of Na-
14 tional Intelligence, shall adopt targeting procedures
15 that are reasonably designed to ensure that any ac-
16 quisition authorized under subsection (a) is limited
17 to targeting persons reasonably believed to be lo-
18 cated outside the United States.

19 “(2) JUDICIAL REVIEW.—The procedures re-
20 ferred to in paragraph (1) shall be subject to judicial
21 review pursuant to subsection (i).

22 “(f) MINIMIZATION PROCEDURES.—

23 “(1) REQUIREMENT TO ADOPT.—The Attorney
24 General, in consultation with the Director of Na-
25 tional Intelligence, shall adopt, consistent with the

1 requirements of section 101(h), minimization proce-
2 dures for acquisitions authorized under subsection
3 (a).

4 “(2) JUDICIAL REVIEW.—The minimization
5 procedures required by this subsection shall be sub-
6 ject to judicial review pursuant to subsection (i).

7 “(g) CERTIFICATION.—

8 “(1) IN GENERAL.—

9 “(A) REQUIREMENT.—Subject to subpara-
10 graph (B), prior to the initiation of an acquisi-
11 tion authorized under subsection (a), the Attor-
12 ney General and the Director of National Intel-
13 ligence shall provide, under oath, a written cer-
14 tification, as described in this subsection.

15 “(B) EXCEPTION.—If the Attorney Gen-
16 eral and the Director of National Intelligence
17 determine that immediate action by the Govern-
18 ment is required and time does not permit the
19 preparation of a certification under this sub-
20 section prior to the initiation of an acquisition,
21 the Attorney General and the Director of Na-
22 tional Intelligence shall prepare such certifi-
23 cation, including such determination, as soon as
24 possible but in no event more than 168 hours
25 after such determination is made.

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

3 “(A) attest that—

4 “(i) there are reasonable procedures
5 in place for determining that the acqui-
6 sition authorized under subsection (a) is tar-
7 geted at persons reasonably believed to be
8 located outside the United States and that
9 such procedures have been approved by, or
10 will promptly be submitted for approval by,
11 the Foreign Intelligence Surveillance Court
12 pursuant to subsection (i);

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

20 “(iii) a significant purpose of the ac-
21 quisition is to obtain foreign intelligence
22 information;

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

1 “(I) meet the definition of mini-
2 mization procedures under section
3 101(h); and

4 “(II) have been approved by, or
5 will promptly be submitted for ap-
6 proval by, the Foreign Intelligence
7 Surveillance Court pursuant to sub-
8 section (i); and

9 “(v) the acquisition involves obtaining
10 the foreign intelligence information from or
11 with the assistance of an electronic com-
12 munication service provider; and

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

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

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

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

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

11 “(5) REVIEW.—The certification required by
12 this subsection shall be subject to judicial review
13 pursuant to subsection (i).

14 “(h) DIRECTIVES.—

15 “(1) AUTHORITY.—With respect to an acquisi-
16 tion authorized under subsection (a), the Attorney
17 General and the Director of National Intelligence
18 may direct, in writing, an electronic communication
19 service provider to—

20 “(A) immediately provide the Government
21 with all information, facilities, or assistance
22 necessary to accomplish the acquisition in a
23 manner that will protect the secrecy of the ac-
24 quisition and produce a minimum of inter-
25 ference with the services that such electronic

1 communication service provider is providing to
2 the target; and

3 “(B) maintain under security procedures
4 approved by the Attorney General and the Di-
5 rector of National Intelligence any records con-
6 cerning the acquisition or the aid furnished that
7 such electronic communication service provider
8 wishes to maintain.

9 “(2) COMPENSATION.—The Government shall
10 compensate, at the prevailing rate, an electronic
11 communication service provider for providing infor-
12 mation, facilities, or assistance pursuant to para-
13 graph (1).

14 “(3) RELEASE FROM LIABILITY.—Notwith-
15 standing any other law, no cause of action shall lie
16 in any court against any electronic communication
17 service provider for providing any information, facili-
18 ties, or assistance in accordance with a directive
19 issued pursuant to paragraph (1).

20 “(4) CHALLENGING OF DIRECTIVES.—

21 “(A) AUTHORITY TO CHALLENGE.—An
22 electronic communication service provider re-
23 ceiving a directive issued pursuant to paragraph
24 (1) may challenge the directive by filing a peti-

1 tion with the Foreign Intelligence Surveillance
2 Court.

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

9 “(C) STANDARDS FOR REVIEW.—A judge
10 considering a petition to modify or set aside a
11 directive may grant such petition only if the
12 judge finds that the directive does not meet the
13 requirements of this section or is otherwise un-
14 lawful. If the judge does not modify or set aside
15 the directive, the judge shall immediately affirm
16 such directive, and order the recipient to com-
17 ply with the directive. The judge shall provide
18 a written statement for the record of the rea-
19 sons for a determination under this paragraph.

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

23 “(5) ENFORCEMENT OF DIRECTIVES.—

24 “(A) ORDER TO COMPEL.—In the case of
25 a failure to comply with a directive issued pur-

1 suant to paragraph (1), the Attorney General
2 may file a petition for an order to compel com-
3 pliance with the directive with the Foreign In-
4 telligence Surveillance Court.

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

11 “(C) STANDARDS FOR REVIEW.—A judge
12 considering a petition shall issue an order re-
13 quiring the electronic communication service
14 provider to comply with the directive if the
15 judge finds that the directive was issued in ac-
16 cordance with paragraph (1), meets the require-
17 ments of this section, and is otherwise lawful.
18 The judge shall provide a written statement for
19 the record of the reasons for a determination
20 under this paragraph.

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

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

5 “(6) APPEAL.—

6 “(A) APPEAL TO THE COURT OF RE-
7 VIEW.—The Government or an electronic com-
8 munication service provider receiving a directive
9 issued pursuant to paragraph (1) may file a pe-
10 tition with the Foreign Intelligence Surveillance
11 Court of Review for review of the decision
12 issued pursuant to paragraph (4) or (5) not
13 later than 7 days after the issuance of such de-
14 cision. The Court of Review shall have jurisdic-
15 tion to consider such a petition and shall pro-
16 vide a written statement for the record of the
17 reasons for a decision under this paragraph.

18 “(B) CERTIORARI TO THE SUPREME
19 COURT.—The Government or an electronic com-
20 munication service provider receiving a directive
21 issued pursuant to paragraph (1) may file a pe-
22 tition for a writ of certiorari for review of the
23 decision of the Court of Review issued under
24 subparagraph (A). The record for such review
25 shall be transmitted under seal to the Supreme

1 Court of the United States, which shall have ju-
2 risdiction to review such decision.

3 “(i) JUDICIAL REVIEW.—

4 “(1) IN GENERAL.—

5 “(A) REVIEW BY THE FOREIGN INTEL-
6 LIGENCE SURVEILLANCE COURT.—The Foreign
7 Intelligence Surveillance Court shall have juris-
8 diction to review any certification required by
9 subsection (d) or targeting and minimization
10 procedures adopted pursuant to subsections (e)
11 and (f).

12 “(B) SUBMISSION TO THE COURT.—The
13 Attorney General shall submit to the Court any
14 such certification or procedure, or amendment
15 thereto, not later than 5 days after making or
16 amending the certification or adopting or
17 amending the procedures.

18 “(2) CERTIFICATIONS.—The Court shall review
19 a certification provided under subsection (g) to de-
20 termine whether the certification contains all the re-
21 quired elements.

22 “(3) TARGETING PROCEDURES.—The Court
23 shall review the targeting procedures required by
24 subsection (e) to assess whether the procedures are
25 reasonably designed to ensure that the acquisition

1 authorized under subsection (a) is limited to the tar-
2 geting of persons reasonably believed to be located
3 outside the United States.

4 “(4) MINIMIZATION PROCEDURES.—The Court
5 shall review the minimization procedures required by
6 subsection (f) to assess whether such procedures
7 meet the definition of minimization procedures
8 under section 101(h).

9 “(5) ORDERS.—

10 “(A) APPROVAL.—If the Court finds that
11 a certification required by subsection (g) con-
12 tains all of the required elements and that the
13 targeting and minimization procedures required
14 by subsections (e) and (f) are consistent with
15 the requirements of those subsections and with
16 the fourth amendment to the Constitution of
17 the United States, the Court shall enter an
18 order approving the continued use of the proce-
19 dures for the acquisition authorized under sub-
20 section (a).

21 “(B) CORRECTION OF DEFICIENCIES.—

22 “(i) IN GENERAL.—If the Court finds
23 that a certification required by subsection
24 (g) does not contain all of the required ele-
25 ments, or that the procedures required by

1 subsections (e) and (f) are not consistent
2 with the requirements of those subsections
3 or the fourth amendment to the Constitu-
4 tion of the United States, the Court shall
5 issue an order directing the Government
6 to, at the Government's election and to the
7 extent required by the Court's order—

8 “(I) correct any deficiency identi-
9 fied by the Court's order not later
10 than 30 days after the date the Court
11 issues the order; or

12 “(II) cease the acquisition au-
13 thorized under subsection (a).

14 “(ii) LIMITATION ON USE OF INFOR-
15 MATION.—

16 “(I) IN GENERAL.—Except as
17 provided in subclause (II), no infor-
18 mation obtained or evidence derived
19 from such acquisition shall be received
20 in evidence or otherwise disclosed in
21 any trial, hearing, or other proceeding
22 in or before any court, grand jury, de-
23 partment, office, agency, regulatory
24 body, legislative committee, or other
25 authority of the United States; a

1 State, or political subdivision thereof,
2 and no information concerning any
3 United States person acquired from
4 such acquisition shall subsequently be
5 used or disclosed in any other manner
6 by Federal officers or employees with-
7 out the consent of such person, except
8 with the approval of the Attorney
9 General if the information indicates a
10 threat of death or serious bodily harm
11 to any person.

12 “(II) EXCEPTION.—If the Gov-
13 ernment corrects any deficiency iden-
14 tified by the Court’s order under
15 clause (i) and such corrected certifi-
16 cation or procedure is substantially
17 similar to the certification or proce-
18 dure rejected by the Court, the Court
19 may permit the use or disclosure of
20 information acquired before the date
21 of the correction pursuant to such
22 minimization procedures as the Court
23 shall establish for purposes of this
24 clause.

1 “(C) REQUIREMENT FOR WRITTEN STATE-
2 MENT.—In support of its orders under this sub-
3 section, the Court shall provide, simultaneously
4 with the orders, for the record a written state-
5 ment of its reasons.

6 “(6) APPEAL.—

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

16 “(B) STAY PENDING APPEAL.—The Gov-
17 ernment may move for a stay of any order of
18 the Foreign Intelligence Surveillance Court
19 under paragraph (5)(B)(i) pending review by
20 the Court en banc or pending appeal to the
21 Foreign Intelligence Surveillance Court of Re-
22 view.

23 “(C) CERTIORARI TO THE SUPREME
24 COURT.—The Government may file a petition
25 for a writ of certiorari for review of a decision

1 of the Court of Review issued under subpara-
2 graph (A). The record for such review shall be
3 transmitted under seal to the Supreme Court of
4 the United States, which shall have jurisdiction
5 to review such decision.

6 “(7) COMPLIANCE REVIEW.—The Court may
7 review and assess compliance with the minimization
8 procedures submitted to the Court pursuant to sub-
9 sections (c) and (f) by reviewing the semiannual as-
10 sessments submitted by the Attorney General and
11 the Director of National Intelligence pursuant to
12 subsection (l)(1) with respect to compliance with
13 minimization procedures. In conducting a review
14 under this paragraph, the Court may, to the extent
15 necessary, require the Government to provide addi-
16 tional information regarding the acquisition, reten-
17 tion, or dissemination of information concerning
18 United States persons during the course of an acqui-
19 sition authorized under subsection (a).

20 “(j) JUDICIAL PROCEEDINGS.—Judicial proceedings
21 under this section shall be conducted as expeditiously as
22 possible.

23 “(k) MAINTENANCE OF RECORDS.—

24 “(1) STANDARDS.—A record of a proceeding
25 under this section, including petitions filed, orders

1 granted, and statements of reasons for decision,
2 shall be maintained under security measures adopted
3 by the Chief Justice of the United States, in con-
4 sultation with the Attorney General and the Director
5 of National Intelligence.

6 “(2) FILING AND REVIEW.—All petitions under
7 this section shall be filed under seal. In any pro-
8 ceedings under this section, the court shall, upon re-
9 quest of the Government, review ex parte and in
10 camera any Government submission, or portions of
11 a submission, which may include classified informa-
12 tion.

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

18 “(1) OVERSIGHT.—

19 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
20 quently than once every 6 months, the Attorney
21 General and Director of National Intelligence shall
22 assess compliance with the targeting and minimiza-
23 tion procedures required by subsections (c), (e), and
24 (f) and shall submit each such assessment to—

1 “(A) the Foreign Intelligence Surveillance
2 Court; and

3 “(B) the congressional intelligence commit-
4 tees.

5 “(2) AGENCY ASSESSMENT.—The Inspectors
6 General of the Department of Justice and of any
7 element of the intelligence community authorized to
8 acquire foreign intelligence information under sub-
9 section (a)—

10 “(A) are authorized to review the compli-
11 ance of their agency or element with the tar-
12 geting and minimization procedures required by
13 subsections (c), (e), and (f);

14 “(B) with respect to acquisitions author-
15 ized under subsection (a), shall review the num-
16 ber of disseminated intelligence reports con-
17 taining a reference to a United States person
18 identity and the number of United States per-
19 son identities subsequently disseminated by the
20 element concerned in response to requests for
21 identities that were not referred to by name or
22 title in the original reporting;

23 “(C) with respect to acquisitions author-
24 ized under subsection (a), shall review the num-
25 ber of targets that were later determined to be

1 located in the United States and the number of
2 persons located in the United States whose
3 communications were reviewed; and

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

5 “(i) the Attorney General;

6 “(ii) the Director of National Intel-
7 ligence; and

8 “(iii) the congressional intelligence
9 committees.

10 “(3) ANNUAL REVIEW.—

11 “(A) REQUIREMENT TO CONDUCT.—The
12 head of an element of the intelligence commu-
13 nity conducting an acquisition authorized under
14 subsection (a) shall direct the element to con-
15 duct an annual review to determine whether
16 there is reason to believe that foreign intel-
17 ligence information has been or will be obtained
18 from the acquisition. The annual review shall
19 provide, with respect to such acquisitions au-
20 thorized under subsection (a)—

21 “(i) an accounting of the number of
22 disseminated intelligence reports con-
23 taining a reference to a United States per-
24 son identity;

1 “(ii) an accounting of the number of
2 United States person identities subse-
3 quently disseminated by that element in re-
4 sponse to requests for identities that were
5 not referred to by name or title in the
6 original reporting; and

7 “(iii) the number of targets that were
8 later determined to be located in the
9 United States and the number of persons
10 located in the United States whose commu-
11 nications were reviewed.

12 “(B) USE OF REVIEW.—The head of each
13 element of the intelligence community that con-
14 ducts an annual review under subparagraph (A)
15 shall use each such review to evaluate the ade-
16 quacy of the minimization procedures utilized
17 by such element or the application of the mini-
18 mization procedures to a particular acquisition
19 authorized under subsection (a).

20 “(C) PROVISION OF REVIEW TO FOREIGN
21 INTELLIGENCE SURVEILLANCE COURT.—The
22 head of each element of the intelligence commu-
23 nity that conducts an annual review under sub-
24 paragraph (A) shall provide such review to the
25 Foreign Intelligence Surveillance Court.

1 “(4) REPORTS TO CONGRESS.—

2 “(A) SEMIANNUAL REPORT.—Not less fre-
3 quently than once every 6 months, the Attorney
4 General shall fully inform, in a manner con-
5 sistent with national security, the congressional
6 intelligence committees, the Committee on the
7 Judiciary of the Senate, and the Committee on
8 the Judiciary of the House of Representatives,
9 concerning the implementation of this Act.

10 “(B) CONTENT.—Each report made under
11 subparagraph (A) shall include—

12 “(i) any certifications made under
13 subsection (g) during the reporting period;

14 “(ii) any directives issued under sub-
15 section (h) during the reporting period;

16 “(iii) the judicial review during the re-
17 porting period of any such certifications
18 and targeting and minimization procedures
19 utilized with respect to such acquisition,
20 including a copy of any order or pleading
21 in connection with such review that con-
22 tains a significant legal interpretation of
23 the provisions of this Act;

1 “(iv) any actions taken to challenge or
2 enforce a directive under paragraphs (4) or
3 (5) of subsections (h);

4 “(v) any compliance reviews con-
5 ducted by the Department of Justice or
6 the Office of the Director of National In-
7 telligence of acquisitions authorized under
8 subsection (a);

9 “(vi) a description of any incidents of
10 noncompliance with a directive issued by
11 the Attorney General and the Director of
12 National Intelligence under subsection (h),
13 including—

14 “(I) incidents of noncompliance
15 by an element of the intelligence com-
16 munity with procedures adopted pur-
17 suant to subsections (c), (e), and (f);
18 and

19 “(II) incidents of noncompliance
20 by a specified person to whom the At-
21 torney General and Director of Na-
22 tional Intelligence issued a directive
23 under subsection (h);

24 “(vii) any procedures implementing
25 this section; and

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

3 **“SEC. 703. USE OF INFORMATION ACQUIRED UNDER SEC-**
4 **TION 702.**

5 “Information acquired from an acquisition conducted
6 under section 702 shall be deemed to be information ac-
7 quired from an electronic surveillance pursuant to title I
8 for purposes of section 106, except for the purposes of
9 subsection (j) of such section.”.

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

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

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

15 and

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

“TITLE VII—ADDITIONAL PROCEDURES FOR TARGETING COMMU-
NICATIONS OF CERTAIN PERSONS OUTSIDE THE UNITED
STATES

“Sec. 701. Definitions.

“Sec. 702. Procedures for acquiring the communications of certain persons out-
side the United States.

“Sec. 703. Use of information acquired under section 702.”.

17 (c) SUNSET.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the amendments made by subsections
20 (a)(2) and (b) shall cease to have effect on Decem-
21 ber 31, 2013.

1 (2) CONTINUING APPLICABILITY.—Section
2 702(h)(3) of the Foreign Intelligence Surveillance
3 Act of 1978 (as amended by subsection (a)) shall re-
4 main in effect with respect to any directive issued
5 pursuant to section 702(h) of that Act (as so
6 amended) during the period such directive was in ef-
7 fect. The use of information acquired by an acquisi-
8 tion conducted under section 702 of that Act (as so
9 amended) shall continue to be governed by the provi-
10 sions of section 703 of that Act (as so amended).

11 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
12 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
13 **TION OF CERTAIN COMMUNICATIONS MAY BE**
14 **CONDUCTED.**

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

19 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
20 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
21 TAIN COMMUNICATIONS MAY BE CONDUCTED

22 “SEC. 112. (a) This Act shall be the exclusive means
23 for targeting the communications or communications in-
24 formation of United States persons for foreign intelligence
25 purposes, whether such persons are inside the United
26 States or outside the United States.

1 “(b) Chapters 119 and 121 of title 18, United States
2 Code, and this Act shall be the exclusive means by which
3 electronic surveillance and the interception of domestic
4 wire, oral, or electronic communications may be con-
5 ducted.

6 “(c) Subsections (a) and (b) shall apply unless spe-
7 cific statutory authorization for electronic surveillance,
8 other than as an amendment to this Act, is enacted. Such
9 specific statutory authorization shall be the only exception
10 to subsection (a) and (b).”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) IN GENERAL.—Section 2511(2)(a) of title
13 18, United States Code, is amended by adding at
14 the end the following:

15 “(iii) A certification under subparagraph (ii)(B) for
16 assistance to obtain foreign intelligence information shall
17 identify the specific provision of the Foreign Intelligence
18 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that
19 provides an exception from providing a court order, and
20 shall certify that the statutory requirements of such provi-
21 sion have been met.”.

22 (2) TABLE OF CONTENTS.—The table of con-
23 tents in the first section of the Foreign Intelligence
24 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)

1 is amended by adding after the item relating to sec-
2 tion 111, the following:

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

3 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
4 **ORDERS UNDER THE FOREIGN INTEL-**
5 **LIGENCE SURVEILLANCE ACT OF 1978.**

6 (a) **INCLUSION OF CERTAIN ORDERS IN SEMI-AN-**
7 **NUAL REPORTS OF ATTORNEY GENERAL.**—Subsection
8 (a)(5) of section 601 of the Foreign Intelligence Surveil-
9 lance Act of 1978 (50 U.S.C. 1871) is amended by strik-
10 ing “(not including orders)” and inserting “, orders,”.

11 (b) **REPORTS BY ATTORNEY GENERAL ON CERTAIN**
12 **OTHER ORDERS.**—Such section 601 is further amended
13 by adding at the end the following new subsection:

14 “(c) The Attorney General shall submit to the com-
15 mittees of Congress referred to in subsection (a) a copy
16 of any decision, order, or opinion issued by the court es-
17 tablished under section 103(a) or the court of review es-
18 tablished under section 103(b) that includes significant
19 construction or interpretation of any provision of this Act
20 not later than 45 days after such decision, order, or opin-
21 ion is issued.”.

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

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

1 (1) in subsection (a)—

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

3 (B) by redesignating paragraphs (3)
4 through (10) as paragraphs (2) through (9), re-
5 spectively;

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

9 (D) in paragraph (7), as redesignated by
10 subparagraph (B) of this paragraph, by striking
11 “statement of” and inserting “summary state-
12 ment of”;

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

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

19 (2) by striking subsection (b);

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

22 (4) in paragraph (1)(A) of subsection (d), as re-
23 designated by paragraph (3) of this subsection, by
24 striking “or the Director of National Intelligence”

1 and inserting “the Director of National Intelligence,
2 or the Director of the Central Intelligence Agency”.

3 **SEC. 105. ISSUANCE OF AN ORDER.**

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

6 (1) in subsection (a)—

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

8 (B) by redesignating paragraphs (2)
9 through (5) as paragraphs (1) through (4), re-
10 spectively;

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

13 (3) in subsection (c)(1)—

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

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

18 (C) by striking subparagraph (F);

19 (4) by striking subsection (d);

20 (5) by redesignating subsections (e) through (i)
21 as subsections (d) through (h), respectively;

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

24 “(e)(1) Notwithstanding any other provision of this
25 title, the Attorney General may authorize the emergency

1 employment of electronic surveillance if the Attorney Gen-
2 eral—

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

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

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

16 “(D) makes an application in accordance with
17 this title to a judge having jurisdiction under section
18 103 as soon as practicable, but not later than 168
19 hours after the Attorney General authorizes such
20 surveillance.

21 “(2) If the Attorney General authorizes the emer-
22 gency employment of electronic surveillance under para-
23 graph (1), the Attorney General shall require that the
24 minimization procedures required by this title for the
25 issuance of a judicial order be followed.

1 “(3) In the absence of a judicial order approving such
2 electronic surveillance, the surveillance shall terminate
3 when the information sought is obtained, when the appli-
4 cation for the order is denied, or after the expiration of
5 168 hours from the time of authorization by the Attorney
6 General, whichever is earliest.

7 “(4) A denial of the application made under this sub-
8 section may be reviewed as provided in section 103.

9 “(5) In the event that such application for approval
10 is denied, or in any other case where the electronic surveil-
11 lance is terminated and no order is issued approving the
12 surveillance, no information obtained or evidence derived
13 from such surveillance shall be received in evidence or oth-
14 erwise disclosed in any trial, hearing, or other proceeding
15 in or before any court, grand jury, department, office,
16 agency, regulatory body, legislative committee, or other
17 authority of the United States, a State, or political sub-
18 division thereof, and no information concerning any
19 United States person acquired from such surveillance shall
20 subsequently be used or disclosed in any other manner by
21 Federal officers or employees without the consent of such
22 person, except with the approval of the Attorney General
23 if the information indicates a threat of death or serious
24 bodily harm to any person.

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

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

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

12 **SEC. 106. USE OF INFORMATION.**

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

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

18 (a) **APPLICATIONS.**—Section 303 of the Foreign In-
19 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
20 amended—

21 (1) in subsection (a)—

22 (A) by striking paragraph (2);

23 (B) by redesignating paragraphs (3)
24 through (9) as paragraphs (2) through (8), re-
25 spectively;

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

4 (D) in paragraph (3)(C), as redesignated
5 by subparagraph (B) of this paragraph, by in-
6 serting “or is about to be” before “owned”; and

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

10 (i) by striking “Affairs or” and insert-
11 ing “Affairs,”; and

12 (ii) by striking “Senate—” and insert-
13 ing “Senate, or the Deputy Director of the
14 Federal Bureau of Investigation, if des-
15 ignated by the President as a certifying of-
16 ficial—”; and

17 (2) in subsection (d)(1)(A), by striking “or the
18 Director of National Intelligence” and inserting “the
19 Director of National Intelligence, or the Director of
20 the Central Intelligence Agency”.

21 (b) ORDERS.—Section 304 of the Foreign Intel-
22 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
23 amended—

24 (1) in subsection (a)—

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

1 (B) by redesignating paragraphs (2)
2 through (5) as paragraphs (1) through (4), re-
3 spectively; and
4 (2) by amending subsection (e) to read as fol-
5 lows:

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

9 “(A) determines that an emergency situation
10 exists with respect to the employment of a physical
11 search to obtain foreign intelligence information be-
12 fore an order authorizing such physical search can
13 with due diligence be obtained;

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

17 “(C) informs, either personally or through a
18 designee, a judge of the Foreign Intelligence Surveil-
19 lance Court at the time of such authorization that
20 the decision has been made to employ an emergency
21 physical search; and

22 “(D) makes an application in accordance with
23 this title to a judge of the Foreign Intelligence Sur-
24 veillance Court as soon as practicable, but not more

1 than 168 hours after the Attorney General author-
2 izes such physical search.

3 “(2) If the Attorney General authorizes the emer-
4 gency employment of a physical search under paragraph
5 (1), the Attorney General shall require that the minimiza-
6 tion procedures required by this title for the issuance of
7 a judicial order be followed.

8 “(3) In the absence of a judicial order approving such
9 physical search, the physical search shall terminate when
10 the information sought is obtained, when the application
11 for the order is denied, or after the expiration of 168
12 hours from the time of authorization by the Attorney Gen-
13 eral, whichever is earliest.

14 “(4) A denial of the application made under this sub-
15 section may be reviewed as provided in section 103.

16 “(5)(A) In the event that such application for ap-
17 proval is denied, or in any other case where the physical
18 search is terminated and no order is issued approving the
19 physical search, no information obtained or evidence de-
20 rived from such physical search shall be received in evi-
21 dence or otherwise disclosed in any trial, hearing, or other
22 proceeding in or before any court, grand jury, department,
23 office, agency, regulatory body, legislative committee, or
24 other authority of the United States, a State, or political
25 subdivision thereof, and no information concerning any

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

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

9 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
10 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
11 is amended—

12 (1) in section 304(a)(4), as redesignated by
13 subsection (b) of this section, by striking
14 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

15 (2) in section 305(k)(2), by striking
16 “303(a)(7)” and inserting “303(a)(6)”.

17 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**
18 **AND TRAP AND TRACE DEVICES.**

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

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

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

1 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

2 (a) DESIGNATION OF JUDGES.—Subsection (a) of
3 section 103 of the Foreign Intelligence Surveillance Act
4 of 1978 (50 U.S.C. 1803) is amended by inserting “at
5 least” before “seven of the United States judicial cir-
6 cuits”.

7 (b) EN BANC AUTHORITY.—

8 (1) IN GENERAL.—Subsection (a) of section
9 103 of the Foreign Intelligence Surveillance Act of
10 1978, as amended by subsection (a) of this section,
11 is further amended—

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

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

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

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

25 “(ii) the proceeding involves a question of ex-
26 ceptional importance.

1 “(B) Any authority granted by this Act to a judge
2 of the court established under this subsection may be exer-
3 cised by the court en banc. When exercising such author-
4 ity, the court en banc shall comply with any requirements
5 of this Act on the exercise of such authority.

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

9 (2) CONFORMING AMENDMENTS.—The Foreign
10 Intelligence Surveillance Act of 1978 is further
11 amended—

12 (A) in subsection (a) of section 103, as
13 amended by this subsection, by inserting “(ex-
14 cept when sitting en banc under paragraph
15 (2))” after “no judge designated under this
16 subsection”; and

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

20 (c) STAY OR MODIFICATION DURING AN APPEAL.—
21 Section 103 of the Foreign Intelligence Surveillance Act
22 of 1978 (50 U.S.C. 1803) is amended—

23 (1) by redesignating subsection (f) as sub-
24 section (g); and

1 (2) by inserting after subsection (e) the fol-
2 lowing new subsection:

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

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

19 **SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.**

20 Section 103(e) of the Foreign Intelligence Surveil-
21 lance Act of 1978 (50 U.S.C. 1803(e)) is amended—

22 (1) in paragraph (1), by striking “105B(h) or
23 501(f)(1)” and inserting “501(f)(1) or 702”; and

24 (2) in paragraph (2), by striking “105B(h) or
25 501(f)(1)” and inserting “501(f)(1) or 702”.

Ahmad, Usman

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep) [REDACTED]@judiciary-rep.senate.gov [EFF2OLA(2)-100]
Sent: Wednesday, November 07, 2007 4:56 PM
To: Seidel, Rebecca; Tracci, Robert N; Gerry, Brett (OLP)
Subject: FW: Possible FISA Amendments to be Offered by Senator Specter
Importance: High
Attachments: GRA07H03_xml.pdf; GRA07G93_xml.pdf; GRA07G95_xml.pdf; GRA07G97_xml.pdf; HEN07K29_xml.pdf; HEN07K42_xml (2).pdf; HEN07K56_xml.pdf; FISA_ExcluAmdt_JEN07F99.pdf

Damion D. Nielsen
 United States Senate
 Committee on the Judiciary
 Senator Arlen Specter
 [REDACTED]

FOIA Exemption b(6)

From: Nielsen, Damion (Judiciary-Rep)
Sent: Wednesday, November 07, 2007 4:54 PM
To: All Judiciary Users
Subject: Possible FISA Amendments to be Offered by Senator Specter
Importance: High

EFF2OLA(2)-101

Attached are possible markup amendments to be offered by Senator Specter on S.2248 (FISA).

GRA07H03: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act.

GRA07G93: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act; If the Presidents issues a signing statement for the FISA Amendments Act, expressly grants Congress the right to file amicus briefs in any case in which the construction or constitutionality of the FISA Amendments Act is at issue.

GRA07G97: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act; If the Presidents issues a signing statement for the FISA Amendments Act, expressly grants Congress the right to file amicus briefs in any case in which the construction or constitutionality of the FISA Amendments Act is at issue; Grants Congress standing to seek declaratory judgment on the constitutionality of any presidential signing statement issued for the FISA Amendments Act.

GRA07G95: Prevents the President from altering the clear meaning of the FISA Amendments Act by instructing the courts not to rely on a Presidential statement when interpreting this Act; If the Presidents issues a signing statement for the FISA Amendments Act, expressly grants Congress the right to file amicus briefs in any case in which the construction or constitutionality of the FISA Amendments Act is at issue; Grants Congress standing to intervene for the presentation of evidence and oral argument in any case that comes before the Supreme Court in which a the construction or constitutionality of the FISA Amendments Act if the President issues a signing statement on the Act .

HEN07K29: Substitutes the United States in place of telecommunications service providers in any covered

civil action.

HEN07K56: Sets out a list of factors for the FISA court to consider in conducting judicial review of the targeting and minimization procedures which includes, previous authorizations, matters submitted to the court for those authorizations, and the annual and semi-annual reports submitted to the Court pursuant to subsection 703(1)(1).

HEN07K42: Provides that the annual and semi-annual reports submitted to the FISA court, pursuant to subsection 703(1)(1), shall trigger ongoing review by the court of the targeting and minimization procedures in place, including as they relate to "acquisitions" already approved by the court.

JEN07F99: This amendment, which is based on language from S. 1114, the Feinstein/Specter FISA bill, makes clear that specific statutory language is required to repeal or modify this act. This language is intended to avoid future claims or confusion regarding the effect of authorizing legislation akin to the AUMF on the reach and exclusivity of FISA.

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**

3 **SIGNING STATEMENTS**

4 **SEC. 401. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**

5 **MENTS.**

6 In determining the meaning of this Act, no Federal

7 or State court shall rely on or defer to a presidential sign-

8 ing statement as a source of authority.

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

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

S. 2248

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

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ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**

3 **SIGNING STATEMENTS**

4 **SEC. 401. DEFINITION.**

5 As used in this title, the term “presidential signing
6 statement” means a statement issued by the President
7 about a bill, in conjunction with signing that bill into law
8 pursuant to Article I, section 7, of the Constitution.

1 **SEC. 402. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
2 **MENTS.**

3 In determining the meaning of this Act, no Federal
4 or State court shall rely on or defer to a presidential sign-
5 ing statement as a source of authority.

6 **SEC. 403. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
7 **COURT PROCEEDINGS OR SUBMIT CLARI-**
8 **FYING RESOLUTION.**

9 (a) CONGRESSIONAL RIGHT TO PARTICIPATE AS
10 AMICUS CURIAE.—If a presidential signing statement is
11 issued concerning this Act, in any action, suit, or pro-
12 ceeding in any Federal or State court (including the Su-
13 preme Court of the United States), regarding the con-
14 struction or constitutionality, or both, of this Act, the Fed-
15 eral or State Court shall permit the United States Senate,
16 through the Office of Senate Legal Counsel, as authorized
17 in section 701 of the Ethics in Government Act of 1978
18 (2 U.S.C. 288), or the United States House of Represent-
19 atives, through the Office of General Counsel for the
20 United States House of Representatives, or both, to par-
21 ticipate as an amicus curiae, and to present an oral argu-
22 ment on the question of the Act's construction or constitu-
23 tionality, or both. Nothing in this section shall be con-
24 strued to confer standing on any party seeking to bring,
25 or jurisdiction on any court with respect to, any civil or
26 criminal action, including suit for court costs, against

1 Congress, either House of Congress, a Member of Con-
2 gress, a committee or subcommittee of a House of Con-
3 gress, any office or agency of Congress, or any officer or
4 employee of a House of Congress or any office or agency
5 of Congress.

6 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
7 RESOLUTION.—In any suit referenced in subsection (a),
8 the full Congress may pass a concurrent resolution declar-
9 ing its view of the proper interpretation of the Act of Con-
10 gress at issue, clarifying Congress's intent or clarifying
11 Congress's findings of fact, or both. If Congress does pass
12 such a concurrent resolution, the Federal or State court
13 shall permit the United States Congress, through the Of-
14 fice of Senate Legal Counsel, to submit that resolution
15 into the record of the case as a matter of right.

16 (c) EXPEDITED CONSIDERATION.—It shall be the
17 duty of each Federal or State court, including the Su-
18 preme Court of the United States, to advance on the dock-
19 et and to expedite to the greatest possible extent the dis-
20 position of any matter brought under subsection (a).

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**

3 **SIGNING STATEMENTS**

4 **SEC. 401. DEFINITION.**

5 As used in this title, the term “presidential signing
6 statement” means a statement issued by the President
7 about a bill, in conjunction with signing that bill into law
8 pursuant to Article I, section 7, of the Constitution.

1 **SEC. 402. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
2 **MENTS.**

3 In determining the meaning of this Act, no Federal
4 or State court shall rely on or defer to a presidential sign-
5 ing statement as a source of authority.

6 **SEC. 403. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
7 **COURT PROCEEDINGS OR SUBMIT CLARI-**
8 **FYING RESOLUTION.**

9 (a) CONGRESSIONAL RIGHT TO PARTICIPATE AS
10 AMICUS CURIAE.—If a presidential signing statement is
11 issued concerning this Act, in any action, suit, or pro-
12 ceeding in any Federal or State court (including the Su-
13 preme Court of the United States), regarding the con-
14 struction or constitutionality, or both, of this Act, the Fed-
15 eral or State Court shall permit the United States Senate,
16 through the Office of Senate Legal Counsel, as authorized
17 in section 701 of the Ethics in Government Act of 1978
18 (2 U.S.C. 288), or the United States House of Represent-
19 atives, through the Office of General Counsel for the
20 United States House of Representatives, or both, to par-
21 ticipate as an amicus curiae, and to present an oral argu-
22 ment on the question of the Act's construction or constitu-
23 tionality, or both. Nothing in this section shall be con-
24 strued to confer standing on any party seeking to bring,
25 or jurisdiction on any court with respect to, any civil or
26 criminal action, including suit for court costs, against

1 Congress, either House of Congress, a Member of Con-
2 gress, a committee or subcommittee of a House of Con-
3 gress, any office or agency of Congress, or any officer or
4 employee of a House of Congress or any office or agency
5 of Congress.

6 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
7 RESOLUTION.—In any suit referenced in subsection (a),
8 the full Congress may pass a concurrent resolution declar-
9 ing its view of the proper interpretation of the Act of Con-
10 gress at issue, clarifying Congress's intent or clarifying
11 Congress's findings of fact, or both. If Congress does pass
12 such a concurrent resolution, the Federal or State court
13 shall permit the United States Congress, through the Of-
14 fice of Senate Legal Counsel, to submit that resolution
15 into the record of the case as a matter of right.

16 (c) EXPEDITED CONSIDERATION.—It shall be the
17 duty of each Federal or State court, including the Su-
18 preme Court of the United States, to advance on the dock-
19 et and to expedite to the greatest possible extent the dis-
20 position of any matter brought under subsection (a).

21 **SEC. 404. CONGRESSIONAL RIGHT TO INTERVENE OR SUB-**
22 **MIT CLARIFYING RESOLUTION.**

23 (a) NOTICE TO CONGRESS.—If a presidential signing
24 statement is issued concerning this Act, in any action,
25 suit, or proceeding in the Supreme Court of the United

1 States, wherein the construction or constitutionality, or
2 both, of this Act is at issue, the Supreme Court shall cer-
3 tify such fact to the Office of Senate Legal Counsel and
4 to the Office of General Counsel for the United States
5 House of Representatives.

6 (b) CONGRESSIONAL RIGHT TO INTERVENE.—In any
7 suit referenced in subsection (a), the Supreme Court shall
8 permit the United States Senate, through the Office of
9 Senate Legal Counsel, or the United States House of Rep-
10 resentatives, through the Office of General Counsel for the
11 United States House of Representatives, or both, to inter-
12 vene for presentation of evidence, if evidence is otherwise
13 admissible in the case, and for argument on the question
14 of the Act's construction or constitutionality, or both. The
15 United States Senate and House of Representatives shall,
16 subject to the applicable provisions of law, have all the
17 rights of a party and be subject to all liabilities of a party
18 as to court costs to the extent necessary for a proper pres-
19 entation of the facts and law relating to the question of
20 constitutionality. Nothing in this section shall be con-
21 strued to confer standing on any party seeking to bring,
22 or jurisdiction on any court with respect to, any civil or
23 criminal action, including suit for court costs, against
24 Congress, either House of Congress, a Member of Con-
25 gress, a committee or subcommittee of a House of Con-

1 gress, any office or agency of Congress, or any officer or
2 employee of a House of Congress or any office or agency
3 of Congress.

4 (c) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
5 RESOLUTION.—In any suit referenced in subsection (a),
6 the full Congress may pass a concurrent resolution declar-
7 ing its view of the proper interpretation of the Act of Con-
8 gress at issue, clarifying Congress's intent or clarifying
9 Congress's findings of fact, or both. If Congress does pass
10 such a concurrent resolution, the Supreme Court shall per-
11 mit the United States Congress, through the Office of
12 Senate Legal Counsel, to submit that resolution into the
13 record of the case as a matter of right.

AMENDMENT NO.

Calendar No.

Purpose: To regulate the judicial use of presidential signing statements in the interpretation of the FISA Amendments Act of 2007.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SPECTER

Viz:

1 At the end of the bill, add the following:

2 **TITLE IV—PRESIDENTIAL**

3 **SIGNING STATEMENTS**

4 **SEC. 401. DEFINITION.**

5 As used in this title, the term “presidential signing
6 statement” means a statement issued by the President
7 about a bill, in conjunction with signing that bill into law
8 pursuant to Article I, section 7, of the Constitution.

1 **SEC. 402. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
2 **MENTS.**

3 In determining the meaning of this Act, no Federal
4 or State court shall rely on or defer to a presidential sign-
5 ing statement as a source of authority.

6 **SEC. 403. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
7 **COURT PROCEEDINGS OR SUBMIT CLARI-**
8 **FYING RESOLUTION.**

9 (a) CONGRESSIONAL RIGHT TO PARTICIPATE AS
10 AMICUS CURIAE.—If a presidential signing statement is
11 issued concerning this Act, in any action, suit, or pro-
12 ceeding in any Federal or State court (including the Su-
13 preme Court of the United States), regarding the con-
14 struction or constitutionality, or both, of this Act, the Fed-
15 eral or State Court shall permit the United States Senate,
16 through the Office of Senate Legal Counsel, as authorized
17 in section 701 of the Ethics in Government Act of 1978
18 (2 U.S.C. 288), or the United States House of Represent-
19 atives, through the Office of General Counsel for the
20 United States House of Representatives, or both, to par-
21 ticipate as an amicus curiae, and to present an oral argu-
22 ment on the question of the Act's construction or constitu-
23 tionality, or both. Nothing in this section shall be con-
24 strued to confer standing on any party seeking to bring,
25 or jurisdiction on any court with respect to, any civil or
26 criminal action, including suit for court costs, against

1 Congress, either House of Congress, a Member of Con-
2 gress, a committee or subcommittee of a House of Con-
3 gress, any office or agency of Congress, or any officer or
4 employee of a House of Congress or any office or agency
5 of Congress.

6 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
7 RESOLUTION.—In any suit referenced in subsection (a),
8 the full Congress may pass a concurrent resolution declar-
9 ing its view of the proper interpretation of the Act of Con-
10 gress at issue, clarifying Congress's intent or clarifying
11 Congress's findings of fact, or both. If Congress does pass
12 such a concurrent resolution, the Federal or State court
13 shall permit the United States Congress, through the Of-
14 fice of Senate Legal Counsel, to submit that resolution
15 into the record of the case as a matter of right.

16 (c) EXPEDITED CONSIDERATION.—It shall be the
17 duty of each Federal or State court, including the Su-
18 preme Court of the United States, to advance on the dock-
19 et and to expedite to the greatest possible extent the dis-
20 position of any matter brought under subsection (a).

21 **SEC. 404. CONGRESSIONAL STANDING TO OBTAIN DECLAR-**
22 **ATORY JUDGMENT.**

23 Any court of the United States, upon the filing of
24 an appropriate pleading by the United States Senate,
25 through the Office of Senate Legal Counsel, or the United

1 States House of Representatives, through the Office of
2 General Counsel for the United States House of Rep-
3 resentatives, or both, may declare the legality of any presi-
4 dential signing statement concerning this Act, whether or
5 not further relief is or could be sought. Any such declara-
6 tion shall have the force and effect of a final judgment
7 or decree and shall be reviewable as such.

AMENDMENT NO.

Calendar No.

Purpose: To provide for the substitution of the United States
in certain civil actions.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 On page 44, strike lines 5 through 13 and insert the
2 following:

3 (3) COVERED CIVIL ACTION.—The term “cov-
4 ered civil action” means a civil action filed in a Fed-
5 eral or State court—

6 (A) that—

7 (i) alleges that an electronic commu-
8 nication service provider furnished assist-

1 ance to an element of the intelligence com-
2 munity; and

3 (ii) seeks monetary or other relief
4 from the electronic communication service
5 provider related to the provision of such
6 assistance; and

7 (B) relating to which, the Attorney Gen-
8 eral certifies to the court that the assistance al-
9 leged to have been provided by the electronic
10 communication service provider was provided—

11 (i) in connection with an intelligence
12 activity involving communications that
13 was—

14 (I) authorized by the President
15 during the period beginning on Sep-
16 tember 11, 2001, and ending on Jan-
17 uary 17, 2007; and

18 (II) designed to detect or prevent
19 a terrorist attack, or activities in
20 preparation for a terrorist attack,
21 against the United States; and

22 (ii) described in a written request or
23 directive from the Attorney General or the
24 head of an element of the intelligence com-
25 munity (or the deputy of such person) to

1 the electronic communication service pro-
2 vider indicating that the activity was—
3 (I) authorized by the President;
4 and
5 (II) determined to be lawful.

6 Strike section 202 and insert the following:

7 **SEC. 202. SUBSTITUTION OF THE UNITED STATES FOR**
8 **ELECTRONIC COMMUNICATION SERVICE**
9 **PROVIDERS.**

10 (a) **EXCLUSIVE REMEDY.**—The remedy under this
11 section against the United States or any electronic com-
12 munication service provider is the exclusive remedy in any
13 covered civil action. Any other civil action or proceeding
14 for money damages arising out of, or relating to the same
15 subject matter as, a covered civil action may not be filed
16 or maintained, without regard to when the act or omission
17 occurred.

18 (b) **ACTIONS.**—The Attorney General shall defend
19 any covered civil action. Not later than the end of the pe-
20 riod established by the Attorney General that begins on
21 the date of service or knowledge of service of any process,
22 an electronic communication service provider shall deliver
23 to the United States attorney for the district embracing
24 the place wherein the proceeding is brought and to the

1 Attorney General all process served upon that electronic
2 communication service provider relating to a covered civil
3 action.

4 (c) SUBSTITUTION.—

5 (1) IN GENERAL.—Upon submission of the cer-
6 tification described in section 201(3)(B) by the At-
7 torney General, a covered civil action in a Federal
8 court shall be deemed an action against the United
9 States under title 28, United States Code, and the
10 United States shall be substituted as the party de-
11 fendant.

12 (2) IN STATE COURT.—Upon submission of the
13 certification described in section 201(3)(B) by the
14 Attorney General, a covered civil action in a State
15 court—

16 (A) may be removed without bond at any
17 time before trial by the Attorney General to the
18 district court of the United States for the dis-
19 trict and division embracing the place in which
20 that covered civil action is pending; and

21 (B) shall be deemed to be an action or pro-
22 ceeding brought against the United States
23 under title 28, United States Code, and the
24 United States shall be substituted as the party
25 defendant.

1 (d) PETITION.—

2 (1) IN GENERAL.—If the Attorney General has
3 refused to submit a certification described in section
4 201(3)(B) relating to a civil action in Federal or
5 State court that, except for that certification, is a
6 covered civil action, an electronic communication
7 service provider may at any time before trial petition
8 the court to find and certify that the requirements
9 of such a certification have been met.

10 (2) NOTICE.—A copy of a petition under para-
11 graph (1) shall be served upon the United States in
12 accordance with rule 4(d)(4) of the Federal Rules of
13 Civil Procedure.

14 (3) STATE COURT PROCEEDINGS.—If a petition
15 under paragraph (1) is filed in a civil action pending
16 in a State court, the action or proceeding may be re-
17 moved without bond by the Attorney General to the
18 district court of the United States for the district
19 and division embracing the place in which it is pend-
20 ing. If a Federal court denies a petition in a civil ac-
21 tion removed under this paragraph, the civil action
22 shall be remanded to the State court.

23 (4) SUBSTITUTION.—If a court enters a certifi-
24 cation described in paragraph (1), that civil action
25 shall be deemed a covered civil action and to be an

1 action brought against the United States under title
2 28, United States Code, and the United States shall
3 be substituted as the party defendant.

4 (e) ENTRY OF CERTIFICATION.—Upon submission of
5 a certification described in section 201(3)(B) or entry of
6 a certification described in subsection (d)(1), a covered
7 civil action shall proceed in the same manner as any action
8 against the United States filed under section 1346(b) of
9 title 28, United States Code, and shall be subject to the
10 limitations and exceptions applicable to those actions.

11 (f) PRESENTATION TO AGENCY.—If a covered civil
12 action in which the United States is substituted as the
13 party defendant under this section is dismissed for failure
14 first to present a claim under 2675(a) of title 28, United
15 States Code, such a claim shall be deemed to be timely
16 presented under section 2401(b) of title 28, United States
17 Code, if—

18 (1) the claim would have been timely had it
19 been filed on the date the underlying civil action was
20 commenced; and

21 (2) the claim is presented to the appropriate
22 Federal agency within 60 days after dismissal of the
23 covered civil action.

24 (g) SETTLEMENT.—The Attorney General may com-
25 promise or settle any claim asserted in a covered civil ac-

1 tion in the manner provided in section 2677 of title 28,
2 United States Code, and with the same effect.

3 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion may be construed to limit any otherwise available im-
5 munity, privilege, or defense under any other provision of
6 law.

7 (i) EFFECTIVE DATE AND APPLICATION.—This sec-
8 tion shall apply to any covered civil action that is pending
9 on or after the date of enactment of this Act.

AMENDMENT NO.

Calendar No.

Purpose: To clarify that the Foreign Intelligence Surveillance Court has the authority to continue its review of Government targeting and minimization procedures.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 On page 18, strike line 24 and all that follows
2 through page 19, line 10, and insert the following:

3 “(3) TARGETING PROCEDURES.—

4 “(A) IN GENERAL.—The Court shall re-
5 view the targeting procedures required by sub-
6 section (e) to assess whether the procedures are
7 reasonably designed to ensure that the acquisi-
8 tion authorized under subsection (a) is limited

1 to the targeting of persons reasonably believed
2 to be located outside the United States.

3 “(B) CONTINUING OVERSIGHT.—Upon re-
4 ceipt of a semiannual assessment or annual re-
5 view pursuant to subsections (l)(1)(A) and
6 (l)(3)(C) respectively, the Foreign Intelligence
7 Surveillance Court shall consider whether in
8 light of the reports, the targeting and minimiza-
9 tion procedures required by subsection (e) and
10 (f) are being fulfilled, with respect to any acqui-
11 sition previously approved under subsection (i),
12 and if not, shall require action to correct the
13 deficiencies in the manner prescribed by para-
14 graph (5)(B).

15 “(4) MINIMIZATION PROCEDURES.—

16 “(A) IN GENERAL.—The Court shall re-
17 view the minimization procedures required by
18 subsection (f) to assess whether such proce-
19 dures meet the definition of minimization proce-
20 dures under section 101(h).

21 “(B) CONTINUING OVERSIGHT.—Upon re-
22 ceipt of a semiannual assessment or annual re-
23 view pursuant to subsections (l)(1)(A) and
24 (l)(3)(C) respectively, the Foreign Intelligence
25 Surveillance Court shall consider whether in

1 light of the reports, the targeting and minimiza-
2 tion procedures required by subsection (e) and
3 (f) are being fulfilled, with respect to any acqui-
4 sition previously approved under subsection (i),
5 and if not, shall require action to correct the
6 deficiencies in the manner prescribed by para-
7 graph (5)(B).”.

AMENDMENT NO.

Calendar No.

Purpose: To clarify that the FISA court has the authority to continue its review of government targeting and minimization procedures.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 On page 18, strike line 24 and all that follows
2 through on page 19, line 10, and insert the following:

3 (3) TARGETING PROCEDURES.—

4 (A) IN GENERAL.—The Court shall review
5 the targeting procedures required by subsection
6 (e) to assess whether the procedures are reason-
7 ably designed to ensure that the acquisition au-
8 thorized under subsection (a) is limited to the

1 targeting of persons reasonably believed to be
2 located outside the United States.

3 (B) FACTORS TO BE CONSIDERED.—When
4 conducting the review required under subpara-
5 graph (A), the Foreign Intelligence Surveillance
6 Court shall take into account—

7 (i) all support materials offered by the
8 government pursuant to the terms of this
9 Act;

10 (ii) prior applications by the govern-
11 ment under this Act and all submissions
12 offered in support of those applications;

13 (iii) prior authorization orders of the
14 Court;

15 (iv) any Semiannual Assessment re-
16 port submitted to it, pursuant to sections
17 703(l)(1)(A) with information relevant to
18 the targeting procedures under review, un-
19 less such findings and conclusions are
20 found to be clearly erroneous; and

21 (v) any Annual Review report sub-
22 mitted to it pursuant to section
23 703(l)(3)(C) with information relevant to
24 the targeting procedures under review, un-

1 less such findings and conclusions are
2 found to be clearly erroneous.

3 (4) MINIMIZATION PROCEDURES.—

4 (A) IN GENERAL.—The Court shall review
5 the minimization procedures required by sub-
6 section (f) to assess whether such procedures
7 meet the definition of minimization procedures
8 under section 101(h).

9 (B) FACTORS TO BE CONSIDERED.—When
10 conducting the review required under subpara-
11 graph (A), the Foreign Intelligence Surveillance
12 Court shall take into account—

13 (i) all support materials offered by the
14 government pursuant to the terms of this
15 Act;

16 (ii) prior applications by the govern-
17 ment under this Act and all submissions
18 offered in support of those applications;

19 (iii) prior authorization orders of the
20 Court;

21 (iv) any Semiannual Assessment re-
22 port submitted to it, pursuant to sections
23 703(l)(1)(A) with information relevant to
24 the targeting procedures under review, un-

1 less such findings and conclusions are
2 found to be clearly erroneous; and

3 (v) any Annual Review report sub-
4 mitted to it pursuant to section
5 703(1)(3)(C) with information relevant to
6 the minimization procedures under review,
7 unless such findings and conclusions are
8 found to be clearly erroneous.

AMENDMENT NO.

Calendar No.

Purpose: To amend the FISA Amendments Act of 2007 to require specific statutory language to repeal or modify the provisions in the bill relating to electronic surveillance and interception of domestic communications.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

- 1 Strike section 102 and insert the following:
- 2 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
- 3 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
- 4 **TION OF DOMESTIC COMMUNICATIONS MAY**
- 5 **BE CONDUCTED.**
- 6 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
- 7 the Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1801 et seq.) is amended by adding at the end
2 the following:

3 "STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
4 TRONIC SURVEILLANCE AND INTERCEPTION OF DO-
5 MESTIC COMMUNICATIONS MAY BE CONDUCTED

6 "SEC. 112. Chapters 119 and 121 of title 18, United
7 States Code, and this Act shall be the exclusive means by
8 which electronic surveillance (as defined in section 101(f),
9 regardless of the limitation of section 701) and the inter-
10 ception of domestic wire, oral, or electronic communica-
11 tions may be conducted. No provision of law shall be con-
12 strued to implicitly repeal or modify this title or any provi-
13 sion thereof, nor shall any provision of law be deemed to
14 repeal or modify this title in any manner unless such pro-
15 vision of law, if enacted after the date of the enactment
16 of the FISA Amendments Act of 2007, expressly amends
17 or otherwise specifically cites this title."

18 (b) TABLE OF CONTENTS.—The table of contents in
19 the first section of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by add-
21 ing after the item relating to section 111, the following:

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

Ahmad, Usman

From: Seidel, Rebecca EFF2OLA(2)-104
Sent: Wednesday, November 07, 2007 6:00 PM
To: Benczkowski, Brian A (OLA); Tracci, Robert N
Cc: Cassidy, Keith E
Subject: FW: SJC markup - Possible amendments to S. 2248 (FISA)
Importance: High
Attachments: Sunset Date.pdf; IG Audit.pdf; Domestic Communications.pdf; Reverse Targeting.pdf

FOIA Exemption b(6)

From: Pozen, David (Judiciary-Dem) [mailto: [REDACTED] @Judiciary-dem.senate.gov] EFF2OLA(2)-105
Sent: Wednesday, November 07, 2007 4:50 PM
To: All Judiciary Users
Cc: Yeomans, Bill (Judiciary-Dem)
Subject: Possible amendments to S. 2248

Senator Kennedy or any other Senator may offer the attached amendments to S. 2248, the "Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007."

- **"Sunset Date"**: This amendment would change the sunset date from 6 years to 2 years (from Dec. 31, 2013 to Dec. 31, 2009).
- **"IG Audit"**: This amendment would require the Department of Justice Inspector General to conduct an audit and submit a report on all programs of the Federal Government involving the acquisition of communications conducted without a court order on or after September 11, 2001.
- **"Domestic Communications"**: This amendment would clarify that under the new authorities provided in this Act, the Government may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.
- **"Reverse Targeting"**: This amendment would require an individualized court order when a significant purpose of the acquisition of the communications of a person abroad is to acquire the communications of a specific person reasonably believed to be in the United States.

David Pozen
Legal Fellow
Senator Edward M. Kennedy
[REDACTED] @judiciary-dem.senate.gov

FOIA Exemption b(6)

AMENDMENT NO.

Calendar No.

Purpose: To change the sunset to December 31, 2009.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by

Viz:

1 In section 101(c)(1) strike "2013" and insert
2 "2009".

3 In section 302(c)(2)(B) strike "2013" and insert
4 "2009".

5 In section 302(c)(3)(B) strike "2013" and insert
6 "2009".

AMENDMENT NO.

Calendar No.

Purpose: To require an Inspector General audit of warrantless surveillance programs.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 At the end of title I, insert the following:

2 **SEC. 111. AUDIT OF WARRANTLESS SURVEILLANCE PRO-**
3 **GRAMS.**

4 (a) **AUDIT.**—Not later than 180 days after the date
5 of the enactment of this Act, the Inspector General of the
6 Department of Justice shall complete an audit of all pro-
7 grams of the Federal Government involving the acquisition
8 of communications conducted without a court order on or
9 after September 11, 2001, including the Terrorist Surveil-

1 lance Program referred to by the President in a radio ad-
2 dress on December 17, 2005. Such audit shall include ac-
3 quiring all documents relevant to such programs, includ-
4 ing memoranda concerning the legal authority of a pro-
5 gram, authorizations of a program, certifications to tele-
6 communications carriers, and court orders.

7 (b) REPORT.—

8 (1) IN GENERAL.—Not later than 30 days after
9 the completion of the audit under subsection (a), the
10 Inspector General shall submit to the Permanent Se-
11 lect Committee on Intelligence and the Committee
12 on the Judiciary of the House of Representatives
13 and the Select Committee on Intelligence and the
14 Committee on the Judiciary of the Senate a report
15 containing the results of such audit, including all
16 documents acquired pursuant to conducting such
17 audit.

18 (2) FORM.—The report under paragraph (1)
19 shall be submitted in unclassified form, but may in-
20 clude a classified annex.

21 (c) EXPEDITED SECURITY CLEARANCE.—The Direc-
22 tor of National Intelligence shall ensure that the process
23 for the investigation and adjudication of an application by
24 the Inspector General or the appropriate staff of the Of-
25 fice of the Inspector General of the Department of Justice

1 for a security clearance necessary for the conduct of the
2 audit under subsection (a) is conducted as expeditiously
3 as possible.

AMENDMENT NO.

Calendar No.

Purpose: To clarify that the authority under title VII of the Foreign Intelligence Surveillance Act of 1978 does not extend to purely domestic communications.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

- 1 On page 6, line 13, strike “and”.
- 2 On page 6, line 16, strike the period and insert “;
- 3 and”.
- 4 On page 6, between lines 16 and 17, insert the fol-
- 5 lowing:
- 6 “(4) shall not intentionally acquire any commu-
- 7 nication as to which the sender and all intended re-

1 recipients are known at the time of the acquisition to
2 be located in the United States.

3 On page 9, line 18, after "United States" insert the
4 following: "and does not result in the intentional acqui-
5 sition of any communication as to which the sender and all
6 intended recipients are known at the time of the acqui-
7 sition to be located in the United States".

8 On page 10, between lines 3 and 4, insert the fol-
9 lowing:

10 "(2) PERSONS IN THE UNITED STATES.—The
11 minimization procedures required by this subsection
12 shall require the destruction, upon recognition, of
13 any communication as to which the sender and all
14 intended recipients are known to be located in the
15 United States, a person has a reasonable expectation
16 of privacy, and a warrant would be required for law
17 enforcement purposes, unless the Attorney General
18 determines that the communication indicates a
19 threat of death or serious bodily harm to any per-
20 son.

21 On page 10, line 4, strike "(2)" and insert "(3)".

1 the communication indicates a threat
2 of death or serious bodily harm to any
3 person.

4 On page 12, line 4, strike “(II)” and insert “(III)”.

5 On page 19, line 5, after “United States” insert the
6 following: “and does not result in the intentional acqui-
7 sition of any communication as to which the sender and all
8 intended recipients are known at the time of the acqui-
9 sition to be located in the United States”.

10 On page 19, strike lines 6 through 10 and insert the
11 following:

12 “(4) MINIMIZATION PROCEDURES.—The Court
13 shall review the minimization procedures required by
14 subsection (f) to assess whether such procedures—

15 “(A) meet the definition of minimization
16 procedures under section 101(h); and

17 “(B) require the destruction, upon recogni-
18 tion, of any communication as to which the
19 sender and all intended recipients are known to
20 be located in the United States, a person has a
21 reasonable expectation of privacy, and a war-
22 rant would be required for law enforcement

1 purposes, unless the Attorney General deter-
2 mines that the communication indicates a
3 threat of death or serious bodily harm to any
4 person.

AMENDMENT NO.

Calendar No.

Purpose: To prohibit reverse targeting and protect the rights of Americans who communicate with persons abroad.

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

S. 2248

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KENNEDY

Viz:

1 On page 6, strikes lines 10 through 13 and insert
2 the following: "a significant purpose of such acquisition
3 is to acquire the communications of a specific person rea-
4 sonably believed to be located in the United States, except
5 in accordance with title I; and".

6 On page 9, line 18, strike "United States." and insert
7 the following: "United States, and that an application is
8 filed under title I, if otherwise required, when a significant

1 purpose of an acquisition authorized under subsection (a)
2 is to acquire the communications of a specific person rea-
3 sonably believed to be located in the United States.”.

4 On page 11, between lines 19 and 20, insert the fol-
5 lowing:

6 “(iii) the procedures referred to in
7 clause (i) require that an application is
8 filed under title I, if otherwise required,
9 when a significant purpose of an acquisi-
10 tion authorized under subsection (a) is to
11 acquire the communications of a specific
12 person reasonably believed to be located in
13 the United States;

14 On page 19, line 5, strike “United States.” and insert
15 the following: “United States, and are reasonably designed
16 to ensure that an application is filed under title I, if other-
17 wise required, when a significant purpose of an acquisition
18 authorized under subsection (a) is to acquire the commu-
19 nications of a specific person reasonably believed to be lo-
20 cated in the United States.”.

Ahmad, Usman

From: Seidel, Rebecca
Sent: Wednesday, November 07, 2007 5:53 PM
To: Tracci, Robert N; Benczkowski, Brian A (OLA)
Cc: Cassidy, Keith E
Subject: FW: SJC mark up - Kyl Amdt. to FISA
Attachments: Kyl Am final.doc

EFF2OLA(2)-106

FOIA Exemption b(6)

From: Matal, Joe (Judiciary-Rep) [mailto: [REDACTED]@judiciary-rep.senate.gov]
Sent: Wednesday, November 07, 2007 4:59 PM
To: Flint, Lara (Judiciary-Dém); All Judiciary Users
Subject: RE: Feingold Amendments to S. 2248

EFF2OLA(2)-107

Kyl amendment for tomorrow.

Duplicate of EFFOLA(2)-68



AMENDMENT NO. _____

Calendar No. _____

Purpose: To make aliens who recruit or use child soldiers ineligible for asylum and withholding of removal.

IN THE SENATE OF THE UNITED STATES -- 110th Cong., 1st Sess.

§. 2135

To prohibit the recruitment or use of child soldiers, to designate persons who recruit or use child soldiers as inadmissible aliens, to allow the deportation of persons who recruit or use child soldiers, and for other purposes.

Referred to the committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KYL.

Viz:

Add at the end the following:

“(d)(1) WITHHOLDING OF REMOVAL.--- Section 1231(b)(3)(B)(iv) of title 8, United States Code, is amended by adding at the end the following: “For purposes of clause (iii), an alien who is removable under section 237(a)(4)(F) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(F)) or inadmissible under section 212(a)(3)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(G)) shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime.”

“(2) ASYLUM.--- Section 1158(b)(2)(B) of title 8, United States Code, is amended by adding at the end the following:

“(iii) RECRUITMENT AND USE OF CHILD SOLDIERS.---

For purposes of clause (iii) of subparagraph (A), an alien who is removable under section 237(a)(4)(F) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(F)) or inadmissible under section 212(a)(3)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(G)) shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime.”

EFF2OLA(2)-106(a)