

# **OLC PART 4**

**Berhanu, Tsedey**

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**From:** Rice, K (Intelligence) [redacted]@SSCI.senate.gov] bb  
**Sent:** Thursday, January 31, 2008 7:17 PM  
**To:** Ben Powell; Hopkins, Heather A.; Demers, John  
**Cc:** Livingston, J (Intelligence); Eisenberg, John; [redacted] bb  
**Subject:** FISA amendments  
**Attachments:** HEN08141\_xml.pdf; HEN08142\_xml.pdf; HEN08143\_xml.pdf; HEN08144\_xml.pdf;  
HEN08147\_xml-complete substitute.pdf; HEN08148\_xml-managers'amendment.pdf;  
HEN08149\_xml.pdf; HEN08146\_xml.pdf

Attached are the final versions of the six proposed amendments—Feingold FISC orders is 81//. If these are acceptable to DoJ, the DNI, and the White House, please send us an email to that effect. Otherwise, let us know of any problems.

(I am also attaching the latest complete substitute and managers' amendment—neither of these includes the revised Feingold FISC orders amendment.) Exclusive means is still unresolved.

Thanks. Kathleen

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 Mr. ROCKEFELLER  
(for himself and Mr. BOND)

Viz:

- 1 On page 6, line 13, strike "and" and all that follows
- 2 through page 10, line 5, and insert the following:
- 3 "(4) shall not intentionally acquire any commu-
- 4 nication as to which the sender and all intended re-
- 5 cipients are known at the time of the acquisition to
- 6 be located in the United States; and

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

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

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

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

12           “(d) TARGETING PROCEDURES.—

13           “(1) REQUIREMENT TO ADOPT.—The Attorney  
14           General, in consultation with the Director of Na-  
15           tional Intelligence, shall adopt targeting procedures  
16           that are reasonably designed to ensure that any ac-  
17           quisition authorized under subsection (a) is limited  
18           to targeting persons reasonably believed to be lo-  
19           cated outside the United States and does not result  
20           in the intentional acquisition of any communication  
21           as to which the sender and all intended recipients  
22           are known at the time of the acquisition to be lo-  
23           cated in the United States.

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

4           “(e) MINIMIZATION PROCEDURES.—

5           “(1) REQUIREMENT TO ADOPT.—The Attorney  
6           General, in consultation with the Director of Na-  
7           tional Intelligence, shall adopt, consistent with the  
8           requirements of section 101(h) or section 301(4),  
9           minimization procedures for acquisitions authorized  
10          under subsection (a).

11          “(2) JUDICIAL REVIEW.—The minimization  
12          procedures required by this subsection shall be sub-  
13          ject to judicial review pursuant to subsection (h).

14          “(f) CERTIFICATION.—

15          “(1) IN GENERAL.—

16               “(A) REQUIREMENT.—Subject to subpara-  
17               graph (B), prior to the initiation of an acquisi-  
18               tion authorized under subsection (a), the Attor-  
19               ney General and the Director of National Intel-  
20               ligence shall provide, under oath, a written cer-  
21               tification, as described in this subsection.

22               “(B) EXCEPTION.—If the Attorney Gen-  
23               eral and the Director of National Intelligence  
24               determine that immediate action by the Govern-  
25               ment is required and time does not permit the

1 preparation of a certification under this sub-  
2 section prior to the initiation of an acquisition,  
3 the Attorney General and the Director of Na-  
4 tional Intelligence shall prepare such certifi-  
5 cation, including such determination, as soon as  
6 possible but in no event more than 168 hours  
7 after such determination is made.

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

10 “(A) attest that—

11 “(i) there are reasonable procedures  
12 in place for determining that the acquisi-  
13 tion authorized under subsection (a) is tar-  
14 geted at persons reasonably believed to be  
15 located outside the United States and that  
16 such procedures have been approved by, or  
17 will be submitted in not more than 5 days  
18 for approval by, the Foreign Intelligence  
19 Surveillance Court pursuant to subsection  
20 (h);

21 “(ii) there are reasonable procedures  
22 in place for determining that the acquisi-  
23 tion authorized under subsection (a) does  
24 not result in the intentional acquisition of  
25 any communication as to which the sender

1 and all intended recipients are known at  
2 the time of the acquisition to be located in  
3 the United States, and that such proce-  
4 dures have been approved by, or will be  
5 submitted in not more than 5 days for ap-  
6 proval by, the Foreign Intelligence Surveil-  
7 lance Court pursuant to subsection (h);

8 “(iii) the procedures referred to in  
9 clauses (i) and (ii) are consistent with the  
10 requirements of the fourth amendment to  
11 the Constitution of the United States and  
12 do not permit the intentional targeting of  
13 any person who is known at the time of ac-  
14 quisition to be located in the United States  
15 or the intentional acquisition of any com-  
16 munication as to which the sender and all  
17 intended recipients are known at the time  
18 of acquisition to be located in the United  
19 States;

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

23 “(v) 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) or section 301(4); and

4                   “(II) have been approved by, or  
5                   will be submitted in not more than 5  
6                   days for approval by, the Foreign In-  
7                   telligence Surveillance Court pursuant  
8                   to subsection (h);

9                   “(vi) 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                  “(vii) the acquisition does not con-  
14                  stitute electronic surveillance, as limited by  
15                  section 701; and

16                  On page 17, line 2, strike “States.” and insert  
17                  “States and does not result in the intentional acquisition  
18                  of any communication as to which the sender and all in-  
19                  tended recipients are known at the time of the acquisition  
20                  to be located in the United States.”.



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To strike the time limitation for certain appeals.

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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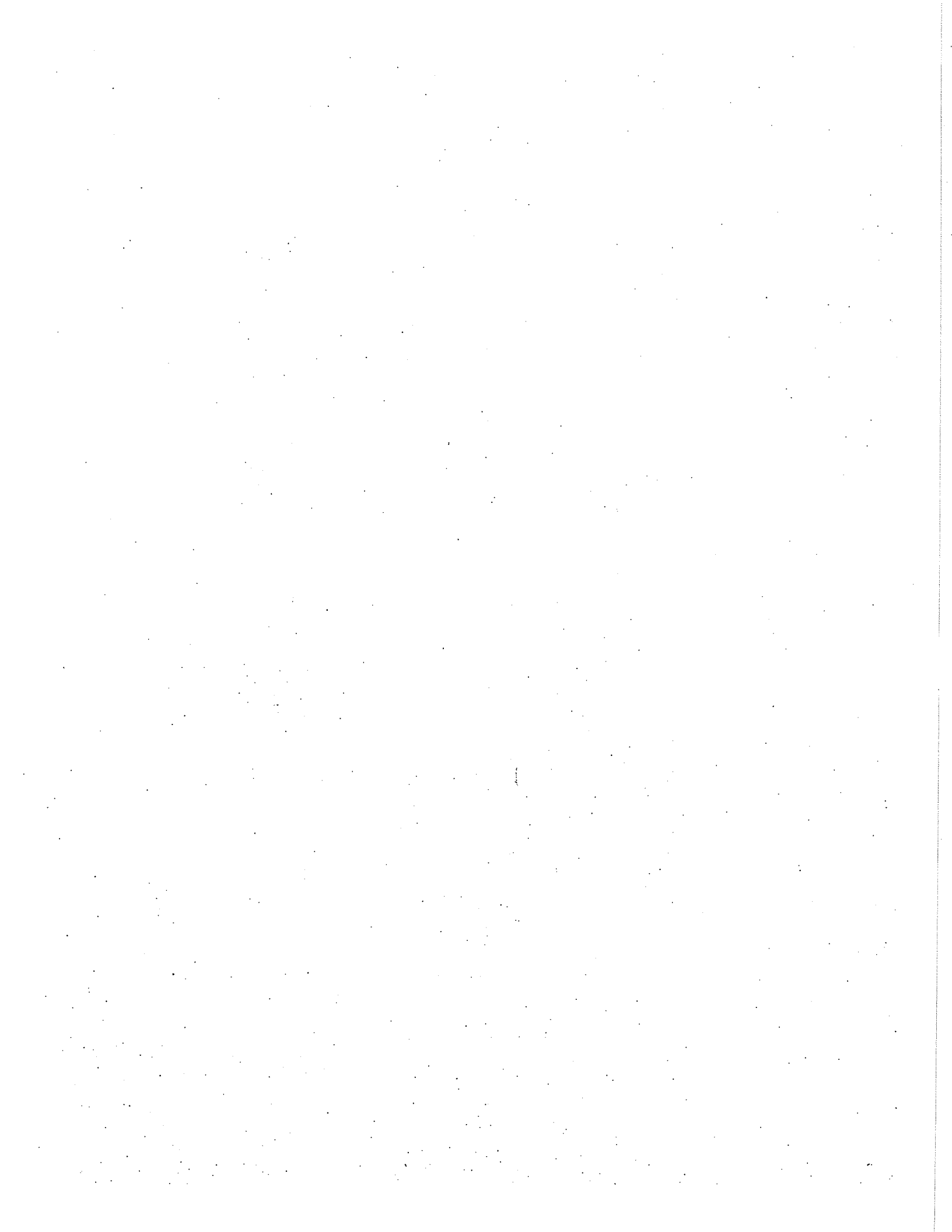
Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ROCKEFELLER  
(for himself and Mr. BOND)

Viz:

- 1 On page 15, beginning on line 10, strike “not later
- 2 than 7 days after the issuance of such decision”.



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for implementation of an order pending appeal.

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. ROCKEFELLER (for himself and Mr. BOND)

Viz:

1 On page 19, strike lines 10 through 12 and insert  
2 the following:

3 “(ii) if the Government appeals an  
4 order under this section, until the Court of  
5 Review enters an order under subpara-  
6 graph (C).

7 “(C) IMPLEMENTATION PENDING AP-  
8 PEAL.—Not later than 60 days after the filing  
9 of an appeal of an order under paragraph

1           (5)(B) directing the correction of a deficiency,  
2           the Court of Review shall determine, and enter  
3           a corresponding order regarding, whether all or  
4           any part of the correction order, as issued or  
5           modified, shall be implemented during the pend-  
6           ency of the appeal.

7           On page 19, line 13, strike "(C)" and insert "(D)".

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To include prohibitions on the international proliferation of weapons of mass destruction in the Foreign Intelligence Surveillance Act of 1978.

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. ROCKEFELLER (for himself and Mr. BOND)

Viz:

- 1 On page 70, strike line 1 and insert the following:
- 2 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**
- 3 (a) DEFINITIONS.—
- 4 (1) FOREIGN POWER.—Subsection (a)(4) of sec-
- 5 tion 101 of the Foreign Intelligence Surveillance Act
- 6 of 1978 (50 U.S.C. 1801(a)(4)) is amended by in-
- 7 serting “, the international proliferation of weapons

1 of mass destruction,” after “international ter-  
2 rorism”.

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

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

7 (B) in subparagraph (C), by striking “or”  
8 at the end; and

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

11 “(D) engages in the international prolifera-  
12 tion of weapons of mass destruction, or activi-  
13 ties in preparation therefor; or

14 “(E) engages in the international prolifera-  
15 tion of weapons of mass destruction, or activi-  
16 ties in preparation therefor, for or on behalf of  
17 a foreign power; or”.

18 (3) FOREIGN INTELLIGENCE INFORMATION.—  
19 Subsection (e)(1)(B) of such section 101 is amended  
20 by striking “sabotage or international terrorism”  
21 and inserting “sabotage, international terrorism, or  
22 the international proliferation of weapons of mass  
23 destruction”.

1           (4) WEAPON OF MASS DESTRUCTION.—Such  
2 section 101 is amended by inserting after subsection  
3 (o) the following:

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

5           “(1) any destructive device described in section  
6 921(a)(4)(A) of title 18, United States Code, that is  
7 intended or has the capability to cause death or seri-  
8 ous bodily injury to a significant number of people;

9           “(2) any weapon that is designed or intended to  
10 cause death or serious bodily injury through the re-  
11 lease, dissemination, or impact of toxic or poisonous  
12 chemicals or their precursors;

13           “(3) any weapon involving a biological agent,  
14 toxin, or vector (as such terms are defined in section  
15 178 of title 18, United States Code); or

16           “(4) any weapon that is designed to release ra-  
17 diation or radioactivity at a level dangerous to  
18 human life.”

19           (b) USE OF INFORMATION.—

20           (1) IN GENERAL.—Section 106(k)(1)(B) of the  
21 Foreign Intelligence Surveillance Act of 1978 (50  
22 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-  
23 otage or international terrorism” and inserting “sab-  
24 otage, international terrorism, or the international  
25 proliferation of weapons of mass destruction”.

1           (2)       PHYSICAL       SEARCHES.—Section  
2       305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))  
3       is amended by striking “sabotage or international  
4       terrorism” and inserting “sabotage, international  
5       terrorism, or the international proliferation of weap-  
6       ons of mass destruction”.

7       (c) TECHNICAL AND CONFORMING AMENDMENT.—  
8       Section 301(1) of the Foreign Intelligence Surveillance  
9       Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting  
10      “‘weapon of mass destruction’,” after “‘person’,”.

11      **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

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12           On page 84, line 12, strike “and 109” and insert  
13      “109, and 110”.

14           On page 87, line 12, strike “and 109” and insert  
15      “109, and 110”.

16           On page 87, line 21, strike “and 109” and insert  
17      “109, and 110”.

18           On page 88, line 10, strike “and 109” and insert  
19      “109, and 110”.



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d 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. ROCKEFELLER  
(for himself and Mr. BOND)

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

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

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Foreign Intelligence Surveillance Act of 1978 Amend-  
6 ments Act of 2008” or the “FISA Amendments Act of  
7 2008”.

8 (b) **TABLE OF CONTENTS.**—The table of contents for  
9 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

- Sec. 101. Additional procedures regarding certain persons outside the United States.
- Sec. 102. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.
- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 104. Applications for court orders.
- Sec. 105. Issuance of an order.
- Sec. 106. Use of information.
- Sec. 107. Amendments for physical searches.
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.
- Sec. 109. Foreign Intelligence Surveillance Court.
- Sec. 110. Weapons of mass destruction.
- Sec. 111. Technical and conforming amendments.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

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

TITLE III—OTHER PROVISIONS

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

1                                   **TITLE I—FOREIGN**  
2                                   **INTELLIGENCE SURVEILLANCE**  
3   **SEC. 101. ADDITIONAL PROCEDURES REGARDING 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 REGARDING CERTAIN**  
3 **PERSONS OUTSIDE THE**  
4 **UNITED STATES**

5 **“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC**  
6 **SURVEILLANCE.**

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

12 **“SEC. 702. DEFINITIONS.**

13 “(a) **IN GENERAL.**—The terms ‘agent of a foreign  
14 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-  
15 lance’, ‘foreign intelligence information’, ‘foreign power’,  
16 ‘minimization procedures’, ‘person’, ‘United States’, and  
17 ‘United States person’ shall have the meanings given such  
18 terms in section 101, except as specifically provided in this  
19 title.

20 **“(b) ADDITIONAL DEFINITIONS.—**

21 **“(1) CONGRESSIONAL INTELLIGENCE COMMIT-**  
22 **TEES.**—The term ‘congressional intelligence commit-  
23 tees’ means—

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

1           “(B) the Permanent Select Committee on  
2 Intelligence of the House of Representatives.

3           “(2) FOREIGN INTELLIGENCE SURVEILLANCE  
4 COURT; COURT.—The terms ‘Foreign Intelligence  
5 Surveillance Court’ and ‘Court’ mean the court es-  
6 tablished by section 103(a).

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

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

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

18           “(B) a provider of electronic communica-  
19 tion service, as that term is defined in section  
20 2510 of title 18, United States Code;

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

24           “(D) any other communication service pro-  
25 vider who has access to wire or electronic com-

1           communications either as such communications are  
2           transmitted or as such communications are  
3           stored; or

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

7           “(5) ELEMENT OF THE INTELLIGENCE COMMU-  
8           NITY.—The term ‘element of the intelligence com-  
9           munity’ means an element of the intelligence com-  
10          munity specified in or designated under section 3(4)  
11          of the National Security Act of 1947 (50 U.S.C.  
12          401a(4)).

13       **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**  
14                               **SONS OUTSIDE THE UNITED STATES OTHER**  
15                               **THAN UNITED STATES PERSONS.**

16       “(a) AUTHORIZATION.—Notwithstanding any other  
17       law, the Attorney General and the Director of National  
18       Intelligence may authorize jointly, for periods of up to 1  
19       year, the targeting of persons reasonably believed to be  
20       located outside the United States to acquire foreign intel-  
21       ligence information.

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

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

4           “(2) may not intentionally target a person rea-  
5 sonably believed to be located outside the United  
6 States if the purpose of such acquisition is to target  
7 a particular, known person reasonably believed to be  
8 in the United States, except in accordance with title  
9 I or title III;

10           “(3) may not intentionally target a United  
11 States person reasonably believed to be located out-  
12 side the United States, except in accordance with  
13 sections 704, 705, or 706;

14           “(4) shall not intentionally acquire any commu-  
15 nication as to which the sender and all intended re-  
16 cipients are known at the time of the acquisition to  
17 be located in the United States; and

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

21           “(c) CONDUCT OF ACQUISITION.—An acquisition au-  
22 thorized under subsection (a) may be conducted only in  
23 accordance with—

1           “(1) a certification made by the Attorney Gen-  
2           eral and the Director of National Intelligence pursu-  
3           ant to subsection (f); and

4           “(2) the targeting and minimization procedures  
5           required pursuant to subsections (d) and (e).

6           “(d) TARGETING PROCEDURES.—

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

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

21          “(e) MINIMIZATION PROCEDURES.—

22          “(1) REQUIREMENT TO ADOPT.—The Attorney  
23          General, in consultation with the Director of Na-  
24          tional Intelligence, shall adopt, consistent with the  
25          requirements of section 101(h) or section 301(4),

1 minimization procedures for acquisitions authorized  
2 under subsection (a).

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

6 “(f) CERTIFICATION.—

7 “(1) IN GENERAL.—

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

14 “(B) EXCEPTION.—If the Attorney Gen-  
15 eral and the Director of National Intelligence  
16 determine that immediate action by the Govern-  
17 ment is required and time does not permit the  
18 preparation of a certification under this sub-  
19 section prior to the initiation of an acquisition,  
20 the Attorney General and the Director of Na-  
21 tional Intelligence shall prepare such certifi-  
22 cation, including such determination, as soon as  
23 possible but in no event more than 168 hours  
24 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 acquisi-  
6 tion 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 be submitted in not more than 5 days  
11 for approval by, the Foreign Intelligence  
12 Surveillance Court pursuant to subsection  
13 (h);

14           “(ii) there are reasonable procedures  
15 in place for determining that the acquisi-  
16 tion authorized under subsection (a) does  
17 not result in the intentional acquisition of  
18 any communication as to which the sender  
19 and all intended recipients are known at  
20 the time of the acquisition to be located in  
21 the United States, and that such proce-  
22 dures have been approved by, or will be  
23 submitted in not more than 5 days for ap-  
24 proval by, the Foreign Intelligence Surveil-  
25 lance Court pursuant to subsection (h);

1           “(iii) the procedures referred to in  
2           clauses (i) and (ii) are consistent with the  
3           requirements of the fourth amendment to  
4           the Constitution of the United States and  
5           do not permit the intentional targeting of  
6           any person who is known at the time of ac-  
7           quisition to be located in the United States  
8           or the intentional acquisition of any com-  
9           munication as to which the sender and all  
10          intended recipients are known at the time  
11          of acquisition to be located in the United  
12          States;

13          “(iv) a significant purpose of the ac-  
14          quisition is to obtain foreign intelligence  
15          information;

16          “(v) the minimization procedures to  
17          be used with respect to such acquisition—

18                 “(I) meet the definition of mini-  
19                 mization procedures under section  
20                 101(h) or section 301(4); and

21                 “(II) have been approved by, or  
22                 will be submitted in not more than 5  
23                 days for approval by, the Foreign In-  
24                 telligence Surveillance Court pursuant  
25                 to subsection (h);

1           “(vi) the acquisition involves obtaining  
2           the foreign intelligence information from or  
3           with the assistance of an electronic com-  
4           munication service provider; and

5           “(vii) the acquisition does not con-  
6           stitute electronic surveillance, as limited by  
7           section 701; and

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

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

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

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

20          “(4) SUBMISSION TO THE COURT.—The Attor-  
21          ney General shall transmit a copy of a certification  
22          made under this subsection, and any supporting affi-  
23          davit, under seal to the Foreign Intelligence Surveil-  
24          lance Court as soon as possible, but in no event  
25          more than 5 days after such certification is made.

1 Such certification shall be maintained under security  
2 measures adopted by the Chief Justice of the United  
3 States and the Attorney General, in consultation  
4 with the Director of National Intelligence.

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

8 “(g) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-  
9 TIVES.—

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

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

23 “(B) maintain under security procedures  
24 approved by the Attorney General and the Di-  
25 rector of National Intelligence any records con-

1           cerning the acquisition or the aid furnished that  
2           such electronic communication service provider  
3           wishes to maintain.

4           “(2) COMPENSATION.—The Government shall  
5           compensate, at the prevailing rate, an electronic  
6           communication service provider for providing infor-  
7           mation, facilities, or assistance pursuant to para-  
8           graph (1).

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

15          “(4) CHALLENGING OF DIRECTIVES.—

16                 “(A) AUTHORITY TO CHALLENGE.—An  
17                 electronic communication service provider re-  
18                 ceiving a directive issued pursuant to paragraph  
19                 (1) may challenge the directive by filing a peti-  
20                 tion with the Foreign Intelligence Surveillance  
21                 Court, which shall have jurisdiction to review  
22                 such a petition.

23                 “(B) ASSIGNMENT.—The presiding judge  
24                 of the Court shall assign the petition filed  
25                 under subparagraph (A) to 1 of the judges serv-

1 ing in the pool established by section 103(e)(1)  
2 not later than 24 hours after the filing of the  
3 petition.

4 “(C) STANDARDS FOR REVIEW.—A judge  
5 considering a petition to modify or set aside a  
6 directive may grant such petition only if the  
7 judge finds that the directive does not meet the  
8 requirements of this section, or is otherwise un-  
9 lawful.

10 “(D) PROCEDURES FOR INITIAL RE-  
11 VIEW.—A judge shall conduct an initial review  
12 not later than 5 days after being assigned a pe-  
13 tition described in subparagraph (C). If the  
14 judge determines that the petition consists of  
15 claims, defenses, or other legal contentions that  
16 are not warranted by existing law or by a non-  
17 frivolous argument for extending, modifying, or  
18 reversing existing law or for establishing new  
19 law, the judge shall immediately deny the peti-  
20 tion and affirm the directive or any part of the  
21 directive that is the subject of the petition and  
22 order the recipient to comply with the directive  
23 or any part of it. Upon making such a deter-  
24 mination or promptly thereafter, the judge shall  
25 provide a written statement for the record of

1 the reasons for a determination under this sub-  
2 paragraph.

3 “(E) PROCEDURES FOR PLENARY RE-  
4 VIEW.—If a judge determines that a petition  
5 described in subparagraph (C) requires plenary  
6 review, the judge shall affirm, modify, or set  
7 aside the directive that is the subject of that pe-  
8 tition not later than 30 days after being as-  
9 signed the petition, unless the judge, by order  
10 for reasons stated, extends that time as nec-  
11 essary to comport with the due process clause  
12 of the fifth amendment to the Constitution of  
13 the United States. Unless the judge sets aside  
14 the directive, the judge shall immediately affirm  
15 or affirm with modifications the directive, and  
16 order the recipient to comply with the directive  
17 in its entirety or as modified. The judge shall  
18 provide a written statement for the records of  
19 the reasons for a determination under this sub-  
20 paragraph.

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

24 “(G) CONTEMPT OF COURT.—Failure to  
25 obey an order of the Court issued under this

1 paragraph may be punished by the Court as  
2 contempt of court.

3 “(5) ENFORCEMENT OF DIRECTIVES.—

4 “(A) ORDER TO COMPEL.—In the case of  
5 a failure to comply with a directive issued pur-  
6 suant to paragraph (1), the Attorney General  
7 may file a petition for an order to compel com-  
8 pliance with the directive with the Foreign In-  
9 telligence Surveillance Court, which shall have  
10 jurisdiction to review such a petition.

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

17 “(C) STANDARDS FOR REVIEW.—A judge  
18 considering a petition filed under subparagraph  
19 (A) shall issue an order requiring the electronic  
20 communication service provider to comply with  
21 the directive or any part of it, as issued or as  
22 modified, if the judge finds that the directive  
23 meets the requirements of this section, and is  
24 otherwise lawful.



1           “(D) PROCEDURES FOR REVIEW.—The  
2           judge shall render a determination not later  
3           than 30 days after being assigned a petition  
4           filed under subparagraph (A), unless the judge,  
5           by order for reasons stated, extends that time  
6           if necessary to comport with the due process  
7           clause of the fifth amendment to the Constitu-  
8           tion of the United States. The judge shall pro-  
9           vide a written statement for the record of the  
10          reasons for a determination under this para-  
11          graph.

12          “(E) CONTEMPT OF COURT.—Failure to  
13          obey an order of the Court issued under this  
14          paragraph may be punished by the Court as  
15          contempt of court.

16          “(F) PROCESS.—Any process under this  
17          paragraph may be served in any judicial district  
18          in which the electronic communication service  
19          provider may be found.

20          “(6) APPEAL.—

21          “(A) APPEAL TO THE COURT OF RE-  
22          VIEW.—The Government or an electronic com-  
23          munication service provider receiving a directive  
24          issued pursuant to paragraph (1) may file a pe-  
25          tition with the Foreign Intelligence Surveillance

1 Court of Review for review of the decision  
2 issued pursuant to paragraph (4) or (5). The  
3 Court of Review shall have jurisdiction to con-  
4 sider such a petition and shall provide a written  
5 statement for the record of the reasons for a  
6 decision under this paragraph.

7 “(B) CERTIORARI TO THE SUPREME  
8 COURT.—The Government or an electronic com-  
9 munication service provider receiving a directive  
10 issued pursuant to paragraph (1) may file a pe-  
11 tition for a writ of certiorari for review of the  
12 decision of the Court of Review issued under  
13 subparagraph (A). The record for such review  
14 shall be transmitted under seal to the Supreme  
15 Court of the United States, which shall have ju-  
16 risdiction to review such decision.

17 “(h) JUDICIAL REVIEW OF CERTIFICATIONS AND  
18 PROCEDURES.—

19 “(1) IN GENERAL.—

20 “(A) REVIEW BY THE FOREIGN INTEL-  
21 LIGENCE SURVEILLANCE COURT.—The Foreign  
22 Intelligence Surveillance Court shall have juris-  
23 diction to review any certification required by  
24 subsection (c) and the targeting and minimiza-

1           tion procedures adopted pursuant to subsections  
2           (d) and (e).

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

9           “(2) CERTIFICATIONS.—The Court shall review  
10          a certification provided under subsection (f) to deter-  
11          mine whether the certification contains all the re-  
12          quired elements.

13          “(3) TARGETING PROCEDURES.—The Court  
14          shall review the targeting procedures required by  
15          subsection (d) to assess whether the procedures are  
16          reasonably designed to ensure that the acquisition  
17          authorized under subsection (a) is limited to the tar-  
18          geting of persons reasonably believed to be located  
19          outside the United States and does not result in the  
20          intentional acquisition of any communication as to  
21          which the sender and all intended recipients are  
22          known at the time of the acquisition to be located  
23          in the United States.

24          “(4) MINIMIZATION PROCEDURES.—The Court  
25          shall review the minimization procedures required by

1 subsection (e) to assess whether such procedures  
2 meet the definition of minimization procedures  
3 under section 101(h) or section 301(4).

4 “(5) ORDERS.—

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

16 “(B) CORRECTION OF DEFICIENCIES.—If  
17 the Court finds that a certification required by  
18 subsection (f) does not contain all of the re-  
19 quired elements, or that the procedures re-  
20 quired by subsections (d) and (e) are not con-  
21 sistent with the requirements of those sub-  
22 sections or the fourth amendment to the Con-  
23 stitution of the United States, the Court shall  
24 issue an order directing the Government to, at

1 the Government's election and to the extent re-  
2 quired by the Court's order—

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

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

9 “(C) REQUIREMENT FOR WRITTEN STATE-  
10 MENT.—In support of its orders under this sub-  
11 section, the Court shall provide, simultaneously  
12 with the orders, for the record a written state-  
13 ment of its reasons.

14 “(6) APPEAL.—

15 “(A) APPEAL TO THE COURT OF RE-  
16 VIEW.—The Government may appeal any order  
17 under this section to the Foreign Intelligence  
18 Surveillance Court of Review, which shall have  
19 jurisdiction to review such order. For any deci-  
20 sion affirming, reversing, or modifying an order  
21 of the Foreign Intelligence Surveillance Court,  
22 the Court of Review shall provide for the record  
23 a written statement of its reasons.

24 “(B) CONTINUATION OF ACQUISITION  
25 PENDING REHEARING OR APPEAL.—Any acqui-

1           sitions affected by an order under paragraph  
2           (5)(B) may continue—

3                   “(i) during the pendency of any re-  
4                   hearing of the order by the Court en banc;  
5                   and

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

10                  “(C) **IMPLEMENTATION PENDING AP-**  
11                  **PEAL.**—Not later than 60 days after the filing  
12                  of an appeal of an order under paragraph  
13                  (5)(B) directing the correction of a deficiency,  
14                  the Court of Review shall determine, and enter  
15                  a corresponding order regarding, whether all or  
16                  any part of the correction order, as issued or  
17                  modified, shall be implemented during the pend-  
18                  ency of the appeal.

19                  “(D) **CERTIORARI TO THE SUPREME**  
20                  **COURT.**—The Government may file a petition  
21                  for a writ of certiorari for review of a decision  
22                  of the Court of Review issued under subpara-  
23                  graph (A). The record for such review shall be  
24                  transmitted under seal to the Supreme Court of

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

3           “(i) **EXPEDITED JUDICIAL PROCEEDINGS.**—Judicial  
4 proceedings under this section shall be conducted as expe-  
5 ditiously as possible.

6           “(j) **MAINTENANCE AND SECURITY OF RECORDS AND**  
7 **PROCEEDINGS.**—

8           “(1) **STANDARDS.**—A record of a proceeding  
9 under this section, including petitions filed, orders  
10 granted, and statements of reasons for decision,  
11 shall be maintained under security measures adopted  
12 by the Chief Justice of the United States, in con-  
13 sultation with the Attorney General and the Director  
14 of National Intelligence.

15           “(2) **FILING AND REVIEW.**—All petitions under  
16 this section shall be filed under seal. In any pro-  
17 ceedings under this section, the court shall, upon re-  
18 quest of the Government, review ex parte and in  
19 camera any Government submission, or portions of  
20 a submission, which may include classified informa-  
21 tion.

22           “(3) **RETENTION OF RECORDS.**—A directive  
23 made or an order granted under this section shall be  
24 retained for a period of not less than 10 years from

1 the date on which such directive or such order is  
2 made.

3 “(k) ASSESSMENTS AND REVIEWS.—

4 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-  
5 quently than once every 6 months, the Attorney  
6 General and Director of National Intelligence shall  
7 assess compliance with the targeting and minimiza-  
8 tion procedures required by subsections (e) and (f)  
9 and shall submit each such assessment to—

10 “(A) the Foreign Intelligence Surveillance  
11 Court; and

12 “(B) the congressional intelligence commit-  
13 tees.

14 “(2) AGENCY ASSESSMENT.—The Inspectors  
15 General of the Department of Justice and of any  
16 element of the intelligence community authorized to  
17 acquire foreign intelligence information under sub-  
18 section (a) with respect to their department, agency,  
19 or element—

20 “(A) are authorized to review the compli-  
21 ance with the targeting and minimization proce-  
22 dures required by subsections (d) and (e);

23 “(B) with respect to acquisitions author-  
24 ized under subsection (a), shall review the num-  
25 ber of disseminated intelligence reports con-



1           taining a reference to a United States person  
2           identity and the number of United States per-  
3           son identities subsequently disseminated by the  
4           element concerned in response to requests for  
5           identities that were not referred to by name or  
6           title in the original reporting;

7           “(C) with respect to acquisitions author-  
8           ized under subsection (a), shall review the num-  
9           ber of targets that were later determined to be  
10          located in the United States and, to the extent  
11          possible; whether their communications were re-  
12          viewed; and

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

14                  “(i) the Attorney General;

15                  “(ii) the Director of National Intel-  
16          ligence; and

17                  “(iii) the congressional intelligence  
18          committees.

19          “(3) ANNUAL REVIEW.—

20                  “(A) REQUIREMENT TO CONDUCT.—The  
21          head of an element of the intelligence commu-  
22          nity conducting an acquisition authorized under  
23          subsection (a) shall direct the element to con-  
24          duct an annual review to determine whether  
25          there is reason to believe that foreign intel-

1           ligence information has been or will be obtained  
2           from the acquisition. The annual review shall  
3           provide, with respect to such acquisitions au-  
4           thorized under subsection (a)—

5                   “(i) an accounting of the number of  
6                   disseminated intelligence reports con-  
7                   taining a reference to a United States per-  
8                   son identity;

9                   “(ii) an accounting of the number of  
10                   United States person identities subse-  
11                   quently disseminated by that element in re-  
12                   sponse to requests for identities that were  
13                   not referred to by name or title in the  
14                   original reporting;

15                   “(iii) the number of targets that were  
16                   later determined to be located in the  
17                   United States and, to the extent possible,  
18                   whether their communications were re-  
19                   viewed; and

20                   “(iv) a description of any procedures  
21                   developed by the head of an element of the  
22                   intelligence community and approved by  
23                   the Director of National Intelligence to as-  
24                   sess, in a manner consistent with national  
25                   security, operational requirements and the

1 privacy interests of United States persons,  
2 the extent to which the acquisitions au-  
3 thorized under subsection (a) acquire the  
4 communications of United States persons,  
5 as well as the results of any such assess-  
6 ment.

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

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

19 “(i) the Foreign Intelligence Surveil-  
20 lance Court;

21 “(ii) the Attorney General;

22 “(iii) the Director of National Intel-  
23 ligence; and

24 “(iv) the congressional intelligence  
25 committees.

1 "SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED  
2 STATES OF UNITED STATES PERSONS OUT-  
3 SIDE THE UNITED STATES.

4 "(a) JURISDICTION OF THE FOREIGN INTELLIGENCE  
5 SURVEILLANCE COURT.—

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

17 "(2) LIMITATION.—In the event that a United  
18 States person targeted under this subsection is rea-  
19 sonably believed to be located in the United States  
20 during the pendency of an order issued pursuant to  
21 subsection (c), such acquisition shall cease until au-  
22 thority, other than under this section, is obtained  
23 pursuant to this Act or the targeted United States  
24 person is again reasonably believed to be located out-  
25 side the United States during the pendency of an  
26 order issued pursuant to subsection (c).

1       “(b) APPLICATION.—

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

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

13               “(B) the identity, if known, or a descrip-  
14       tion of the United States person who is the tar-  
15       get of the acquisition;

16               “(C) a statement of the facts and cir-  
17       cumstances relied upon to justify the appli-  
18       cant’s belief that the United States person who  
19       is the target of the acquisition is—

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

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

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

4           “(E) a description of the nature of the in-  
5           formation sought and the type of communica-  
6           tions or activities to be subjected to acquisition;

7           “(F) a certification made by the Attorney  
8           General or an official specified in section  
9           104(a)(6) that—

10           “(i) the certifying official deems the  
11           information sought to be foreign intel-  
12           ligence information;

13           “(ii) a significant purpose of the ac-  
14           quisition is to obtain foreign intelligence  
15           information;

16           “(iii) such information cannot reason-  
17           ably be obtained by normal investigative  
18           techniques;

19           “(iv) designates the type of foreign in-  
20           telligence information being sought accord-  
21           ing to the categories described in section  
22           101(e); and

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

1                   “(I) the information sought is  
2                   the type of foreign intelligence infor-  
3                   mation designated; and

4                   “(II) such information cannot  
5                   reasonably be obtained by normal in-  
6                   vestigative techniques;

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

11                  “(H) the identity of any electronic commu-  
12                  nication service provider necessary to effect the  
13                  acquisition, provided, however, that the applica-  
14                  tion is not required to identify the specific fa-  
15                  cilities, places, premises, or property at which  
16                  the acquisition authorized under this section  
17                  will be directed or conducted;

18                  “(I) a statement of the facts concerning  
19                  any previous applications that have been made  
20                  to any judge of the Foreign Intelligence Surveil-  
21                  lance Court involving the United States person  
22                  specified in the application and the action taken  
23                  on each previous application; and

24                  “(J) a statement of the period of time for  
25                  which the acquisition is required to be main-





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

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

7                   “(D) the application which has been filed  
8                   contains all statements and certifications re-  
9                   quired by subsection (b) and the certification or  
10                  certifications are not clearly erroneous on the  
11                  basis of the statement made under subsection  
12                  (b)(1)(F)(v) and any other information fur-  
13                  nished under subsection (b)(3).

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

1           “(3) REVIEW.—

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

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

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

1           “(D) REVIEW OF CERTIFICATION.—If the  
2           judge determines that an application required  
3           by subsection (2) does not contain all of the re-  
4           quired elements, or that the certification or cer-  
5           tifications are clearly erroneous on the basis of  
6           the statement made under subsection  
7           (b)(1)(F)(v) and any other information fur-  
8           nished under subsection (b)(3), the judge shall  
9           enter an order so stating and provide a written  
10          statement for the record of the reasons for such  
11          determination. The Government may appeal an  
12          order under this clause pursuant to subsection  
13          (f).

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

16                 “(A) the identity, if known, or a descrip-  
17                 tion of the United States person who is the tar-  
18                 get of the acquisition identified or described in  
19                 the application pursuant to subsection  
20                 (b)(1)(B);

21                 “(B) if provided in the application pursu-  
22                 ant to subsection (b)(1)(H), the nature and lo-  
23                 cation of each of the facilities or places at  
24                 which the acquisition will be directed;

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

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

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

9           “(5) DIRECTIONS.—An order approving acqui-  
10          tions under this subsection shall direct—

11           “(A) that the minimization procedures be  
12           followed;

13           “(B) an electronic communication service  
14           provider to provide to the Government forthwith  
15           all information, facilities, or assistance nec-  
16           essary to accomplish the acquisition authorized  
17           under this subsection in a manner that will pro-  
18           tect the secrecy of the acquisition and produce  
19           a minimum of interference with the services  
20           that such electronic communication service pro-  
21           vider is providing to the target;

22           “(C) an electronic communication service  
23           provider to maintain under security procedures  
24           approved by the Attorney General any records  
25           concerning the acquisition or the aid furnished

1           that such electronic communication service pro-  
2           vider wishes to maintain; and

3           “(D) that the Government compensate, at  
4           the prevailing rate, such electronic communica-  
5           tion service provider for providing such infor-  
6           mation, facilities, or assistance.

7           “(6) DURATION.—An order approved under this  
8           paragraph shall be effective for a period not to ex-  
9           ceed 90 days and such order may be renewed for ad-  
10          ditional 90-day periods upon submission of renewal  
11          applications meeting the requirements of subsection  
12          (b).

13          “(7) COMPLIANCE.—At or prior to the end of  
14          the period of time for which an acquisition is ap-  
15          proved by an order or extension under this section,  
16          the judge may assess compliance with the minimiza-  
17          tion procedures by reviewing the circumstances  
18          under which information concerning United States  
19          persons was acquired, retained, or disseminated.

20          “(d) EMERGENCY AUTHORIZATION.—

21          “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-  
22          TION.—Notwithstanding any other provision of this  
23          Act, if the Attorney General reasonably determines  
24          that—

1           “(A) an emergency situation exists with re-  
2           spect to the acquisition of foreign intelligence  
3           information for which an order may be obtained  
4           under subsection (c) before an order author-  
5           izing such acquisition can with due diligence be  
6           obtained; and

7           “(B) the factual basis for issuance of an  
8           order under this subsection to approve such ac-  
9           quisition exists,

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

21          “(2) MINIMIZATION PROCEDURES.—If the At-  
22          torney General authorizes such emergency acquisi-  
23          tion, the Attorney General shall require that the  
24          minimization procedures required by this subsection  
25          for the issuance of a judicial order be followed.

1           “(3) TERMINATION OF EMERGENCY AUTHOR-  
2           IZATION.—In the absence of a judicial order approv-  
3           ing such acquisition, the acquisition shall terminate  
4           when the information sought is obtained, when the  
5           application for the order is denied, or after the expi-  
6           ration of 168 hours from the time of authorization  
7           by the Attorney General, whichever is earliest.

8           “(4) USE OF INFORMATION.—In the event that  
9           such application for approval is denied, or in any  
10          other case where the acquisition is terminated and  
11          no order is issued approving the acquisition, no in-  
12          formation obtained or evidence derived from such ac-  
13          quisition, except under circumstances in which the  
14          target of the acquisition is determined not to be a  
15          United States person during the pendency of the  
16          168-hour emergency acquisition period, shall be re-  
17          ceived in evidence or otherwise disclosed in any trial,  
18          hearing, or other proceeding in or before any court,  
19          grand jury, department, office, agency, regulatory  
20          body, legislative committee, or other authority of the  
21          United States, a State, or political subdivision there-  
22          of, and no information concerning any United States  
23          person acquired from such acquisition shall subse-  
24          quently be used or disclosed in any other manner by  
25          Federal officers or employees without the consent of

1       such person, except with the approval of the Attor-  
2       ney General if the information indicates a threat of  
3       death or serious bodily harm to any person.

4       “(e) **RELEASE FROM LIABILITY.**—Notwithstanding  
5 any other law, no cause of action shall lie in any court  
6 against any electronic communication service provider for  
7 providing any information, facilities, or assistance in ac-  
8 cordance with an order or request for emergency assist-  
9 ance issued pursuant to subsections (c) or (d).

10       “(f) **APPEAL.**—

11               “(1) **APPEAL TO THE FOREIGN INTELLIGENCE**  
12 **SURVEILLANCE COURT OF REVIEW.**—The Govern-  
13 ment may file an appeal with the Foreign Intel-  
14 ligence Surveillance Court of Review for review of an  
15 order issued pursuant to subsection (c). The Court  
16 of Review shall have jurisdiction to consider such ap-  
17 peal and shall provide a written statement for the  
18 record of the reasons for a decision under this para-  
19 graph.

20               “(2) **CERTIORARI TO THE SUPREME COURT.**—  
21 The Government may file a petition for a writ of  
22 certiorari for review of the decision of the Court of  
23 Review issued under paragraph (1). The record for  
24 such review shall be transmitted under seal to the



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

3 **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**  
4 **STATES PERSONS OUTSIDE THE UNITED**  
5 **STATES.**

6 **“(a) JURISDICTION AND SCOPE.—**

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

10 **“(2) SCOPE.—**No element of the intelligence  
11 community may intentionally target, for the purpose  
12 of acquiring foreign intelligence information, a  
13 United States person reasonably believed to be lo-  
14 cated outside the United States under circumstances  
15 in which the targeted United States person has a  
16 reasonable expectation of privacy and a warrant  
17 would be required if the acquisition were conducted  
18 inside the United States for law enforcement pur-  
19 poses, unless a judge of the Foreign Intelligence  
20 Surveillance Court has entered an order or the At-  
21 torney General has authorized an emergency acquisi-  
22 tion pursuant to subsections (c) or (d) or any other  
23 provision of this Act.

24 **“(3) LIMITATIONS.—**

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

12          “(B) APPLICABILITY.—If the acquisition is  
13          to be conducted inside the United States and  
14          could be authorized under section 704, the pro-  
15          cedures of section 704 shall apply, unless an  
16          order or emergency acquisition authority has  
17          been obtained under a provision of this Act  
18          other than under this section.

19          “(b) APPLICATION.—Each application for an order  
20          under this section shall be made by a Federal officer in  
21          writing upon oath or affirmation to a judge having juris-  
22          diction under subsection (a)(1). Each application shall re-  
23          quire the approval of the Attorney General based upon the  
24          Attorney General’s finding that it satisfies the criteria and

1 requirements of such application as set forth in this sec-  
2 tion and shall include—

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

6           “(2) a statement of the facts and circumstances  
7 relied upon to justify the applicant’s belief that the  
8 United States person who is the target of the acqui-  
9 sition is—

10                   “(A) a person reasonably believed to be lo-  
11 cated outside the United States; and

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

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

18           “(4) a certification made by the Attorney Gen-  
19 eral, an official specified in section 104(a)(6), or the  
20 head of an element of the intelligence community  
21 that—

22                   “(A) the certifying official deems the infor-  
23 mation sought to be foreign intelligence infor-  
24 mation; and



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

4                   “(B) the proposed minimization proce-  
5                   dures, with respect to their dissemination provi-  
6                   sions, meet the definition of minimization pro-  
7                   cedures under section 101(h) or section 301(4);  
8                   and

9                   “(C) the application which has been filed  
10                  contains all statements and certifications re-  
11                  quired by subsection (b) and the certification  
12                  provided under subsection (b)(4) is not clearly  
13                  erroneous on the basis of the information fur-  
14                  nished under subsection (b),

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

16                  “(2) PROBABLE CAUSE.—In determining  
17                  whether or not probable cause exists for purposes of  
18                  an order under paragraph (1)(A), a judge having ju-  
19                  risdiction under subsection (a)(1) may consider past  
20                  activities of the target, as well as facts and cir-  
21                  cumstances relating to current or future activities of  
22                  the target. However, no United States person may  
23                  be considered a foreign power, agent of a foreign  
24                  power, or officer or employee of a foreign power  
25                  solely upon the basis of activities protected by the

1 first amendment to the Constitution of the United  
2 States.

3 “(3) REVIEW.—

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

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

20 “(C) REVIEW OF MINIMIZATION PROCE-  
21 DURES.—If the judge determines that the mini-  
22 mization procedures applicable to dissemination  
23 of information obtained through an acquisition  
24 under this subsection do not meet the definition  
25 of minimization procedures under section

1 101(h) or section 301(4), the judge shall enter  
2 an order so stating and provide a written state-  
3 ment for the record of the reasons for such de-  
4 termination. The Government may appeal an  
5 order under this clause pursuant to subsection  
6 (e).

7 “(D) SCOPE OF REVIEW OF CERTIFI-  
8 CATION.—If the judge determines that the cer-  
9 tification provided under subsection (b)(4) is  
10 clearly erroneous on the basis of the informa-  
11 tion furnished under subsection (b), the judge  
12 shall enter an order so stating and provide a  
13 written statement for the record of the reasons  
14 for such determination. The Government may  
15 appeal an order under this clause pursuant to  
16 subsection (e).

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

22 “(5) COMPLIANCE.—At or prior to the end of  
23 the period of time for which an order or extension  
24 is granted under this section, the judge may assess  
25 compliance with the minimization procedures by re-

1 viewing the circumstances under which information  
2 concerning United States persons was disseminated,  
3 provided that the judge may not inquire into the cir-  
4 cumstances relating to the conduct of the acqui-  
5 sition.

6 “(d) EMERGENCY AUTHORIZATION.—

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

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

17 “(B) the factual basis for issuance of an  
18 order under this section exists,  
19 the Attorney General may authorize the emergency  
20 acquisition if a judge having jurisdiction under sub-  
21 section (a)(1) is informed by the Attorney General  
22 or a designee of the Attorney General at the time of  
23 such authorization that the decision has been made  
24 to conduct such acquisition and if an application in  
25 accordance with this subsection is made to a judge



1 of the Foreign Intelligence Surveillance Court as  
2 soon as practicable, but not more than 168 hours  
3 after the Attorney General authorizes such acqui-  
4 sition.

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

10 “(3) TERMINATION OF EMERGENCY AUTHOR-  
11 IZATION.—In the absence of an order under sub-  
12 section (c), the acquisition shall terminate when the  
13 information sought is obtained, if the application for  
14 the order is denied, or after the expiration of 168  
15 hours from the time of authorization by the Attor-  
16 ney General, whichever is earliest.

17 “(4) USE OF INFORMATION.—In the event that  
18 such application is denied, or in any other case  
19 where the acquisition is terminated and no order is  
20 issued approving the acquisition, no information ob-  
21 tained or evidence derived from such acquisition, ex-  
22 cept under circumstances in which the target of the  
23 acquisition is determined not to be a United States  
24 person during the pendency of the 168-hour emer-  
25 gency acquisition period, shall be received in evi-

1       dence or otherwise disclosed in any trial, hearing, or  
2       other proceeding in or before any court, grand jury,  
3       department, office, agency, regulatory body, legisla-  
4       tive committee, or other authority of the United  
5       States, a State, or political subdivision thereof, and  
6       no information concerning any United States person  
7       acquired from such acquisition shall subsequently be  
8       used or disclosed in any other manner by Federal of-  
9       ficers or employees without the consent of such per-  
10      son, except with the approval of the Attorney Gen-  
11      eral if the information indicates a threat of death or  
12      serious bodily harm to any person.

13      “(e) APPEAL.—

14           “(1) APPEAL TO THE COURT OF REVIEW.—The  
15      Government may file an appeal with the Foreign In-  
16      telligence Surveillance Court of Review for review of  
17      an order issued pursuant to subsection (c). The  
18      Court of Review shall have jurisdiction to consider  
19      such appeal and shall provide a written statement  
20      for the record of the reasons for a decision under  
21      this paragraph.

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

23      The Government may file a petition for a writ of  
24      certiorari for review of the decision of the Court of  
25      Review issued under paragraph (1). The record for

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

4 **"SEC. 706. JOINT APPLICATIONS AND CONCURRENT AU-**  
5 **THORIZATIONS.**

6 "(a) JOINT APPLICATIONS AND ORDERS.—If an ac-  
7 quisition targeting a United States person under section  
8 704 or section 705 is proposed to be conducted both inside  
9 and outside the United States, a judge having jurisdiction  
10 under section 704(a)(1) or section 705(a)(1) may issue si-  
11 multaneously, upon the request of the Government in a  
12 joint application complying with the requirements of sec-  
13 tion 704(b) or section 705(b), orders under section 704(b)  
14 or section 705(b), as applicable.

15 "(b) CONCURRENT AUTHORIZATION.—If an order  
16 authorizing electronic surveillance or physical search has  
17 been obtained under section 105 or section 304 and that  
18 order is still in effect, the Attorney General may authorize,  
19 without an order under section 704 or section 705, an ac-  
20 quisition of foreign intelligence information targeting that  
21 United States person while such person is reasonably be-  
22 lieved to be located outside the United States.

1 "SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE

2 VII.

3 "(a) INFORMATION ACQUIRED UNDER SECTION  
4 703.—Information acquired from an acquisition con-  
5 ducted under section 703 shall be deemed to be informa-  
6 tion acquired from an electronic surveillance pursuant to  
7 title I for purposes of section 106, except for the purposes  
8 of subsection (j) of such section.

9 "(b) INFORMATION ACQUIRED UNDER SECTION  
10 704.—Information acquired from an acquisition con-  
11 ducted under section 704 shall be deemed to be informa-  
12 tion acquired from an electronic surveillance pursuant to  
13 title I for purposes of section 106.

14 "SEC. 708. CONGRESSIONAL OVERSIGHT.

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

22 "(b) CONTENT.—Each report made under subpara-  
23 graph (a) shall include—

24 "(1) with respect to section 703—

25 "(A) any certifications made under sub-  
26 section 703(f) during the reporting period;

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

3           “(C) a description of the judicial review  
4           during the reporting period of any such certifi-  
5           cations and targeting and minimization proce-  
6           dures utilized with respect to such acquisition,  
7           including a copy of any order or pleading in  
8           connection with such review that contains a sig-  
9           nificant legal interpretation of the provisions of  
10          this section;

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

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

18          “(F) a description of any incidents of non-  
19          compliance with a directive issued by the Attor-  
20          ney General and the Director of National Intel-  
21          ligence under subsection 703(g), including—

22                 “(i) incidents of noncompliance by an  
23                 element of the intelligence community with  
24                 procedures adopted pursuant to sub-  
25                 sections (d) and (e) of section 703; and

1                   “(ii) incidents of noncompliance by a  
2                   specified person to whom the Attorney  
3                   General and Director of National Intel-  
4                   ligence issued a directive under subsection  
5                   703(g); and

6                   “(G) any procedures implementing this  
7                   section;

8                   “(2) with respect to section 704—

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

11                  “(B) the total number of such orders ei-  
12                  ther granted, modified, or denied; and

13                  “(C) the total number of emergency acqui-  
14                  sitions authorized by the Attorney General  
15                  under section 704(d) and the total number of  
16                  subsequent orders approving or denying such  
17                  acquisitions; and

18                  “(3) with respect to section 705—

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

21                  “(B) the total number of such orders ei-  
22                  ther granted, modified, or denied; and

23                  “(C) the total number of emergency acqui-  
24                  sitions authorized by the Attorney General  
25                  under subsection 705(d) and the total number

1 of subsequent orders approving or denying such  
2 applications.”.

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

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

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

8 and

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

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

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

“Sec. 702. Definitions.

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

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

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

“Sec. 706. Joint applications and concurrent authorizations.

“Sec. 707. Use of information acquired under title VII.

“Sec. 708. Congressional oversight.”.

10 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) TITLE 18, UNITED STATES CODE.—

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

18 (B) SECTION 2511.—Section  
19 2511(2)(a)(ii)(A) of title 18, United States

1 Code, is amended by inserting “or a court order  
2 pursuant to section 705 of the Foreign Intel-  
3 ligence Surveillance Act of 1978” after “assist-  
4 ance”.

5 (2) FOREIGN INTELLIGENCE SURVEILLANCE  
6 ACT OF 1978.—

7 (A) SECTION 109.—Section 109 of the For-  
8 eign Intelligence Surveillance Act of 1978 (50  
9 U.S.C. 1809) is amended by adding at the end  
10 the following:

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

15 (B) SECTION 110.—Section 110 of the For-  
16 eign Intelligence Surveillance Act of 1978 (50  
17 U.S.C. 1810) is amended by—

18 (i) adding an “(a)” before “CIVIL AC-  
19 TION”,

20 (ii) redesignating subsections (a)  
21 through (c) as paragraphs (1) through (3),  
22 respectively; and

23 (iii) adding at the end the following:

24 “(b) DEFINITION.—For the purpose of this section,  
25 the term ‘electronic surveillance’ means electronic surveil-



1 lance as defined in section 101(f) of this Act regardless  
2 of the limitation of section 701 of this Act.”

3 (C) SECTION 601.—Section 601(a)(1) of  
4 the Foreign Intelligence Surveillance Act of  
5 1978 (50 U.S.C. 1871(a)(1)) is amended by  
6 striking subparagraphs (C) and (D) and insert-  
7 ing the following:

8 “(C) pen registers under section 402;

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

10 “(E) acquisitions under section 704; and

11 “(F) acquisitions under section 705;”

12 (d) TERMINATION OF AUTHORITY.—

13 (1) IN GENERAL.—Except as provided in para-  
14 graph (2), the amendments made by subsections  
15 (a)(2), (b), and (c) shall cease to have effect on De-  
16 cember 31, 2013.

17 (2) CONTINUING APPLICABILITY.—Section  
18 703(g)(3) of the Foreign Intelligence Surveillance  
19 Act of 1978 (as amended by subsection (a)) shall re-  
20 main in effect with respect to any directive issued  
21 pursuant to section 703(g) of that Act (as so  
22 amended) during the period such directive was in ef-  
23 fect. Section 704(e) of the Foreign Intelligence Sur-  
24 veillance Act of 1978 (as amended by subsection (a))  
25 shall remain in effect with respect to an order or re-

1 quest for emergency assistance under that section.  
2 The use of information acquired by an acquisition  
3 conducted under section 703 of that Act (as so  
4 amended) shall continue to be governed by the provi-  
5 sions of section 707 of that Act (as so amended).

6 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**  
7 **ELECTRONIC SURVEILLANCE AND INTERCEP-**  
8 **TION OF DOMESTIC COMMUNICATIONS MAY**  
9 **BE CONDUCTED.**

10 (a) **STATEMENT OF EXCLUSIVE MEANS.**—Title I of  
11 the Foreign Intelligence Surveillance Act of 1978 (50  
12 U.S.C. 1801 et seq.) is amended by adding at the end  
13 the following new section:

14 **“STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-**  
15 **TRONIC SURVEILLANCE AND INTERCEPTION OF DO-**  
16 **MESTIC COMMUNICATIONS MAY BE CONDUCTED**

17 **“SEC. 112. The procedures of chapters 119, 121, and**  
18 **206 of title 18, United States Code, and this Act shall**  
19 **be the exclusive means by which electronic surveillance (as**  
20 **defined in section 101(f), regardless of the limitation of**  
21 **section 701) and the interception of domestic wire, oral,**  
22 **or electronic communications may be conducted.”.**

23 (b) **TABLE OF CONTENTS.**—The table of contents in  
24 the first section of the Foreign Intelligence Surveillance  
25 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by add-  
26 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.”

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

6 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**  
7 **ORDERS UNDER THE FOREIGN INTEL-**  
8 **LIGENCE SURVEILLANCE ACT OF 1978.**

9 (a) INCLUSION OF CERTAIN ORDERS IN SEMIANNUAL  
10 REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of  
11 section 601 of the Foreign Intelligence Surveillance Act  
12 of 1978 (50 U.S.C. 1871) is amended by striking “(not  
13 including orders)” and inserting “, orders,”.

14 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN  
15 OTHER ORDERS.—Such section 601, as amended by sub-  
16 section (a), is further amended by adding at the end the  
17 following:

18 “(c) The Attorney General shall submit to the com-  
19 mittees of Congress referred to in subsection (a) a copy  
20 of any decision, order, or opinion issued by the Foreign  
21 Intelligence Surveillance Court or the Foreign Intelligence  
22 Surveillance Court of Review that includes significant con-  
23 struction or interpretation of any provision of this Act not

1 later than 45 days after such decision, order, or opinion  
2 is issued.”

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

6 “(d) DEFINITIONS.—In this section:

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

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

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

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

18 (1) in subsection (a)—

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

20 (B) by redesignating paragraphs (3)  
21 through (10) as paragraphs (2) through (9), re-  
22 spectively;

23 (C) in paragraph (5), as redesignated by  
24 subparagraph (B) of this paragraph, by striking  
25 “detailed”;

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

4 (i) by striking “Affairs or” and insert-  
5 ing “Affairs,”; and

6 (ii) by striking “Senate—” and insert-  
7 ing “Senate, or the Deputy Director of the  
8 Federal Bureau of Investigation, if des-  
9 ignated by the President as a certifying of-  
10 ficial—”;

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

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

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

21 (2) by striking subsection (b);

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

24 (4) in paragraph (1)(A) of subsection (d), as re-  
25 designated by paragraph (3) of this subsection, by

1 striking "or the Director of National Intelligence"  
2 and inserting "the Director of National Intelligence,  
3 or the Director of the Central Intelligence Agency".

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

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

7 (1) in subsection (a)—

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

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

12 (2) in subsection (b), by striking "(a)(3)" and  
13 inserting "(a)(2)";

14 (3) in subsection (c)(1)—

15 (A) in subparagraph (D), by adding "and"  
16 at the end;

17 (B) in subparagraph (E), by striking ";  
18 and" and inserting a period; and

19 (C) by striking subparagraph (F);

20 (4) by striking subsection (d);

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

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

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

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

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

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

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

23       “(2) If the Attorney General authorizes the emer-  
24 gency employment of electronic surveillance under para-  
25 graph (1), the Attorney General shall require that the

1 minimization procedures required by this title for the  
2 issuance of a judicial order be followed.

3       “(3) In the absence of a judicial order approving such  
4 electronic surveillance, the surveillance shall terminate  
5 when the information sought is obtained, when the appli-  
6 cation for the order is denied, or after the expiration of  
7 168 hours from the time of authorization by the Attorney  
8 General, whichever is earliest.

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

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



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

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

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

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

14 **SEC. 106. USE OF INFORMATION.**

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

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

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

23 (1) in subsection (a)—

24 (A) by striking paragraph (2);

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

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

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

10 (E) in paragraph (6), as redesignated by  
11 subparagraph (B) of this paragraph, in the  
12 matter preceding subparagraph (A)—

13 (i) by striking “Affairs or” and insert-  
14 ing “Affairs,”; and

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

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

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

4 (1) in subsection (a)—

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

6 (B) by redesignating paragraphs (2)  
7 through (5) as paragraphs (1) through (4), re-  
8 spectively; and

9 (2) by amending subsection (e) to read as fol-  
10 lows:

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

15 “(A) determines that an emergency situation  
16 exists with respect to the employment of a physical  
17 search to obtain foreign intelligence information be-  
18 fore an order authorizing such physical search can  
19 with due diligence be obtained;

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

23 “(C) informs, either personally or through a  
24 designee, a judge of the Foreign Intelligence Surveil-  
25 lance Court at the time of such authorization that

1 the decision has been made to employ an emergency  
2 physical search; and

3 “(D) makes an application in accordance with  
4 this title to a judge of the Foreign Intelligence Sur-  
5 veillance Court as soon as practicable, but not more  
6 than 168 hours after the Attorney General author-  
7 izes such physical search.

8 “(2) If the Attorney General authorizes the emer-  
9 gency employment of a physical search under paragraph  
10 (1), the Attorney General shall require that the minimiza-  
11 tion procedures required by this title for the issuance of  
12 a judicial order be followed.

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

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

21 “(5)(A) In the event that such application for ap-  
22 proval is denied, or in any other case where the physical  
23 search is terminated and no order is issued approving the  
24 physical search, no information obtained or evidence de-  
25 rived from such physical search shall be received in evi-

1 dence or otherwise disclosed in any trial, hearing, or other  
2 proceeding in or before any court, grand jury, department,  
3 office, agency, regulatory body, legislative committee, or  
4 other authority of the United States, a State, or political  
5 subdivision thereof, and no information concerning any  
6 United States person acquired from such physical search  
7 shall subsequently be used or disclosed in any other man-  
8 ner by Federal officers or employees without the consent  
9 of such person, except with the approval of the Attorney  
10 General if the information indicates a threat of death or  
11 serious bodily harm to any person.

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

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

17 (1) in section 304(a)(4), as redesignated by  
18 subsection (b) of this section, by striking  
19 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

20 (2) in section 305(k)(2), by striking  
21 “303(a)(7)” and inserting “303(a)(6)”.

22 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**

23 **AND TRAP AND TRACE DEVICES.**

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

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

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

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

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

11           (b) **EN BANC AUTHORITY.**—

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

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

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

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

1           “(i) en banc consideration is necessary to se-  
2           cure or maintain uniformity of the court’s decisions;  
3           or

4           “(ii) the proceeding involves a question of ex-  
5           ceptional importance.

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

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

14           (2) CONFORMING AMENDMENTS.—The Foreign  
15 Intelligence Surveillance Act of 1978 is further  
16 amended—

17           (A) in subsection (a) of section 103, as  
18 amended by this subsection, by inserting “(ex-  
19 cept when sitting en banc under paragraph  
20 (2))” after “no judge designated under this  
21 subsection”; and

22           (B) in section 302(e) (50 U.S.C. 1822(e)),  
23 by inserting “(except when sitting en banc)”  
24 after “except that no judge”.

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

4 (1) by redesignating subsection (f) as sub-  
5 section (g); and

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

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

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

24 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

25 (a) DEFINITIONS.—



1 (1) FOREIGN POWER.—Subsection (a)(4) of sec-  
2 tion 101 of the Foreign Intelligence Surveillance Act  
3 of 1978 (50 U.S.C. 1801(a)(4)) is amended by in-  
4 serting “, the international proliferation of weapons  
5 of mass destruction,” after “international ter-  
6 rorism”.

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

9 (A) in subparagraph (B), by striking “or”  
10 at the end

11 (B) in subparagraph (C), by striking “or”  
12 at the end; and

13 (C) by adding at the end the following new  
14 subparagraphs:

15 “(D) engages in the international prolifera-  
16 tion of weapons of mass destruction, or activi-  
17 ties in preparation therefor; or

18 “(E) engages in the international prolifera-  
19 tion of weapons of mass destruction, or activi-  
20 ties in preparation therefor, for or on behalf of  
21 a foreign power; or”.

22 (3) FOREIGN INTELLIGENCE INFORMATION.—  
23 Subsection (e)(1)(B) of such section 101 is amended  
24 by striking “sabotage or international terrorism”  
25 and inserting “sabotage, international terrorism, or

1 the international proliferation of weapons of mass  
2 destruction”.

3 (4) WEAPON OF MASS DESTRUCTION.—Such  
4 section 101 is amended by inserting after subsection  
5 (o) the following:

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

7 “(1) any destructive device described in section  
8 921(a)(4)(A) of title 18, United States Code, that is  
9 intended or has the capability to cause death or seri-  
10 ous bodily injury to a significant number of people;

11 “(2) any weapon that is designed or intended to  
12 cause death or serious bodily injury through the re-  
13 lease, dissemination, or impact of toxic or poisonous  
14 chemicals or their precursors;

15 “(3) any weapon involving a biological agent,  
16 toxin, or vector (as such terms are defined in section  
17 178 of title 18, United States Code); or

18 “(4) any weapon that is designed to release ra-  
19 diation or radioactivity at a level dangerous to  
20 human life.”.

21 (b) USE OF INFORMATION.—

22 (1) IN GENERAL.—Section 106(k)(1)(B) of the  
23 Foreign Intelligence Surveillance Act of 1978 (50  
24 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-  
25 otage or international terrorism” and inserting “sab-

1       otage, international terrorism, or the international  
2       proliferation of weapons of mass destruction”.

3           (2)       PHYSICAL       SEARCHES.—Section  
4       305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))  
5       is amended by striking “sabotage or international  
6       terrorism” and inserting “sabotage, international  
7       terrorism, or the international proliferation of weap-  
8       ons of mass destruction”.

9           (c) TECHNICAL AND CONFORMING AMENDMENT.—  
10       Section 301(1) of the Foreign Intelligence Surveillance  
11       Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting  
12       “‘weapon of mass destruction’,” after “‘person’,”.

13       **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

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

16           (1) in paragraph (1), by striking “105B(h) or  
17       501(f)(1)” and inserting “501(f)(1) or 703”; and

18           (2) in paragraph (2), by striking “105B(h) or  
19       501(f)(1)” and inserting “501(f)(1) or 703”.

20       **TITLE II—PROTECTIONS FOR**  
21       **ELECTRONIC COMMUNICA-**  
22       **TION SERVICE PROVIDERS**

23       **SEC. 201. DEFINITIONS.**

24       In this title:

1           (1) ASSISTANCE.—The term “assistance”  
2 means the provision of, or the provision of access to,  
3 information (including communication contents,  
4 communications records, or other information relat-  
5 ing to a customer or communication), facilities, or  
6 another form of assistance.

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

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

14                   (A) alleges that an electronic communica-  
15 tion service provider furnished assistance to an  
16 element of the intelligence community; and

17                   (B) seeks monetary or other relief from the  
18 electronic communication service provider re-  
19 lated to the provision of such assistance.

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

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

1 (B) a provider of an electronic communica-  
2 tion service, as that term is defined in section  
3 2510 of title 18, United States Code;

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

7 (D) any other communication service pro-  
8 vider who has access to wire or electronic com-  
9 munications either as such communications are  
10 transmitted or as such communications are  
11 stored;

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

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

18 (5) ELEMENT OF THE INTELLIGENCE COMMU-  
19 NITY.—The term “element of the intelligence com-  
20 munity” means an element of the intelligence com-  
21 munity specified in or designated under section 3(4)  
22 of the National Security Act of 1947 (50 U.S.C.  
23 401a(4)).

1 SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-  
2 TRONIC COMMUNICATION SERVICE PRO-  
3 VIDERS.

4 (a) LIMITATIONS.—

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

10 (A) the assistance alleged to have been  
11 provided by the electronic communication serv-  
12 ice provider was—

13 (i) in connection with an intelligence  
14 activity involving communications that  
15 was—

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

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

24 (ii) described in a written request or  
25 directive from the Attorney General or the  
26 head of an element of the intelligence com-

1 munity (or the deputy of such person) to  
2 the electronic communication service pro-  
3 vider indicating that the activity was—

4 (I) authorized by the President;

5 and

6 (II) determined to be lawful; or

7 (B) the electronic communication service  
8 provider did not provide the alleged assistance.

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

12 (b) REVIEW OF CERTIFICATIONS.—If the Attorney  
13 General files a declaration under section 1746 of title 28,  
14 United States Code, that disclosure of a certification made  
15 pursuant to subsection (a) would harm the national secu-  
16 rity of the United States, the court shall—

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

19 (2) limit any public disclosure concerning such  
20 certification, including any public order following  
21 such an ex parte review, to a statement that the con-  
22 ditions of subsection (a) have been met, without dis-  
23 closing the subparagraph of subsection (a)(1) that is  
24 the basis for the certification.

1 (c) NONDELEGATION.—The authority and duties of  
2 the Attorney General under this section shall be performed  
3 by the Attorney General (or Acting Attorney General) or  
4 a designee in a position not lower than the Deputy Attor-  
5 ney General.

6 (d) CIVIL ACTIONS IN STATE COURT.—A covered  
7 civil action that is brought in a State court shall be  
8 deemed to arise under the Constitution and laws of the  
9 United States and shall be removable under section 1441  
10 of title 28, United States Code.

11 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
12 tion may be construed to limit any otherwise available im-  
13 munity, privilege, or defense under any other provision of  
14 law.

15 (f) EFFECTIVE DATE AND APPLICATION.—This sec-  
16 tion shall apply to any covered civil action that is pending  
17 on or filed after the date of enactment of this Act.

18 **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY**  
19 **DEFENSES UNDER THE FOREIGN INTEL-**  
20 **LIGENCE SURVEILLANCE ACT OF 1978.**

21 The Foreign Intelligence Surveillance Act of 1978  
22 (50 U.S.C. 1801 et seq.), as amended by section 101, is  
23 further amended by adding after title VII the following  
24 new title:



1 **“TITLE VIII—PROTECTION OF**  
2 **PERSONS ASSISTING THE**  
3 **GOVERNMENT**

4 **“SEC. 801. DEFINITIONS.**

5 “In this title:

6 “(1) **ASSISTANCE.**—The term ‘assistance’  
7 means the provision of, or the provision of access to,  
8 information (including communication contents,  
9 communications records, or other information relat-  
10 ing to a customer or communication), facilities, or  
11 another form of assistance.

12 “(2) **ATTORNEY GENERAL.**—The term ‘Attor-  
13 ney General’ has the meaning give that term in sec-  
14 tion 101(g).

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

17 “(4) **ELECTRONIC COMMUNICATION SERVICE**  
18 **PROVIDER.**—The term ‘electronic communication  
19 service provider’ means—

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

23 “(B) a provider of electronic communica-  
24 tion service, as that term is defined in section  
25 2510 of title 18, United States Code;

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

4           “(D) any other communication service pro-  
5           vider who has access to wire or electronic com-  
6           munications either as such communications are  
7           transmitted or as such communications are  
8           stored;

9           “(E) a parent, subsidiary, affiliate, suc-  
10          cessor, or assignee of an entity described in  
11          subparagraph (A), (B), (C), or (D); or

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

15          “(5) ELEMENT OF THE INTELLIGENCE COMMU-  
16          NITY.—The term ‘element of the intelligence com-  
17          munity’ means an element of the intelligence com-  
18          munity as specified or designated under section 3(4)  
19          of the National Security Act of 1947 (50 U.S.C.  
20          401a(4)).

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

22                 “(A) an electronic communication service  
23                 provider; or

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

4                   “(i) an order of the court established  
5                   under section 103(a) directing such assist-  
6                   ance;

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

10                   “(iii) a directive under section  
11                   102(a)(4), 105B(e), as in effect on the day  
12                   before the date of the enactment of the  
13                   FISA Amendments Act of 2008 or 703(h).

14           “(7) STATE.—The term ‘State’ means any  
15           State, political subdivision of a State, the Common-  
16           wealth of Puerto Rico, the District of Columbia, and  
17           any territory or possession of the United States, and  
18           includes any officer, public utility commission, or  
19           other body authorized to regulate an electronic com-  
20           munication service provider.

21   **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**  
22                   **DEFENSES.**

23           “(a) REQUIREMENT FOR CERTIFICATION.—

24                   “(1) IN GENERAL.—Notwithstanding any other  
25           provision of law, no civil action may lie or be main-

1           tained in a Federal or State court against any per-  
2           son for providing assistance to an element of the in-  
3           telligence community, and shall be promptly dis-  
4           missed, if the Attorney General certifies to the court  
5           that—

6                   “(A) any assistance by that person was  
7                   provided pursuant to an order of the court es-  
8                   tablished under section 103(a) directing such  
9                   assistance;

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

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

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

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

1       “(b) **LIMITATIONS ON DISCLOSURE.**—If the Attorney  
2 General files a declaration under section 1746 of title 28,  
3 United States Code, that disclosure of a certification made  
4 pursuant to subsection (a) would harm the national secu-  
5 rity of the United States, the court shall—

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

8           “(2) limit any public disclosure concerning such  
9 certification, including any public order following  
10 such an ex parte review, to a statement that the con-  
11 ditions of subsection (a) have been met, without dis-  
12 closing the subparagraph of subsection (a)(1) that is  
13 the basis for the certification.

14       “(c) **REMOVAL.**—A civil action against a person for  
15 providing assistance to an element of the intelligence com-  
16 munity that is brought in a State court shall be deemed  
17 to arise under the Constitution and laws of the United  
18 States and shall be removable under section 1441 of title  
19 28, United States Code.

20       “(d) **RELATIONSHIP TO OTHER LAWS.**—Nothing in  
21 this section may be construed to limit any otherwise avail-  
22 able immunity, privilege, or defense under any other provi-  
23 sion of law.

1       “(e) **APPLICABILITY.**—This section shall apply to a  
2 civil action pending on or filed after the date of enactment  
3 of the FISA Amendments Act of 2008.”

4 **SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.**

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

9 **“SEC. 803. PREEMPTION.**

10       “(a) **IN GENERAL.**—No State shall have authority  
11 to—

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

15               “(2) require through regulation or any other  
16 means the disclosure of information about an elec-  
17 tronic communication service provider’s alleged as-  
18 sistance to an element of the intelligence community;

19               “(3) impose any administrative sanction on an  
20 electronic communication service provider for assist-  
21 ance to an element of the intelligence community; or

22               “(4) commence or maintain a civil action or  
23 other proceeding to enforce a requirement that an  
24 electronic communication service provider disclose

1 information concerning alleged assistance to an ele-  
2 ment of the intelligence community.

3 “(b) SUITS BY THE UNITED STATES.—The United  
4 States may bring suit to enforce the provisions of this sec-  
5 tion.

6 “(c) JURISDICTION.—The district courts of the  
7 United States shall have jurisdiction over any civil action  
8 brought by the United States to enforce the provisions of  
9 this section.

10 “(d) APPLICATION.—This section shall apply to any  
11 investigation, action, or proceeding that is pending on or  
12 filed after the date of enactment of the FISA Amendments  
13 Act of 2008.”

14 **SEC. 205. TECHNICAL AMENDMENTS.**

15 The table of contents in the first section of the For-  
16 eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
17 1801 et seq.), as amended by section 101(b), is further  
18 amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE  
GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”

19 **TITLE III—OTHER PROVISIONS**

20 **SEC. 301. SEVERABILITY.**

21 If any provision of this Act, any amendment made  
22 by this Act, or the application thereof to any person or

1 circumstances is held invalid, the validity of the remainder  
2 of the Act, any such amendments, and of the application  
3 of such provisions to other persons and circumstances  
4 shall not be affected thereby.

5 **SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCE-**  
6 **DURES.**

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

10 (b) **REPEAL.**—

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

15 (2) **TABLE OF CONTENTS.**—The table of con-  
16 tents in the first section of the Foreign Intelligence  
17 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
18 is amended by striking the items relating to sections  
19 105A, 105B, and 105C.

20 (c) **TRANSITIONS PROCEDURES.**—

21 (1) **PROTECTION FROM LIABILITY.**—Notwith-  
22 standing subsection (b)(1), subsection (l) of section  
23 105B of the Foreign Intelligence Surveillance Act of  
24 1978 shall remain in effect with respect to any di-  
25 rectives issued pursuant to such section 105B for in-



1 formation, facilities, or assistance provided during  
2 the period such directive was or is in effect.

3 (2) ORDERS IN EFFECT.—

4 (A) ORDERS IN EFFECT ON DATE OF EN-  
5 ACTMENT.—Notwithstanding any other provi-  
6 sion of this Act or of the Foreign Intelligence  
7 Surveillance Act of 1978—

8 (i) any order in effect on the date of  
9 enactment of this Act issued pursuant to  
10 the Foreign Intelligence Surveillance Act of  
11 1978 or section 6(b) of the Protect Amer-  
12 ica Act of 2007 (Public Law 110-55; 121  
13 Stat. 556) shall remain in effect until the  
14 date of expiration of such order; and

15 (ii) at the request of the applicant,  
16 the court established under section 103(a)  
17 of the Foreign Intelligence Surveillance Act  
18 of 1978 (50 U.S.C. 1803(a)) shall reau-  
19 thorize such order if the facts and cir-  
20 cumstances continue to justify issuance of  
21 such order under the provisions of such  
22 Act, as in effect on the day before the date  
23 of the enactment of the Protect America  
24 Act of 2007, except as amended by sec-

1           tions 102, 103, 104, 105, 106, 107, 108,  
2           109, and 110 of this Act.

3           (B) ORDERS IN EFFECT ON DECEMBER 31,  
4           2013.—Any order issued under title VII of the  
5           Foreign Intelligence Surveillance Act of 1978,  
6           as amended by section 101 of this Act, in effect  
7           on December 31, 2013, shall continue in effect  
8           until the date of the expiration of such order.  
9           Any such order shall be governed by the appli-  
10          cable provisions of the Foreign Intelligence Sur-  
11          veillance Act of 1978, as so amended.

12          (3) AUTHORIZATIONS AND DIRECTIVES IN EF-  
13          FECT.—

14               (A) AUTHORIZATIONS AND DIRECTIVES IN  
15               EFFECT ON DATE OF ENACTMENT.—Notwith-  
16               standing any other provision of this Act or of  
17               the Foreign Intelligence Surveillance Act of  
18               1978, any authorization or directive in effect on  
19               the date of the enactment of this Act issued  
20               pursuant to the Protect America Act of 2007,  
21               or any amendment made by that Act, shall re-  
22               main in effect until the date of expiration of  
23               such authorization or directive. Any such au-  
24               thorization or directive shall be governed by the  
25               applicable provisions of the Protect America Act

1 of 2007 (121 Stat. 552), and the amendment  
2 made by that Act, and, except as provided in  
3 paragraph (4) of this subsection, any acquisi-  
4 tion pursuant to such authorization or directive  
5 shall be deemed not to constitute electronic sur-  
6 veillance (as that term is defined in section  
7 101(f) of the Foreign Intelligence Surveillance  
8 Act of 1978 (50 U.S.C. 1801(f)), as construed  
9 in accordance with section 105A of the Foreign  
10 Intelligence Surveillance Act of 1978 (50  
11 U.S.C. 1805a)).

12 (B) AUTHORIZATIONS AND DIRECTIVES IN  
13 EFFECT ON DECEMBER 31, 2013.—Any author-  
14 ization or directive issued under title VII of the  
15 Foreign Intelligence Surveillance Act of 1978,  
16 as amended by section 101 of this Act, in effect  
17 on December 31, 2013, shall continue in effect  
18 until the date of the expiration of such author-  
19 ization or directive. Any such authorization or  
20 directive shall be governed by the applicable  
21 provisions of the Foreign Intelligence Surveil-  
22 lance Act of 1978, as so amended, and, except  
23 as provided in section 707 of the Foreign Intel-  
24 ligence Surveillance Act of 1978, as so amend-  
25 ed, any acquisition pursuant to such authoriza-

1           tion or directive shall be deemed not to con-  
2           stitute electronic surveillance (as that term is  
3           defined in section 101(f) of the Foreign Intel-  
4           ligence Surveillance Act of 1978, to the extent  
5           that such section 101(f) is limited by section  
6           701 of the Foreign Intelligence Surveillance Act  
7           of 1978, as so amended).

8           (4) USE OF INFORMATION ACQUIRED UNDER  
9           PROTECT AMERICA ACT.—Information acquired from  
10          an acquisition conducted under the Protect America  
11          Act of 2007, and the amendments made by that Act,  
12          shall be deemed to be information acquired from an  
13          electronic surveillance pursuant to title I of the For-  
14          eign Intelligence Surveillance Act of 1978 (50  
15          U.S.C. 1801 et seq.) for purposes of section 106 of  
16          that Act (50 U.S.C. 1806), except for purposes of  
17          subsection (j) of such section.

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

21                 (A) the government may file an application  
22                 for an order under the Foreign Intelligence  
23                 Surveillance Act of 1978, as in effect on the  
24                 day before the date of the enactment of the  
25                 Protect America Act of 2007, except as amend-

1 ed by sections 102, 103, 104, 105, 106, 107,  
2 108, 109, and 110 of this Act; and

3 (B) the court established under section  
4 103(a) of the Foreign Intelligence Surveillance  
5 Act of 1978 shall enter an order granting such  
6 an application if the application meets the re-  
7 quirements of such Act, as in effect on the day  
8 before the date of the enactment of the Protect  
9 America Act of 2007, except as amended by  
10 sections 102, 103, 104, 105, 106, 107, 108,  
11 109, and 110 of this Act.

12 (6) EXTANT AUTHORIZATIONS.—At the request  
13 of the applicant, the court established under section  
14 103(a) of the Foreign Intelligence Surveillance Act  
15 of 1978 shall extinguish any extant authorization to  
16 conduct electronic surveillance or physical search en-  
17 tered pursuant to such Act.

18 (7) APPLICABLE PROVISIONS.—Any surveillance  
19 conducted pursuant to an order entered pursuant to  
20 this subsection shall be subject to the provisions of  
21 the Foreign Intelligence Surveillance Act of 1978, as  
22 in effect on the day before the date of the enactment  
23 of the Protect America Act of 2007, except as  
24 amended by sections 102, 103, 104, 105, 106, 107,  
25 108, 109, and 110 of this Act.

1           (8) TRANSITION PROCEDURES CONCERNING  
2           THE TARGETING OF UNITED STATES PERSONS OVER-  
3           SEAS.—Any authorization in effect on the date of  
4           enactment of this Act under section 2.5 of Executive  
5           Order 12333 to intentionally target a United States  
6           person reasonably believed to be located outside the  
7           United States shall remain in effect, and shall con-  
8           stitute a sufficient basis for conducting such an ac-  
9           quisition targeting a United States person located  
10          outside the United States until the earlier of—  
11                   (A) the date that authorization expires; or  
12                   (B) the date that is 90 days after the date  
13                   of the enactment of this Act.