

(46 PAGES)

**T H L**

**Exemption 5**

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2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

7 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

13 Sec. 104. Applications for court orders.

14 Sec. 105. Issuance of an order.

15 Sec. 106. Use of information.

16 Sec. 107. Amendments for physical searches.

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

18 Sec. 109. Foreign Intelligence Surveillance Court.

19 Sec. 110. Weapons of mass destruction.

20 TITLE II—PROTECTIONS FOR ELECTRONIC  
21 COMMUNICATION SERVICE PROVIDERS

22 Sec. 201. Procedures for implementing statutory defenses under the Foreign Intelligence  
23 Surveillance Act of 1978.

24 ~~Sec. 202. Preemption of State investigations.~~

25 ~~Sec. 203. Reporting.~~

26 ~~Sec. 204. Technical~~ Sec. 202. Technical amendments.

27 TITLE III—REVIEW OF PREVIOUS ACTIONS

28 Sec. 301. Review of previous actions.

29 TITLE IV—OTHER PROVISIONS

30 Sec. 401. Severability.

31 Sec. 402. Effective date.

32 Sec. 403. Repeals.

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1 Sec.404.Transition procedures.

2 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

3 SEC. 101. ADDITIONAL PROCEDURES REGARDING  
4 CERTAIN PERSONS OUTSIDE THE UNITED STATES.

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

7 (1) by striking title VII; and

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

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

11 “SEC. 701. DEFINITIONS.

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

16 “(b) Additional Definitions.—

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

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

20 “(B) the Permanent Select Committee on Intelligence of the House of  
21 Representatives.

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

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

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

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

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

33 “(C) a provider of a remote computing service, as that term is defined in section  
34 2711 of title 18, United States Code;

35 “(D) any other communication service provider who has access to wire or electronic

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

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

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

7 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN**  
8 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**  
9 **UNITED STATES PERSONS.**

10 “(a) Authorization.—Notwithstanding any other provision of law, upon the issuance of an  
11 order in accordance with subsection (i)(3) or a determination under subsection ~~(g)(1)(B)(c)(2)~~,  
12 the Attorney General and the Director of National Intelligence may authorize jointly, for a period  
13 of up to 1 year from the effective date of the authorization, the targeting of persons reasonably  
14 believed to be located outside the United States to acquire foreign intelligence information.

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

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

18 “(2) may not intentionally target a person reasonably believed to be located outside the  
19 United States if the purpose of such acquisition is to target a particular, known person  
20 reasonably believed to be in the United States;

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

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

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

28 “(c) Conduct of Acquisition.—

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

31 ~~“(A) the certification made by the Attorney General and the Director of National~~  
32 ~~Intelligence pursuant to subsection (g) or, until such time as a certification in~~  
33 **accordance with subsection (g), as soon as such certification is submitted pursuant to**  
34 ~~subsection (g), a determination under paragraph (1)(B) of in accordance with such~~  
35 **subsection; and**

36 ~~“(B) the targeting and minimization procedures required by adopted in accordance~~  
37 **with subsections (d) and (e).**

38 “(2) DETERMINATION.—A determination under this paragraph is a determination by

1 the Attorney General and the Director of National Intelligence that exigent  
2 circumstances exist because, without immediate implementation of an authorization  
3 under paragraph (1), intelligence important to the national security of the United  
4 States may be lost or not timely acquired and time does not permit the issuance of an  
5 order pursuant to subsection (i)(3) prior to the implementation of such authorization.

6 **“(3) TIMING OF DETERMINATION.—The Attorney General and the Director of**  
7 **National Intelligence may make the determination under paragraph (3)—**

8 **“(A) before the submission of a certification under subsection (g); or**

9 **“(B) by amending a certification pursuant to subsection (i)(1)(C) at any time**  
10 **during which judicial review under subsection (i) of such certification is pending.**

11 **“(4) CONSTRUCTION.—Nothing in title I shall be construed to require an application for a**  
12 **court order under such title for an acquisition that is targeted in accordance with this section**  
13 **at a person reasonably believed to be located outside the United States.**

14 **“(d) Targeting Procedures.—**

15 **“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director**  
16 **of National Intelligence, shall adopt targeting procedures that are reasonably designed to**  
17 **to—**

18 **“(A) ensure that any acquisition authorized under subsection (a) is limited to**  
19 **targeting persons reasonably believed to be located outside the United States and does**  
20 **not intentionally acquire; and**

21 **“(B) prevent the intentional acquisition of any communication as to which the**  
22 **sender and all intended recipients are known at the time of the acquisition to be located**  
23 **in the United States.**

24 **“(2) JUDICIAL REVIEW.—The procedures required by paragraph (1) shall be subject to**  
25 **judicial review pursuant to subsection (i).**

26 **“(e) Minimization Procedures.—**

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

31 **“(2) JUDICIAL REVIEW.—The minimization procedures required by paragraph (1) shall be**  
32 **subject to judicial review pursuant to subsection (i).**

33 **“(f) Guidelines for Compliance With Limitations.—**

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

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

37 **“(B) that an application for a court order is filed if required by any other section of**  
38 **this Act as required by this Act.**

39 **“(2) Training.—The Director of National Intelligence shall establish a training program**

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1 for appropriate intelligence community personnel to ensure that the guidelines adopted  
2 pursuant to paragraph (1) are properly implemented.

3 ~~“(3)“(2) SUBMISSION OF GUIDELINES. The Attorney General shall provide the guidelines~~  
4 adopted pursuant to paragraph (1) to—

5 “(A) the congressional intelligence committees;

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

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

8 “(D) the Foreign Intelligence Surveillance Court.

9 “(g) Certification.—

10 “(1) IN GENERAL.—

11 “(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an  
12 acquisition authorized under subsection (a), the Attorney General and the Director of  
13 National Intelligence shall provide to the Foreign Intelligence Surveillance Court,  
14 under oath, a written certification and any supporting affidavit, under seal, in  
15 accordance with this subsection.

16 “(B) EXCEPTION.—~~If Exception.—~~

17 ~~“(i) In general.—If the Attorney General and the Director of National Intelligence~~  
18 ~~determine that exigent circumstances exist because, without immediate implementation~~  
19 ~~of an authorization under subsection (a), intelligence important to the national security~~  
20 ~~of the United States may be lost or not timely acquired make a determination under~~  
21 ~~subsection (c)(2) and time does not permit the issuance of an order pursuant to~~  
22 ~~submission of a certification under this subsection (i)(3) prior to the initiation of an~~  
23 ~~acquisition authorization referred to in such subsection, the Attorney General and~~  
24 ~~the Director of National Intelligence may authorize the acquisition and, if no~~  
25 ~~certification for such acquisition has been submitted to the Foreign Intelligence~~  
26 ~~Surveillance Court, shall submit to the Court a certification for such authorization as~~  
27 ~~soon as practicable but in no event later than 7 days after such determination is made.~~

28  
29 ~~“(ii) Timing.—The Attorney General and the Director of National Intelligence may make~~  
30 ~~a determination in clause (i) before the filing of the certification or at any time during which~~  
31 ~~judicial review under subsection (i) is pending.~~

32 ~~“(iii) Notification of determination of exigent circumstances.—If the Attorney General~~  
33 ~~and the Director of National Intelligence make a determination under clause (i) after the~~  
34 ~~submission of a certification for such acquisition to the Foreign Intelligence Surveillance~~  
35 ~~Court, the Attorney General and the Director of National Intelligence shall notify the Court~~  
36 ~~of such determination.~~

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

38 “(A) attest that—

39 “(i) there are reasonable procedures in place that have been approved, have  
40 been submitted for approval, or will be submitted with the certification for

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1 approval by the Foreign Intelligence Surveillance Court—

2 “(I) for ensuring that the acquisition authorized under subsection (a)(a)—

3 “(I) is targeted at persons reasonably believed to be located outside the  
4 United States; and

5 “(II) ~~does not intentionally acquire to prevent the intentional acquisition~~  
6 of any communication as to which the sender and all intended recipients are  
7 known at the time of the acquisition to be located in the United States;

8 “(ii) the minimization procedures to be used with respect to such acquisition—

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

11 “(II) have been approved, have been submitted for approval, or will be  
12 submitted with the certification for approval by the Foreign Intelligence  
13 Surveillance Court;

14 “(iii) guidelines have been adopted in accordance with subsection (f) to ensure  
15 compliance with the limitations in subsection (b) and to ensure that applications  
16 for court orders are filed if required by this Act;

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

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

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

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

25 “(B) include the procedures adopted in accordance with subsections (d) and (e);

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

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

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

30 “(C)“(D) include—

31 “(i) an effective date for the authorization that is at least 30 days after the  
32 submission of the written certification to the court; or

33 “(ii) if the acquisition has begun or the effective date is less than 30 days after  
34 the submission of the written certification to the court, the date the acquisition  
35 began or the effective date for the acquisition; and

36 “(E) if ~~(D)~~ in the case of a certification submitted after the Attorney General and the  
37 Director of National Intelligence make a determination under ~~paragraph (1)(B)(i)~~  
38 subsection (c)(1)(A)(ii), include a statement that such determination has been made.

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1           “(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of National  
2 Intelligence may advance or delay the effective date referred to in paragraph ~~(2)(C)~~(2)(D)  
3 by submitting an amended certification in accordance with this subsection to the Foreign  
4 Intelligence Surveillance Court for review pursuant to subsection (i).

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

8           “(5) MAINTENANCE OF CERTIFICATION.—The Attorney General or a designee of the  
9 Attorney General shall maintain a copy of a certification made under this subsection.

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

12           “(h) Directives and Judicial Review of Directives.—

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

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

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

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

27           “(3) RELEASE FROM LIABILITY.—No cause of action shall lie in any court against any  
28 electronic communication service provider for providing any information, facilities, or  
29 assistance in accordance with a directive issued pursuant to paragraph (1).

30           “(4) CHALLENGING OF DIRECTIVES.—

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

35           “(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed  
36 under subparagraph (A) to 1 of the judges serving in the pool established by section  
37 103(e)(1) not later than 24 hours after the filing of the petition.

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

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

11           “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition  
12 described in subparagraph (A) requires plenary review, the judge shall affirm, modify,  
13 or set aside the directive that is the subject of that petition not later than 30 days after  
14 being assigned the petition. If the Court does not set aside the directive, the judge shall  
15 immediately affirm or affirm with modifications the directive, and order the recipient  
16 to comply with the directive in its entirety or as modified. The judge shall provide a  
17 written statement for the record of the reasons for a determination under this  
18 subparagraph.

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

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

23           “(5) ENFORCEMENT OF DIRECTIVES.—

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

29           “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed  
30 under subparagraph (A) to 1 of the judges serving in the pool established by section  
31 103(e)(1) not later than 24 hours after the filing of the petition.

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

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

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



1           “(6) APPEAL.—

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

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

14          “(i) Judicial Review of Certifications and Procedures.—

15               “(1) IN GENERAL.—

16               “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
17               Intelligence Surveillance Court shall have jurisdiction to review any certification  
18               submitted in accordance with subsection (g) and the targeting and minimization  
19               procedures adopted pursuant to in accordance with subsections (d) and (e), and any  
20               amendments to such certification or procedures.

21               “(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted  
22               in accordance with subsection (g) and the targeting and minimization procedures  
23               submitted adopted in accordance with subsections (d) and (e) and shall complete such  
24               review and issue an order under paragraph (3) not later than 30 days after the date on  
25               which such certification and procedures are submitted.

26               “(C) AMENDMENTS.—The Attorney General and the Director of National  
27               Intelligence may amend a certification submitted in accordance with subsection (g) or  
28               the targeting and minimization procedures submitted adopted in accordance with  
29               subsections (d) and (e) as necessary at any time, including if the Court is conducting  
30               or has completed review of such certification or such procedures, and shall submit  
31               such amended certification or amended procedures to the Court not later than 7 days  
32               after amending such certification or such procedures. The Court shall review any  
33               amendment under this subparagraph under the procedures set forth in this subsection.  
34               The Attorney General and the Director of National Intelligence may authorize the use  
35               of an amended certification or amended procedures pending the Court’s review of such  
36               amended certification or amended procedures.

37          “(2) REVIEW.—The Court shall review the following:

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

40               “(B) TARGETING PROCEDURES.—The targeting procedures required by adopted in  
41               accordance with subsection (d) to assess whether the procedures are reasonably  
42               designed to to—

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1           “(i) ensure that the acquisition authorized under subsection (a) is limited to the  
2 targeting of persons reasonably believed to be located outside the United States  
3 and ~~does not intentionally acquire~~; and

4           “(ii) prevent the intentional acquisition of any communication as to which  
5 the sender and all intended recipients are known at the time of the acquisition to  
6 be located in the United States.

7           “(C) MINIMIZATION PROCEDURES.—The minimization procedures submitted in  
8 accordance with subsection (e) to assess whether such procedures meet the definition  
9 of minimization procedures under section 101(h) or section 301(4), as appropriate.

10       “(3) ORDERS.—

11           “(A) APPROVAL.—If the Court finds that a certification submitted in accordance  
12 with subsection (g) contains all of the required elements and that the targeting and  
13 minimization procedures ~~submitted~~ adopted in accordance with subsections (d) and (e)  
14 are consistent with the requirements of those subsections and with the fourth  
15 amendment to the Constitution of the United States, the Court shall enter an order  
16 approving the certification and the use, or continued use in the case of an acquisition  
17 authorized pursuant to a determination under subsection ~~(g)(1)(B)(c)(2)~~, of the  
18 procedures for the acquisition.

19           “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification submitted  
20 in accordance with subsection (g) does not contain all of the required elements, or that  
21 the procedures ~~submitted~~ adopted in accordance with subsections (d) and (e) are not  
22 consistent with the requirements of those subsections or the fourth amendment to the  
23 Constitution of the United States, the Court shall issue an order directing the  
24 Government to, at the Government’s election and to the extent required by the Court’s  
25 order—

26           “(i) correct any deficiency identified by the Court’s order not later than 30 days  
27 after the date the Court issues the order; or

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

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

32       “(4) APPEAL.—

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

38           “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any  
39 acquisition affected by an order under paragraph (3)(B) may continue—

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

1           “(ii) if the Government appeals an order under this section, until the Court of  
2           Review enters an order under subparagraph (C).

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

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

13          “(5) SCHEDULE.—

14           “(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and  
15           the Director of National Intelligence seek to replace an authorization issued pursuant to  
16           section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section  
17           2 of the Protect America Act of 2007 (Public Law 110-55) with an authorization under  
18           this section, the Attorney General and the Director of National Intelligence shall, to  
19           the extent practicable, submit to the Court the certification prepared in accordance with  
20           subsection (g) and the procedures adopted in accordance with subsections (d) and (e) at  
21           least 30 days before the expiration of such authorization.

22           “(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General  
23           and the Director of National Intelligence seek to reauthorize or replace an authorization  
24           issued pursuant to this section, the Attorney General and the Director of National  
25           Intelligence shall, to the extent practicable, submit to the Court the certification  
26           prepared in accordance with subsection (g) and the procedures adopted in accordance  
27           with subsections (d) and (e) at least 30 days prior to the expiration of such  
28           authorization.

29           “(C) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the  
30           Attorney General and the Director of National Intelligence seek to replace an  
31           authorization made pursuant to this section by filing a certification pursuant to  
32           paragraph (B), that authorization, and any directives issued thereunder and any  
33           order related thereto, shall remain in effect until the Court issues an order with  
34           respect to that certification under paragraph (3) at which time the provisions of  
35           that paragraph and paragraph (4) shall apply.

36          “(j) Judicial Proceedings.—

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

39           “(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless  
40           the Court, the Court of Review, or any judge of either the Court or the Court of Review, by  
41           order for reasons stated, extends that time as necessary for good cause in a manner  
42           consistent with national security.

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

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

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

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

14 “(l) Assessments and Reviews.—

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

20 “(A) the Foreign Intelligence Surveillance Court; and

21 “(B) **consistent with the Rules of the House of Representatives, the Standing**  
22 **Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any**  
23 **successor Senate resolution—**

24 “(i) ~~(B)~~ the congressional intelligence committees; and

25 “(C) ~~(i)~~ “(ii) the Committees on the Judiciary of the House of Representatives and  
26 the Senate.

27 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and  
28 each element of the intelligence community authorized to acquire foreign intelligence  
29 information under subsection (a) with respect to the department or element of such  
30 Inspector General—

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

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

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

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

2                 “(i) the Attorney General;

3                 “(ii) the Director of National Intelligence; and

4                 “(iii) consistent with the Rules of the House of Representatives, the  
5                 Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress  
6                 or any successor Senate resolution—

7                     “(I)~~“(iii)~~ the congressional intelligence committees; and

8                     ~~“(iv)~~“(II) the Committees on the Judiciary of the House of  
9                     Representatives and the Senate.

10           “(3) ANNUAL REVIEW.—

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

16                     “(i) an accounting of the number of disseminated intelligence reports  
17                     containing a reference to a United States person identity;

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

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

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

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

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

38                     “(i) the Foreign Intelligence Surveillance Court;

39                     “(ii) the Attorney General;

40                     “(iii) the Director of National Intelligence; and

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1                   “(iv) consistent with the Rules of the House of Representatives, the  
2                   Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress  
3                   or any successor Senate resolution—

4                   “(I)~~“(iv)~~ the congressional intelligence committees; and

5                   ~~“(v)~~“(II) the Committees on the Judiciary of the House of Representatives  
6                   and the Senate.

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

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

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

17                  “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably  
18                  believed to be located in the United States during the effective period of an order issued  
19                  pursuant to subsection (c), an acquisition targeting such United States person under this  
20                  section shall cease unless the targeted United States person is again reasonably believed to  
21                  be located outside the United States while an order issued pursuant to subsection (c) is in  
22                  effect. **Nothing in this paragraph shall be construed to limit the authority of the**  
23                  **Government to seek an order or authorization under, or otherwise engage in any**  
24                  **activity that is authorized under, any other title of this Act or chapter 119, 121, or 206**  
25                  **of title 18, United States Code.**

26                  “(b) Application.—

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

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

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

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

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

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

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

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

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

7 “(i) the certifying official deems the information sought to be foreign  
8 intelligence information;

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

11 “(iii) such information cannot reasonably be obtained by normal investigative  
12 techniques;

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

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

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

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

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

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

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

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

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

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

38  
39 \* 1 “(4) Construction.—Nothing in title I shall be construed to require an application for a

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1 court order under such title for an acquisition that is targeted in accordance with this section at a  
2 United States person reasonably believed to be located outside the United States.

3 “(c) Order.—

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

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

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

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

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

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

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

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

27 “(3) REVIEW.—

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

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

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

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

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

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

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

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

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

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

20           “(5) DIRECTIVES.—An order approving an acquisition under this subsection shall direct—

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

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

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

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

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

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

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1 retained, or disseminated.

2 “(d) Emergency Authorization.—

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

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

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

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

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

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

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

36 “(e) Release From Liability.—No cause of action shall lie in any court against any electronic  
37 communication service provider for providing any information, facilities, or assistance in  
38 accordance with an order or request for emergency assistance issued pursuant to subsections (c)  
39 or (d).

40 “(f) Appeal.—

41 “(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The  
42 Government may file an appeal with the Foreign Intelligence Surveillance Court of Review

1 for review of an order issued pursuant to subsection (c). The Court of Review shall have  
2 jurisdiction to consider such appeal and shall provide a written statement for the record of  
3 the reasons for a decision under this paragraph.

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

8 \*\* 1 “(4)(g) Construction.—Nothing in title I shall be construed to require an application for  
9 a court order under such title for an acquisition that is targeted in accordance with this section at  
10 a United States person reasonably believed to be located outside the United States.

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

13 “(a) Jurisdiction and Scope.—

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

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

24 “(3) LIMITATIONS.—

25 “(A) MOVING OR MISIDENTIFIED TARGETS.—If a United States person targeted under  
26 this subsection is reasonably believed to be located in the United States during the  
27 effective period of an order issued pursuant to subsection (c), an acquisition targeting  
28 such United States person under this section shall cease unless the targeted United  
29 States person is again reasonably believed to be located outside the United States  
30 during the effective period of such order.

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

35 “(C) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit  
36 the authority of the Government to seek an order or authorization under, or  
37 otherwise engage in any activity that is authorized under, any other title of this  
38 Act or chapter 119, 121, or 206 of title 18, United States Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(c) Order.—

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

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

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

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

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

36 “(C) the proposed minimization procedures, with respect to their dissemination  
37 provisions, meet the definition of minimization procedures under section 101(h) or  
38 section 301(4), as appropriate; and

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

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

11          “(3) REVIEW.—

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

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

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

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

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

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

43          “(d) Emergency Authorization.—

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

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

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

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

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

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

34           “(e) Appeal.—

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

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

1 “SEC. 705. JOINT APPLICATIONS AND CONCURRENT  
2 AUTHORIZATIONS.

3 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under  
4 section 703 or section 704 is proposed to be conducted both inside and outside the United States,  
5 a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue  
6 simultaneously, upon the request of the Government in a joint application complying with the  
7 requirements of section 703(b) and section 704(b), orders under section 703(c) and section  
8 704(c), as appropriate.

9 “(b) Concurrent Authorization.—If an order authorizing electronic surveillance or physical  
10 search has been obtained under section 105 or section 304 and that order is still in effect, during  
11 the effective period of that order, the Attorney General may authorize, without an order under  
12 section 703 or section 704, the targeting of that United States person for the purpose of acquiring  
13 foreign intelligence information while such person is reasonably believed to be located outside  
14 the United States.

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

17 “(a) Information Acquired Under Section 702.—Information acquired from an acquisition  
18 conducted under section 702 shall be deemed to be information acquired from an electronic  
19 surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection  
20 (j) of such section.

21 “(b) Information Acquired Under Section 703.—Information acquired from an acquisition  
22 conducted under section 703 shall be deemed to be information acquired from an electronic  
23 surveillance pursuant to title I for purposes of section 106.

24 “SEC. 707. CONGRESSIONAL OVERSIGHT.

25 “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General  
26 shall fully inform, in a manner consistent with national security, the congressional intelligence  
27 committees and the Committees on the Judiciary of the Senate and the House of Representatives,  
28 **consistent with the Rules of the House of Representatives, the Standing Rules of the Senate,**  
29 **and Senate Resolution 400 of the 94th Congress or any successor Senate resolution,**  
30 concerning the implementation of this title.

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

32 “(1) with respect to section 702—

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

34 “(B) with respect to each determination made under section ~~702(g)(1)(B)(i)~~  
35 **702(c)(2)**, the reasons for exercising the authority under such section;

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

37 “(D) a description of the judicial review during the reporting period of any such  
38 certifications and targeting and minimization procedures required by subsections (d)

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1 and (e) of section 702 and utilized with respect to such acquisition, including a copy of  
2 any order or pleading in connection with such review that contains a significant legal  
3 interpretation of the provisions of section 702;

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

6 “(F) any compliance reviews conducted by the Attorney General or the Director of  
7 National Intelligence of acquisitions authorized under section 702(a);

8 “(G) a description of any incidents of noncompliance with a directive issued by the  
9 Attorney General and the Director of National Intelligence under section 702(h),  
10 including—

11 “(i) incidents of noncompliance by an element of the intelligence community  
12 with procedures and guidelines ~~submitted~~ **adopted** in accordance with  
13 subsections (d) ~~and~~, (e), and ~~(f)~~(f) of section 702; and

14 “(ii) incidents of noncompliance by a specified person to whom the Attorney  
15 General and Director of National Intelligence issued a directive under section  
16 702(h); and

17 “(H) any procedures implementing section 702;

18 “(2) with respect to section 703—

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

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

21 “(i) granted;

22 “(ii) modified; or

23 “(iii) denied; and

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

27 “(3) with respect to section 704—

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

29 “(B) the total number of such orders

30 “(i) granted;

31 “(ii) modified; or

32 “(iii) denied; and

33 “(C) the total number of emergency acquisitions authorized by the Attorney General  
34 under section 704(d) and the total number of subsequent orders approving or denying  
35 such applications.

36 “SEC. 708. SAVINGS PROVISION.



1 “Nothing in this title shall be construed to limit the authority of the Government to seek an  
2 order or authorization under, or otherwise engage in any activity that is authorized under, any  
3 other title of this Act.” Act or chapter 119, 121, or 206 of title 18, United States Code.”.

4 (b) Table of Contents.—The table of contents in the first section of the Foreign Intelligence  
5 Surveillance 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; and

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

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

11 “Sec. 701. Definitions.

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

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

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

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

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

19 “Sec. 707. Congressional oversight.

20 “Sec. 708. Savings provision.”.

21 (c) Technical and Conforming Amendments.—

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

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

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

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

29 “(E) acquisitions under section 703; and

30 “(F) acquisitions under section 704;”.

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

1 (a) Statement of Exclusive Means.— Title I of the Foreign Intelligence Surveillance Act of  
2 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

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

5 “Sec. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and  
6 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic  
7 surveillance and the interception of domestic wire, oral, or electronic communications may be  
8 conducted.

9 “(b) Only an express statutory authorization for electronic surveillance or the interception of  
10 domestic wire, oral, or electronic communications, other than as an amendment to this Act or  
11 chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive  
12 means for the purpose of subsection (a).”.

13 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
14 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and  
15 inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any  
16 express statutory authorization that is an additional exclusive means for conducting electronic  
17 surveillance under section 112.”; and

18 (c) Conforming Amendments.—

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

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

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

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

30 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN**  
31 **COURT ORDERS UNDER THE FOREIGN INTELLIGENCE**  
32 **SURVEILLANCE ACT OF 1978.**

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

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

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

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

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

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

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

17 “(e) Definitions.—In this section:

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

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

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

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

25 (1) in subsection (a)—

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

27 (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9),  
28 respectively;

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

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

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

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

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

39 (F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by

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1 adding "and" at the end; and

2 (G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by  
3 striking "; and" and inserting a period;

4 (2) by striking subsection (b);

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

7 (4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this  
8 subsection, by striking "or the Director of National Intelligence" and inserting "the Director  
9 of National Intelligence, or the Director of the Central Intelligence Agency".

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

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

13 (1) in subsection (a)—

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

15 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),  
16 respectively;

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

18 (3) in subsection (c)(1)—

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

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

21 (C) by striking subparagraph (F);

22 (4) by striking subsection (d);

23 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),  
24 respectively;

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

27 "(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize  
28 the emergency employment of electronic surveillance if the Attorney General—

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

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

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

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

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

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

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

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

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

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

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

## 31   SEC. 106. USE OF INFORMATION.

32          Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.  
33          1806) is amended by striking “radio communication” and inserting “communication”.

## 34   SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

37          (1) in subsection (a)—

38                  (A) by striking paragraph (2);

39                  (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),

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1           respectively;

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

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

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

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

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

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

15           (b) Orders. —Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
16           1824) is amended—

17                 (1) in subsection (a)—

18                         (A) by striking paragraph (1);

19                         (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),  
20                         respectively; and

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

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

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

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

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

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

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

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

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

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

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

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

19 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
20 1801 et seq.) is amended—

21 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking  
22 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

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

## 24 SEC. 108. AMENDMENTS FOR EMERGENCY PEN 25 REGISTERS AND TRAP AND TRACE DEVICES.

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

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

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

## 30 SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE 31 COURT.

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

35 (b) En Banc Authority.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 “(f)(1) A judge of the court established under subsection (a), the court established under  
26 subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of  
27 that court, may, in accordance with the rules of their respective courts, enter a stay of an order or  
28 an order modifying an order of the court established under subsection (a) or the court established  
29 under subsection (b) entered under any title of this Act, while the court established under  
30 subsection (a) conducts a rehearing, while an appeal is pending to the court established under  
31 subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United  
32 States, or during the pendency of any review by that court.

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

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

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

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1 SEC. 110. WEAPONS OF MASS DESTRUCTION.

2 (a) Definitions.—

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

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

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

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

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

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

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

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

13 ~~(B)-(C)~~(C) by adding at the end the following new ~~subparagraph~~ subparagraphs:

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

16 or

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

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

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

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

25 “(1) any explosive, incendiary, or poison gas device that is ~~designed~~, intended, or has the  
26 capability to cause a mass casualty incident;

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

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

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

37 (b) Use of Information.—

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1 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of  
2 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international  
3 terrorism” and inserting “sabotage, international terrorism, or the international proliferation  
4 of weapons of mass destruction”.

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

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

11 **TITLE II—PROTECTIONS FOR ELECTRONIC**  
12 **COMMUNICATION SERVICE PROVIDERS**

13 **SEC. 201. PROCEDURES FOR IMPLEMENTING**  
14 **STATUTORY DEFENSES UNDER THE FOREIGN**  
15 **INTELLIGENCE SURVEILLANCE ACT OF 1978.**

16 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by  
17 section 101, is further amended by adding ~~after title VII~~ at the end the following new title:

18 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**  
19 **THE GOVERNMENT**

20 **“SEC. 801. DEFINITIONS.**

21 “In this title:

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

26 “(2) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence  
27 committees’ means—

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

29 “(B) the Permanent Select Committee on Intelligence of the House of  
30 Representatives.

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

32 “(4) COVERED CIVIL ACTION.—The term ‘covered civil action’ means a civil action  
33 filed in a Federal or State court that—

34 “(A) alleges that an electronic communication service provider furnished  
35 assistance to an element of the intelligence community; and

36 “(B) seeks monetary or other relief from the electronic surveillance

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1 communication service provider related to the provision of such assistance.

2 **“(5) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—**The term ‘electronic  
3 communication service provider’ means—

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

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

8 “(C) a provider of a remote computing service, as that term is defined in section  
9 2711 of title 18, United States Code;

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

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

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

17 **“(5)“(6) INTELLIGENCE COMMUNITY.—**The term ‘intelligence community’ has the  
18 meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C.  
19 401a(4)).

20 **“(6)“(7) PERSON.—**The term ‘person’ means—

21 “(A) an electronic communication service provider; or

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

24 “(i) an order of the court established under section 103(a) directing such  
25 assistance;

26 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title  
27 18, United States Code; or

28 “(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the  
29 Protect America Act of 2007 (Public Law 110-55), or 702(h).

30 **“(7)“(8) STATE.—**The term ‘State’ means any State, political subdivision of a State, the  
31 Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of  
32 the United States, and includes any officer, public utility commission, or other body  
33 authorized to regulate an electronic communication service provider.

34 **“SEC. 802. PROCEDURES FOR IMPLEMENTING**  
35 **STATUTORY DEFENSES.**

36 **“(a) Requirement for Certification.—Notwithstanding Certification.—**

37 ~~“(1) In general.—Notwithstanding any other provision of law, no a civil action may not lie or~~  
38 ~~be maintained in a Federal or State court against any person for providing assistance to an~~

1 element of the intelligence community, and shall be promptly dismissed, if the Attorney General  
2 certifies to the district court of the United States that—

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

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

7 ~~“(C)“(3) any assistance by that person was provided pursuant to a directive under~~  
8 ~~sections 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007~~  
9 ~~(Public Law 110-55), or 702(h) directing such assistance;~~

10 ~~or~~

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

12 ~~“(2) Additional limitation.—Notwithstanding any other provision of law,“(4) in the case~~  
13 ~~of a covered civil action shall not lie or be maintained in a Federal or State court, and shall~~  
14 ~~be promptly dismissed, if the Attorney General certifies to the district court of the United~~  
15 ~~States that, the assistance alleged to have been provided by the electronic communication~~  
16 ~~service provider was—~~

17 ~~“(A) in connection with an intelligence activity involving communications that~~  
18 ~~was—~~

19 ~~“(i) authorized by the President during the period beginning on September 11,~~  
20 ~~2001, and ending on January 17, 2007; and~~

21 ~~“(ii) designed to detect or prevent a terrorist attack, or activities in preparation~~  
22 ~~for a terrorist attack, against the United States; and~~

23 ~~“(B) the subject of a written request or directive, or a series of such requests or~~  
24 ~~directives, from the Attorney General or the head of an element of the intelligence~~  
25 ~~community (or the deputy of such person) to the electronic communication service~~  
26 ~~provider indicating that the activity was—~~

27 ~~“(i) authorized by the President; and~~

28 ~~“(ii) determined to be lawful; or~~

29 ~~“(5) the person did not provide the alleged assistance.~~

30  
31 ~~“(b) Judicial Review.—~~

32 ~~“(1) REVIEW OF CERTIFICATIONS.—A certification made pursuant to subsection (a) shall~~  
33 ~~be given effect unless the court finds that such certification is not supported by substantial~~  
34 ~~evidence provided to the court pursuant to subsection (a), paragraph (2), and subsection (d)~~  
35 ~~this section.~~

36 ~~“(2) SUPPLEMENTAL MATERIALS.—In its review of a certification made pursuant to~~  
37 ~~subsection (a), the court may examine the court order, certification, written request, or~~  
38 ~~directive described in subsection (a), and any relevant court order, certification, written~~  
39 ~~request, or directive submitted pursuant to subsection (d), and any other materials submitted~~

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1 by the Attorney General.

2 “(c) Limitations on Disclosure.—If the Attorney General files a declaration under section  
3 1746 of title 28, United States Code, that disclosure of a certification made pursuant to  
4 subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would  
5 harm the national security of the United States, the court shall—

6 “(1) review such certification and the supplemental materials in camera and ex parte; and

7 “(2) limit any public disclosure concerning such certification and the supplemental  
8 materials, including any public order following such in camera and ex parte review, to a  
9 statement that the conditions for dismissal of subsection (a) have been met, or that the court  
10 has been unable to determine that they have been met, as to whether the case is dismissed  
11 and a description of the legal standards that govern the order, without disclosing the  
12 paragraph of subsection (a) that is the basis for the certification.

13 “(d) Role of the Parties.—Any plaintiff or defendant in a civil action may submit any relevant  
14 court order, certification, written request, or directive to the district court referred to in  
15 subsection (a) for review and shall be permitted to participate in the briefing or argument of any  
16 legal issue in a judicial proceeding conducted pursuant to this section, but only to the extent that  
17 such participation does not require the disclosure of classified information to such party. To the  
18 extent that classified information is relevant to the proceeding or would be revealed in the  
19 determination of an issue, the court shall review such information in camera and ex parte, and  
20 make issue any part of the court’s written order that would reveal classified information in  
21 camera and ex parte and maintain such part under seal.

22 “(e) Nondelegation.—The authority and duties of the Attorney General under this section shall  
23 be performed by the Attorney General or a designee in a position not lower than Deputy  
24 Attorney General.

25 “(f) Appeal.—The courts of appeals shall have jurisdiction of appeals from interlocutory  
26 orders of the district courts of the United States granting or denying a motion to dismiss or for  
27 summary judgment under this section.

28 “(g) Removal.—A civil action against a person for providing assistance to an element of the  
29 intelligence community that is brought in a State court shall be deemed to arise under the  
30 Constitution and laws of the United States and shall be removable under section 1441 of title 28,  
31 United States Code.

32 “(h) Relationship to Other Laws.—Nothing in this section may be construed to limit any  
33 otherwise available immunity, privilege, or defense under any other provision of law.

34 “(i) Applicability.—This section shall apply to a civil action pending on or filed after the date  
35 of enactment of the FISA Amendments Act of 2008. 2008.”

36 ~~SEC. 202. PREEMPTION OF STATE INVESTIGATIONS.~~

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

39 **“SEC. 803. PREEMPTION.**

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

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

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

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

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

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

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

15           “(d) Application.—This section shall apply to any investigation, action, or proceeding that is  
16 pending on or filed ~~commenced~~ after the date of enactment of the FISA Amendments Act of  
17 ~~2008. 2008.~~”.

18           ~~SEC. 203. REPORTING.~~

19           ~~Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as amended~~  
20 ~~by section 204 of this Act, is further amended by adding at the end the following new section:~~

21           **“SEC. 804. REPORTING.**

22           “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General  
23 shall fully inform, in a manner consistent with national security, **the Rules of the House of**  
24 **Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th**  
25 **Congress or any successor Senate resolution**, the congressional intelligence committees, the  
26 Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of  
27 Representatives; concerning the implementation of this title.

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

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

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

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

32           **SEC. 204 202. TECHNICAL AMENDMENTS.**

33           The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978  
34 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end  
35 the following:

36           **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**  
37 **THE GOVERNMENT**

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- 1 "Sec.801.Definitions
- 2 "Sec.802.Procedures for implementing statutory defenses.
- 3 "Sec.803.Preemption.
- 4 "Sec.804.Reporting."

5 **TITLE III—REVIEW OF PREVIOUS ACTIONS**  
6 **SEC. 301. REVIEW OF PREVIOUS ACTIONS.**

7 (a) Definitions.—In this section:

8 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term "appropriate committees of  
9 Congress" means—

10 (A) the Select Committee on Intelligence and the Committee on the Judiciary of the  
11 Senate; and

12 (B) the Permanent Select Committee on Intelligence and the Committee on the  
13 Judiciary of the House of Representatives.

14 (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term "Foreign Intelligence  
15 Surveillance Court" means the court established by section 103(a) of the Foreign  
16 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

17 (3) PRESIDENT'S SURVEILLANCE PROGRAM AND PROGRAM.—The terms "President's  
18 Surveillance Program" and "Program" mean the intelligence activity involving  
19 communications that was authorized by the President during the period beginning on  
20 September 11, 2001, and ending on January 17, 2007, including the program referred to by  
21 the President in a radio address on December 17, 2005 (commonly known as the Terrorist  
22 Surveillance Program).

23 (b) Reviews.—

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

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

32 (B) ~~the process through which access to legal reviews of the program were~~  
33 ~~conducted, the substance of such reviews, access to such reviews, Program and access~~  
34 ~~to information about the Program;~~

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

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

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

4 (2) COOPERATION AND COORDINATION.—

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

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

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

13 (B) INTEGRATION OF OTHER REVIEWS.—The Office of Professional Responsibility of  
14 the Department of Justice shall provide the report of any investigation conducted by  
15 such Office on matters relating to the Program, **including any investigation of the**  
16 **process through which legal reviews of the Program were conducted and the**  
17 **substance of such reviews**, to the Inspector General of the Department of Justice, who  
18 shall integrate the factual findings and conclusions of such investigation into its  
19 review.

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

24 (c) Reports.—

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

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

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



1 (d) Resources.—

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

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

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

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

15 (3) TRANSFER OF PERSONNEL.—The Attorney General, the Secretary of Defense, the  
16 Director of National Intelligence, the Director of the National Security Agency, and the  
17 head of any other element of the intelligence community that participated in the  
18 President's Surveillance Program may transfer personnel to the relevant Office of the  
19 Inspector General required to conduct a review under subsection (b)(1) and submit a  
20 report under subsection (c) and, in addition to any other personnel authorized by law,  
21 are authorized to fill any vacancy caused by such a transfer. Personnel transferred  
22 under this paragraph shall perform such duties relating to such review as the relevant  
23 Inspector General shall direct.

24 TITLE IV—OTHER PROVISIONS

25 SEC. 401. SEVERABILITY.

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

30 SEC. 402. EFFECTIVE DATE.

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

33 SEC. 403. REPEALS.

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

35 (1) AMENDMENTS TO FISA.—

36 (A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and  
37 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,  
38 and 1805c) are repealed.

1 (B) TECHNICAL AND CONFORMING AMENDMENTS.—

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

5 (ii) CONFORMING AMENDMENTS.—Except as provided in section 404, section  
6 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is  
7 amended—

8 (I) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting  
9 “501(f)(1) or 702(h)(4)”; and

10 (II) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting  
11 “501(f)(1) or 702(h)(4)”.

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

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

17 (b) FISA Amendments Act of 2008.—

18 (1) IN GENERAL.—Except as provided in section 404, effective December 31, ~~2011~~ 2012,  
19 title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a),  
20 is repealed.

21 (2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, ~~2011~~—  
22 2012—

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

25 (B) except as provided in section 404, section 601(a)(1) of such Act (50 U.S.C.  
26 1871(a)(1)) is amended to read as such section read on the day before the date of the  
27 enactment of this Act; and

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

31 SEC. 404. TRANSITION PROCEDURES.

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

33 (1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any  
34 other provision of law, **except as provided in paragraph (7)**, any order, authorization, or  
35 directive issued or made pursuant to section 105B of the Foreign Intelligence Surveillance  
36 Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55;  
37 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or  
38 directive.

39 (2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS,

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1 AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act, any  
2 amendment made by this Act or the Foreign Intelligence Surveillance Act of 1978 (50  
3 U.S.C. 1801 et seq.)—

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

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

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

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

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

20 (4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign  
21 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of  
22 2007, shall continue to apply with respect to any directives issued pursuant to such section  
23 105B.

24 (5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding  
25 any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50  
26 U.S.C. 1801 et seq.), section 103(e) of the Foreign Intelligence Surveillance Act (50 U.S.C.  
27 1803(e)), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110-  
28 55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to  
29 section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of  
30 the Protect America Act of 2007, until the later of—

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

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

35 (6) REPORTING REQUIREMENTS.—

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

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

1 certification—

2 (i) made by the Attorney General;

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

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

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

12 (7) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the Attorney  
13 General and the Director of National Intelligence seek to replace an authorization made  
14 pursuant to section 105B of the ~~Act~~ **Foreign Intelligence Surveillance Act of 1978**, as  
15 added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 522),  
16 by filing a certification pursuant to section 702(i)(5)(A) of the Foreign Intelligence  
17 Surveillance Act of 1978 (**as added by section 101(a) of this Act**), that authorization, and  
18 any directives ~~issues~~ issued thereunder and any order related thereto, shall remain in effect  
19 until the Court issues an order with respect to that certification under section 702(i)(3) of  
20 ~~such Act~~ **the Foreign Intelligence Surveillance Act of 1978 (as so added)** at which time  
21 the ~~provision~~ **provisions** of that ~~subsection~~ **section** and of section 702(i)(4) of such Act  
22 shall apply.

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

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

26 (1) ORDERS IN EFFECT ON DECEMBER 31, 2011.—~~NOTWITHSTANDING 2012.~~—  
27 **Notwithstanding** any other provision of this Act, any amendment made by this Act, or the  
28 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order,  
29 authorization, or directive issued or made under title VII of the Foreign Intelligence  
30 Surveillance Act of 1978, as amended by section 101(a), shall continue in effect until the  
31 date of the expiration of such order, authorization, or directive.

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

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

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

40 (3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF INFORMATION.—  
41 Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance

1 Act of 1978 (50 U.S.C. 1801 et seq.)—

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

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

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

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

11 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section  
12 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the  
13 Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

14 (4) REPORTING REQUIREMENTS.—

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

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

22 (i) made by the Attorney General;

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

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

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

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

- 1 (A) the date that authorization expires; or
- 2 (B) the date that is 90 days after the date of the enactment of this Act.