

WITHHOLD

Exemption 5

[STAFF WORKING DRAFT]

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

- Sec. 201. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 202. Technical amendments.

TITLE III—REVIEW OF PREVIOUS ACTIONS

- Sec. 301. Review of previous actions.

TITLE IV—OTHER PROVISIONS

- Sec. 401. Severability.
- Sec. 402. Effective date.
- Sec. 403. Repeals.
- Sec. 404. Transition procedures.

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

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

7 (1) by striking title VII; and

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

10 **“TITLE VII—ADDITIONAL PROCE-**
11 **DURES REGARDING CERTAIN**
12 **PERSONS OUTSIDE THE**
13 **UNITED STATES**

14 **“SEC. 701. DEFINITIONS.**

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

21 “(b) ADDITIONAL DEFINITIONS.—

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

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

3 “(B) the Permanent Select Committee on
4 Intelligence of the House of Representatives.

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

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

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

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

20 “(B) a provider of electronic communica-
21 tion service, as that term is defined in section
22 2510 of title 18, United States Code;

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

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

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

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

13 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
14 **SONS OUTSIDE THE UNITED STATES OTHER**
15 **THAN UNITED STATES PERSONS.**

16 “(a) AUTHORIZATION.—Notwithstanding any other
17 provision of law, upon the issuance of an order in accord-
18 ance with subsection (i)(3) or a determination under sub-
19 section (c)(1)(C)(ii), the Attorney General and the Direc-
20 tor of National Intelligence may authorize jointly, for a
21 period of up to 1 year from the effective date of the au-
22 thorization, the targeting of persons reasonably believed
23 to be located outside the United States to acquire foreign
24 intelligence information.

1 “(b) LIMITATIONS.—An acquisition authorized under
2 subsection (a)—

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

6 “(2) may not intentionally target a person rea-
7 sonably believed to be located outside the United
8 States if the purpose of such acquisition is to target
9 a particular, known person reasonably believed to be
10 in the United States;

11 “(3) may not intentionally target a United
12 States person reasonably believed to be located out-
13 side the United States;

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

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

21 “(c) CONDUCT OF ACQUISITION.—

22 “(1) IN GENERAL.—An acquisition authorized
23 under subsection (a) may be conducted only in ac-
24 cordance with—

1 “(A)(i) a certification made by the Attor-
2 ney General and the Director of National Intel-
3 ligence pursuant to subsection (g); or
4 “(ii) a determination under subpara-
5 graph (C)(ii), until such time as a certifi-
6 cation for such authorization is submitted
7 pursuant to subsection (g) or amended
8 pursuant to subsection (i)(1)(C);
9 “(B) the targeting and minimization proce-
10 dures adopted in accordance with subsections
11 (d) and (e); and
12 “(C)(i) an order issued in accordance with
13 subsection (i)(3); or
14 “(ii) a determination by the Attorney
15 General and the Director of National Intel-
16 ligence that exigent circumstances exist be-
17 cause, without immediate implementation
18 of an authorization under subsection (a),
19 intelligence important to the national secu-
20 rity of the United States may be lost or
21 not timely acquired and time does not per-
22 mit the issuance of an order pursuant to
23 subsection (i)(3) prior to the implementa-
24 tion of such authorization.

1 “(2) TIMING OF DETERMINATION.—The Attor-
2 ney General and the Director of National Intel-
3 ligence may make the determination under para-
4 graph (1)(C)(ii)—

5 “(A) before the submission of a certifi-
6 cation under subsection (g); or

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

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

17 “(d) TARGETING PROCEDURES.—

18 “(1) REQUIREMENT TO ADOPT.—The Attorney
19 General, in consultation with the Director of Na-
20 tional Intelligence, shall adopt targeting procedures
21 that are reasonably designed to ensure that any ac-
22 quisition authorized under subsection (a) is limited
23 to targeting persons reasonably believed to be lo-
24 cated outside the United States and does not inten-
25 tionally acquire any communication as to which the

1 sender and all intended recipients are known at the
2 time of the acquisition to be located in the United
3 States.

4 “(2) JUDICIAL REVIEW.—The procedures re-
5 quired by paragraph (1) shall be subject to judicial
6 review pursuant to subsection (i).

7 “(e) MINIMIZATION PROCEDURES.—

8 “(1) REQUIREMENT TO ADOPT.—The Attorney
9 General, in consultation with the Director of Na-
10 tional Intelligence, shall adopt minimization proce-
11 dures that meet the definition of minimization proce-
12 dures under section 101(h) or section 301(4), as ap-
13 propriate, for acquisitions authorized under sub-
14 section (a).

15 “(2) JUDICIAL REVIEW.—The minimization
16 procedures required by paragraph (1) shall be sub-
17 ject to judicial review pursuant to subsection (i).

18 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
19 TIONS.—

20 “(1) REQUIREMENT TO ADOPT.—The Attorney
21 General, in consultation with the Director of Na-
22 tional Intelligence, shall adopt guidelines to ensure—

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

1 “(B) that an application for a court order
2 is filed if required by any other section of this
3 Act.

4 “(2) SUBMISSION OF GUIDELINES.—The Attor-
5 ney General shall provide the guidelines adopted
6 pursuant to paragraph (1) to—

7 “(A) the congressional intelligence commit-
8 tees;

9 “(B) the Committee on the Judiciary of
10 the Senate;

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

13 “(D) the Foreign Intelligence Surveillance
14 Court.

15 “(g) CERTIFICATION.—

16 “(1) IN GENERAL.—

17 “(A) REQUIREMENT.—Subject to subpara-
18 graph (B), prior to the initiation of an acquisi-
19 tion authorized under subsection (a), the Attor-
20 ney General and the Director of National Intel-
21 ligence shall provide to the Foreign Intelligence
22 Surveillance Court, under oath, a written cer-
23 tification and any supporting affidavit, under
24 seal, in accordance with this subsection.

1 “(B) EXCEPTION.—If the Attorney Gen-
2 eral and the Director of National Intelligence
3 make a determination under subsection
4 (c)(1)(C)(ii) and time does not permit the sub-
5 mission of a certification under this subsection
6 prior to the authorization referred to in such
7 subsection, the Attorney General and the Direc-
8 tor of National Intelligence shall submit to the
9 Court a certification for such authorization as
10 soon as practicable but in no event later than
11 7 days after such determination is made.

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

14 “(A) attest that—

15 “(i) there are reasonable procedures
16 in place that have been approved, have
17 been submitted for approval, or will be
18 submitted with the certification for ap-
19 proval by the Foreign Intelligence Surveil-
20 lance Court for ensuring that the acquisi-
21 tion authorized under subsection (a)—

22 “(I) is targeted at persons rea-
23 sonably believed to be located outside
24 the United States; and

1 “(II) does not intentionally ac-
2 quire any communication as to which
3 the sender and all intended recipients
4 are known at the time of the acquisi-
5 tion to be located in the United
6 States;

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

9 “(I) meet the definition of mini-
10 mization procedures under section
11 101(h) or section 301(4), as appro-
12 priate; and

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

18 “(iii) guidelines have been adopted in
19 accordance with subsection (f) to ensure
20 compliance with the limitations in sub-
21 section (b) and to ensure that applications
22 for court orders are filed if required by
23 this Act;

24 “(iv) the procedures and guidelines re-
25 ferred to in clauses (i), (ii), and (iii) are

1 consistent with the requirements of the
2 fourth amendment to the Constitution of
3 the United States;

4 “(v) a significant purpose of the ac-
5 quisition is to obtain foreign intelligence
6 information;

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

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

13 “(B) include the procedures adopted in ac-
14 cordance with subsections (d) and (e);

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

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

20 “(ii) the head of an element of the in-
21 telligence community;

22 “(D) include—

23 “(i) an effective date for the author-
24 ization that is at least 30 days after the

1 submission of the written certification to
2 the court; or

3 “(ii) if the acquisition has begun or
4 the effective date is less than 30 days after
5 the submission of the written certification
6 to the court, the date the acquisition began
7 or the effective date for the acquisition;
8 and

9 “(E) if the Attorney General and the Di-
10 rector of National Intelligence make a deter-
11 mination under subsection (c)(1)(A)(ii), include
12 a statement that such determination has been
13 made.

14 “(3) CHANGE IN EFFECTIVE DATE.—The At-
15 torney General and the Director of National Intel-
16 ligence may advance or delay the effective date re-
17 ferred to in paragraph (2)(D) by submitting an
18 amended certification in accordance with this sub-
19 section to the Foreign Intelligence Surveillance
20 Court for review pursuant to subsection (i).

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

1 “(5) MAINTENANCE OF CERTIFICATION.—The
2 Attorney General or a designee of the Attorney Gen-
3 eral shall maintain a copy of a certification made
4 under this subsection.

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

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

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

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

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

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

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

9 “(3) RELEASE FROM LIABILITY.—No cause of
10 action shall lie in any court against any electronic
11 communication service provider for providing any in-
12 formation, facilities, or assistance in accordance with
13 a directive issued pursuant to paragraph (1).

14 “(4) CHALLENGING OF DIRECTIVES.—

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

22 “(B) ASSIGNMENT.—The presiding judge
23 of the Court shall assign the petition filed
24 under subparagraph (A) to 1 of the judges serv-
25 ing in the pool established by section 103(e)(1)

1 not later than 24 hours after the filing of the
2 petition.

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

9 “(D) PROCEDURES FOR INITIAL RE-
10 VIEW.—A judge shall conduct an initial review
11 of a petition filed under subparagraph (A) not
12 later than 5 days after being assigned such pe-
13 tition. If the judge determines that the petition
14 does not consist of claims, defenses, or other
15 legal contentions that are warranted by existing
16 law or by a nonfrivolous argument for extend-
17 ing, modifying, or reversing existing law or for
18 establishing new law, the judge shall imme-
19 diately deny the petition and affirm the direc-
20 tive or any part of the directive that is the sub-
21 ject of the petition and order the recipient to
22 comply with the directive or any part of it.
23 Upon making such a determination or promptly
24 thereafter, the judge shall provide a written

1 statement for the record of the reasons for a
2 determination under this subparagraph.

3 “(E) PROCEDURES FOR PLENARY RE-
4 VIEW.—If a judge determines that a petition
5 described in subparagraph (A) requires plenary
6 review, the judge shall affirm, modify, or set
7 aside the directive that is the subject of that pe-
8 tition not later than 30 days after being as-
9 signed the petition. If the Court does not set
10 aside the directive, the judge shall immediately
11 affirm or affirm with modifications the direc-
12 tive, and order the recipient to comply with the
13 directive in its entirety or as modified. The
14 judge shall provide a written statement for the
15 record of the reasons for a determination under
16 this subparagraph.

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

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

24 “(5) ENFORCEMENT OF DIRECTIVES.—

1 “(A) ORDER TO COMPEL.—If an electronic
2 communication service provider fails to comply
3 with a directive issued pursuant to paragraph
4 (1), the Attorney General may file a petition for
5 an order to compel the electronic communica-
6 tion service provider to comply with the direc-
7 tive with the Foreign Intelligence Surveillance
8 Court, which shall have jurisdiction to review
9 such a petition.

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

16 “(C) PROCEDURES FOR REVIEW.—A judge
17 considering a petition filed under subparagraph
18 (A) shall issue an order requiring the electronic
19 communication service provider to comply with
20 the directive or any part of it, as issued or as
21 modified, not later than 30 days after being as-
22 signed such petition if the judge finds that the
23 directive meets the requirements of this section,
24 and is otherwise lawful. The judge shall provide

1 a written statement for the record of the rea-
2 sons for a determination under this paragraph.

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

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

11 “(6) APPEAL.—

12 “(A) APPEAL TO THE COURT OF RE-
13 VIEW.—The Government or an electronic com-
14 munication service provider receiving a directive
15 issued pursuant to paragraph (1) may file a pe-
16 tition with the Foreign Intelligence Surveillance
17 Court of Review for review of a decision issued
18 pursuant to paragraph (4) or (5). The Court of
19 Review shall have jurisdiction to consider such
20 a petition and shall provide a written statement
21 for the record of the reasons for a decision
22 under this paragraph.

23 “(B) CERTIORARI TO THE SUPREME
24 COURT.—The Government or an electronic com-
25 munication service provider receiving a directive

1 issued pursuant to paragraph (1) may file a pe-
2 tition for a writ of certiorari for review of the
3 decision of the Court of Review issued under
4 subparagraph (A). The record for such review
5 shall be transmitted under seal to the Supreme
6 Court of the United States, which shall have ju-
7 risdiction to review such decision.

8 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
9 PROCEDURES.—

10 “(1) IN GENERAL.—

11 “(A) REVIEW BY THE FOREIGN INTEL-
12 LIGENCE SURVEILLANCE COURT.—The Foreign
13 Intelligence Surveillance Court shall have juris-
14 diction to review any certification submitted in
15 accordance with subsection (g) and the tar-
16 geting and minimization procedures adopted in
17 accordance with subsections (d) and (e), and
18 any amendments to such certification or proce-

19 dures.

20 “(B) TIME PERIOD FOR REVIEW.—The
21 Court shall review the certification submitted in
22 accordance with subsection (g) and the tar-
23 geting and minimization procedures adopted in
24 accordance with subsections (d) and (e) and
25 shall complete such review and issue an order

1 under paragraph (3) not later than 30 days
2 after the date on which such certification and
3 procedures are submitted.

4 “(C) AMENDMENTS.—The Attorney Gen-
5 eral and the Director of National Intelligence
6 may amend a certification submitted in accord-
7 ance with subsection (g) or the targeting and
8 minimization procedures adopted in accordance
9 with subsections (d) and (e) as necessary at any
10 time, including if the Court is conducting or
11 has completed review of such certification or
12 such procedures, and shall submit such amend-
13 ed certification or amended procedures to the
14 Court not later than 7 days after amending
15 such certification or such procedures. The
16 Court shall review any amendment under this
17 subparagraph under the procedures set forth in
18 this subsection. The Attorney General and the
19 Director of National Intelligence may authorize
20 the use of an amended certification or amended
21 procedures pending the Court’s review of such
22 amended certification or amended procedures.

23 “(2) REVIEW.—The Court shall review the fol-
24 lowing:

1 “(A) CERTIFICATION.—A certification sub-
2 mitted in accordance with subsection (g) to de-
3 termine whether the certification contains all
4 the required elements.

5 “(B) TARGETING PROCEDURES.—The tar-
6 geting procedures adopted in accordance with
7 subsection (d) to assess whether the procedures
8 are reasonably designed to ensure that the ac-
9 quisition authorized under subsection (a) is lim-
10 ited to the targeting of persons reasonably be-
11 lieved to be located outside the United States
12 and does not intentionally acquire of any com-
13 munication as to which the sender and all in-
14 tended recipients are known at the time of the
15 acquisition to be located in the United States.

16 “(C) MINIMIZATION PROCEDURES.—The
17 minimization procedures submitted in accord-
18 ance with subsection (e) to assess whether such
19 procedures meet the definition of minimization
20 procedures under section 101(h) or section
21 301(4), as appropriate.

22 “(3) ORDERS.—

23 “(A) APPROVAL.—If the Court finds that
24 a certification submitted in accordance with
25 subsection (g) contains all of the required ele-

1 ments and that the targeting and minimization
2 procedures adopted in accordance with sub-
3 sections (d) and (e) are consistent with the re-
4 quirements of those subsections and with the
5 fourth amendment to the Constitution of the
6 United States, the Court shall enter an order
7 approving the certification and the use, or con-
8 tinued use in the case of an acquisition author-
9 ized pursuant to a determination under sub-
10 section (c)(1)(C)(ii), of the procedures for the
11 acquisition.

12 “(B) CORRECTION OF DEFICIENCIES.—If
13 the Court finds that a certification submitted in
14 accordance with subsection (g) does not contain
15 all of the required elements, or that the proce-
16 dures adopted in accordance with subsections
17 (d) and (e) are not consistent with the require-
18 ments of those subsections or the fourth
19 amendment to the Constitution of the United
20 States, the Court shall issue an order directing
21 the Government to, at the Government’s elec-
22 tion and to the extent required by the Court’s
23 order—

24 “(i) correct any deficiency identified
25 by the Court’s order not later than 30 days

1 after the date the Court issues the order;

2 or

3 “(ii) cease, or not begin, the acquisi-
4 tion authorized under subsection (a).

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

10 “(4) APPEAL.—

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

20 “(B) CONTINUATION OF ACQUISITION
21 PENDING REHEARING OR APPEAL.—Any acqui-
22 sition affected by an order under paragraph
23 (3)(B) may continue—

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

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

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

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

25 “(5) SCHEDULE.—

1 “(A) REPLACEMENT OF AUTHORIZATIONS
2 IN EFFECT.—If the Attorney General and the
3 Director of National Intelligence seek to replace
4 an authorization issued pursuant to section
5 105B of the Foreign Intelligence Surveillance
6 Act of 1978, as added by section 2 of the Pro-
7 tect America Act of 2007 (Public Law 110-55)
8 with an authorization under this section, the
9 Attorney General and the Director of National
10 Intelligence shall, to the extent practicable, sub-
11 mit to the Court the certification prepared in
12 accordance with subsection (g) and the proce-
13 dures adopted in accordance with subsections
14 (d) and (e) at least 30 days before the expira-
15 tion of such authorization.

16 “(B) REAUTHORIZATION OF AUTHORIZA-
17 TIONS IN EFFECT.—If the Attorney General
18 and the Director of National Intelligence seek
19 to reauthorize or replace an authorization
20 issued pursuant to this section, the Attorney
21 General and the Director of National Intel-
22 ligence shall, to the extent practicable, submit
23 to the Court the certification prepared in ac-
24 cordance with subsection (g) and the procedures
25 adopted in accordance with subsections (d) and

1 (e) at least 30 days prior to the expiration of
2 such authorization.

3 “(j) JUDICIAL PROCEEDINGS.—

4 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Ju-
5 dicial proceedings under this section shall be con-
6 ducted as expeditiously as possible.

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

13 “(k) MAINTENANCE AND SECURITY OF RECORDS
14 AND PROCEEDINGS.—

15 “(1) STANDARDS.—The Foreign Intelligence
16 Surveillance Court shall maintain a record of a pro-
17 ceeding under this section, including petitions filed,
18 appeals, orders granted, and statements of reasons
19 for decision, under security measures adopted by the
20 Chief Justice of the United States, in consultation
21 with the Attorney General and the Director of Na-
22 tional Intelligence.

23 “(2) FILING AND REVIEW.—All petitions under
24 this section shall be filed under seal. In any pro-
25 ceedings under this section, the court shall, upon re-

1 quest of the Government, review ex parte and in
2 camera any Government submission, or portions of
3 a submission, which may include classified informa-
4 tion.

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

11 “(1) ASSESSMENTS AND REVIEWS.—

12 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
13 quently than once every 6 months, the Attorney
14 General and Director of National Intelligence shall
15 assess compliance with the targeting and minimiza-
16 tion procedures adopted in accordance with sub-
17 sections (d) and (e) and the guidelines adopted in
18 accordance with subsection (f) and shall submit each
19 such assessment to—

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

22 “(B) the congressional intelligence commit-
23 tees; and

24 “(C) the Committees on the Judiciary of
25 the House of Representatives and the Senate,

1 consistent with the Rules of the House of Rep-
2 resentatives and the Standing Rules of the Sen-
3 ate.

4 “(2) AGENCY ASSESSMENT.—The Inspectors
5 General of the Department of Justice and each ele-
6 ment of the intelligence community authorized to ac-
7 quire foreign intelligence information under sub-
8 section (a) with respect to the department or ele-
9 ment of such Inspector General—

10 “(A) are authorized to review the compli-
11 ance with the targeting and minimization proce-
12 dures adopted in accordance with subsections
13 (d) and (e) and the guidelines adopted in ac-
14 cordance with subsection (f);

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

24 “(C) with respect to acquisitions author-
25 ized under subsection (a), shall review the num-

1 ber of targets that were later determined to be
2 located in the United States and, to the extent
3 possible, whether their communications were re-
4 viewed; and

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

6 “(i) the Attorney General;

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

9 “(iii) the congressional intelligence
10 committees; and

11 “(iv) the Committees on the Judiciary
12 of the House of Representatives and the
13 Senate, consistent with the Rules of the
14 House of Representatives and the Standing
15 Rules of the Senate.

16 “(3) ANNUAL REVIEW.—

17 “(A) REQUIREMENT TO CONDUCT.—The
18 head of each element of the intelligence commu-
19 nity conducting an acquisition authorized under
20 subsection (a) shall conduct an annual review to
21 determine whether there is reason to believe
22 that foreign intelligence information has been
23 or will be obtained from the acquisition. The
24 annual review shall provide, with respect to

1 such acquisitions authorized under subsection
2 (a)—
3 “(i) an accounting of the number of
4 disseminated intelligence reports con-
5 taining a reference to a United States per-
6 son identity;
7 “(ii) an accounting of the number of
8 United States person identities subse-
9 quently disseminated by that element in re-
10 sponse to requests for identities that were
11 not referred to by name or title in the
12 original reporting;
13 “(iii) the number of targets that were
14 later determined to be located in the
15 United States and, to the extent possible,
16 whether their communications were re-
17 viewed; and
18 “(iv) a description of any procedures
19 developed by the head of such element of
20 the intelligence community and approved
21 by the Director of National Intelligence to
22 assess, in a manner consistent with na-
23 tional security, operational requirements
24 and the privacy interests of United States
25 persons, the extent to which the acquisi-

1 tions authorized under subsection (a) ac-
2 quire the communications of United States
3 persons, and the results of any such as-
4 sessment.

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

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

17 “(i) the Foreign Intelligence Surveil-
18 lance Court;

19 “(ii) the Attorney General;

20 “(iii) the Director of National Intel-
21 ligence;

22 “(iv) the congressional intelligence
23 committees; and

24 “(v) the Committees on the Judiciary
25 of the House of Representatives and the

1 Senate, consistent with the Rules of the
2 House of Representatives and the Standing
3 Rules of the Senate.

4 **"SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**
5 **STATES OF UNITED STATES PERSONS OUT-**
6 **SIDE THE UNITED STATES.**

7 **"(a) JURISDICTION OF THE FOREIGN INTELLIGENCE**
8 **SURVEILLANCE COURT.—**

9 **"(1) IN GENERAL.—**The Foreign Intelligence
10 Surveillance Court shall have jurisdiction to review
11 an application and to enter an order approving the
12 targeting of a United States person reasonably be-
13 lieved to be located outside the United States to ac-
14 quire foreign intelligence information, if the acquisi-
15 tion constitutes electronic surveillance or the acquisi-
16 tion of stored electronic communications or stored
17 electronic data that requires an order under this
18 Act, and such acquisition is conducted within the
19 United States.

20 **"(2) LIMITATION.—**If a United States person
21 targeted under this subsection is reasonably believed
22 to be located in the United States during the effec-
23 tive period of an order issued pursuant to subsection
24 (c), an acquisition targeting such United States per-
25 son under this section shall cease unless the targeted

1 United States person is again reasonably believed to
2 be located outside the United States while an order
3 issued pursuant to subsection (c) is in effect.

4 “(b) APPLICATION.—

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

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

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

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

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

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

4 “(D) a statement of proposed minimization
5 procedures that meet the definition of mini-
6 mization procedures under section 101(h) or
7 section 301(4), as appropriate;

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

11 “(F) a certification made by the Attorney
12 General or an official specified in section
13 104(a)(6) that—

14 “(i) the certifying official deems the
15 information sought to be foreign intel-
16 ligence information;

17 “(ii) a significant purpose of the ac-
18 quisition is to obtain foreign intelligence
19 information;

20 “(iii) such information cannot reason-
21 ably be obtained by normal investigative
22 techniques;

23 “(iv) designates the type of foreign in-
24 telligence information being sought accord-

1 ing to the categories described in section
2 101(e); and

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

5 “(I) the information sought is
6 the type of foreign intelligence infor-
7 mation designated; and

8 “(II) such information cannot
9 reasonably be obtained by normal in-
10 vestigative techniques;

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

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

22 “(I) a statement of the facts concerning
23 any previous applications that have been made
24 to any judge of the Foreign Intelligence Surveil-
25 lance Court involving the United States person

1 specified in the application and the action taken
2 on each previous application; and

3 “(J) a statement of the period of time for
4 which the acquisition is required to be main-
5 tained, provided that such period of time shall
6 not exceed 90 days per application.

7 “(2) OTHER REQUIREMENTS OF THE ATTOR-
8 NEY GENERAL.—The Attorney General may require
9 any other affidavit or certification from any other
10 officer in connection with the application.

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

15 “(c) ORDER.—

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

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

24 “(B) on the basis of the facts submitted by
25 the applicant, for the United States person who

1 is the target of the acquisition, there is prob-
2 able cause to believe that the target is—

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

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

8 “(C) the proposed minimization procedures
9 meet the definition of minimization procedures
10 under section 101(h) or section 301(4), as ap-
11 propriate; and

12 “(D) the application that has been filed
13 contains all statements and certifications re-
14 quired by subsection (b) and the certification or
15 certifications are not clearly erroneous on the
16 basis of the statement made under subsection
17 (b)(1)(F)(v) and any other information fur-
18 nished under subsection (b)(3).

19 “(2) PROBABLE CAUSE.—In determining
20 whether or not probable cause exists for purposes of
21 paragraph (1)(B), a judge having jurisdiction under
22 subsection (a)(1) may consider past activities of the
23 target and facts and circumstances relating to cur-
24 rent or future activities of the target. No United
25 States person may be considered a foreign power,

1 agent of a foreign power, or officer or employee of
2 a foreign power solely upon the basis of activities
3 protected by the first amendment to the Constitution
4 of the United States.

5 “(3) REVIEW.—

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

10 “(B) REVIEW OF PROBABLE CAUSE.—If
11 the judge determines that the facts submitted
12 under subsection (b) are insufficient to estab-
13 lish probable cause under paragraph (1)(B), the
14 judge shall enter an order so stating and pro-
15 vide a written statement for the record of the
16 reasons for such determination. The Govern-
17 ment may appeal an order under this subpara-
18 graph pursuant to subsection (f).

19 “(C) REVIEW OF MINIMIZATION PROCE-
20 DURES.—If the judge determines that the pro-
21 posed minimization procedures referred to in
22 paragraph (1)(C) do not meet the definition of
23 minimization procedures under section 101(h)
24 or section 301(4), as appropriate, the judge
25 shall enter an order so stating and provide a

1 written statement for the record of the reasons
2 for such determination. The Government may
3 appeal an order under this subparagraph pursu-
4 ant to subsection (f).

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

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

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

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

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

8 “(D) a summary of the means by which
9 the acquisition will be conducted and whether
10 physical entry is required to effect the acquisi-
11 tion; and

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

14 “(5) DIRECTIVES.—An order approving an ac-
15 quisition under this subsection shall direct—

16 “(A) that the minimization procedures re-
17 ferred to in paragraph (1)(C), as approved or
18 modified by the Court, be followed;

19 “(B) if applicable, an electronic commu-
20 nication service provider to provide to the Gov-
21 ernment forthwith all information, facilities, or
22 assistance necessary to accomplish the acquisi-
23 tion authorized under such order in a manner
24 that will protect the secrecy of the acquisition
25 and produce a minimum of interference with

1 the services that such electronic communication
2 service provider is providing to the target of the
3 acquisition;

4 “(C) if applicable, an electronic commu-
5 nication service provider to maintain under se-
6 curity procedures approved by the Attorney
7 General any records concerning the acquisition
8 or the aid furnished that such electronic com-
9 munication service provider wishes to maintain;
10 and

11 “(D) if applicable, that the Government
12 compensate, at the prevailing rate, such elec-
13 tronic communication service provider for pro-
14 viding such information, facilities, or assistance.

15 “(6) DURATION.—An order approved under this
16 subsection shall be effective for a period not to ex-
17 ceed 90 days and such order may be renewed for ad-
18 ditional 90-day periods upon submission of renewal
19 applications meeting the requirements of subsection
20 (b).

21 “(7) COMPLIANCE.—At or prior to the end of
22 the period of time for which an acquisition is ap-
23 proved by an order or extension under this section,
24 the judge may assess compliance with the minimiza-
25 tion procedures referred to in paragraph (1)(C) by

1 reviewing the circumstances under which informa-
2 tion concerning United States persons was acquired,
3 retained, or disseminated.

4 “(d) EMERGENCY AUTHORIZATION.—

5 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
6 TION.—Notwithstanding any other provision of this
7 Act, if the Attorney General reasonably determines
8 that—

9 “(A) an emergency situation exists with re-
10 spect to the acquisition of foreign intelligence
11 information for which an order may be obtained
12 under subsection (c) before an order author-
13 izing such acquisition can with due diligence be
14 obtained, and

15 “(B) the factual basis for issuance of an
16 order under this subsection to approve such ac-
17 quisition exists,
18 the Attorney General may authorize such acquisition
19 if a judge having jurisdiction under subsection (a)(1)
20 is informed by the Attorney General, or a designee
21 of the Attorney General, at the time of such author-
22 ization that the decision has been made to conduct
23 such acquisition and if an application in accordance
24 with this section is made to a judge of the Foreign
25 Intelligence Surveillance Court as soon as prac-

1 ticable, but not more than 7 days after the Attorney
2 General authorizes such acquisition.

3 “(2) MINIMIZATION PROCEDURES.—If the At-
4 torney General authorizes an acquisition under para-
5 graph (1), the Attorney General shall require that
6 the minimization procedures referred to in sub-
7 section (c)(1)(C) for the issuance of a judicial order
8 be followed.

9 “(3) TERMINATION OF EMERGENCY AUTHOR-
10 IZATION.—In the absence of a judicial order approv-
11 ing an acquisition under paragraph (1), such acqui-
12 sition shall terminate when the information sought is
13 obtained, when the application for the order is de-
14 nied, or after the expiration of 7 days from the time
15 of authorization by the Attorney General, whichever
16 is earliest.

17 “(4) USE OF INFORMATION.—If an application
18 for approval submitted pursuant to paragraph (1) is
19 denied, or in any other case where the acquisition is
20 terminated and no order is issued approving the ac-
21 quisition, no information obtained or evidence de-
22 rived from such acquisition, except under cir-
23 cumstances in which the target of the acquisition is
24 determined not to be a United States person, shall
25 be received in evidence or otherwise disclosed in any

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

13 “(e) RELEASE FROM LIABILITY.—No cause of action
14 shall lie in any court against any electronic communication
15 service provider for providing any information, facilities,
16 or assistance in accordance with an order or request for
17 emergency assistance issued pursuant to subsections (c)
18 or (d).

19 “(f) APPEAL.—

20 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
21 SURVEILLANCE COURT OF REVIEW.—The Govern-
22 ment may file an appeal with the Foreign Intel-
23 ligence Surveillance Court of Review for review of an
24 order issued pursuant to subsection (c). The Court
25 of Review shall have jurisdiction to consider such ap-

1 peal and shall provide a written statement for the
2 record of the reasons for a decision under this para-
3 graph.

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

11 “(g) CONSTRUCTION.—Nothing in title I shall be con-
12 strued to require an application for a court order under
13 such title for an acquisition that is targeted in accordance
14 with this section or chapter 119, 121, or 206 of title 18,
15 United States Code, at a United States person reasonably
16 believed to be located outside the United States.

17 **“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED**
18 **STATES PERSONS OUTSIDE THE UNITED**
19 **STATES.**

20 “(a) JURISDICTION AND SCOPE.—

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

24 “(2) SCOPE.—No element of the intelligence
25 community may intentionally target, for the purpose

1 of acquiring foreign intelligence information, a
2 United States person reasonably believed to be lo-
3 cated outside the United States under circumstances
4 in which the targeted United States person has a
5 reasonable expectation of privacy and a warrant
6 would be required if the acquisition were conducted
7 inside the United States for law enforcement pur-
8 poses, unless a judge of the Foreign Intelligence
9 Surveillance Court has entered an order with respect
10 to such targeted United States person or the Attor-
11 ney General has authorized an emergency acquisition
12 pursuant to subsections (c) or (d) or any other pro-
13 vision of this Act.

14 “(3) LIMITATIONS.—

15 “(A) MOVING OR MISIDENTIFIED TAR-
16 GETS.—If a United States person targeted
17 under this subsection is reasonably believed to
18 be located in the United States during the ef-
19 fective period of an order issued pursuant to
20 subsection (c), an acquisition targeting such
21 United States person under this section shall
22 cease unless the targeted United States person
23 is again reasonably believed to be located out-
24 side the United States during the effective pe-
25 riod of such order.

1 “(B) APPLICABILITY.—If an acquisition is
2 to be conducted inside the United States and
3 could be authorized under section 703, the ac-
4 quisition may only be conducted if authorized
5 by section 703 or in accordance with another
6 provision of this Act other than this section or
7 chapter 119, 121, or 206 of title 18, United
8 States Code.

9 “(b) APPLICATION.—Each application for an order
10 under this section shall be made by a Federal officer in
11 writing upon oath or affirmation to a judge having juris-
12 diction under subsection (a)(1). Each application shall re-
13 quire the approval of the Attorney General based upon the
14 Attorney General’s finding that it satisfies the criteria and
15 requirements of such application as set forth in this sec-
16 tion and shall include—

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

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

22 “(3) a statement of the facts and circumstances
23 relied upon to justify the applicant’s belief that the
24 United States person who is the target of the acqui-
25 sition is—

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

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

6 “(4) a statement of proposed minimization pro-
7 cedures that meet the definition of minimization pro-
8 cedures under section 101(h) or section 301(4), as
9 appropriate;

10 “(5) a certification made by the Attorney Gen-
11 eral, an official specified in section 104(a)(6), or the
12 head of an element of the intelligence community
13 that—

14 “(A) the certifying official deems the infor-
15 mation sought to be foreign intelligence infor-
16 mation; and

17 “(B) a significant purpose of the acquisi-
18 tion is to obtain foreign intelligence informa-
19 tion;

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

1 “(7) a statement of the period of time for which
2 the acquisition is required to be maintained, pro-
3 vided that such period of time shall not exceed 90
4 days per application.

5 “(c) ORDER.—

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

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

14 “(B) on the basis of the facts submitted by
15 the applicant, for the United States person who
16 is the target of the acquisition, there is prob-
17 able cause to believe that the target is—

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

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

23 “(C) the proposed minimization proce-
24 dures, with respect to their dissemination provi-
25 sions, meet the definition of minimization pro-

1 cedures under section 101(h) or section 301(4),
2 as appropriate; and

3 “(D) the application that has been filed
4 contains all statements and certifications re-
5 quired by subsection (b) and the certification
6 provided under subsection (b)(5) is not clearly
7 erroneous on the basis of the information fur-
8 nished under subsection (b).

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

20 “(3) REVIEW.—

21 “(A) LIMITATIONS ON REVIEW.—Review
22 by a judge having jurisdiction under subsection
23 (a)(1) shall be limited to that required to make
24 the findings described in paragraph (1). The
25 judge shall not have jurisdiction to review the

1 means by which an acquisition under this sec-
2 tion may be conducted.

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

12 “(C) REVIEW OF MINIMIZATION PROCE-
13 DURES.—If the judge determines that the mini-
14 mization procedures applicable to dissemination
15 of information obtained through an acquisition
16 under this subsection do not meet the definition
17 of minimization procedures under section
18 101(h) or section 301(4), as appropriate, the
19 judge shall enter an order so stating and pro-
20 vide a written statement for the record of the
21 reasons for such determination. The Govern-
22 ment may appeal an order under this clause
23 pursuant to subsection (e).

24 “(D) SCOPE OF REVIEW OF CERTIFI-
25 CATION.—If the judge determines that an appli-

1 cation under subsection (b) does not contain all
2 the required elements, or that the certification
3 provided under subsection (b)(5) is clearly erro-
4 neous on the basis of the information furnished
5 under subsection (b), the judge shall enter an
6 order so stating and provide a written state-
7 ment for the record of the reasons for such de-
8 termination. The Government may appeal an
9 order under this subparagraph pursuant to sub-
10 section (e).

11 “(4) DURATION.—An order under this para-
12 graph shall be effective for a period not to exceed 90
13 days and such order may be renewed for additional
14 90-day periods upon submission of renewal applica-
15 tions meeting the requirements of subsection (b).

16 “(5) COMPLIANCE.—At or prior to the end of
17 the period of time for which an order or extension
18 is granted under this section, the judge may assess
19 compliance with the minimization procedures re-
20 ferred to in paragraph (1)(C) by reviewing the cir-
21 cumstances under which information concerning
22 United States persons was disseminated, provided
23 that the judge may not inquire into the cir-
24 cumstances relating to the conduct of the acquisi-
25 tion.

1 “(d) EMERGENCY AUTHORIZATION.—

2 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
3 TION.—Notwithstanding any other provision of this
4 section, if the Attorney General reasonably deter-
5 mines that—

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

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

24 “(2) MINIMIZATION PROCEDURES.—If the At-
25 torney General authorizes an emergency acquisition

1 under paragraph (1), the Attorney General shall re-
2 quire that the minimization procedures referred to in
3 subsection (e)(1)(C) be followed.

4 “(3) TERMINATION OF EMERGENCY AUTHOR-
5 IZATION.—In the absence of an order under sub-
6 section (e), an emergency acquisition under para-
7 graph (1) shall terminate when the information
8 sought is obtained, if the application for the order
9 is denied, or after the expiration of 7 days from the
10 time of authorization by the Attorney General,
11 whichever is earliest.

12 “(4) USE OF INFORMATION.—If an application
13 submitted to the Court pursuant to paragraph (1) is
14 denied, or in any other case where the acquisition is
15 terminated and no order with respect to the target
16 of the acquisition is issued under subsection (e), no
17 information obtained or evidence derived from such
18 acquisition, except under circumstances in which the
19 target of the acquisition is determined not to be a
20 United States person, shall be received in evidence
21 or otherwise disclosed in any trial, hearing, or other
22 proceeding in or before any court, grand jury, de-
23 partment, office, agency, regulatory body, legislative
24 committee, or other authority of the United States,
25 a State, or political subdivision thereof, and no in-