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SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) Table of Contents.—The table of contents for 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.Preemption of State investigations.~~

~~Sec.203.Reporting.~~

~~Sec.204.Technical~~ **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.

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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) shall be conducted
30 only in accordance with—

31 “(A) ~~the targeting and minimization procedures required by~~ **adopted in accordance**
32 **with subsections (d) and (e); and**

33 “(B) ~~upon submission of the certification in accordance with subsection (g), such~~
34 **certification.** “(2) DETERMINATION.—**A determination under this paragraph and for the**
35 **purposes of subsection (a) is a determination by the Attorney General and the Director**
36 **of National Intelligence that exigent circumstances exist because, without immediate**
37 **implementation of an authorization under paragraph (a), intelligence important to the**
38 **national security of the United States may be lost or not timely acquired and time does**
39 **not permit the issuance of an order pursuant to subsection (i)(3) prior to the**

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1 | implementation of such authorization.

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2 | “(3) **TIMING OF DETERMINATION.**—The Attorney General and the Director of
3 | National Intelligence may make the determination under paragraph (2)—

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4 | “(A) before the submission of a certification under subsection (g); or

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

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

10 | “(d) **Targeting Procedures.**—

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

14 | “(A) ensure that any acquisition authorized under subsection (a) is limited to
15 | targeting persons reasonably believed to be located outside the United States and does
16 | not intentionally acquire; and

17 | “(B) prevent the intentional acquisition of any communication as to which the
18 | sender and all intended recipients are known at the time of the acquisition to be located
19 | in the United States.

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

22 | “(e) **Minimization Procedures.**—

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

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

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

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

32 | “(A) compliance with the limitations in subsection (b); and

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

35 | “(2) **Training.**—The Director of National Intelligence shall establish a training program
36 | for appropriate intelligence community personnel to ensure that the guidelines adopted
37 | pursuant to paragraph (1) are properly implemented.

38 | “(3)“(2) **SUBMISSION OF GUIDELINES.**—The Attorney General shall provide the guidelines
39 | adopted pursuant to paragraph (1) to—

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- 1 “(A) the congressional intelligence committees;
- 2 “(B) the Committee on the Judiciary of the Senate;
- 3 “(C) the Committee on the Judiciary of the House of Representatives; and
- 4 “(D) the Foreign Intelligence Surveillance Court.

5 “(g) Certification.—

6 “(1) IN GENERAL.—

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

12 “(B) EXCEPTION.—If Exception.—

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

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

26 ~~“(iii) Notification of determination of exigent circumstances.—If the Attorney General~~
27 ~~and the Director of National Intelligence make a determination under clause (i) after the~~
28 ~~submission of a certification for such acquisition to the Foreign Intelligence Surveillance~~
29 ~~Court, the Attorney General and the Director of National Intelligence shall notify the Court~~
30 ~~of such determination.~~

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

32 “(A) attest that—

33 “(i) there are reasonable procedures in place that have been approved, have
34 been submitted for approval, or will be submitted with the certification for
35 approval by the Foreign Intelligence Surveillance Court Court to—

36 “(I) ensure that the acquisition authorized under subsection (a)(a)—

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

39 “(II) does not intentionally acquire to prevent the intentional acquisition
40 of any communication as to which the sender and all intended recipients are

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1 known at the time of the acquisition to be located in the United States;

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

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

5 “(II) have been approved, have been submitted for approval, or will be
6 submitted with the certification for approval by the Foreign Intelligence
7 Surveillance Court;

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

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

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

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

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

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

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

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

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

24 “(C)“(D) include—

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

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

30 “(E) if“(D) in the case of a certification submitted after the Attorney General and the
31 Director of National Intelligence make a determination under paragraph (1)(B)(i)
32 subsection (c)(2), include a statement that such determination has been made.

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

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

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

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

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

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

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

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

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

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

23 “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

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

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1 thereafter, the judge shall provide a written statement for the record of the reasons for a
2 determination under this subparagraph.

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

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

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

15 “(5) ENFORCEMENT OF DIRECTIVES.—

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

21 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed
22 under subparagraph (A) to 1 of the judges serving in the pool established by section
23 103(e)(1) not later than 24 hours after the filing of the petition.

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

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

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

35 “(6) APPEAL.—

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

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

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

8 “(1) IN GENERAL.—

9 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
10 Intelligence Surveillance Court shall have jurisdiction to review any certification
11 submitted in accordance with subsection (g) and the targeting and minimization
12 procedures adopted ~~pursuant to~~ **in accordance with** subsections (d) and (e), and any
13 amendments to such certification or procedures.

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

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

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

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

33 “(B) TARGETING PROCEDURES.—The targeting procedures ~~required by~~ **adopted in**
34 **accordance with** subsection (d) to assess whether the procedures are reasonably
35 designed to—

36 “(i) ensure that the acquisition authorized under subsection (a) is limited to the
37 targeting of persons reasonably believed to be located outside the United States
38 and ~~does not intentionally require;~~ **and**

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

42 “(C) MINIMIZATION PROCEDURES.—The minimization procedures submitted in

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

3 “(3) ORDERS.—

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

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

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

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

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

25 “(4) APPEAL.—

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

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

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

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

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

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

6 “(5) SCHEDULE.—

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

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

23 “(C) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the
24 Attorney General and the Director of National Intelligence seek to replace an
25 authorization made pursuant to this section by filing a certification pursuant to
26 paragraph (B), that authorization, and any directives issued thereunder and any
27 order related thereto, shall remain in effect, notwithstanding the expiration
28 provided for in section 702(a) of this Act, until the Court issues an order with
29 respect to that certification under paragraph (3), at which time the provisions of
30 that paragraph and paragraph (4) shall apply.

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of that paragraph and paragraph (4)
shall apply

31 “(j) Judicial Proceedings.—

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

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

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

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

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

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

8 “(1) Assessments and Reviews.—

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

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

15 “(B) consistent with the Rules of the House of Representatives, the Standing
16 Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any
17 successor Senate resolution—

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

19 ~~(C)~~“(ii) the Committees on the Judiciary of the House of Representatives and
20 the Senate.

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

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

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

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

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

37 “(i) the Attorney General;

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

39 “(iii) consistent with the Rules of the House of Representatives, the
40 Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress

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1 or any successor Senate resolution—

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

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

5 “(3) ANNUAL REVIEW.—

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

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

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

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

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

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

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

33 “(i) the Foreign Intelligence Surveillance Court;

34 “(ii) the Attorney General;

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

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

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

40 ~~(v)~~“(II) the Committees on the Judiciary of the House of Representatives

1 and the Senate.

2 “SEC. 703. CERTAIN ACQUISITIONS INSIDE THE
3 UNITED STATES TARGETING UNITED STATES
4 PERSONS OUTSIDE THE UNITED STATES.

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

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

12 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably
13 believed to be located in the United States during the effective period of an order issued
14 pursuant to subsection (c), an acquisition targeting such United States person under this
15 section shall cease unless the targeted United States person is again reasonably believed to
16 be located outside the United States while an order issued pursuant to subsection (c) is in
17 effect. **Nothing in this section shall be construed to limit the authority of the**
18 **Government to seek an order or authorization under, or otherwise engage in any**
19 **activity that is authorized under, any other title of this Act.**

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of title 18, United States Code

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20 “(b) Application.—

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

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

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

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

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

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

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

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

38 “(F) a certification made by the Attorney General or an official specified in section
39 104(a)(6) that—

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1 “(i) the certifying official deems the information sought to be foreign
2 intelligence information;

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

5 “(iii) such information cannot reasonably be obtained by normal investigative
6 techniques;

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

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

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

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

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

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

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

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

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

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

32
33 ~~“(4) Construction.—Nothing in title I shall be construed to require an application for a~~
34 ~~court order under such title for an acquisition that is targeted in accordance with this section at a~~
35 ~~United States person reasonably believed to be located outside the United States.~~

36 “(c) Order.—

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

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

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

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

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

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

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

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

21 “(3) REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 “(d) Emergency Authorization.—

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

39 “(A) an emergency situation exists with respect to the acquisition of foreign
40 intelligence information for which an order may be obtained under subsection (c)

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1 before an order authorizing such acquisition can with due diligence be obtained, and

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

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

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

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

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

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

34 “(f) Appeal.

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

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1 “(g) Construction.—Nothing in this Act shall be construed to require an application for a court
2 order for an acquisition that is targeted in accordance with this section at a United States person
3 reasonably believed to be located outside the United States. **“SEC. 704. OTHER**
4 **ACQUISITIONS TARGETING UNITED STATES PERSONS**
5 **OUTSIDE THE UNITED STATES.**

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6 “(a) Jurisdiction and Scope.—

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

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

17 “(3) LIMITATIONS.—

18 “(A) MOVING OR MISIDENTIFIED TARGETS.—If a United States person targeted under
19 this subsection is reasonably believed to be located in the United States during the
20 effective period of an order issued pursuant to subsection (c), an acquisition targeting
21 such United States person under this section shall cease unless the targeted United
22 States person is again reasonably believed to be located outside the United States
23 during the effective period of such order.

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

28 “(C) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit
29 the authority of the Government to seek an order or authorization under, or
30 otherwise engage in any activity that is authorized under, any other title of this
31 Act.

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

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

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

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

40 “(3) a statement of the facts and circumstances relied upon to justify the applicant’s belief

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1 that the United States person who is the target of the acquisition is—

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

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

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

7 “(5) a certification made by the Attorney General, an official specified in section
8 104(a)(6), or the head of an element of the intelligence community that—

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

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

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

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

18 “(c) Order.—

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

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

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

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

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

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

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

36 “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for
37 purposes of an order under paragraph (1)(B), a judge having jurisdiction under subsection
38 (a)(1) may consider past activities of the target and facts and circumstances relating to
39 current or future activities of the target. No United States person may be considered a

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

4 “(3) REVIEW.—

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

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

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

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

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

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

36 “(d) Emergency Authorization.—

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

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

42 “(B) the factual basis for the issuance of an order under this section exists,

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

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

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

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

28 “(e) Appeal.—

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

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

38 “SEC. 705. JOINT APPLICATIONS AND CONCURRENT
39 AUTHORIZATIONS.

40 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under
41 section 703 or section 704 is proposed to be conducted both inside and outside the United States,
42 a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue

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1 simultaneously, upon the request of the Government in a joint application complying with the
2 requirements of section 703(b) and section 704(b), orders under section 703(c) and section
3 704(c), as appropriate.

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

10 “SEC. 706. USE OF INFORMATION ACQUIRED UNDER
11 TITLE VII.

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

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

19 “SEC. 707. CONGRESSIONAL OVERSIGHT.

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

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

27 “(1) with respect to section 702—

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

29 “(B) with respect to each determination made under section ~~702(g)(1)(B)(i)~~
30 702(c)(2), the reasons for exercising the authority under such section;

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

32 “(D) a description of the judicial review during the reporting period of any such
33 certifications and targeting and minimization procedures required by subsections (d)
34 and (e) of section 702 and utilized with respect to such acquisition, including a copy of
35 any order or pleading in connection with such review that contains a significant legal
36 interpretation of the provisions of section 702;

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

39 “(F) any compliance reviews conducted by the Attorney General or the Director of

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1 National Intelligence of acquisitions authorized under section 702(a);
2 “(G) a description of any incidents of noncompliance with a directive issued by the
3 Attorney General and the Director of National Intelligence under section 702(h),
4 including—

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

8 “(ii) incidents of noncompliance by a specified person to whom the Attorney
9 General and Director of National Intelligence issued a directive under section
10 702(h); and

11 “(H) any procedures implementing section 702;

12 “(2) with respect to section 703—

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

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

15 “(i) granted;

16 “(ii) modified; or

17 “(iii) denied; and

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

21 “(3) with respect to section 704—

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

23 “(B) the total number of such orders

24 “(i) granted;

25 “(ii) modified; or

26 “(iii) denied; and

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

30 “SEC. 708. SAVINGS PROVISION.

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

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

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

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of title 18, United States Code.”

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

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

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

5 **“Sec.701.Definitions.**

6 **“Sec.702.Procedures for targeting certain persons outside the United States other than United**
7 **States persons.**

8 **“Sec.703.Certain acquisitions inside the United States ~~Targeting United States persons outside~~**
9 **the United States.**

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

11 **“Sec.705.Joint applications and concurrent authorizations.**

12 **“Sec.706.Use of information acquired under title VII.**

13 **“Sec.707.Congressional oversight.**

14 **“Sec.708.Savings provision.”.**

15 (c) **Technical and Conforming Amendments.—**

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

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

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

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

23 (E) **acquisitions under section 703; and**

24 (F) **acquisitions under section 704;”.**

25 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**
26 **WHICH ELECTRONIC SURVEILLANCE AND**
27 **INTERCEPTION OF CERTAIN COMMUNICATIONS MAY**
28 **BE CONDUCTED.**

29 (a) **Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of**
30 **1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:**

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

33 **“Sec. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and**
34 **206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic**

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1 surveillance and the interception of domestic wire, oral, or electronic communications may be
2 conducted.

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

7 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
8 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and
9 inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any
10 express statutory authorization that is an additional exclusive means for conducting electronic
11 surveillance under section 112.”; and

12 (c) Conforming Amendments.—

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

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

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

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

24 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN**
25 **COURT ORDERS UNDER THE FOREIGN INTELLIGENCE**
26 **SURVEILLANCE ACT OF 1978.**

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

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

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

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

39 “(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or

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1 memoranda of law associated with such decision, order, or opinion, that was issued during
2 the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008
3 and not previously submitted in a report under subsection (a).

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

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

11 “(e) Definitions.—In this section:

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

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

16 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

19 (1) in subsection (a)—

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

21 (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9),
22 respectively;

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

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

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

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

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

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

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

37 (2) by striking subsection (b);

38 (3) by redesignating subsections (c) through (e) as subsections (b) through (d),

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1 respectively; and

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

5 SEC. 105. ISSUANCE OF AN ORDER.

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

8 (1) in subsection (a)—

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

10 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
11 respectively;

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

13 (3) in subsection (c)(1)—

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

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

16 (C) by striking subparagraph (F);

17 (4) by striking subsection (d);

18 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),
19 respectively;

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

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

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

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

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

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

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

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

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

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

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

25 SEC. 106. USE OF INFORMATION.

26 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.
27 1806) is amended by striking “radio communication” and inserting “communication”.

28 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

31 (1) in subsection (a)—

32 (A) by striking paragraph (2);

33 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),
34 respectively;

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

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

39 (E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the

1 matter preceding subparagraph (A)—

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

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

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

9 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
10 1824) is amended —

11 (1) in subsection (a)—

12 (A) by striking paragraph (1);

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
14 1801 et seq.) is amended—

15 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking
16 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

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

18 SEC. 108. AMENDMENTS FOR EMERGENCY PEN 19 REGISTERS AND TRAP AND TRACE DEVICES.

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

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

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

24 SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE 25 COURT.

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

29 (b) En Banc Authority.—

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

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

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

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

38 “(i) en banc consideration is necessary to secure or maintain uniformity of the court’s

1 decisions; or

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

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

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

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

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

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

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

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

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

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

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

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

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

35 SEC. 110. WEAPONS OF MASS DESTRUCTION.

36 (a) Definitions.—

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

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

1 (B) in paragraph (6) by striking the period and inserting “; or”; and
2 (C) by adding at the end the following new paragraph:
3 “(7) an entity not substantially composed of United States persons that is engaged in the
4 international proliferation of weapons of mass destruction.”.

5 (2) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of such section 101 is amended—
6 (A) in subparagraph (B), by striking “or” at the end;
7 and (B) in subparagraph (C), by striking “or” at the end; and
8 ~~(B)-(C)~~ by adding at the end the following new subparagraph subparagraphs:
9 “(D) engages in the international proliferation of weapons of mass destruction, or
10 activities in preparation therefor; or.”.

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

Comment [COT1]: Is this provision necessary? (E) is necessarily included in (D).

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

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

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

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

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

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

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29 “(4) any weapon that is designed, intended, or has the capability to release radiation or
30 radioactivity causing death, illness, or serious bodily injury to a significant number of
31 persons.”.

32 (b) Use of Information.—

33 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of
34 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international
35 terrorism” and inserting “sabotage, international terrorism, or the international proliferation
36 of weapons of mass destruction”.

37 (2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is
38 amended by striking “sabotage or international terrorism” and inserting “sabotage,

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

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

5 **TITLE II—PROTECTIONS FOR ELECTRONIC**
6 **COMMUNICATION SERVICE PROVIDERS**

7 **SEC. 201. PROCEDURES FOR IMPLEMENTING**
8 **STATUTORY DEFENSES UNDER THE FOREIGN**
9 **INTELLIGENCE SURVEILLANCE ACT OF 1978.**

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

12 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**
13 **THE GOVERNMENT**

14 **“SEC. 801. DEFINITIONS.**

15 “In this title:

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

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

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

23 “(B) the Permanent Select Committee on Intelligence of the House of
24 Representatives.

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

26 “(4) CIVIL ACTION.—The term ‘civil action’ includes a covered civil action.

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

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

31 “(B) seeks monetary or other relief from the electronic surveillance
32 communication service provider related to the provision of such assistance.

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

35 “(A) a telecommunications carrier, as that term is defined in section 3 of the

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1 Communications Act of 1934 (47 U.S.C. 153);

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

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

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

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

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

13 ~~“(5)“(7) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the~~
14 ~~meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C.~~
15 ~~401a(4)).~~

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16 ~~“(6)“(8) PERSON.—The term ‘person’ means—~~

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

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

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

22 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title
23 18, United States Code; or

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

26 ~~“(7)“(9) STATE.—The term ‘State’ means any State, political subdivision of a State, the~~
27 ~~Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of~~
28 ~~the United States, and includes any officer, public utility commission, or other body~~
29 ~~authorized to regulate an electronic communication service provider.~~

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30 “SEC. 802. PROCEDURES FOR IMPLEMENTING
31 STATUTORY DEFENSES.

32 “(a) Requirement for Certification.—~~Notwithstanding Certification.—~~

33 ~~“(1) In general.—Notwithstanding any other provision of law, no a civil action may not lie or~~
34 ~~be maintained in a Federal or State court against any person for providing assistance to an~~
35 ~~element of the intelligence community, and shall be promptly dismissed, if the Attorney General~~
36 ~~certifies to the district court of the United States that—~~

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

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

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

6 ~~or~~

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

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

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

15 ~~“(i) authorized by the President during the period beginning on September 11,~~
16 ~~2001, and ending on January 17, 2007; and~~

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

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

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

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

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

26
27 ~~“(b) Judicial Review.—~~

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

32 ~~“(2) SUPPLEMENTAL MATERIALS.—In its review of a certification made pursuant to~~
33 ~~subsection (a), the court may examine the court order, certification, written request, or~~
34 ~~directive described in subsection (a); and any relevant court order, certification, written~~
35 ~~request, or directive submitted pursuant to subsection (d), and any other materials submitted~~
36 ~~by the Attorney General.~~

37 ~~“(c) Limitations on Disclosure.—If the Attorney General files a declaration under section~~
38 ~~1746 of title 28, United States Code, that disclosure of a certification made pursuant to~~
39 ~~subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would~~
40 ~~harm the national security of the United States, the court shall—~~

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

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

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

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

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

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

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

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

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

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

35 **“SEC. 803. PREEMPTION.**

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

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

39 “(2) require through regulation or any other means the disclosure of information about an
40 electronic communication service provider’s alleged assistance to an element of the

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1 intelligence community;

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

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

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

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

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

14 ~~SEC. 203. REPORTING.~~

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

17 **“SEC. 804. REPORTING.**

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

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

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

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

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

28 **SEC. 204 202. TECHNICAL AMENDMENTS.**

29 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978
30 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end
31 the following:

32 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**
33 **THE GOVERNMENT**

34 “Sec.801.Definitions

35 “Sec.802.Procedures for implementing statutory defenses.

36 “Sec.803.Preemption.

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1 "Sec.804.Reporting."

2 TITLE III—REVIEW OF PREVIOUS ACTIONS

3 SEC. 301. REVIEW OF PREVIOUS ACTIONS.

4 (a) Definitions.—In this section:

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

7 (A) the Select Committee on Intelligence and the Committee on the Judiciary of the
8 Senate; and

9 (B) the Permanent Select Committee on Intelligence and the Committee on the
10 Judiciary of the House of Representatives.

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

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

20 (b) Reviews.—

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

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

29 (B) ~~the process through which access to legal reviews of the program were~~
30 ~~conducted; the substance of such reviews, access to such reviews, Program and access~~
31 ~~to information about the Program;~~ **Program** and access
to information about the Program;

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

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

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

39 (2) COOPERATION AND COORDINATION.—

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

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

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

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

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

20 (c) Reports.—

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

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

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

40 (d) Resources.—

41 (1) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall
42 ensure that the process for the investigation and adjudication of an application by an

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1 Inspector General or any appropriate staff of an Inspector General for a security clearance
2 necessary for the conduct of the review under subsection (b)(1) is carried out as
3 expeditiously as possible.

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

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

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

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

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President's Surveillance Program

20 TITLE IV—OTHER PROVISIONS

21 SEC. 401. SEVERABILITY.

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

26 SEC. 402. EFFECTIVE DATE.

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

29 SEC. 403. REPEALS.

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

31 (1) AMENDMENTS TO FISA.—

32 (A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and
33 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,
34 and 1805c) are repealed.

35 (B) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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1 (ii) CONFORMING AMENDMENTS.—Except as provided in section 404, section
2 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is
3 amended—

4 (I) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting
5 “501(f)(1) or 702(h)(4)”; and

6 (II) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting
7 “501(f)(1) or 702(h)(4)”.

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

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

13 (b) FISA Amendments Act of 2008.—

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

17 (2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2011—
18 2012—

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

21 (B) except as provided in section 404, section 601(a)(1) of such Act (50 U.S.C.
22 1871(a)(1)) is amended to read as such section read on the day before the date of the
23 enactment of this Act; and

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

27 SEC. 404. TRANSITION PROCEDURES.

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

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

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paragraph (7)

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

39 (A) subject to paragraph (3), section 105A of such Act, as added by section 2 of the

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

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

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

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

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

16 (4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign
17 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of
18 2007, shall continue to apply with respect to any directives issued pursuant to such section
19 105B.

20 (5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding
21 any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1801 et seq.), section 103(e) of the Foreign Intelligence Surveillance Act (50 U.S.C.
23 1803(e)), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110-
24 55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to
25 section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of
26 the Protect America Act of 2007, until the later of—

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

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

31 (6) REPORTING REQUIREMENTS.—

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

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

39 (i) made by the Attorney General;

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

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

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

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

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

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

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

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

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

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

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

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

Comment [CQT2]: We are not sure what the reference to section 113 is referring to. Suggest possibly leaving it as "section 103(e) of such Act, as amended, shall..."

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

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

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

7 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section
8 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the
9 Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

10 (4) REPORTING REQUIREMENTS.—

11 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or
12 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section
13 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections
14 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until
15 the date that the certification described in subparagraph (B) is submitted.

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

18 (i) made by the Attorney General;

19 (ii) submitted to the Select Committee on Intelligence of the Senate, the
20 Permanent Select Committee on Intelligence of the House of Representatives, and
21 the Committees on the Judiciary of the Senate and the House of Representatives;

22 (iii) that states that there will be no further acquisitions carried out under title
23 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section
24 101(a), after the date of such certification; and

25 (iv) that states that the information required to be included in a review,
26 assessment, or report under section 601 of such Act, as amended by section
27 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating
28 to any acquisition conducted under title VII of such Act, as amended by section
29 101(a), has been included in a review, assessment, or report under such section
30 601, 702(l), or 707.

31 (5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS
32 OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section
33 2.5 of Executive Order 12333 to intentionally target a United States person reasonably
34 believed to be located outside the United States shall continue in effect, and shall constitute
35 a sufficient basis for conducting such an acquisition targeting a United States person located
36 outside the United States until the earlier of—

37 (A) the date that authorization expires; or

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