

(109 PAGES)

**WITHHOLD**

**[STAFF WORKING DRAFT]**

**Exemption 5**

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

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

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

Sec. 1. Short title; table of contents.

**TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

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

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

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

**TITLE III—REVIEW OF PREVIOUS ACTIONS**

- Sec. 301. Review of previous actions.

**TITLE IV—OTHER PROVISIONS**

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

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

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

7                   (1) by striking title VII; and

8                   (2) by adding at the end:

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

13   **“SEC. 701. DEFINITIONS.**

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

20           “(b) ADDITIONAL DEFINITIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14          “(a) AUTHORIZATION.—Notwithstanding any other  
15 provision of law, upon the issuance of an order in accord-  
16 ance with subsection (i)(3) or a determination under sub-  
17 section (c)(2), the Attorney General and the Director of  
18 National Intelligence may authorize jointly, for a period  
19 of up to 1 year from the effective date of the authoriza-  
20 tion, the targeting of persons reasonably believed to be lo-  
21 cated outside the United States to acquire foreign intel-  
22 ligence information.

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

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

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

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

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

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

19           “(c) CONDUCT OF ACQUISITION.—

20           “(1) IN GENERAL.—An acquisition authorized  
21 under subsection (a) shall be conducted only in ac-  
22 cordance with—

23           “(A) the targeting and minimization proce-  
24 dures adopted in accordance with subsections  
25 (d) and (e); and

1                   “(B) upon submission of a certification in  
2                   accordance with subsection (g), such certifi-  
3                   cation.

4                   “(2) DETERMINATION.—A determination under  
5                   this paragraph and for purposes of subsection (a) is  
6                   a determination by the Attorney General and the Di-  
7                   rector of National Intelligence that exigent cir-  
8                   cumstances exist because, without immediate imple-  
9                   mentation of an authorization under subsection (a),  
10                  intelligence important to the national security of the  
11                  United States may be lost or not timely acquired  
12                  and time does not permit the issuance of an order  
13                  pursuant to subsection (i)(3) prior to the implemen-  
14                  tation of such authorization.

15                  “(3) TIMING OF DETERMINATION.—The Attor-  
16                  ney General and the Director of National Intel-  
17                  ligence may make the determination under para-  
18                  graph (2)—

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

21                         “(B) by amending a certification pursuant  
22                         to subsection (i)(1)(C) at any time during  
23                         which judicial review under subsection (i) of  
24                         such certification is pending.

1           “(4) CONSTRUCTION.—Nothing in title I shall  
2           be construed to require an application for a court  
3           order under such title for an acquisition that is tar-  
4           geted in accordance with this section at a person  
5           reasonably believed to be located outside the United  
6           States.

7           “(d) TARGETING PROCEDURES.—

8           “(1) REQUIREMENT TO ADOPT.—The Attorney  
9           General, in consultation with the Director of Na-  
10          tional Intelligence, shall adopt targeting procedures  
11          that are reasonably designed to—

12               “(A) ensure that any acquisition author-  
13               ized under subsection (a) is limited to targeting  
14               persons reasonably believed to be located out-  
15               side the United States; and

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

21           “(2) JUDICIAL REVIEW.—The procedures  
22           adopted in accordance with paragraph (1) shall be  
23           subject to judicial review pursuant to subsection (i).

24           “(e) MINIMIZATION PROCEDURES.—

1           “(1) REQUIREMENT TO ADOPT.—The Attorney  
2           General, in consultation with the Director of Na-  
3           tional Intelligence, shall adopt minimization proce-  
4           dures that meet the definition of minimization proce-  
5           dures under section 101(h) or section 301(4), as ap-  
6           propriate, for acquisitions authorized under sub-  
7           section (a).

8           “(2) JUDICIAL REVIEW.—The minimization  
9           procedures adopted in accordance with paragraph  
10          (1) shall be subject to judicial review pursuant to  
11          subsection (i).

12          “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-  
13          TIONS.—

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

17                         “(A) compliance with the limitations in  
18                         subsection (b); and

19                         “(B) that an application for a court order  
20                         is filed as required by this Act.

21                 “(2) SUBMISSION OF GUIDELINES.—The Attor-  
22                 ney General shall provide the guidelines adopted in  
23                 accordance with paragraph (1) to—

24                         “(A) the congressional intelligence commit-  
25                         tees;



1           “(B) the Committee on the Judiciary of  
2           the Senate;

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

5           “(D) the Foreign Intelligence Surveillance  
6           Court.

7           “(g) CERTIFICATION.—

8           “(1) IN GENERAL.—

9           “(A) REQUIREMENT.—Subject to subpara-  
10          graph (B), prior to the implementation of an  
11          authorization under subsection (a), the Attor-  
12          ney General and the Director of National Intel-  
13          ligence shall provide to the Foreign Intelligence  
14          Surveillance Court a written certification and  
15          any supporting affidavit, under oath and under  
16          seal, in accordance with this subsection.

17          “(B) EXCEPTION.—If the Attorney Gen-  
18          eral and the Director of National Intelligence  
19          make a determination under subsection (c)(2)  
20          and time does not permit the submission of a  
21          certification under this subsection prior to the  
22          implementation of an authorization under sub-  
23          section (a), the Attorney General and the Direc-  
24          tor of National Intelligence shall submit to the  
25          Court a certification for such authorization as

1           soon as practicable but in no event later than  
2           7 days after such determination is made.

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

5                   “(A) attest that—

6                           “(i) there are reasonable procedures  
7                           in place that have been approved, have  
8                           been submitted for approval, or will be  
9                           submitted with the certification for ap-  
10                          proval by the Foreign Intelligence Surveil-  
11                          lance Court to—

12                                   “(I) ensure that an acquisition  
13                                   authorized under subsection (a) is tar-  
14                                   geted at persons reasonably believed  
15                                   to be located outside the United  
16                                   States; and

17   “(II) prevent the intentional ac-  
18   quisition of any communication as to  
19   which the sender and all intended re-  
20   cipients are known at the time of the  
21   acquisition to be located in the United  
22   States;

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

1                   “(I) meet the definition of mini-  
2                   mization procedures under section  
3                   101(h) or section 301(4), as appro-  
4                   priate; and

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

10                   “(iii) guidelines have been adopted in  
11                   accordance with subsection (f) to ensure  
12                   compliance with the limitations in sub-  
13                   section (b) and to ensure that applications  
14                   for court orders are filed as required by  
15                   this Act;

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

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

24                   “(vi) the acquisition involves obtaining  
25                   the foreign intelligence information from or

1 with the assistance of an electronic com-  
2 munication service provider; and

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

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

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

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

13 “(ii) the head of an element of the in-  
14 telligence community;

15 “(D) include—

16 “(i) an effective date for the author-  
17 ization that is at least 30 days after the  
18 submission of the written certification to  
19 the court; or

20 “(ii) if the acquisition has begun or  
21 the effective date is less than 30 days after  
22 the submission of the written certification  
23 to the court, the date the acquisition began  
24 or the effective date for the acquisition;  
25 and

1           “(E) if the Attorney General and the Di-  
2           rector of National Intelligence make a deter-  
3           mination under subsection (c)(2), include a  
4           statement that such determination has been  
5           made.

6           “(3) CHANGE IN EFFECTIVE DATE.—The At-  
7           torney General and the Director of National Intel-  
8           ligence may advance or delay the effective date re-  
9           ferred to in paragraph (2)(D) by submitting an  
10          amended certification in accordance with this sub-  
11          section to the Foreign Intelligence Surveillance  
12          Court for review pursuant to subsection (i).

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

18          “(5) MAINTENANCE OF CERTIFICATION.—The  
19          Attorney General or a designee of the Attorney Gen-  
20          eral shall maintain a copy of a certification made  
21          under this subsection.

22          “(6) REVIEW.—A certification submitted in ac-  
23          cordance with this subsection shall be subject to ju-  
24          dicial review pursuant to subsection (i).

1       “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-  
2 TIVES.—

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

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

16           “(B) maintain under security procedures  
17 approved by the Attorney General and the Di-  
18 rector of National Intelligence any records con-  
19 cerning the acquisition or the aid furnished that  
20 such electronic communication service provider  
21 wishes to maintain.

22           “(2) COMPENSATION.—The Government shall  
23 compensate, at the prevailing rate, an electronic  
24 communication service provider for providing infor-

1 mation, facilities, or assistance pursuant to para-  
2 graph (1).

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

8 “(4) CHALLENGING OF DIRECTIVES.—

9 “(A) AUTHORITY TO CHALLENGE.—An  
10 electronic communication service provider re-  
11 ceiving a directive issued pursuant to paragraph  
12 (1) may challenge the directive by filing a peti-  
13 tion with the Foreign Intelligence Surveillance  
14 Court, which shall have jurisdiction to review  
15 such a petition.

16 “(B) ASSIGNMENT.—The presiding judge  
17 of the Court shall assign the petition filed  
18 under subparagraph (A) to 1 of the judges serv-  
19 ing in the pool established under section  
20 103(e)(1) not later than 24 hours after the fil-  
21 ing of the petition.

22 “(C) STANDARDS FOR REVIEW.—A judge  
23 considering a petition to modify or set aside a  
24 directive may grant such petition only if the  
25 judge finds that the directive does not meet the

1 requirements of this section, or is otherwise un-  
2 lawful.

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

21 “(E) PROCEDURES FOR PLENARY RE-  
22 VIEW.—If a judge determines that a petition  
23 described in subparagraph (A) requires plenary  
24 review, the judge shall affirm, modify, or set  
25 aside the directive that is the subject of that pe-



1           tition not later than 30 days after being as-  
2           signed the petition. If the Court does not set  
3           aside the directive, the judge shall immediately  
4           affirm or affirm with modifications the direc-  
5           tive, and order the recipient to comply with the  
6           directive in its entirety or as modified. The  
7           judge shall provide a written statement for the  
8           record of the reasons for a determination under  
9           this subparagraph.

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

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

17           “(5) ENFORCEMENT OF DIRECTIVES.—

18           “(A) ORDER TO COMPEL.—If an electronic  
19           communication service provider fails to comply  
20           with a directive issued pursuant to paragraph  
21           (1), the Attorney General may file a petition for  
22           an order to compel the electronic communica-  
23           tion service provider to comply with the direc-  
24           tive with the Foreign Intelligence Surveillance

1 Court, which shall have jurisdiction to review  
2 such a petition.

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

9 “(C) PROCEDURES FOR REVIEW.—A judge  
10 considering a petition filed under subparagraph  
11 (A) shall issue an order requiring the electronic  
12 communication service provider to comply with  
13 the directive or any part of it, as issued or as  
14 modified, not later than 30 days after being as-  
15 signed such petition if the judge finds that the  
16 directive meets the requirements of this section  
17 and is otherwise lawful. The judge shall provide  
18 a written statement for the record of the rea-  
19 sons for a determination under this paragraph.

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

24 “(E) PROCESS.—Any process under this  
25 paragraph may be served in any judicial district

1           in which the electronic communication service  
2           provider may be found.

3           “(6) APPEAL.—

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

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

1       “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND  
2 PROCEDURES.—

3           “(1) IN GENERAL.—

4               “(A) REVIEW BY THE FOREIGN INTEL-  
5 LIGENCE SURVEILLANCE COURT.—The Foreign  
6 Intelligence Surveillance Court shall have juris-  
7 diction to review any certification submitted in  
8 accordance with subsection (g) and the tar-  
9 geting and minimization procedures adopted in  
10 accordance with subsections (d) and (e), and  
11 any amendments to such certification or proce-  
12 dures.

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

22               “(C) AMENDMENTS.—The Attorney Gen-  
23 eral and the Director of National Intelligence  
24 may amend a certification submitted in accord-  
25 ance with subsection (g) or the targeting and

1           minimization procedures adopted in accordance  
2           with subsections (d) and (e) as necessary at any  
3           time, including if the Court is conducting or  
4           has completed review of such certification or  
5           such procedures, and shall submit such amend-  
6           ed certification or amended procedures to the  
7           Court not later than 7 days after amending  
8           such certification or such procedures. The  
9           Court shall review any amendment under this  
10          subparagraph under the procedures set forth in  
11          this subsection. The Attorney General and the  
12          Director of National Intelligence may authorize  
13          the use of an amended certification or amended  
14          procedures pending the Court's review of such  
15          amended certification or amended procedures.

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

18                 “(A) CERTIFICATION.—A certification sub-  
19                 mitted in accordance with subsection (g) to de-  
20                 termine whether the certification contains all  
21                 the required elements.

22                 “(B) TARGETING PROCEDURES.—The tar-  
23                 geting procedures adopted in accordance with  
24                 subsection (d) to assess whether the procedures  
25                 are reasonably designed to—

1                   “(i) ensure that the acquisition au-  
2                   thorized under subsection (a) is limited to  
3                   the targeting of persons reasonably be-  
4                   lieved to be located outside the United  
5                   States; and

6                   “(ii) prevent the intentional acquisi-  
7                   tion of any communication as to which the  
8                   sender and all intended recipients are  
9                   known at the time of the acquisition to be  
10                  located in the United States.

11                  “(C) MINIMIZATION PROCEDURES.—The  
12                  minimization procedures adopted in accordance  
13                  with subsection (e) to assess whether such pro-  
14                  cedures meet the definition of minimization pro-  
15                  cedures under section 101(h) or section 301(4),  
16                  as appropriate.

17                  “(3) ORDERS.—

18                  “(A) APPROVAL.—If the Court finds that  
19                  a certification submitted in accordance with  
20                  subsection (g) contains all of the required ele-  
21                  ments and that the targeting and minimization  
22                  procedures adopted in accordance with sub-  
23                  sections (d) and (e) are consistent with the re-  
24                  quirements of those subsections and with the  
25                  fourth amendment to the Constitution of the

1 United States, the Court shall enter an order  
2 approving the certification and the use, or con-  
3 tinued use in the case of an acquisition author-  
4 ized pursuant to a determination under sub-  
5 section (c)(2), of the procedures for the acquisi-  
6 tion.

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

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

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

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

6           “(4) APPEAL.—

7           “(A) APPEAL TO THE COURT OF RE-  
8           VIEW.—The Government may file a petition  
9           with the Foreign Intelligence Surveillance Court  
10          of Review for review of an order under this sub-  
11          section. The Court of Review shall have juris-  
12          diction to consider such a petition. For any de-  
13          cision affirming, reversing, or modifying an  
14          order of the Foreign Intelligence Surveillance  
15          Court, the Court of Review shall provide for the  
16          record a written statement of the reasons for  
17          the decision.

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

22                 “(i) during the pendency of any re-  
23                 hearing of the order by the Court en banc;  
24                 and



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

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

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

22                  “(5) SCHEDULE.—

23                  “(A) REAUTHORIZATION OF AUTHORIZA-  
24                  TIONS IN EFFECT.—If the Attorney General  
25                  and the Director of National Intelligence seek

1 to reauthorize or replace an authorization  
2 issued pursuant to this section, the Attorney  
3 General and the Director of National Intel-  
4 ligence shall, to the extent practicable, submit  
5 to the Court the certification prepared in ac-  
6 cordance with subsection (g) and the procedures  
7 adopted in accordance with subsections (d) and  
8 (e) at least 30 days prior to the expiration of  
9 such authorization.

10 “(B) REAUTHORIZATION OF ORDERS, AU-  
11 THORIZATIONS, AND DIRECTIVES.—If the At-  
12 torney General and the Director of National In-  
13 telligence seek to reauthorize or replace an au-  
14 thorization made pursuant to this section by fil-  
15 ing a certification pursuant to subparagraph  
16 (A), that authorization, and any directives  
17 issued thereunder and any order related there-  
18 to, shall remain in effect, notwithstanding the  
19 expiration provided for in subsection (a), until  
20 the Court issues an order with respect to such  
21 certification under paragraph (3) at which time  
22 the provisions of that paragraph and paragraph  
23 (4) shall apply with respect to such certifi-  
24 cation.

25 “(j) JUDICIAL PROCEEDINGS.—

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

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

10          “(k) MAINTENANCE AND SECURITY OF RECORDS  
11          AND PROCEEDINGS.—

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

20           “(2) FILING AND REVIEW.—All petitions under  
21           this section shall be filed under seal. In any pro-  
22           ceedings under this section, the court shall, upon re-  
23           quest of the Government, review ex parte and in  
24           camera any Government submission, or portions of

1 a submission, which may include classified informa-  
2 tion.

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

9 “(1) ASSESSMENTS AND REVIEWS.—

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

18 “(A) the Foreign Intelligence Surveillance  
19 Court; and

20 “(B) consistent with the Rules of the  
21 House of Representatives, the Standing Rules  
22 of the Senate, and Senate Resolution 400 of the  
23 94th Congress or any successor Senate resolu-  
24 tion—

1                   “(i) the congressional intelligence  
2                   committees; and

3                   “(ii) the Committees on the Judiciary  
4                   of the House of Representatives and the  
5                   Senate.

6                   “(2) AGENCY ASSESSMENT.—The Inspector  
7                   General of the Department of Justice and the In-  
8                   spector General of each element of the intelligence  
9                   community authorized to acquire foreign intelligence  
10                  information under subsection (a), with respect to the  
11                  department or element of such Inspector General—

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

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

1           “(C) with respect to acquisitions author-  
2           ized under subsection (a), shall review the num-  
3           ber of targets that were later determined to be  
4           located in the United States and, to the extent  
5           possible, whether communications of such tar-  
6           gets were reviewed; and

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

8                   “(i) the Attorney General;

9                   “(ii) the Director of National Intel-  
10                  ligence; and

11                  “(iii) consistent with the Rules of the  
12                  House of Representatives, the Standing  
13                  Rules of the Senate, and Senate Resolution  
14                  400 of the 94th Congress or any successor  
15                  Senate resolution—

16                   “(I) the congressional intelligence  
17                   committees; and

18                   “(II) the Committees on the Ju-  
19                   diciary of the House of Representa-  
20                   tives and the Senate.

21           “(3) ANNUAL REVIEW.—

22                   “(A) REQUIREMENT TO CONDUCT.—The  
23                   head of each element of the intelligence commu-  
24                   nity conducting an acquisition authorized under  
25                   subsection (a) shall conduct an annual review to

1 determine whether there is reason to believe  
2 that foreign intelligence information has been  
3 or will be obtained from the acquisition. The  
4 annual review shall provide, with respect to  
5 such acquisitions authorized under subsection  
6 (a)—

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

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

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

22 “(iv) a description of any procedures  
23 developed by the head of such element of  
24 the intelligence community and approved  
25 by the Director of National Intelligence to

1            assess, in a manner consistent with na-  
2            tional security, operational requirements  
3            and the privacy interests of United States  
4            persons, the extent to which the acquisi-  
5            tions authorized under subsection (a) ac-  
6            quire the communications of United States  
7            persons, and the results of any such as-  
8            sessment.

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

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

21                    “(i) the Foreign Intelligence Surveil-  
22                    lance Court;

23                    “(ii) the Attorney General;

24                    “(iii) the Director of National Intel-  
25                    ligence; and



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

6                   “(I) the congressional intelligence  
7                   committees; and

8                   “(II) the Committees on the Ju-  
9                   diciary of the House of Representa-  
10                  tives and the Senate.

11 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**  
12 **STATES TARGETING UNITED STATES PER-**  
13 **SONS OUTSIDE THE UNITED STATES.**

14                  “(a) JURISDICTION OF THE FOREIGN INTELLIGENCE  
15 SURVEILLANCE COURT.—

16                  “(1) IN GENERAL.—The Foreign Intelligence  
17 Surveillance Court shall have jurisdiction to review  
18 an application and to enter an order approving the  
19 targeting of a United States person reasonably be-  
20 lieved to be located outside the United States to ac-  
21 quire foreign intelligence information, if the acquisi-  
22 tion constitutes electronic surveillance or the acquisi-  
23 tion of stored electronic communications or stored  
24 electronic data that requires an order under this

1 Act, and such acquisition is conducted within the  
2 United States.

3 “(2) LIMITATION.—If a United States person  
4 targeted under this subsection is reasonably believed  
5 to be located in the United States during the effec-  
6 tive period of an order issued pursuant to subsection  
7 (c), an acquisition targeting such United States per-  
8 son under this section shall cease unless the targeted  
9 United States person is again reasonably believed to  
10 be located outside the United States while an order  
11 issued pursuant to subsection (c) is in effect. Noth-  
12 ing in this section shall be construed to limit the au-  
13 thority of the Government to seek an order or au-  
14 thorization under, or otherwise engage in any activ-  
15 ity that is authorized under, any other title of this  
16 Act.

17 “(b) APPLICATION.—

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

1 of such application, as set forth in this section, and  
2 shall include—

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

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

8 “(C) a statement of the facts and cir-  
9 cumstances relied upon to justify the appli-  
10 cant’s belief that the United States person who  
11 is the target of the acquisition is—

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

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

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

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

1           “(F) a certification made by the Attorney  
2           General or an official specified in section  
3           104(a)(6) that—

4                   “(i) the certifying official deems the  
5                   information sought to be foreign intel-  
6                   ligence information;

7                   “(ii) a significant purpose of the ac-  
8                   quisition is to obtain foreign intelligence  
9                   information;

10                   “(iii) such information cannot reason-  
11                   ably be obtained by normal investigative  
12                   techniques;

13                   “(iv) designates the type of foreign in-  
14                   telligence information being sought accord-  
15                   ing to the categories described in section  
16                   101(e); and

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

19                           “(I) the information sought is  
20                           the type of foreign intelligence infor-  
21                           mation designated; and

22                           “(II) such information cannot  
23                           reasonably be obtained by normal in-  
24                           vestigative techniques;

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

5           “(H) the identity of any electronic commu-  
6           nication service provider necessary to effect the  
7           acquisition, provided that the application is not  
8           required to identify the specific facilities, places,  
9           premises, or property at which the acquisition  
10          authorized under this section will be directed or  
11          conducted;

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

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

22          “(2) OTHER REQUIREMENTS OF THE ATTOR-  
23          NEY GENERAL.—The Attorney General may require  
24          any other affidavit or certification from any other  
25          officer in connection with the application.

1           “(3) OTHER REQUIREMENTS OF THE JUDGE.—

2           The judge may require the applicant to furnish such  
3           other information as may be necessary to make the  
4           findings required by subsection (c)(1).

5           “(c) ORDER.—

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

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

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

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

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

23           “(C) the proposed minimization procedures  
24          meet the definition of minimization procedures

1 under section 101(h) or section 301(4), as ap-  
2 propriate; and

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

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

21 “(3) REVIEW.—

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

1           “(B) REVIEW OF PROBABLE CAUSE.—If  
2           the judge determines that the facts submitted  
3           under subsection (b) are insufficient to estab-  
4           lish probable cause under paragraph (1)(B), the  
5           judge shall enter an order so stating and pro-  
6           vide a written statement for the record of the  
7           reasons for such determination. The Govern-  
8           ment may appeal an order under this subpara-  
9           graph pursuant to subsection (f).

10           “(C) REVIEW OF MINIMIZATION PROCE-  
11           DURES.—If the judge determines that the pro-  
12           posed minimization procedures referred to in  
13           paragraph (1)(C) do not meet the definition of  
14           minimization procedures under section 101(h)  
15           or section 301(4), as appropriate, the judge  
16           shall enter an order so stating and provide a  
17           written statement for the record of the reasons  
18           for such determination. The Government may  
19           appeal an order under this subparagraph pursu-  
20           ant to subsection (f).

21           “(D) REVIEW OF CERTIFICATION.—If the  
22           judge determines that an application required  
23           by subsection (b) does not contain all of the re-  
24           quired elements, or that the certification or cer-  
25           tifications are clearly erroneous on the basis of



1           the statement made under subsection  
2           (b)(1)(F)(v) and any other information fur-  
3           nished under subsection (b)(3), the judge shall  
4           enter an order so stating and provide a written  
5           statement for the record of the reasons for such  
6           determination. The Government may appeal an  
7           order under this subparagraph pursuant to sub-  
8           section (f).

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

11           “(A) the identity, if known, or a descrip-  
12           tion of the United States person who is the tar-  
13           get of the acquisition identified or described in  
14           the application pursuant to subsection  
15           (b)(1)(B);

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

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

23           “(D) a summary of the means by which  
24           the acquisition will be conducted and whether

1 physical entry is required to effect the acquisi-  
2 tion; and

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

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

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

10 “(B) if applicable, an electronic commu-  
11 nication service provider to provide to the Gov-  
12 ernment forthwith all information, facilities, or  
13 assistance necessary to accomplish the acquisi-  
14 tion authorized under such order in a manner  
15 that will protect the secrecy of the acquisition  
16 and produce a minimum of interference with  
17 the services that such electronic communication  
18 service provider is providing to the target of the  
19 acquisition;

20 “(C) if applicable, an electronic commu-  
21 nication service provider to maintain under se-  
22 curity procedures approved by the Attorney  
23 General any records concerning the acquisition  
24 or the aid furnished that such electronic com-

1           communication service provider wishes to maintain;  
2           and

3                   “(D) if applicable, that the Government  
4           compensate, at the prevailing rate, such elec-  
5           tronic communication service provider for pro-  
6           viding such information, facilities, or assistance.

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

13           “(7) COMPLIANCE.—At or prior to the end of  
14          the period of time for which an acquisition is ap-  
15          proved by an order or extension under this section,  
16          the judge may assess compliance with the minimiza-  
17          tion procedures referred to in paragraph (1)(C) by  
18          reviewing the circumstances under which informa-  
19          tion concerning United States persons was acquired,  
20          retained, or disseminated.

21          “(d) EMERGENCY AUTHORIZATION.—

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

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

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

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

20          “(2) MINIMIZATION PROCEDURES.—If the At-  
21          torney General authorizes an acquisition under para-  
22          graph (1), the Attorney General shall require that  
23          the minimization procedures referred to in sub-  
24          section (c)(1)(C) for the issuance of a judicial order  
25          be followed.

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

9           “(4) USE OF INFORMATION.—If an application  
10          for approval submitted pursuant to paragraph (1) is  
11          denied, or in any other case where the acquisition is  
12          terminated and no order is issued approving the ac-  
13          quisition, no information obtained or evidence de-  
14          rived from such acquisition, except under cir-  
15          cumstances in which the target of the acquisition is  
16          determined not to be a United States person, shall  
17          be received in evidence or otherwise disclosed in any  
18          trial, hearing, or other proceeding in or before any  
19          court, grand jury, department, office, agency, regu-  
20          latory body, legislative committee, or other authority  
21          of the United States, a State, or political subdivision  
22          thereof, and no information concerning any United  
23          States person acquired from such acquisition shall  
24          subsequently be used or disclosed in any other man-  
25          ner by Federal officers or employees without the

1 consent of such person, except with the approval of  
2 the Attorney General if the information indicates a  
3 threat of death or serious bodily harm to any per-  
4 son.

5 “(e) RELEASE FROM LIABILITY.—No cause of action  
6 shall lie in any court against any electronic communication  
7 service provider for providing any information, facilities,  
8 or assistance in accordance with an order or request for  
9 emergency assistance issued pursuant to subsection (c) or  
10 (d).

11 “(f) APPEAL.—

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

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

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

3 “(g) CONSTRUCTION.—Except as provided in this  
4 section, nothing in this Act shall be construed to require  
5 an application for a court order for an acquisition that  
6 is targeted in accordance with this section at a United  
7 States person reasonably believed to be located outside the  
8 United States.

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

12 “(a) JURISDICTION AND SCOPE.—

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

16 “(2) SCOPE.—No element of the intelligence  
17 community may intentionally target, for the purpose  
18 of acquiring foreign intelligence information, a  
19 United States person reasonably believed to be lo-  
20 cated outside the United States under circumstances  
21 in which the targeted United States person has a  
22 reasonable expectation of privacy and a warrant  
23 would be required if the acquisition were conducted  
24 inside the United States for law enforcement pur-  
25 poses, unless a judge of the Foreign Intelligence

1 Surveillance Court has entered an order with respect  
2 to such targeted United States person or the Attor-  
3 ney General has authorized an emergency acquisition  
4 pursuant to subsections (c) or (d) or any other pro-  
5 vision of this Act.

6 “(3) LIMITATIONS.—

7 “(A) MOVING OR MISIDENTIFIED TAR-  
8 GETS.—If a United States person targeted  
9 under this subsection is reasonably believed to  
10 be located in the United States during the ef-  
11 fective period of an order issued pursuant to  
12 subsection (c), an acquisition targeting such  
13 United States person under this section shall  
14 cease unless the targeted United States person  
15 is again reasonably believed to be located out-  
16 side the United States during the effective pe-  
17 riod of such order.

18 “(B) APPLICABILITY.—If an acquisition  
19 for foreign intelligence purposes is to be con-  
20 ducted inside the United States and could be  
21 authorized under section 703, the acquisition  
22 may only be conducted if authorized under sec-  
23 tion 703 or in accordance with another provi-  
24 sion of this Act other than this section.



1           “(C) CONSTRUCTION.—Nothing in this  
2           paragraph shall be construed to limit the au-  
3           thority of the Government to seek an order or  
4           authorization under, or otherwise engage in any  
5           activity that is authorized under, any other title  
6           of this Act.

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

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

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

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

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

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

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

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

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

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

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

24           “(7) a statement of the period of time for which  
25          the acquisition is required to be maintained, pro-

1 vided that such period of time shall not exceed 90  
2 days per application.

3 “(c) ORDER.—

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

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

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

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

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

21 “(C) the proposed minimization proce-  
22 dures, with respect to their dissemination provi-  
23 sions, meet the definition of minimization pro-  
24 cedures under section 101(h) or section 301(4),  
25 as appropriate; and

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

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

18          “(3) REVIEW.—

19                 “(A) LIMITATIONS ON REVIEW.—Review  
20                 by a judge having jurisdiction under subsection  
21                 (a)(1) shall be limited to that required to make  
22                 the findings described in paragraph (1). The  
23                 judge shall not have jurisdiction to review the  
24                 means by which an acquisition under this sec-  
25                 tion may be conducted.

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

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

22           “(D) SCOPE OF REVIEW OF CERTIFI-  
23           CATION.—If the judge determines that an appli-  
24           cation under subsection (b) does not contain all  
25           the required elements, or that the certification

1 provided under subsection (b)(5) is clearly erro-  
2 neous on the basis of the information furnished  
3 under subsection (b), the judge shall enter an  
4 order so stating and provide a written state-  
5 ment for the record of the reasons for such de-  
6 termination. The Government may appeal an  
7 order under this subparagraph pursuant to sub-  
8 section (e).

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

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

24 “(d) EMERGENCY AUTHORIZATION.—

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

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

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

23                   “(2) MINIMIZATION PROCEDURES.—If the At-  
24           torney General authorizes an emergency acquisition  
25           under paragraph (1), the Attorney General shall re-