

WITHHELD

Exemption 5

(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R. _____

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

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1 (b) TABLE OF CONTENTS.—The table of contents for
2 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.

3 **TITLE I—FOREIGN**
4 **INTELLIGENCE SURVEILLANCE**

5 **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
6 **PERSONS OUTSIDE THE UNITED STATES.**

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

9 (1) by striking title VII; and

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

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES REGARDING CERTAIN**
3 **PERSONS OUTSIDE THE**
4 **UNITED STATES**

5 **“SEC. 701. DEFINITIONS.**

6 “(a) IN GENERAL.—The terms ‘agent of a foreign
7 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
8 lance’, ‘foreign intelligence information’, ‘foreign power’,
9 ‘person’, ‘United States’, and ‘United States person’ have
10 the meanings given such terms in section 101, except as
11 specifically provided in this title.

12 “(b) ADDITIONAL DEFINITIONS.—

13 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-
14 TEES.—The term ‘congressional intelligence commit-
15 tees’ means—

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

18 “(B) the Permanent Select Committee on
19 Intelligence of the House of Representatives.

20 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
21 COURT; COURT.—The terms ‘Foreign Intelligence
22 Surveillance Court’ and ‘Court’ mean the court es-
23 tablished under section 103(a).

24 “(3) FOREIGN INTELLIGENCE SURVEILLANCE
25 COURT OF REVIEW; COURT OF REVIEW.—The terms

1 'Foreign Intelligence Surveillance Court of Review'
2 and 'Court of Review' mean the court established
3 under section 103(b).

4 "(4) ELECTRONIC COMMUNICATION SERVICE
5 PROVIDER.—The term 'electronic communication
6 service provider' means—

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

10 "(B) a provider of electronic communica-
11 tion service, as that term is defined in section
12 2510 of title 18, United States Code;

13 "(C) a provider of a remote computing
14 service, as that term is defined in section 2711
15 of title 18, United States Code;

16 "(D) any other communication service pro-
17 vider who has access to wire or electronic com-
18 munications either as such communications are
19 transmitted or as such communications are
20 stored; or

21 "(E) an officer, employee, or agent of an
22 entity described in subparagraph (A), (B), (C),
23 or (D).

24 "(5) INTELLIGENCE COMMUNITY.—The term
25 'intelligence community' has the meaning given the

1 term in section 3(4) of the National Security Act of
2 1947 (50 U.S.C. 401a(4)).

3 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
4 **SONS OUTSIDE THE UNITED STATES OTHER**
5 **THAN UNITED STATES PERSONS.**

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

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

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

20 “(2) may not intentionally target a person rea-
21 sonably believed to be located outside the United
22 States if the purpose of such acquisition is to target
23 a particular, known person reasonably believed to be
24 in the United States;

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

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

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

11 “(c) CONDUCT OF ACQUISITION.—

12 “(1) IN GENERAL.—An acquisition authorized
13 under subsection (a) shall be conducted only in ac-
14 cordance with—

15 “(A) the targeting and minimization proce-
16 dures adopted in accordance with subsections
17 (d) and (e); and

18 “(B) upon submission of a certification in
19 accordance with subsection (g), such certifi-
20 cation.

21 “(2) DETERMINATION.—A determination under
22 this paragraph and for purposes of subsection (a) is
23 a determination by the Attorney General and the Di-
24 rector of National Intelligence that exigent cir-
25 cumstances exist because, without immediate imple-

1 mentation of an authorization under subsection (a),
2 intelligence important to the national security of the
3 United States may be lost or not timely acquired
4 and time does not permit the issuance of an order
5 pursuant to subsection (i)(3) prior to the implemen-
6 tation of such authorization.

7 “(3) TIMING OF DETERMINATION.—The Attor-
8 ney General and the Director of National Intel-
9 ligence may make the determination under para-
10 graph (2)—

11 “(A) before the submission of a certifi-
12 cation in accordance with subsection (g); or

13 “(B) by amending a certification pursuant
14 to subsection (i)(1)(C) at any time during
15 which judicial review under subsection (i) of
16 such certification is pending.

17 “(4) CONSTRUCTION.—Nothing in title I shall
18 be construed to require an application for a court
19 order under such title for an acquisition that is tar-
20 geted in accordance with this section at a person
21 reasonably believed to be located outside the United
22 States.

23 “(d) TARGETING PROCEDURES.—

24 “(1) REQUIREMENT TO ADOPT.—The Attorney
25 General, in consultation with the Director of Na-

1 tional Intelligence, shall adopt targeting procedures
2 that are reasonably designed to—

3 “(A) ensure that any acquisition author-
4 ized under subsection (a) is limited to targeting
5 persons reasonably believed to be located out-
6 side the United States; and

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

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

15 “(e) MINIMIZATION PROCEDURES.—

16 “(1) REQUIREMENT TO ADOPT.—The Attorney
17 General, in consultation with the Director of Na-
18 tional Intelligence, shall adopt minimization proce-
19 dures that meet the definition of minimization proce-
20 dures under section 101(h) or 301(4), as appro-
21 priate, for acquisitions authorized under subsection
22 (a).

23 “(2) JUDICIAL REVIEW.—The minimization
24 procedures adopted in accordance with paragraph

1 (1) shall be ~~subject to~~ judicial review pursuant to
2 subsection (i).

3 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
4 TIONS.—

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

8 “(A) compliance with the limitations in
9 subsection (b); and

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

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

15 “(A) the congressional intelligence commit-
16 tees;

17 “(B) the Committees on the Judiciary of
18 the Senate and the House of Representatives;
19 and

20 “(C) the Foreign Intelligence Surveillance
21 Court.

22 “(g) CERTIFICATION.—

23 “(1) IN GENERAL.—

24 “(A) REQUIREMENT.—Subject to subpara-
25 graph (B), prior to the implementation of an

1 authorization under subsection (a), the Attor-
2 ney General and the Director of National Intel-
3 ligence shall provide to the Foreign Intelligence
4 Surveillance Court a written certification and
5 any supporting affidavit, under oath and under
6 seal, in accordance with this subsection.

7 “(B) EXCEPTION.—If the Attorney Gen-
8 eral and the Director of National Intelligence
9 make a determination under subsection (c)(2)
10 and time does not permit the submission of a
11 certification under this subsection prior to the
12 implementation of an authorization under sub-
13 section (a), the Attorney General and the Direc-
14 tor of National Intelligence shall submit to the
15 Court a certification for such authorization as
16 soon as practicable but in no event later than
17 7 days after such determination is made.

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

20 “(A) attest that—

21 “(i) there are procedures in place that
22 have been approved, have been submitted
23 for approval, or will be submitted with the
24 certification for approval by the Foreign

1 Intelligence Surveillance Court that are
2 reasonably designed to—

3 “(I) ensure that an acquisition
4 authorized under subsection (a) is
5 limited to targeting persons reason-
6 ably believed to be located outside the
7 United States; and

8 “(II) prevent the intentional ac-
9 quisition of any communication as to
10 which the sender and all intended re-
11 cipients are known at the time of the
12 acquisition to be located in the United
13 States;

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

16 “(I) meet the definition of mini-
17 mization procedures under section
18 101(h) or 301(4), as appropriate; and

19 “(II) have been approved, have
20 been submitted for approval, or will be
21 submitted with the certification for
22 approval by the Foreign Intelligence
23 Surveillance Court;

24 “(iii) guidelines have been adopted in
25 accordance with subsection (f) to ensure

1 compliance with the limitations in sub-
2 section (b) and to ensure that an applica-
3 tion for a court order is filed as required
4 by this Act;

5 “(iv) the procedures and guidelines re-
6 ferred to in clauses (i), (ii), and (iii) are
7 consistent with the requirements of the
8 fourth amendment to the Constitution of
9 the United States;

10 “(v) a significant purpose of the ac-
11 quisition is to obtain foreign intelligence
12 information;

13 “(vi) the acquisition involves obtaining
14 foreign intelligence information from or
15 with the assistance of an electronic com-
16 munication service provider; and

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

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

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

1 “(i) appointed by the President, by
2 and with the advice and consent of the
3 Senate; or

4 “(ii) the head of an element of the in-
5 telligence community;

6 “(D) include—

7 “(i) an effective date for the author-
8 ization that is at least 30 days after the
9 submission of the written certification to
10 the court; or

11 “(ii) if the acquisition has begun or
12 the effective date is less than 30 days after
13 the submission of the written certification
14 to the court, the date the acquisition began
15 or the effective date for the acquisition;
16 and

17 “(E) if the Attorney General and the Di-
18 rector of National Intelligence make a deter-
19 mination under subsection (c)(2), include a
20 statement that such determination has been
21 made.

22 “(3) CHANGE IN EFFECTIVE DATE.—The At-
23 torney General and the Director of National Intel-
24 ligence may advance or delay the effective date re-
25 ferred to in paragraph (2)(D) by submitting an

1 amended certification in accordance with subsection
2 (i)(1)(C) to the Foreign Intelligence Surveillance
3 Court for review pursuant to subsection (i).

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

9 “(5) MAINTENANCE OF CERTIFICATION.—The
10 Attorney General or a designee of the Attorney Gen-
11 eral shall maintain a copy of a certification made
12 under this subsection.

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

16 “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
17 TIVES.—

18 “(1) AUTHORITY.—With respect to an acquisi-
19 tion authorized under subsection (a), the Attorney
20 General and the Director of National Intelligence
21 may direct, in writing, an electronic communication
22 service provider to—

23 “(A) immediately provide the Government
24 with all information, facilities, or assistance
25 necessary to accomplish the acquisition in a

1 manner that will protect the secrecy of the ac-
2 quisition and produce a minimum of inter-
3 ference with the services that such electronic
4 communication service provider is providing to
5 the target of the acquisition; and

6 “(B) maintain under security procedures
7 approved by the Attorney General and the Di-
8 rector of National Intelligence any records con-
9 cerning the acquisition or the aid furnished that
10 such electronic communication service provider
11 wishes to maintain.

12 “(2) COMPENSATION.—The Government shall
13 compensate, at the prevailing rate, an electronic
14 communication service provider for providing infor-
15 mation, facilities, or assistance in accordance with a
16 directive issued pursuant to paragraph (1).

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

22 “(4) CHALLENGING OF DIRECTIVES.—

23 “(A) AUTHORITY TO CHALLENGE.—An
24 electronic communication service provider re-
25 ceiving a directive issued pursuant to paragraph

1 (1) may file a petition to modify or set aside
2 such directive with the Foreign Intelligence
3 Surveillance Court, which shall have jurisdiction
4 to review such petition.

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

11 “(C) STANDARDS FOR REVIEW.—A judge
12 considering a petition filed under subparagraph
13 (A) may grant such petition only if the judge
14 finds that the directive does not meet the re-
15 quirements of this section, or is otherwise un-
16 lawful.

17 “(D) PROCEDURES FOR INITIAL RE-
18 VIEW.—A judge shall conduct an initial review
19 of a petition filed under subparagraph (A) not
20 later than 5 days after being assigned such pe-
21 tition. If the judge determines that such peti-
22 tion does not consist of claims, defenses, or
23 other legal contentions that are warranted by
24 existing law or by a nonfrivolous argument for
25 extending, modifying, or reversing existing law

1 or for establishing new law, the judge shall im-
2 mediately deny such petition and affirm the di-
3 rective or any part of the directive that is the
4 subject of such petition and order the recipient
5 to comply with the directive or any part of it.
6 Upon making a determination under this sub-
7 paragraph or promptly thereafter, the judge
8 shall provide a written statement for the record
9 of the reasons for such determination.

10 “(E) PROCEDURES FOR PLENARY RE-
11 VIEW.—If a judge determines that a petition
12 filed under subparagraph (A) requires plenary
13 review, the judge shall affirm, modify, or set
14 aside the directive that is the subject of such
15 petition not later than 30 days after being as-
16 signed such petition. If the judge does not set
17 aside the directive, the judge shall immediately
18 affirm or affirm with modifications the direc-
19 tive, and order the recipient to comply with the
20 directive in its entirety or as modified. The
21 judge shall provide a written statement for the
22 record of the reasons for a determination under
23 this subparagraph.

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

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

7 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

23 “(C) PROCEDURES FOR REVIEW.—A judge
24 considering a petition filed under subparagraph
25 (A) shall, not later than 30 days after being as-

1 signed such petition, issue an order requiring
2 the electronic communication service provider to
3 comply with the directive or any part of it, as
4 issued or as modified, if the judge finds that
5 the directive meets the requirements of this sec-
6 tion and is otherwise lawful. The judge shall
7 provide a written statement for the record of
8 the reasons for a determination under this
9 paragraph.

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

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

17 “(6) APPEAL.—

18 “(A) APPEAL TO THE COURT OF RE-
19 VIEW.—The Government or an electronic com-
20 munication service provider receiving a directive
21 issued pursuant to paragraph (1) may file a pe-
22 tition with the Foreign Intelligence Surveillance
23 Court of Review for review of a decision issued
24 pursuant to paragraph (4) or (5). The Court of
25 Review shall have jurisdiction to consider such

1 petition and shall provide a written statement
2 for the record of the reasons for a decision
3 under this subparagraph.

4 “(B) CERTIORARI TO THE SUPREME
5 COURT.—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 for a writ of certiorari for review of a de-
9 cision of the Court of Review issued under sub-
10 paragraph (A). The record for such review shall
11 be transmitted under seal to the Supreme Court
12 of the United States, which shall have jurisdic-
13 tion to review such decision.

14 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
15 PROCEDURES.—

16 “(1) IN GENERAL.—

17 “(A) REVIEW BY THE FOREIGN INTEL-
18 LIGENCE SURVEILLANCE COURT.—The Foreign
19 Intelligence Surveillance Court shall have juris-
20 diction to review a certification submitted in ac-
21 cordance with subsection (g) and the targeting
22 and minimization procedures adopted in accord-
23 ance with subsections (d) and (e), and amend-
24 ments to such certification or such procedures.

1 “(B) TIME PERIOD FOR REVIEW.—The
2 Court shall review a certification submitted in
3 accordance with subsection (g) and the tar-
4 geting and minimization procedures adopted in
5 accordance with subsections (d) and (e) and
6 shall complete such review and issue an order
7 under paragraph (3) not later than 30 days
8 after the date on which such certification and
9 such procedures are submitted.

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

1 the use of an amended certification or amended
2 procedures pending the Court's review of such
3 amended certification or amended procedures.

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

6 “(A) CERTIFICATION.—A certification sub-
7 mitted in accordance with subsection (g) to de-
8 termine whether the certification contains all
9 the required elements.

10 “(B) TARGETING PROCEDURES.—The tar-
11 geting procedures adopted in accordance with
12 subsection (d) to assess whether the procedures
13 are reasonably designed to—

14 “(i) ensure that an acquisition author-
15 ized under subsection (a) is limited to tar-
16 geting persons reasonably believed to be lo-
17 cated outside the United States; and

18 “(ii) prevent the intentional acquisi-
19 tion of any communication as to which the
20 sender and all intended recipients are
21 known at the time of the acquisition to be
22 located in the United States.

23 “(C) MINIMIZATION PROCEDURES.—The
24 minimization procedures adopted in accordance
25 with subsection (e) to assess whether such pro-

1 cedures meet the definition of minimization pro-
2 cedures under section 101(h) or section 301(4),
3 as appropriate.

4 “(3) ORDERS.--

5 “(A) APPROVAL.—If the Court finds that
6 a certification submitted in accordance with
7 subsection (g) contains all the required ele-
8 ments and that the targeting and minimization
9 procedures adopted in accordance with sub-
10 sections (d) and (e) are consistent with the re-
11 quirements of those subsections and with the
12 fourth amendment to the Constitution of the
13 United States, the Court shall enter an order
14 approving the certification and the use, or con-
15 tinued use in the case of an acquisition author-
16 ized pursuant to a determination under sub-
17 section (c)(2), of the procedures for the acquisi-
18 tion.

19 “(B) CORRECTION OF DEFICIENCIES.—If
20 the Court finds that a certification submitted in
21 accordance with subsection (g) does not contain
22 all the required elements, or that the proce-
23 dures adopted in accordance with subsections
24 (d) and (e) are not consistent with the require-
25 ments of those subsections or the fourth

1 amendment to the Constitution of the United
2 States, the Court shall issue an order directing
3 the Government to, at the Government's elec-
4 tion and to the extent required by the Court's
5 order—

6 “(i) correct any deficiency identified
7 by the Court's order not later than 30 days
8 after the date on which the Court issues
9 the order; or

10 “(ii) cease, or not begin, the imple-
11 mentation of the authorization for which
12 such certification was submitted.

13 “(C) REQUIREMENT FOR WRITTEN STATE-
14 MENT.—In support of an order under this sub-
15 section, the Court shall provide, simultaneously
16 with the order, for the record a written state-
17 ment of the reasons for the order.

18 “(4) APPEAL.—

19 “(A) APPEAL TO THE COURT OF RE-
20 VIEW.—The Government may file a petition
21 with the Foreign Intelligence Surveillance Court
22 of Review for review of an order under this sub-
23 section. The Court of Review shall have juris-
24 diction to consider such petition. For any deci-
25 sion under this subparagraph affirming, revers-

1 ing, or modifying an order of the Foreign Intel-
2 ligence Surveillance Court, the Court of Review
3 shall provide for the record a written statement
4 of the reasons for the decision.

5 “(B) CONTINUATION OF ACQUISITION
6 PENDING REHEARING OR APPEAL.—Any acqui-
7 sition affected by an order under paragraph
8 (3)(B) may continue—

9 “(i) during the pendency of any re-
10 hearing of the order by the Court en banc;
11 and

12 “(ii) if the Government files a petition
13 for review of an order under this section,
14 until the Court of Review enters an order
15 under subparagraph (C).

16 “(C) IMPLEMENTATION PENDING AP-
17 PEAL.—Not later than 60 days after the filing
18 of a petition for review of an order under para-
19 graph (3)(B) directing the correction of a defi-
20 ciency, the Court of Review shall determine,
21 and enter a corresponding order regarding,
22 whether all or any part of the correction order,
23 as issued or modified, shall be implemented
24 during the pendency of the review.

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

9 “(5) SCHEDULE.—

10 “(A) REAUTHORIZATION OF AUTHORIZA-
11 TIONS IN EFFECT.—If the Attorney General
12 and the Director of National Intelligence seek
13 to reauthorize or replace an authorization
14 issued under subsection (a), the Attorney Gen-
15 eral and the Director of National Intelligence
16 shall, to the extent practicable, submit to the
17 Court the certification prepared in accordance
18 with subsection (g) and the procedures adopted
19 in accordance with subsections (d) and (e) at
20 least 30 days prior to the expiration of such au-
21 thorization.

22 “(B) REAUTHORIZATION OF ORDERS, AU-
23 THORIZATIONS, AND DIRECTIVES.—If the At-
24 torney General and the Director of National In-
25 telligence seek to reauthorize or replace an au-

1 thorization issued under subsection (a) by filing
2 a certification pursuant to subparagraph (A),
3 that authorization, and any directives issued
4 thereunder and any order related thereto, shall
5 remain in effect, notwithstanding the expiration
6 provided for in subsection (a), until the Court
7 issues an order with respect to such certifi-
8 cation under paragraph (3) at which time the
9 provisions of that paragraph and paragraph (4)
10 shall apply with respect to such certification.

11 “(j) JUDICIAL PROCEEDINGS.—

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

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

21 “(k) MAINTENANCE AND SECURITY OF RECORDS
22 AND PROCEEDINGS.—

23 “(1) STANDARDS.—The Foreign Intelligence
24 Surveillance Court shall maintain a record of a pro-
25 ceeding under this section, including petitions, ap-

1 peals, orders, and statements of reasons for a deci-
2 sion, under security measures adopted by the Chief
3 Justice of the United States, in consultation with
4 the Attorney General and the Director of National
5 Intelligence.

6 “(2) FILING AND REVIEW.—All petitions under
7 this section shall be filed under seal. In any pro-
8 ceedings under this section, the Court shall, upon re-
9 quest of the Government, review ex parte and in
10 camera any Government submission, or portions of
11 a submission, which may include classified informa-
12 tion.

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

19 “(1) ASSESSMENTS AND REVIEWS.—

20 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
21 quently than once every 6 months, the Attorney
22 General and Director of National Intelligence shall
23 assess compliance with the targeting and minimiza-
24 tion procedures adopted in accordance with sub-
25 sections (d) and (e) and the guidelines adopted in

1 accordance with subsection (f) and shall submit each
2 assessment to—

3 “(A) the Foreign Intelligence Surveillance
4 Court; and

5 “(B) consistent with the Rules of the
6 House of Representatives, the Standing Rules
7 of the Senate, and Senate Resolution 400 of the
8 94th Congress or any successor Senate resolu-
9 tion—

10 “(i) the congressional intelligence
11 committees; and

12 “(ii) the Committees on the Judiciary
13 of the House of Representatives and the
14 Senate.

15 “(2) AGENCY ASSESSMENT.—The Inspector
16 General of the Department of Justice and the In-
17 spector General of each element of the intelligence
18 community authorized to acquire foreign intelligence
19 information under subsection (a), with respect to the
20 department or element of such Inspector General—

21 “(A) are authorized to review compliance
22 with the targeting and minimization procedures
23 adopted in accordance with subsections (d) and
24 (e) and the guidelines adopted in accordance
25 with subsection (f);

1 “(B) with respect to acquisitions author-
2 ized under subsection (a), shall review the num-
3 ber of disseminated intelligence reports con-
4 taining a reference to a United States-person
5 identity and the number of United States-per-
6 son identities subsequently disseminated by the
7 element concerned in response to requests for
8 identities that were not referred to by name or
9 title in the original reporting;

10 “(C) with respect to acquisitions author-
11 ized under subsection (a), shall review the num-
12 ber of targets that were later determined to be
13 located in the United States and, to the extent
14 possible, whether communications of such tar-
15 gets were reviewed; and

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

17 “(i) the Attorney General;

18 “(ii) the Director of National Intel-
19 ligence; and

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

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

3 “(II) the Committees on the Ju-
4 diciary of the House of Representa-
5 tives and the Senate.

6 “(3) ANNUAL REVIEW.—

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

16 “(i) an accounting of the number of
17 disseminated intelligence reports con-
18 taining a reference to a United States-per-
19 son identity;

20 “(ii) an accounting of the number of
21 United States-person identities subse-
22 quently disseminated by that element in re-
23 sponse to requests for identities that were
24 not referred to by name or title in the
25 original reporting;

1 “(iii) the number of targets that were
2 later determined to be located in the
3 United States and, to the extent possible,
4 whether communications of such targets
5 were reviewed; and

6 “(iv) a description of any procedures
7 developed by the head of such element of
8 the intelligence community and approved
9 by the Director of National Intelligence to
10 assess, in a manner consistent with na-
11 tional security, operational requirements
12 and the privacy interests of United States
13 persons, the extent to which the acquisi-
14 tions authorized under subsection (a) ac-
15 quire the communications of United States
16 persons, and the results of any such as-
17 sessment.

18 “(B) USE OF REVIEW.—The head of each
19 element of the intelligence community that con-
20 ducts an annual review under subparagraph (A)
21 shall use each such review to evaluate the ade-
22 quacy of the minimization procedures utilized
23 by such element and, as appropriate, the appli-
24 cation of the minimization procedures to a par-

1 ticular acquisition authorized under subsection
2 (a).

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

7 “(i) the Foreign Intelligence Surveil-
8 lance Court;

9 “(ii) the Attorney General;

10 “(iii) the Director of National Intel-
11 ligence; and

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

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

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

1 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**
2 **STATES TARGETING UNITED STATES PER-**
3 **SONS OUTSIDE THE UNITED STATES.**

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

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

17 **“(2) LIMITATION.—**If a United States person
18 targeted under this subsection is reasonably believed
19 to be located in the United States during the effec-
20 tive period of an order issued pursuant to subsection
21 (c), an acquisition targeting such United States per-
22 son under this section shall cease unless the targeted
23 United States person is again reasonably believed to
24 be located outside the United States while an order
25 issued pursuant to subsection (c) is in effect. Noth-
26 . ing in this section shall be construed to limit the au-

1 thority of the Government to seek an order or au-
2 thorization under, or otherwise engage in any activ-
3 ity that is authorized under, any other title of this
4 Act.

5 “(b) APPLICATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(c) ORDER.—

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

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

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

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

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

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

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

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

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

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

5 “(3) REVIEW.—

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

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

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

1 ment for the record of the reasons for the de-
2 termination. The Government may appeal an
3 order under this subparagraph pursuant to sub-
4 section (f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(d) EMERGENCY AUTHORIZATION.—

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

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

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

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

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

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

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

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

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

19 “(f) APPEAL.—

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

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

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

11 “(g) CONSTRUCTION.—Except as provided in this
12 section, nothing in this Act shall be construed to require
13 an application for a court order for an acquisition that
14 is targeted in accordance with this section at a United
15 States person reasonably believed to be located outside the
16 United States.

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

20 “(a) JURISDICTION AND SCOPE.—

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

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

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

14 “(3) LIMITATIONS.—

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

1 “(B) APPLICABILITY.—If an acquisition
2 for foreign intelligence purposes is to be con-
3 ducted inside the United States and could be
4 authorized under section 703, the acquisition
5 may only be conducted if authorized under sec-
6 tion 703 or in accordance with another provi-
7 sion of this Act other than this section.

8 “(C) CONSTRUCTION.—Nothing in this
9 paragraph shall be construed to limit the au-
10 thority of the Government to seek an order or
11 authorization under, or otherwise engage in any
12 activity that is authorized under, any other title
13 of this Act.

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

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

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

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

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

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

13 “(4) a statement of proposed minimization pro-
14 cedures that meet the definition of minimization pro-
15 cedures under section 101(h) or 301(4), as appro-
16 priate;

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

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

1 “(B) a significant purpose of the acquisi-
2 tion is to obtain foreign intelligence informa-
3 tion;

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

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

14 “(c) ORDER.—

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

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

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

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

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

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

8 “(C) the proposed minimization proce-
9 dures, with respect to their dissemination provi-
10 sions, meet the definition of minimization pro-
11 cedures under section 101(h) or 301(4), as ap-
12 propriate; and

13 “(D) the application that has been filed
14 contains all statements and certifications re-
15 quired by subsection (b) and the certification
16 provided under subsection (b)(5) is not clearly
17 erroneous on the basis of the information fur-
18 nished under subsection (b).

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

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

5 “(3) REVIEW.—

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

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

22 “(C) REVIEW OF MINIMIZATION PROCE-
23 DURES.—If the judge determines that the mini-
24 mization procedures applicable to dissemination
25 of information obtained through an acquisition

1 under this subsection do not meet the definition
2 of minimization procedures under section
3 101(h) or 301(4), as appropriate, the judge
4 shall enter an order so stating and provide a
5 written statement for the record of the reasons
6 for such determination. The Government may
7 appeal an order under this subparagraph pursu-
8 ant to subsection (e).

9 “(D) SCOPE OF REVIEW OF CERTIFI-
10 CATION.—If the judge determines that an appli-
11 cation under subsection (b) does not contain all
12 the required elements, or that the certification
13 provided under subsection (b)(5) is clearly erro-
14 neous on the basis of the information furnished
15 under subsection (b), the judge shall enter an
16 order so stating and provide a written state-
17 ment for the record of the reasons for such de-
18 termination. The Government may appeal an
19 order under this subparagraph pursuant to sub-
20 section (e).

21 “(4) DURATION.—An order under this para-
22 graph shall be effective for a period not to exceed 90
23 days and such order may be renewed for additional
24 90-day periods upon submission of renewal applica-
25 tions meeting the requirements of subsection (b).

1 “(5) COMPLIANCE.—At or prior to the end of
2 the period of time for which an order or extension
3 is granted under this section, the judge may assess
4 compliance with the minimization procedures re-
5 ferred to in paragraph (1)(C) by reviewing the cir-
6 cumstances under which information concerning
7 United States persons was disseminated, provided
8 that the judge may not inquire into the cir-
9 cumstances relating to the conduct of the acquisi-
10 tion.

11 “(d) EMERGENCY AUTHORIZATION.—

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

16 “(A) an emergency situation exists with re-
17 spect to the acquisition of foreign intelligence
18 information for which an order may be obtained
19 under subsection (c) before an order under that
20 subsection can, with due diligence, be obtained,
21 and

22 “(B) the factual basis for the issuance of
23 an order under this section exists,
24 the Attorney General may authorize the emergency
25 acquisition if a judge having jurisdiction under sub-

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

9 “(2) MINIMIZATION PROCEDURES.—If the At-
10 torney General authorizes an emergency acquisition
11 under paragraph (1), the Attorney General shall re-
12 quire that the minimization procedures referred to in
13 subsection (c)(1)(C) be followed.

14 “(3) TERMINATION OF EMERGENCY AUTHOR-
15 IZATION.—In the absence of an order under sub-
16 section (c), an emergency acquisition under para-
17 graph (1) shall terminate when the information
18 sought is obtained, if the application for the order
19 is denied, or after the expiration of 7 days from the
20 time of authorization by the Attorney General,
21 whichever is earliest.

22 “(4) USE OF INFORMATION.—If an application
23 submitted to the Court pursuant to paragraph (1) is
24 denied, or in any other case where the acquisition is
25 terminated and no order with respect to the target

1 of the acquisition is issued under subsection (c), no
2 information obtained or evidence derived from such
3 acquisition, except under circumstances in which the
4 target of the acquisition is determined not to be a
5 United States person, shall be received in evidence
6 or otherwise disclosed in any trial, hearing, or other
7 proceeding in or before any court, grand jury, de-
8 partment, office, agency, regulatory body, legislative
9 committee, or other authority of the United States,
10 a State, or political subdivision thereof, and no in-
11 formation concerning any United States person ac-
12 quired from such acquisition shall subsequently be
13 used or disclosed in any other manner by Federal of-
14 ficers or employees without the consent of such per-
15 son, except with the approval of the Attorney Gen-
16 eral if the information indicates a threat of death or
17 serious bodily harm to any person.

18 “(e) APPEAL.—

19 “(1) APPEAL TO THE COURT OF REVIEW.—The
20 Government may file a petition with the Foreign In-
21 telligence Surveillance Court of Review for review of
22 an order issued pursuant to subsection (c). The
23 Court of Review shall have jurisdiction to consider
24 such petition and shall provide a written statement