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2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

7 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

13 Sec.104.Applications for court orders.

14 Sec.105.Issuance of an order.

15 Sec.106.Use of information.

16 Sec.107.Amendments for physical searches.

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

18 Sec.109.Foreign Intelligence Surveillance Court.

19 Sec.110.Weapons of mass destruction.

20 TITLE II—PROTECTIONS FOR ELECTRONIC
21 COMMUNICATION SERVICE PROVIDERS

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

24 Sec.202.Technical amendments.

25 TITLE III—REVIEW OF PREVIOUS ACTIONS

26 Sec.301.Review of previous actions.

27 TITLE IV—OTHER PROVISIONS

28 Sec.401.Severability.

29 Sec.402.Effective date.

30 Sec.403.Repeals.

31 Sec.404.Transition procedures.

32 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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1 SEC. 101. ADDITIONAL PROCEDURES REGARDING
2 CERTAIN PERSONS OUTSIDE THE UNITED STATES.

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

5 (1) by striking title VII; and

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

7 “TITLE VII—ADDITIONAL PROCEDURES REGARDING
8 CERTAIN PERSONS OUTSIDE THE UNITED STATES

9 “SEC. 701. DEFINITIONS.

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

14 “(b) Additional Definitions.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 “(c) Conduct of Acquisition.—

27 “(1) IN GENERAL.—An acquisition authorized under subsection (a) shall be conducted
28 only in accordance with—

29 “(A) the targeting and minimization procedures adopted in accordance with
30 subsections (d) and (e); and

31 “(B) upon submission of a certification in accordance with subsection (g), such
32 certification.

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

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

3 “(A) before the submission of a certification under in accordance with subsection
4 (g); or

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

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

10 “(d) Targeting Procedures.— Procedures.—

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

13 “(A) ensure that any acquisition authorized under subsection (a) is limited to
14 targeting persons reasonably believed to be located outside the United States; and

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

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

20 “(e) Minimization Procedures.—

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

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

27 “(f) Guidelines for Compliance With Limitations.—

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

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

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

32 “(2) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines
33 adopted in accordance with paragraph (1) to—

34 “(A) the congressional intelligence committees;

35 “(B) the ~~Committee~~ Committees on the Judiciary of the Senate and;

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

37 ~~“(D)“(C) the Foreign Intelligence Surveillance Court.~~

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1 “(g) Certification.--

2 “(1) IN GENERAL.—

3 “(A) REQUIREMENT.—Subject to subparagraph (B), prior to the implementation of
4 an authorization under subsection (a), the Attorney General and the Director of
5 National Intelligence shall provide to the Foreign Intelligence Surveillance Court a
6 written certification and any supporting affidavit, under oath and under seal, in
7 accordance with this subsection.

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

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

15 “(A) attest that—

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

19 “(I) ensure that an acquisition authorized under subsection (a) is ~~targeted~~
20 ~~at limited to targeting~~ persons reasonably believed to be located outside the
21 United States; and

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

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

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

28 “(II) have been approved, have been submitted for approval, or will be
29 submitted with the certification for approval by the Foreign Intelligence
30 Surveillance Court;

31 “(iii) guidelines have been adopted in accordance with subsection (f) to ensure
32 compliance with the limitations in subsection (b) and to ensure that ~~applications~~
33 ~~an application~~ for a court ~~orders are order~~ is filed as required by this Act;

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

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

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

- 1 “(vii) the acquisition complies with the limitations in subsection (b);
- 2 “(B) include the procedures adopted in accordance with subsections (d) and (e);
- 3 “(C) be supported, as appropriate, by the affidavit of any appropriate official in the
- 4 area of national security who is—
- 5 “(i) appointed by the President, by and with the advice and consent of the
- 6 Senate; or
- 7 “(ii) the head of an element of the intelligence community;
- 8 “(D) include—
- 9 “(i) an effective date for the authorization that is at least 30 days after the
- 10 submission of the written certification to the court; or
- 11 “(ii) if the acquisition has begun or the effective date is less than 30 days after
- 12 the submission of the written certification to the court, the date the acquisition
- 13 began or the effective date for the acquisition; and
- 14 “(E) if the Attorney General and the Director of National Intelligence make a
- 15 determination under subsection (c)(2), include a statement that such determination has
- 16 been made.
- 17 “(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of National
- 18 Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by
- 19 submitting an amended certification in accordance with this subsection (i)(1)(C) to the
- 20 Foreign Intelligence Surveillance Court for review pursuant to subsection (i).
- 21 “(4) LIMITATION.—A certification made under this subsection is not required to identify
- 22 the specific facilities, places, premises, or property at which the an acquisition authorized
- 23 under subsection (a) will be directed or conducted.
- 24 “(5) MAINTENANCE OF CERTIFICATION.—The Attorney General or a designee of the
- 25 Attorney General shall maintain a copy of a certification made under this subsection.
- 26 “(6) REVIEW.—A certification submitted in accordance with this subsection shall be
- 27 subject to judicial review pursuant to subsection (i).
- 28 “(h) Directives and Judicial Review of Directives.—
- 29 “(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the
- 30 Attorney General and the Director of National Intelligence may direct, in writing, an
- 31 electronic communication service provider to—
- 32 “(A) immediately provide the Government with all information, facilities, or
- 33 assistance necessary to accomplish the acquisition in a manner that will protect the
- 34 secrecy of the acquisition and produce a minimum of interference with the services
- 35 that such electronic communication service provider is providing to the target of the
- 36 acquisition; and
- 37 “(B) maintain under security procedures approved by the Attorney General and the
- 38 Director of National Intelligence any records concerning the acquisition or the aid
- 39 furnished that such electronic communication service provider wishes to maintain.

1 “(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an
2 electronic communication service provider for providing information, facilities, or
3 assistance in accordance with a directive issued pursuant to paragraph (1).

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

7 “(4) CHALLENGING OF DIRECTIVES.—

8 “(A) AUTHORITY TO CHALLENGE.— An electronic communication service provider
9 receiving a directive issued pursuant to paragraph (1) may ~~challenge the directive by~~
10 ~~filing a petition~~ file a petition to modify or set aside such directive with the Foreign
11 Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

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

15 “(C) STANDARDS FOR REVIEW.—A judge considering a petition to ~~modify or set~~
16 ~~aside a directive~~ filed under subparagraph (A) may grant such petition only if the
17 judge finds that the directive does not meet the requirements of this section, or is
18 otherwise unlawful.

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

29 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition
30 described in filed under subparagraph (A) requires plenary review, the judge shall
31 affirm, modify, or set aside the directive that is the subject of ~~that such~~ petition not
32 later than 30 days after being assigned ~~the such~~ petition. If the ~~Court judge~~ does not
33 set aside the directive, the judge shall immediately affirm or affirm with modifications
34 the directive, and order the recipient to comply with the directive in its entirety or as
35 modified. The judge shall provide a written statement for the record of the reasons for
36 a determination under this subparagraph.

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

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

41 “(5) ENFORCEMENT OF DIRECTIVES. —

42 “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to

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1 comply with a directive issued pursuant to paragraph (1), the Attorney General may
2 file a petition for an order to compel the electronic communication service provider to
3 comply with the directive with the Foreign Intelligence Surveillance Court, which shall
4 have jurisdiction to review such a petition.

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

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

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

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

19 “(6) APPEAL.—

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

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

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

33 “(1) IN GENERAL.—

34 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
35 Intelligence Surveillance Court shall have jurisdiction to review ~~any~~ a certification
36 submitted in accordance with subsection (g) and the targeting and minimization
37 procedures adopted in accordance with subsections (d) and (e), and ~~any~~ amendments to
38 such certification or such procedures.

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

1 certification and such procedures are submitted.

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

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

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

16 “(B) TARGETING PROCEDURES.—The targeting procedures adopted in accordance
17 with subsection (d) to assess whether the procedures are reasonably designed to—

18 “(i) ensure that the an acquisition authorized under subsection (a) is limited to
19 the targeting of persons reasonably believed to be located outside the United
20 States; and

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

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

27 “(3) ORDERS.—

28 “(A) APPROVAL.—If the Court finds that a certification submitted in accordance
29 with subsection (g) contains all of the required elements and that the targeting and
30 minimization procedures adopted in accordance with subsections (d) and (e) are
31 consistent with the requirements of those subsections and with the fourth amendment
32 to the Constitution of the United States, the Court shall enter an order approving the
33 certification and the use, or continued use in the case of an acquisition authorized
34 pursuant to a determination under subsection (c)(2), of the procedures for the
35 acquisition.

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

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

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1 after the date on which the Court issues the order; or

2 “(ii) cease, or not begin, the acquisition authorized under subsection (a).
3 **implementation of the authorization for which such certification was**
4 **submitted.**

5 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of an order under this
6 subsection, the Court shall provide, simultaneously with the order, for the record a
7 written statement of the reasons for the order.

8 “(4) APPEAL.—

9 “(A) APPEAL TO THE COURT OF REVIEW.—The Government may file a petition with
10 the Foreign Intelligence Surveillance Court of Review for review of an order under this
11 subsection. The Court of Review shall have jurisdiction to consider such a petition. For
12 any decision **under this subparagraph** affirming, reversing, or modifying an order of
13 the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the
14 record a written statement of the reasons for the decision.

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

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

19 “(ii) if the Government ~~appeals~~ **files a petition for review** of an order under
20 this section, until the Court of Review enters an order under subparagraph (C).

21 “(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of
22 ~~an appeal a petition for review~~ of an order under paragraph (3)(B) directing the
23 correction of a deficiency, the Court of Review shall determine, and enter a
24 corresponding order regarding, whether all or any part of the correction order, as
25 issued or modified, shall be implemented during the pendency of the ~~appeal~~ review.

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

31 “(5) SCHEDULE.—

32 “(A) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General
33 and the Director of National Intelligence seek to reauthorize or replace an authorization
34 issued ~~pursuant to this section~~ **under subsection (a)**, the Attorney General and the
35 Director of National Intelligence shall, to the extent practicable, submit to the Court
36 the certification prepared in accordance with subsection (g) and the procedures adopted
37 in accordance with subsections (d) and (e) at least 30 days prior to the expiration of
38 such authorization.

39 “(B) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the
40 Attorney General and the Director of National Intelligence seek to reauthorize or
41 replace an authorization ~~made pursuant to this section~~ **issued under subsection (a)** by

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

7 “(j) Judicial Proceedings.—

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

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

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

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

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

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

28 “(l) Assessments and Reviews.—

29 “(1) SEMIANNUAL ASSESSMENT.— Not less frequently than once every 6 months, the
30 Attorney General and Director of National Intelligence shall assess compliance with the
31 targeting and minimization procedures adopted in accordance with subsections (d) and (e)
32 and the guidelines adopted in accordance with subsection (f) and shall submit each such
33 assessment to—

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

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

38 “(i) the congressional intelligence committees; and

39 “(ii) the Committees on the Judiciary of the House of Representatives and the
40 Senate.

1 “(2) AGENCY ASSESSMENT.—The Inspector General of the Department of Justice and the
2 Inspector General of each element of the intelligence community authorized to acquire
3 foreign intelligence information under subsection (a), with respect to the department or
4 element of such Inspector General—

5 “(A) are authorized to review the compliance with the targeting and minimization
6 procedures adopted in accordance with subsections (d) and (e) and the guidelines
7 adopted in accordance with subsection (f);

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

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

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

17 “(i) the Attorney General;

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

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

22 “(I) the congressional intelligence committees; and

23 “(II) the Committees on the Judiciary of the House of Representatives and
24 the Senate.

25 “(3) ANNUAL REVIEW.—

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

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

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

36 “(iii) the number of targets that were later determined to be located in the
37 United States and, to the extent possible, whether communications of such targets
38 were reviewed; and

39 “(iv) a description of any procedures developed by the head of such element of
40 the intelligence community and approved by the Director of National Intelligence

1 to assess, in a manner consistent with national security, operational requirements
2 and the privacy interests of United States persons, the extent to which the
3 acquisitions authorized under subsection (a) acquire the communications of
4 United States persons, and the results of any such assessment.

5 “(B) USE OF REVIEW.—The head of each element of the intelligence community that
6 conducts an annual review under subparagraph (A) shall use each such review to
7 evaluate the adequacy of the minimization procedures utilized by such element ~~or~~ and,
8 as appropriate, the application of the minimization procedures to a particular
9 acquisition authorized under subsection (a).

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

13 “(i) the Foreign Intelligence Surveillance Court;

14 “(ii) the Attorney General;

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

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

19 “(I) the congressional intelligence committees; and

20 “(II) the Committees on the Judiciary of the House of Representatives and
21 the Senate.

22 “SEC. 703. CERTAIN ACQUISITIONS INSIDE THE
23 UNITED STATES TARGETING UNITED STATES
24 PERSONS OUTSIDE THE UNITED STATES.

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

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

32 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably
33 believed to be located in the United States during the effective period of an order issued
34 pursuant to subsection (c), an acquisition targeting such United States person under this
35 section shall cease unless the targeted United States person is again reasonably believed to
36 be located outside the United States while an order issued pursuant to subsection (c) is in
37 effect. Nothing in this section shall be construed to limit the authority of the Government to
38 seek an order or authorization under, or otherwise engage in any activity that is authorized
39 under, any other title of this Act.

1 “(b) Application.—

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

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

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

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

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

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

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

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

19 “(F) a certification made by the Attorney General or an official specified in section
20 104(a)(6) that—

21 “(i) the certifying official deems the information sought to be foreign
22 intelligence information;

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

25 “(iii) such information cannot reasonably be obtained by normal investigative
26 techniques;

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

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

30 “(I) the information sought is the type of foreign intelligence information
31 designated; and

32 “(II) such information cannot reasonably be obtained by normal
33 investigative techniques;

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

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

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

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

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

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

13 “(c) Order.—

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

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

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

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

23 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
24 a foreign power;

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

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

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

37 “(3) REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

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

39 “(C) if applicable, an electronic communication service provider to maintain under
40 security procedures approved by the Attorney General any records concerning the
41 acquisition or the aid furnished that such electronic communication service provider

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1 wishes to maintain; and

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

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

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

13 “(d) Emergency Authorization.—

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

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

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

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

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

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

35 “(4) USE OF INFORMATION.—If an application for approval submitted pursuant to
36 paragraph (1) is denied, or in any other case where the acquisition is terminated and no
37 order is issued approving the acquisition, no information obtained or evidence derived from
38 such acquisition, except under circumstances in which the target of the acquisition is
39 determined not to be a United States person, shall be received in evidence or otherwise
40 disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,
41 department, office, agency, regulatory body, legislative committee, or other authority of the
42 United States, a State, or political subdivision thereof, and no information concerning any

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1 United States person acquired from such acquisition shall subsequently be used or disclosed
2 in any other manner by Federal officers or employees without the consent of such person,
3 except with the approval of the Attorney General if the information indicates a threat of
4 death or serious bodily harm to any person.

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

9 “(f) Appeal.—

10 “(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW. —The
11 Government may file a petition with the Foreign Intelligence Surveillance Court of Review
12 for review of an order issued pursuant to subsection (c). The Court of Review shall have
13 jurisdiction to consider such petition and shall provide a written statement for the record of
14 the reasons for a decision under this paragraph.

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

19 “(g) Construction.—Except as provided in this section, nothing in this Act shall be construed
20 to require an application for a court order for an acquisition that is targeted in accordance with
21 this section at a United States person reasonably believed to be located outside the United States.

22 “SEC. 704. OTHER ACQUISITIONS TARGETING UNITED 23 STATES PERSONS OUTSIDE THE UNITED STATES.

24 “(a) Jurisdiction and Scope.—

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

27 “(2) SCOPE.—No element of the intelligence community may intentionally target, for the
28 purpose of acquiring foreign intelligence information, a United States person reasonably
29 believed to be located outside the United States under circumstances in which the targeted
30 United States person has a reasonable expectation of privacy and a warrant would be
31 required if the acquisition were conducted inside the United States for law enforcement
32 purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order
33 with respect to such targeted United States person or the Attorney General has authorized an
34 emergency acquisition pursuant to ~~subsections~~ subsection (c) or (d), respectively, or any
35 other provision of this Act.

36 “(3) LIMITATIONS.—

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

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1 during the effective period of such order.

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

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

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

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

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

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

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

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

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

24 “(5) a certification made by the Attorney General, an official specified in section
25 104(a)(6), or the head of an element of the intelligence community that—

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

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

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

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

35 “(c) Order.—

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

39 “(A) the application has been made by a Federal officer and approved by the

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1 Attorney General;

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

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

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

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

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

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

20 “(3) REVIEW.—

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

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

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

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

1 (e).

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

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

10 “(d) Emergency Authorization.—

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

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

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

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

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

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

1 person.

2 “(e) Appeal.—

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

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

12 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT**
13 **AUTHORIZATIONS.**

14 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under
15 section 703 or section 704 is proposed to be conducted both inside and outside the United States,
16 a judge having jurisdiction under section 703(a)(1) or ~~section 704(a)(1)~~ may issue
17 simultaneously, upon the request of the Government in a joint application complying with the
18 requirements of ~~section~~ sections 703(b) and ~~section 704(b)~~, orders under ~~section~~ sections 703(c)
19 and ~~section 704(c)~~, as appropriate.

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

26 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER**
27 **TITLE VII.**

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

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

35 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

36 “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General
37 shall fully inform, in a manner consistent with national security, the congressional intelligence
38 committees and the Committees on the Judiciary of the Senate and the House of Representatives,
39 consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and

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1 Senate Resolution 400 of the 94th Congress or any successor Senate resolution, concerning the
2 implementation of this title.

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

4 “(1) with respect to section 702—

5 “(A) any certifications ~~made under~~ **submitted in accordance with** section 702(g)
6 during the reporting period;

7 “(B) with respect to each determination ~~made~~ under section 702(c)(2), the reasons
8 for exercising the authority under such section;

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

10 “(D) a description of the judicial review during the reporting period of ~~any~~ such
11 certifications and targeting and minimization procedures adopted in accordance with
12 subsections (d) and (e) of section 702 and utilized with respect to an acquisition under
13 such section, including a copy of ~~any an~~ order or pleading in connection with such
14 review that contains a significant legal interpretation of the provisions of section 702;

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

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

19 “(G) a description of any incidents of ~~noncompliance~~ **noncompliance**—

20 “(i) with a directive issued by the Attorney General and the Director of
21 National Intelligence under section 702(h), ~~including including~~—

22 ~~“(i) incidents of noncompliance by a specified person to whom the Attorney~~
23 **General and Director of National Intelligence issued a directive under section**
24 **702(h); and**

25 ~~“(ii) by an element of the intelligence community with procedures and~~
26 ~~guidelines adopted in accordance with subsections (d), (e), and (f) of section 702;~~
27 **and**

28 ~~“(ii) incidents of noncompliance by a specified person to whom the Attorney~~
29 ~~General and Director of National Intelligence issued a directive under section~~
30 ~~702(h); and~~

31 “(H) any procedures implementing section 702;

32 “(2) with respect to section 703—

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

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

35 “(i) granted;

36 “(ii) modified; and

37 “(iii) denied; and

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

4 “(3) with respect to section 704—

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

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

7 “(i) granted;

8 “(ii) modified; and

9 “(iii) denied; and

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

13 “SEC. 708. SAVINGS PROVISION.

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

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

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

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

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

22 “TITLE VII—ADDITIONAL PROCEDURES REGARDING 23 CERTAIN PERSONS OUTSIDE THE UNITED STATES

24 “Sec. 701. Definitions.

25 “Sec. 702. Procedures for targeting certain persons outside the United States other than United
26 States persons.

27 “Sec. 703. Certain acquisitions inside the United States targeting United States persons outside the
28 United States.

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

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

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

32 “Sec. 707. Congressional oversight.

33 “Sec. 708. Savings provision.”.

34 (c) Technical and Conforming Amendments.—

35 (1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a)(ii)(A) of title 18, United States

1 Code, is amended by inserting “or a court order pursuant to section 704 of the Foreign
2 Intelligence Surveillance Act of 1978” after “assistance”.

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

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

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

7 “(E) acquisitions under section 703; and

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

9 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**
10 **WHICH ELECTRONIC SURVEILLANCE AND**
11 **INTERCEPTION OF CERTAIN COMMUNICATIONS MAY**
12 **BE CONDUCTED.**

13 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of
14 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

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

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

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

25 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
26 1809(a)) is amended by striking “authorized by statute” each place it appears and inserting
27 “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express
28 statutory authorization that is an additional exclusive means for conducting electronic
29 surveillance under section 112.”; and

30 (c) Conforming Amendments.—

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

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

37 (2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign
38 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after

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1 the item relating to section 111, the following new item:

2 "Sec. 112. Statement of exclusive means by which electronic surveillance and interception of
3 certain communications may be conducted."

4 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN**
5 **COURT ORDERS UNDER THE FOREIGN INTELLIGENCE**
6 **SURVEILLANCE ACT OF 1978.**

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

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

12 "(c) Submissions to Congress.—The Attorney General shall submit to the committees of
13 Congress referred to in subsection (a)—

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

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

23 "(d) Protection of National Security.—The Attorney General, in consultation with the Director
24 of National Intelligence, may authorize redactions of materials described in subsection (c) that
25 are provided to the committees of Congress referred to in subsection (a), if such redactions are
26 necessary to protect the national security of the United States and are limited to sensitive sources
27 and methods information or the identities of targets."

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

30 "(e) Definitions.—In this section:

31 "(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term 'Foreign Intelligence
32 Surveillance Court' means the court established under section 103(a).

33 "(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The term 'Foreign
34 Intelligence Surveillance Court of Review' means the court established under section
35 103(b)."

36 **SEC. 104. APPLICATIONS FOR COURT ORDERS.**

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

- 1 (1) in subsection (a)—
2 (A) by striking paragraphs (2) and (11);
3 (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9),
4 respectively;
5 (C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by
6 striking “detailed”;
7 (D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the
8 matter preceding subparagraph (A)—
9 (i) by striking “Affairs or” and inserting “Affairs,”; and
10 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the
11 Federal Bureau of Investigation, if designated by the President as a certifying
12 official—”;
13 (E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by
14 striking “statement of” and inserting “summary statement of”;
15 (F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by
16 adding “and” at the end; and
17 (G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by
18 striking “; and” and inserting a period;
19 (2) by striking subsection (b);
20 (3) by redesignating subsections (c) through (e) as subsections (b) through (d),
21 respectively; and
22 (4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this
23 subsection, by striking “or the Director of National Intelligence” and inserting “the Director
24 of National Intelligence, or the Director of the Central Intelligence Agency”.

25 SEC. 105. ISSUANCE OF AN ORDER.

26 **Section(a) In General.**—Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50
27 U.S.C. 1805) is amended—

- 28 (1) in subsection (a)—
29 (A) by striking paragraph (1); and
30 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),
31 respectively;
32 (2) in subsection (b), by striking “(a)(3)” and inserting “(a)(2)”;
33 (3) in subsection (c)(1)—
34 (A) in subparagraph (D), by adding “and” at the end;
35 (B) in subparagraph (E), by striking “; and” and inserting a period; and
36 (C) by striking subparagraph (F);

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1 (4) by striking subsection (d);

2 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),
3 respectively;

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

6 “(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize
7 the emergency employment of electronic surveillance if the Attorney General—

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

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

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

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

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

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

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

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

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

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

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

6 (b) Conforming Amendment.—Section 108(a)(2)(C) of the Foreign Intelligence
7 Surveillance Act of 1978 (50 U.S.C. 1808(a)(2)(C)) is amended by striking “105(f)” and
8 inserting “105(e)”;

9 SEC. 106. USE OF INFORMATION.

10 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.
11 1806) is amended by striking “radio communication” and inserting “communication”.

12 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

15 (1) in subsection (a)—

16 (A) by striking paragraph (2);

17 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),
18 respectively;

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

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

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

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

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

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

32 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
33 1824) is amended—

34 (1) in subsection (a)—

35 (A) by striking paragraph (1);

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

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

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

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

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

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

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

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

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

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

24 "(4) A denial of the application made under this subsection may be reviewed as provided in
25 section 103.

26 "(5) In the event that such application for approval is denied, or in any other case where the
27 physical search is terminated and no order is issued approving the physical search, no
28 information obtained or evidence derived from such physical search shall be received in
29 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court,
30 grand jury, department, office, agency, regulatory body, legislative committee, or other authority
31 of the United States, a State, or political subdivision thereof, and no information concerning any
32 United States person acquired from such physical search shall subsequently be used or disclosed
33 in any other manner by Federal officers or employees without the consent of such person, except
34 with the approval of the Attorney General if the information indicates a threat of death or serious
35 bodily harm to any person.

36 "(6) The Attorney General shall assess compliance with the requirements of paragraph (5)."

37 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
38 1801 et seq.) is amended—

39 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking
40 "303(a)(7)(E)" and inserting "303(a)(6)(E)"; and

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

2 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN**
3 **REGISTERS AND TRAP AND TRACE DEVICES.**

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

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

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

8 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE**
9 **COURT.**

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

13 (b) En Banc Authority.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(f)(1) A judge of the court established under subsection (a), the court established under
6 subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of
7 that court, may, in accordance with the rules of their respective courts, enter a stay of an order or
8 an order modifying an order of the court established under subsection (a) or the court established
9 under subsection (b) entered under any title of this Act, while the court established under
10 subsection (a) conducts a rehearing, while an appeal is pending to the court established under
11 subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United
12 States, or during the pendency of any review by that court.

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

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

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

21 SEC. 110. WEAPONS OF MASS DESTRUCTION.

22 (a) Definitions.—

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

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

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

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

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

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

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

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

33 (C) by adding at the end the following new subparagraphs:

34 “(D) engages in the international proliferation of weapons of mass destruction, or
35 activities in preparation therefor; or

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

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

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

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

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

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

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

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

19 (b) Use of Information.—

20 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of
21 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international
22 terrorism” and inserting “sabotage, international terrorism, or the international proliferation
23 of weapons of mass destruction”.

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

27 (c) Technical and Conforming Amendment.—Section 301(1) of the **Amendments**.—The
28 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended is further
29 amended—

30 (1) in paragraph (2) of section 105(d) (50 U.S.C. 1805(d)), as redesignated by section
31 105(a)(5) of this Act, by striking “section 101(a) (5) or (6)” and inserting “paragraph
32 (5), (6), or (7) of section 101(a)”;

33 (2) in section 301(1) (50 U.S.C. 1821(1)), by inserting “weapon of mass destruction,”
34 after “person,”; and

35 (3) in section 304(d)(2) (50 U.S.C. 1824(d)(2)), by striking “section 101(a) (5) or (6)”
36 and inserting “paragraph (5), (6), or (7) of section 101(a)”.

37 TITLE II—PROTECTIONS FOR ELECTRONIC
38 COMMUNICATION SERVICE PROVIDERS

1 SEC. 201. PROCEDURES FOR IMPLEMENTING
2 STATUTORY DEFENSES UNDER THE FOREIGN
3 INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

6 "TITLE VIII—PROTECTION OF PERSONS ASSISTING
7 THE GOVERNMENT

8 "SEC. 801. DEFINITIONS.

9 "In this title:

10 "(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of
11 access to, information (including communication contents, communications records, or
12 other information relating to a customer or communication), facilities, or another form of
13 assistance.

14 "(2) CIVIL ACTION.—The term 'civil action' includes a covered civil action.

15 "(3) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence
16 committees' means—

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

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

20 "(4) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).

21 "(5) COVERED CIVIL ACTION.—The term 'covered civil action' means a civil action filed
22 in a Federal or State court that—

23 "(A) alleges that an electronic communication service provider furnished assistance
24 to an element of the intelligence community; and

25 "(B) seeks monetary or other relief from the electronic communication service
26 provider related to the provision of such assistance.

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

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

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

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

35 "(D) any other communication service provider who has access to wire or electronic
36 communications either as such communications are transmitted or as such

1 communications are stored;

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

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

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

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

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

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

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

14 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title
15 18, United States Code; or

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

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

22 “SEC. 802. PROCEDURES FOR IMPLEMENTING
23 STATUTORY DEFENSES.

24 “(a) Requirement for Certification.—Notwithstanding any other provision of law, a civil
25 action may not lie or be maintained in a Federal or State court against any person for providing
26 assistance to an element of the intelligence community, and shall be promptly dismissed, if the
27 Attorney General certifies to the district court of the United States in which such action is
28 pending that—

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

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

33 “(3) any assistance by that person was provided pursuant to a directive under section
34 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law
35 110-55), or 702(h) directing such assistance;

36 “(4) in the case of a covered civil action, the assistance alleged to have been provided by
37 the electronic communication service provider was—

38 “(A) in connection with an intelligence activity involving communications that

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1 was—

2 “(i) authorized by the President during the period beginning on September 11,
3 2001, and ending on January 17, 2007; and

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

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

10 “(i) authorized by the President; and

11 “(ii) determined to be lawful; or

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

13 “(b) Judicial Review.—

14 “(1) REVIEW OF CERTIFICATIONS.—A certification ~~made pursuant to~~ under subsection (a)
15 shall be given effect unless the court finds that such certification is not supported by
16 substantial evidence provided to the court pursuant to this section.

17 “(2) SUPPLEMENTAL MATERIALS.—In its review of a certification ~~made pursuant to~~ under
18 subsection (a), the court may examine the court order, certification, written request, or
19 directive described in subsection (a) and any relevant court order, certification, written
20 request, or directive submitted pursuant to subsection (d).

21 “(c) Limitations on Disclosure.—If the Attorney General files a declaration under section
22 1746 of title 28, United States Code, that disclosure of a certification made pursuant to
23 subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would
24 harm the national security of the United States, the court shall—

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

26 “(2) limit any public disclosure concerning such certification and the supplemental
27 materials, including any public order following such in camera and ex parte review, to a
28 statement as to whether the case is dismissed and a description of the legal standards that
29 govern the order, without disclosing the paragraph of subsection (a) that is the basis for the
30 certification.

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

40 “(e) Nondelegation.—The authority and duties of the Attorney General under this section shall

1 be performed by the Attorney General ~~or a designee in a position not lower than~~ **(or Acting**
2 **Attorney General) or the Deputy Attorney General.**

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

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

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

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

14 **“SEC. 803. PREEMPTION.**

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

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

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

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

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

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

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

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

32 **“SEC. 804. REPORTING.**

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

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

- 1 “(1) any certifications made under section 802;
2 “(2) a description of the judicial review of the certifications made under section 802; and
3 “(3) any actions taken to enforce the provisions of section 803.”.

4 **SEC. 202. TECHNICAL AMENDMENTS.**

5 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978
6 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end
7 the following:

8 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING 9 THE GOVERNMENT**

- 10 “Sec.801.Definitions.
11 “Sec.802.Procedures for implementing statutory defenses.
12 “Sec.803.Preemption.
13 “Sec.804.Reporting.”.

14 **TITLE III—REVIEW OF PREVIOUS ACTIONS**

15 **SEC. 301. REVIEW OF PREVIOUS ACTIONS.**

16 (a) Definitions.—In this section:

17 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of
18 Congress” means—

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

21 (B) the Permanent Select Committee on Intelligence and the Committee on the
22 Judiciary of the House of Representatives.

23 (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence
24 Surveillance Court” means the court established under section 103(a) of the Foreign
25 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

26 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND PROGRAM.—The terms “President’s
27 Surveillance Program” and “Program” mean the intelligence activity involving
28 communications that was authorized by the President during the period beginning on
29 September 11, 2001, and ending on January 17, 2007, including the program referred to by
30 the President in a radio address on December 17, 2005 (commonly known as the Terrorist
31 Surveillance Program).

32 (b) Reviews.—

33 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice,
34 the Office of the Director of National Intelligence, the National Security Agency, the
35 Department of Defense, and any other element of the intelligence community that
36 participated in the President’s Surveillance Program, shall complete a comprehensive

respect to the oversight authority and responsibility of each such Inspector

s a

f the facts necessary to describe the establishment, implementation, product,
the product of the Program;

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munications with, and participation of, individuals and entities in the private
ed to the Program;

action with the Foreign Intelligence Surveillance Court and transition to
s related to the Program; and

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ther matters identified by any such Inspector General that would enable
or General to complete a review of the Program, with respect to such
or element.

ION AND COORDINATION.—

PERATION.—Each Inspector General required to conduct a review under
(1) shall—

PERSONS
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ork in conjunction, to the extent practicable, with any other Inspector
l required to conduct such a review; and

utilize, to the extent practicable, and not unnecessarily duplicate or delay,
views or audits that have been completed or are being undertaken by any
spector General or by any other office of the Executive Branch related to
gram.

RATION OF OTHER REVIEWS.—The Counsel of the Office of Professional
ty of the Department of Justice shall provide the report of any
conducted by such Office on matters relating to the Program, including
ation of the process through which legal reviews of the Program were
nd the substance of such reviews, to the Inspector General of the
of Justice, who shall integrate the factual findings and conclusions of such
into its review.

INATION.—The Inspectors General shall designate one of the Inspectors
ired to conduct a review under paragraph (1) that is appointed by the
and with the advice and consent of the Senate, to coordinate the conduct
s and the preparation of the reports.

Y REPORTS.—Not later than 60 days after the date of the enactment of this
General of the Department of Justice, the Office of the Director of
ce, the National Security Agency, the Department of Defense, and any
neral required to conduct a review under subsection (b)(1), shall submit
committees of Congress an interim report that describes the planned
ew.

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