

1 Purpose: To provide a complete substitute.  
2  
3

4 H. R. 3773  
5

6 To amend the Foreign Intelligence Surveillance Act of 1978  
7 to establish a procedure for authorizing certain acquisitions  
8 of foreign intelligence, and for other purposes.  
9

10 Referred to the Committee on \_\_\_\_\_ and ordered to be  
11 printed

12 Ordered to lie on the table and to be printed

13 AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO  
14 BE PROPOSED BY MR. ROCKEFELLER

15 Viz:

16 ~~HOUSE AMENDMENT TO SENATE AMENDMENT:~~

17 In lieu of the matter proposed to be inserted by the amendment of the Senate House of  
18 Representatives to the amendment of the Senate to the text of the bill, insert the following:

19 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

24 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

30 Sec.104.Applications for court orders.

31 Sec.105.Issuance of an order.

32 Sec.106.Use of information.

- 1 Sec.107.Amendments for physical searches.
- 2 Sec.108.Amendments for emergency pen registers and trap and trace devices.
- 3 Sec.109.Foreign intelligence surveillance court **Intelligence Surveillance Court.**
- 4 Sec.110.Review of previous actions.
- 5 Sec.111.Weapons of mass destruction.

6 ~~Sec.112.Statute of limitations.~~ **TITLE II—PROTECTIONS**  
7 **FOR ELECTRONIC COMMUNICATION SERVICE**  
8 **PROVIDERS**

- 9 ~~TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT~~  
10 ~~Sec.201.Statutory defenses.~~ **Sec.201.Procedures for implementing statutory defenses under**  
11 **the Foreign Intelligence Surveillance Act of 1978.**  
12 Sec.202.Technical amendments.

13 ~~TITLE III—COMMISSION ON WARRANTLESS~~  
14 ~~ELECTRONIC SURVEILLANCE ACTIVITIES~~  
15 **INTELLIGENCE COLLECTION, PRIVACY**  
16 **PROTECTION, AND CHANGES IN INFORMATION**  
17 **TECHNOLOGY**

- 18 ~~Sec.301.Commission on Warrantless Electronic Surveillance Activities.~~ **Intelligence Collection,**  
19 **Privacy Protection, and Changes in Information Technology.**

20 **TITLE IV—OTHER PROVISIONS**

- 21 Sec.401.Severability.
- 22 Sec.402.Effective date.
- 23 Sec.403.Repeals.
- 24 Sec.404.Transition procedures.
- 25 ~~Sec.405.No rights under the FISA Amendments Act of 2008 for~~  
26 ~~undocumented aliens.~~
- 27 ~~Sec.406.Surveillance to protect the United States.~~

28 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**  
29 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**  
30 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

3 (1) by striking title VII; and

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

5 **“TITLE VII—ADDITIONAL PROCEDURES REGARDING**  
6 **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

7 **“SEC. 701. DEFINITIONS.**

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

12 “(b) Additional Definitions.—

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

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

16 “(B) the Permanent Select Committee on Intelligence of the House of  
17 Representatives.

18 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign  
19 Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

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

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

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

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

29 “(C) a provider of a remote computing service, as that term is defined in section  
30 2711 of title 18, United States Code;

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

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

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

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1 "SEC. 702. PROCEDURES FOR TARGETING CERTAIN  
2 PERSONS OUTSIDE THE UNITED STATES OTHER THAN  
3 UNITED STATES PERSONS.

4 "(a) Authorization.—Notwithstanding any other provision of law, pursuant to an order issued  
5 in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B)(ii), the  
6 Attorney General and the Director of National Intelligence may authorize jointly, for a period of  
7 up to 1 year from the effective date of the authorization, the targeting of persons reasonably  
8 believed to be located outside the United States to acquire foreign intelligence information.

9 "(b) Limitations.—An acquisition authorized under subsection (a)—

10 "(1) may not intentionally target any person known at the time of acquisition to be  
11 located in the United States;

12 "(2) may not intentionally target a person reasonably believed to be located outside the  
13 United States if the purpose of such acquisition is in order to target a particular, known  
14 person reasonably believed to be in the United States;

15 "(3) may not intentionally target a United States person reasonably believed to be located  
16 outside the United States;

17 "(4) may not intentionally acquire any communication as to which the sender and all  
18 intended recipients are known at the time of the acquisition to be located in the United  
19 States; and

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

22 "(c) Conduct of Acquisition.—An Acquisition.—

23 "(1) IN GENERAL.—An acquisition authorized under subsection (a) may be conducted  
24 only in accordance with—

25 ~~"(1) a~~ "(A) the certification made by the Attorney General and the Director of  
26 National Intelligence pursuant to subsection (g) or a determination under paragraph  
27 ~~(1)(B) of such subsection; and submitted in accordance with subsection (g); and~~

28 ~~"(2) the procedures and guidelines required pursuant to subsections (d), (e), and~~  
29 ~~(f)."~~ "(B) the targeting and minimization procedures submitted in accordance with  
30 subsections (d) and (e).

31 \*\* 1 ~~(m)~~ "(2) CONSTRUCTION.—Nothing in title I of this Act shall be construed to  
32 require an application under section 104 for an acquisition that is targeted in accordance  
33 with this section at a person reasonably believed to be located outside the United States.

34 "(d) Targeting Procedures.—

35 "(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director  
36 of National Intelligence, shall adopt targeting procedures that are reasonably designed to  
37 ensure that any acquisition authorized under subsection (a) is limited to targeting persons  
38 reasonably believed to be located outside the United States and does not result in the  
39 intentional acquisition of any communication as to which the sender and all intended

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1 recipients are known at the time of the acquisition to be located in the United States.

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

4 “(e) Minimization Procedures.—

5 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director  
6 of National Intelligence, shall adopt minimization procedures ~~that for acquisitions~~  
7 ~~authorized under subsection (a) that—~~

8 ~~“(A) in the case of electronic surveillance, meet the definition of minimization~~  
9 ~~procedures under section 101(h) or section 301(4), as appropriate, for acquisitions~~  
10 ~~authorized under subsection (a).; and~~

11 ~~“(B) in the case of a physical search, meet the definition of minimization procedures~~  
12 ~~under section 301(4).~~

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

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

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

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

19 “(B) that an application is filed under section 104 or 303, if required by this Act.  
20 **section 303, as appropriate, if required by any other section of this Act.**

21 ~~“(2) Criteria.—With respect to subsection (b)(2), the guidelines adopted pursuant to~~  
22 ~~paragraph (1) shall contain specific criteria for determining whether a significant purpose of~~  
23 ~~an acquisition is to acquire the communications of a specific United States person~~  
24 ~~reasonably believed to be located in the United States. Such criteria shall include~~  
25 ~~consideration of whether—~~

26 ~~“(A) the department or agency of the Federal Government conducting the acquisition has~~  
27 ~~made an inquiry to another department or agency of the Federal Government to gather~~  
28 ~~information on the specific United States person;~~

29 ~~“(B) the department or agency of the Federal Government conducting the acquisition has~~  
30 ~~provided information that identifies the specific United States person to another department~~  
31 ~~or agency of the Federal Government;~~

32 ~~“(C) the department or agency of the Federal Government conducting the acquisition~~  
33 ~~determines that the specific United States person has been the subject of ongoing interest or~~  
34 ~~repeated investigation by a department or agency of the Federal Government; and~~

35 ~~“(D) the specific United States person is a natural person.~~

36 “(3)“(2) TRAINING.—The Director of National Intelligence shall establish a training  
37 program for appropriate ~~personnel of the intelligence community~~ **personnel** to ensure that  
38 the guidelines adopted pursuant to paragraph (1) are properly implemented.

39 “(4) ~~Submission to congress and foreign intelligence surveillance court.—The“(3)~~

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1 **SUBMISSION OF GUIDELINES.**—The Attorney General shall ~~submit~~ **provide** the guidelines  
2 adopted pursuant to paragraph (1) to—

3 “(A) the congressional intelligence committees;

4 “(B) the ~~Committees~~ **Committee** on the Judiciary of the **Senate**;

5 “(C) the ~~Committee on the Judiciary of the House of Representatives and the~~  
6 **Senate**; and

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

8 “(g) Certification.—

9 “(1) IN GENERAL.—

10 “(A) ~~REQUIREMENT.~~—~~SUBJECT TO SUBPARAGRAPH (B), IF REQUIREMENT.~~—**In**  
11 **order to conduct an acquisition under subsection (a)**, the Attorney General and the  
12 Director of National Intelligence ~~seek to authorize an acquisition under this section, the~~  
13 ~~Attorney General and the Director of National Intelligence shall provide~~ **shall provide**  
14 **to the Foreign Intelligence Surveillance Court**, under oath, a written certification, as  
15 ~~described in this subsection.~~

16 “~~(B) Emergency authorization.~~—**If and any supporting affidavit, under seal, in**  
17 **accordance with this subsection.**

18 “(B) **TIMING OF SUBMISSION TO THE COURT.**—

19 “(i) **IN GENERAL.**—**Except as provided in clause (ii), the Attorney General**  
20 **and Director of National Intelligence shall provide a copy of a certification**  
21 **made under this subsection to the Foreign Intelligence Surveillance Court**  
22 **prior to the initiation of an acquisition under subsection (a).**

23 “(ii) **EXCEPTION.**—**If the Attorney General and the Director of National**  
24 **Intelligence determine that an emergency situation exists, immediate action by the**  
25 **Government is required, there should be immediate implementation of the**  
26 **authorization and time does not permit the completion of judicial review**  
27 **issuance of an order pursuant to subsection (i)(3) prior to the initiation of an**  
28 **acquisition implementation of the authorization, the Attorney General and the**  
29 **Director of National Intelligence may authorize the acquisition and shall submit to**  
30 **the Foreign Intelligence Surveillance Court a certification, including the**  
31 **determination under this subsection, as soon as possible but in no event more**  
32 **than 7 days after such determination is made.**

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

34 “(A) attest that—

35 “(i) there are reasonable procedures in place **that have been approved or**  
36 **submitted for approval to the Foreign Intelligence Surveillance Court**, for  
37 determining that the acquisition authorized under subsection (a)—

38 “(I) is targeted at persons reasonably believed to be located outside the  
39 United States ~~and such procedures have been submitted to the Foreign~~  
40 **Intelligence Surveillance Court; and**

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1           “(II) does not result in the intentional acquisition of any communication as  
2           to which the sender and all intended recipients are known at the time of the  
3           acquisition to be located in the United States, ~~and such procedures have been~~  
4           ~~submitted to the Foreign Intelligence Surveillance Court;~~

5           “(ii) guidelines have been adopted in accordance with subsection (f) to ensure  
6           compliance with the limitations in subsection (b) and to ensure that applications  
7           are filed under section 104 or section 303, if required by this Act;

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

9           “(I) meet the definition of minimization procedures under section 101(h)  
10           or section 301(4) ~~in accordance with subsection (e), as appropriate;~~ and

11           “(II) have been **approved by, or submitted to for approval by,** the  
12           Foreign Intelligence Surveillance Court;

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

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

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

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

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

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

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

25           “(C) include—

26           “(i) an effective date for the authorization that is between 30 and 60 days from  
27           the submission of the written certification to the court; or

28           “(ii) if the acquisition has begun or ~~will begin in the effective date is less than~~  
29           30 days from the submission of the written certification to the court—

30           “(I) the date the acquisition began or the effective date for the acquisition;

31           “(II) a description of why ~~implementation was~~ **initiation of the**  
32           **acquisition is** required in less than 30 days from the submission of the  
33           written certification to the court; and

34           “(III) if the acquisition is authorized under paragraph (1)(B), ~~the basis for~~  
35           ~~the determination that an emergency situation exists, immediate action by the~~  
36           **government is required;** (ii), **a description of why there should be**  
37           **immediate implementation of the authorization** and time does not permit  
38           the completion of judicial review prior to the initiation of the acquisition.  
39           **issuance of an order pursuant to subsection (i)(3) prior to the**

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implementation of the authorization.

1  
2 ~~“(3)“(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of~~  
3 ~~National Intelligence may advance or delay the effective date described in paragraph~~  
4 ~~(2)(C) by amending the certification pursuant to subsection (i)(C) to include the~~  
5 ~~applicable requirements of paragraph (2)(C).~~

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

9 ~~“(4) Submission to the court.—The“(5) MAINTENANCE OF CERTIFICATION.—The~~  
10 ~~Attorney General shall transmit maintain a copy of a certification made under this~~  
11 ~~subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance~~  
12 ~~Court before the initiation of an acquisition under this section, except in accordance with~~  
13 ~~paragraph (1)(B). The Attorney General shall maintain such certification under security~~  
14 ~~measures adopted by the Chief Justice of the United States and the Attorney General, in~~  
15 ~~consultation with the Director of National Intelligence.~~

16 ~~“(5) Review.—A“(6) REVIEW.—The certification submitted pursuant to required by~~  
17 ~~this subsection shall be subject to judicial review pursuant to subsection (i).~~

18 ~~“(h) Directives and Judicial Review of Directives.—~~

19 ~~“(1) AUTHORITY.— PURSUANT TO AN ORDER ISSUED IN ACCORDANCE WITH SUBSECTION-~~  
20 ~~(1)(3) OR A DETERMINATION UNDER SUBSECTION (C)(1)(B) AUTHORITY.—With respect to~~  
21 ~~an acquisition authorized under subsection (a), the Attorney General and the Director of~~  
22 ~~National Intelligence may direct, in writing, an electronic communication service provider~~  
23 ~~to—~~

24 ~~“(A) immediately provide the Government with all information, facilities, or~~  
25 ~~assistance necessary to accomplish the acquisition authorized in accordance with this~~  
26 ~~section in a manner that will protect the secrecy of the acquisition and produce a~~  
27 ~~minimum of interference with the services that such electronic communication service~~  
28 ~~provider is providing to the target of the acquisition; and~~

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

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

35 ~~“(3) RELEASE FROM LIABILITY.— NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO~~  
36 ~~LIABILITY.—No cause of action shall lie in any court against any electronic communication~~  
37 ~~service provider for providing any information, facilities, or assistance in accordance with a~~  
38 ~~directive issued pursuant to paragraph (1).~~

39 ~~“(4) CHALLENGING OF DIRECTIVES.—~~

40 ~~“(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider~~  
41 ~~receiving a directive issued pursuant to paragraph (1) may challenge the directive by~~

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1 filing a petition with the Foreign Intelligence Surveillance Court, which shall have  
2 jurisdiction to review such a petition.

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

6 “(C) STANDARDS FOR REVIEW.—A JUDGE REVIEW.—**The Foreign Intelligence**  
7 **Surveillance Court** considering a petition to modify or set aside a directive may grant  
8 such petition only if the judge Court finds that the directive does not meet the  
9 requirements of this section, or is otherwise unlawful.

10 “(D) PROCEDURES FOR INITIAL REVIEW.—A JUDGE REVIEW.—**The Foreign**  
11 **Intelligence Surveillance Court** shall conduct an initial review of a petition filed  
12 under subparagraph (A) not later than 5 days after being assigned such petition. If the  
13 judge Court determines that the petition does not consist of claims, defenses, or other  
14 legal contentions that are warranted by existing law; or by a nonfrivolous argument for  
15 extending, modifying, or reversing existing law; or for establishing new law, the judge  
16 Court shall immediately deny the petition and affirm the directive or any part of the  
17 directive that is the subject of the petition and order the recipient to comply with the  
18 directive or any part of it. Upon making such a determination or promptly thereafter,  
19 the judge Court shall provide a written statement for the record of the reasons for a  
20 determination under this subparagraph.

21 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge the **Foreign Intelligence**  
22 **Surveillance Court** determines that a petition filed under subparagraph (A) requires  
23 plenary review, the judge Court shall affirm, modify, or set aside the directive that is  
24 the subject of that petition not later than 30 days after being assigned the petition. If the  
25 judge Court does not set aside the directive, the judge Court shall immediately affirm  
26 ~~or modify the directive or order that the directive be modified,~~ and order the  
27 recipient to comply with the directive in its entirety or as modified. The judge Court  
28 shall provide a written statement for the ~~records~~ record of the reasons for a  
29 determination under this subparagraph.

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

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

34 “(5) ENFORCEMENT OF DIRECTIVES.—

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

40 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed  
41 under subparagraph (A) to 1 of the judges serving in the pool established by section  
42 103(e)(1) not later than 24 hours after the filing of the petition.

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1           “(C) PROCEDURES FOR REVIEW.—A JUDGE REVIEW.—The Foreign Intelligence  
2           **Surveillance Court** considering a petition filed under subparagraph (A) shall issue an  
3           order requiring the electronic communication service provider to comply with the  
4           directive or any part of it, as issued or as modified, not later than 30 days after being  
5           assigned the petition if the **judge Court** finds that the directive meets the requirements  
6           of this section, and is otherwise lawful. The **judge Court** shall provide a written  
7           statement for the record of the reasons for a determination under this paragraph.

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

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

12           “(6) APPEAL.—

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

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

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

26           “(1) IN GENERAL.—

27           “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
28           Intelligence Surveillance Court shall have jurisdiction to review any certification  
29           submitted pursuant to in accordance with subsection (g) and the targeting and  
30           minimization procedures required by submitted in accordance with subsections (d)  
31           and (e), and any amendments to such certification or procedures.

32           “(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted  
33           pursuant to in accordance with subsection (g) and the targeting and minimization  
34           procedures required by submitted in accordance with subsections (d) and (e) and  
35           approve or deny an order under this subsection not later than 30 days after the date on  
36           which a certification is submitted.

37           “(C) AMENDMENTS.—The Attorney General and the Director of National  
38           Intelligence may amend a certification submitted in accordance with subsection  
39           (g) or the targeting and minimization procedures submitted in accordance with  
40           subsections (d) and (e) as necessary after such certification or procedures have  
41           been submitted for review to the Foreign Intelligence Surveillance Court. If an  
42           amendment is submitted subsequent to the issuance of an order under subsection

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1 (i)(3) that significantly modifies such certification or procedures, the Attorney  
2 General and Director of National Intelligence shall seek approval of such  
3 amendment by the Court.

4 “(2) REVIEW.—~~Court~~“(2) Review.—~~The Court~~ shall review the following:

5 “(A) CERTIFICATIONS.—A CERTIFICATION.—A certification submitted pursuant to  
6 in accordance with subsection (g) to determine whether the certification contains all  
7 the required elements.

8 “(B) TARGETING PROCEDURES.—The targeting procedures required by submitted in  
9 accordance with subsection (d) to assess whether the procedures are reasonably  
10 designed to ensure that the acquisition authorized under subsection (a) is limited to the  
11 targeting of persons reasonably believed to be located outside the United States and  
12 does not result in the intentional acquisition of any communication as to which the  
13 sender and all intended recipients are known at the time of the acquisition to be located  
14 in the United States.

15 “(C) MINIMIZATION PROCEDURES.—The minimization procedures required by  
16 submitted in accordance with subsection (e) to assess whether such procedures meet  
17 the definition of minimization procedures under section 101(h) or section 301(4) in  
18 accordance with subsection (e), as appropriate.

19 “(3) ORDERS.—

20 “(A) APPROVAL.—If the Court finds that a certification submitted pursuant to in  
21 accordance with subsection (g) contains all of the required elements and that the  
22 procedures required by targeting and minimization procedures submitted in  
23 accordance with subsections (d) and (e) are consistent with the requirements of those  
24 subsections and with the fourth amendment to the Constitution of the United States, the  
25 Court shall enter an order approving the certification and the use of the procedures for  
26 the acquisition.

27 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required  
28 submitted pursuant to in accordance with subsection (g) does not contain all of the  
29 required elements, or that the procedures required by submitted in accordance with  
30 subsections (d) and (e) are not consistent with the requirements of those subsections or  
31 the fourth amendment to the Constitution of the United States—

32 “(i) in the case of a certification submitted in accordance with subsection (g)(1)(A),  
33 the Court shall deny the order, identify any deficiency in the certification or  
34 procedures, and provide the Government with an opportunity to correct such  
35 deficiency; and

36 “(ii) in the case of a certification submitted in accordance with subsection (g)(1)(B),  
37 the Court shall issue an order directing the Government to, at the Government’s  
38 election and to the extent required by the Court’s order—

39 “(I)“(i) correct any deficiency identified by the Court not later than 30 days  
40 after the date the Court issues the order; or

41 “(II)“(ii) cease, or not begin, the acquisition authorized under subsection  
42 (g)(1)(B)(a).

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

4           “(4) APPEAL.—

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

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

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

14           “(ii) if the Government appeals an order under this section, subject to  
15 ~~subparagraph (C), until the Court of Review enters the entry of an order under~~  
16 ~~subparagraph (A)-(C).~~

17           “(C) IMPLEMENTATION OF EMERGENCY AUTHORITY PENDING APPEAL.—Not later than  
18 60 days after the filing of an appeal of an order issued under paragraph (3)(B)(ii)  
19 directing the correction of a deficiency, the Court of Review shall determine, and enter  
20 a corresponding order regarding, whether all or any part of the correction order, as  
21 issued or modified, shall be implemented during the pendency of the appeal. ~~The~~  
22 ~~Government shall conduct an acquisition affected by such order issued under~~  
23 ~~paragraph (3)(B)(ii) in accordance with an order issued under this subparagraph or~~  
24 ~~shall cease such acquisition.~~

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

30           “(5) SCHEDULE.—

31           “(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—~~IF THE ATTORNEY GENERAL~~  
32 ~~AND THE DIRECTOR OF NATIONAL INTELLIGENCE SEEK TO REPLACE EFFECT.—When~~  
33 **replacing** an authorization issued pursuant to section 105B of the Foreign Intelligence  
34 Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007  
35 (Public Law 110-55) **with an authorization under this section**, the Attorney General  
36 and the Director of National Intelligence shall, to the extent practicable, submit to the  
37 Court **a the certification under prepared in accordance with** subsection (g) and the  
38 **procedures required by adopted in accordance with** subsections (d), (e), and (f)(e) at  
39 least 30 days before the expiration of such authorization.

40           “(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—~~IF THE ATTORNEY~~  
41 ~~GENERAL AND THE DIRECTOR OF NATIONAL INTELLIGENCE SEEK TO REPLACE~~  
42 **EFFECT.—When replacing** an authorization issued pursuant to this section, the

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1 Attorney General and the Director of National Intelligence shall, to the extent  
2 practicable, submit to the Court a ~~the certification under subsection prepared in~~  
3 **accordance with section (g)** and the procedures ~~required by adopted in accordance~~  
4 **with subsections (d), (e), and (f)(e)** at least 30 days prior to the expiration of such  
5 authorization.

6 “(C) CONSOLIDATED SUBMISSIONS.—The Attorney General and Director of National  
7 Intelligence shall, to the extent practicable, annually submit to the Court a  
8 consolidation of—

9 “(i) certifications ~~under prepared in accordance with~~ subsection (g) for  
10 reauthorization of authorizations in effect;

11 “(ii) the procedures ~~required by adopted in accordance with~~ subsections (d),  
12 ~~(e), and (f)(e)~~; and

13 “(iii) the annual review required by subsection (l)(3) for the preceding year.

14 “(D) TIMING OF REVIEWS.—The Attorney General and the Director of National  
15 Intelligence shall, ~~to the extent practicable~~, schedule the completion of the annual  
16 review ~~under required by~~ subsection (l)(3) and a semiannual assessment ~~under~~  
17 **required by** subsection (l)(1) so that they may be submitted to the Court at the time of  
18 the consolidated submission under subparagraph (C).

19 “(E) CONSTRUCTION.—The requirements of subparagraph (C) shall not be construed  
20 to preclude the Attorney General and the Director of National Intelligence from  
21 submitting certifications for additional authorizations at other times during the year as  
22 necessary.

23 “(6) COMPLIANCE.—At or before the end of the period of time for which a ~~certification~~  
24 ~~submitted pursuant to subsection (g) and procedures required by subsection (d) and (e) are~~  
25 ~~approved by an order under this section~~ **an authorization under subsection (a) expires**,  
26 the Foreign Intelligence Surveillance Court may assess compliance with the minimization  
27 procedures **required by** ~~under~~ subsection (e) by reviewing the circumstances under which  
28 information concerning United States persons was acquired, retained, or disseminated.

29 “(j) Judicial Proceedings.—

30 “(1) EXPEDITED PROCEEDINGS.—Judicial proceedings under this section shall be  
31 conducted as expeditiously as possible.

32 “(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless  
33 the Court, the Court of Review, or any judge of either the Court or the Court of Review, by  
34 order for reasons stated, extends that time for good cause.

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

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

40 “(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In  
41 any proceedings under this section, the court shall, upon request of the Government, review

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1 ex parte and in camera any Government submission, or portions of a submission, which  
2 may include classified information.

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

6 “(l) Assessments and Reviews.—

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

13 “(A) the Foreign Intelligence Surveillance Court;

14 “(B) the congressional intelligence committees;

15 ~~“(B)“(C) the Committees Committee on the Judiciary of the House of~~  
16 ~~Representatives and the Senate; and Senate; and~~

17 ~~“(C) the Foreign Intelligence Surveillance Court.”(D) the Committee on the~~  
18 **Judiciary of the House of Representatives.**

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

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

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

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

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

36 “(i) the Attorney General;

37 “(ii) the Director of National Intelligence;

38 “(iii) the congressional intelligence committees; and

39 “(iv) the ~~Committees Committee~~ on the Judiciary of the ~~House of~~  
40 ~~Representatives and the Senate; and~~

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1                   ~~“(v) the Foreign Intelligence Surveillance Court.~~ **Committee on the Judiciary**  
2                   **of the House of Representatives.**

3                   “(3) ANNUAL REVIEW.—

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

9                   “(i) the number and nature of disseminated intelligence reports containing a  
10                   reference to a United States person identity;

11                   “(ii) the number and nature of United States person identities subsequently  
12                   disseminated by that element in response to requests for identities that were not  
13                   referred to by name or title in the original reporting;

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

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

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

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

31                   “(i) the Foreign Intelligence Surveillance Court;

32                   “(ii) the Attorney General;

33                   “(iii) the Director of National Intelligence;

34                   “(iv) the congressional intelligence committees; and

35                   “(v) the Committees on the Judiciary of the Senate; and

36                   “(vi) the Committee on the Judiciary of the House of Representatives and the  
37                   Senate.

38  
39                   \* 1 ~~“(m) Construction. Nothing in this Act shall be construed~~

1 ~~to require an application under section 104 for an acquisition~~  
2 ~~that is targeted in accordance with this section at a person~~  
3 ~~reasonably believed to be located outside the United States.~~

4 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE**  
5 **UNITED STATES OF UNITED STATES PERSONS**  
6 **OUTSIDE THE UNITED STATES.**

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

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

14 **“(2) LIMITATION.—**If a United States person targeted under this subsection is reasonably  
15 believed to be located in the United States during the pendency of an order issued pursuant  
16 to subsection (c), ~~such acquisition shall cease unless authority, other than the targeting of~~  
17 **such United States person** under this section, ~~is obtained pursuant to this Act or shall~~  
18 **cease unless** the targeted United States person is again reasonably believed to be located  
19 outside the United States during the pendency of an order issued pursuant to subsection (c).

20 **“(b) Application.—**

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

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

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

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

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

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

34 **“(D) a statement of proposed minimization procedures that that—**

35 **“(i) in the case of electronic surveillance, meet the definition of minimization**  
36 **procedures in section 101(h) or section 301(4), as appropriate; and**

37 **“(ii) in the case of a physical search, meet the definition of minimization procedures—**

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1 ~~in section 301(4);~~

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

4 “(F) a certification made by the Attorney General or an official specified in section  
5 104(a)(6) that—

6 “(i) the certifying official deems the information sought to be foreign  
7 intelligence information;

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

10 “(iii) such information cannot reasonably be obtained by normal investigative  
11 techniques;

12 “(iv) ~~identifies designates~~ the type of foreign intelligence information being  
13 sought according to the categories described in ~~each subparagraph of section~~  
14 101(e); and

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

16 “(I) the information sought is the type of foreign intelligence information  
17 designated; and

18 “(II) such information cannot reasonably be obtained by normal  
19 investigative techniques;

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

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

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

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

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

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

38 \*\* 2 ~~(e)~~“(4) CONSTRUCTION.—Nothing in **title I** of this Act shall be construed to require  
39 an application under section 104 for an acquisition that is targeted in accordance with this  
40 section at a **United States** person reasonably believed to be located outside the United

1 States.

2 “(c) Order.—

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

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

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

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

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

14 “(C) the proposed minimization ~~procedures~~ ~~procedures~~—

15 “(i) ~~in the case of electronic surveillance,~~ meet the definition of minimization  
16 procedures **under section 101(h) or section 301(4), as appropriate; and in section**  
17 **101(h); and**

18 “(ii) ~~in the case of a physical search, meet the definition of minimization procedures~~  
19 ~~in section 301(4);~~

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

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

30 “(3) REVIEW.—

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

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

39 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the  
40 proposed minimization procedures referred to in paragraph (1)(C) do not meet the

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1 definition of minimization procedures ~~as required under such paragraph~~ **under section**  
2 **101(h) or section 301(4), as appropriate**, the judge shall enter an order so stating and  
3 provide a written statement for the record of the reasons for such determination. The  
4 Government may appeal an order under this subparagraph pursuant to subsection (f).

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

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

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

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

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

21 “(D) the means by which the acquisition will be conducted and whether physical  
22 entry is required to effect the acquisition; and

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

24 “(5) DIRECTIONS.—An order approving an acquisition under this subsection shall  
25 direct—

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

28 “(B) an electronic communication service provider to provide to the Government  
29 forthwith all information, facilities, or assistance necessary to accomplish the  
30 acquisition authorized under such order in a manner that will protect the secrecy of the  
31 acquisition and produce a minimum of interference with the services that such  
32 electronic communication service provider is providing to the target of the acquisition;

33 “(C) an electronic communication service provider to maintain under security  
34 procedures approved by the Attorney General any records concerning the acquisition  
35 or the aid furnished that such electronic communication service provider wishes to  
36 maintain; and

37 “(D) that the Government compensate, at the prevailing rate, such electronic  
38 communication service provider for providing such information, facilities, or  
39 assistance.

40 “(6) DURATION.—An order approved under this subsection shall be effective for a period  
41 not to exceed 90 days and such order may be renewed for additional 90-day periods upon

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1 submission of renewal applications meeting the requirements of subsection (b).

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

7 “(d) Emergency Authorization.—

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

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

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

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

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

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

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

41 “(e) Release From Liability.—~~Notwithstanding any other provision of law, no~~ Liability.—No  
42 cause of action shall lie in any court against any electronic communication service provider for

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1 providing any information, facilities, or assistance in accordance with an order or request for  
2 emergency assistance issued pursuant to ~~subsection~~ subsections (c) or (d).

3 “(f) Appeal.—

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

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

13  
14 \* 2 “(g) Construction. ~~Nothing in this Act shall be construed to~~  
15 ~~require an application under section 104 for an acquisition that is~~  
16 ~~targeted in accordance with this section at a person reasonably~~  
17 ~~believed to be located outside the United States.~~

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

20 “(a) Jurisdiction and Scope.—

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

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

32 “(3) LIMITATIONS.—

33 “(A) MOVING OR MISIDENTIFIED TARGETS.—If a targeted United States person is  
34 reasonably believed to be in the United States during the pendency of an order issued  
35 pursuant to subsection (c), ~~acquisitions relating to such targeted~~ the targeting of such  
36 United States ~~Person~~ person under this section shall cease unless ~~authority is~~  
37 ~~obtained pursuant to this Act or~~ the targeted United States person is again reasonably  
38 believed to be located outside the United States during the pendency of such order an

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1           order issued pursuant to subsection (c).

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

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

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

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

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

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

17                  “(B) a foreign power, an agent of a foreign power, or an officer or employee of a  
18                  foreign power;

19          “(4) a statement of proposed minimization procedures ~~that that~~—

20                  ~~“(A) in the case of electronic surveillance, meet the definition of minimization~~  
21          procedures **under section 101(h) or section 301(4), as appropriate; in section 101(h); and**

22                  ~~“(B) in the case of a physical search, meet the definition of minimization procedures in~~  
23          **section 301(4);**

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

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 procedures—**

10 ~~“(i) in the case of electronic surveillance, meet the definition of minimization~~  
11 ~~procedures under section 101(h) or section 301(4), as appropriate; and in section-~~  
12 ~~101(h); and~~

13 ~~“(ii) in the case of a physical search, meet the definition of minimization procedures-~~  
14 ~~in section 301(4);~~

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

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

25 “(3) REVIEW.—

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

30 “(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted  
31 under subsection (b) are insufficient to establish probable cause under ~~paragraph (1)(B)~~  
32 **this subsection**, the judge shall enter an order so stating and provide a written  
33 statement for the record of the reasons for such determination. The Government may  
34 appeal an order under this clause pursuant to subsection (e).

35 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the  
36 proposed minimization procedures ~~referred to in paragraph (1)(C)~~ **applicable to**  
37 **dissemination of information obtained through an acquisition under this**  
38 **subsection** do not meet the definition of minimization procedures as required under  
39 ~~such paragraph~~ **under section 101(h) or section 301(4), as appropriate**, the judge  
40 shall enter an order so stating and provide a written statement for the record of the  
41 reasons for such determination. The Government may appeal an order under this clause

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1 pursuant to subsection (e).

2 “(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge **Foreign Intelligence**  
3 **Surveillance Court** determines that an application under subsection (b) does not  
4 contain all the required elements, or that the certification provided under subsection  
5 (b)(5) is clearly erroneous on the basis of the information furnished under subsection  
6 (b), the judge shall enter an order so stating and provide a written statement for the  
7 record of the reasons for such determination. The Government may appeal an order  
8 under this clause pursuant to subsection (e).

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

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

17 “(d) Emergency Authorization.—

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

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

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

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

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

38 “(4) USE OF INFORMATION.—If an application submitted to the Court pursuant to  
39 paragraph (1) is denied, or in any other case where ~~an the~~ acquisition ~~under this section~~ is  
40 terminated and no order with respect to the target of the acquisition is issued under  
41 subsection (c), no information obtained or evidence derived from such acquisition, except  
42 under circumstances in which the target of the acquisition is determined not to be a United

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

9 “(e) Appeal.—

10 “(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the  
11 Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to  
12 subsection (c). The Court of Review shall have jurisdiction to consider such appeal and  
13 shall provide a written statement for the record of the reasons for a decision under this  
14 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 “SEC. 705. JOINT APPLICATIONS AND CONCURRENT  
20 AUTHORIZATIONS.

21 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under  
22 section 703 or section 704 is proposed to be conducted both inside and outside the United States,  
23 a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue  
24 simultaneously, upon the request of the Government in a joint application complying with the  
25 requirements of section 703(b) and section 704(b), orders under section 703(c) and section  
26 704(c), as appropriate.

27 “(b) Concurrent Authorization.—If Authorization.—

28 “(1) ~~Electronic surveillance.~~—If an order authorizing electronic surveillance or physical  
29 search has been obtained under section 105 or section 304 and that order is still in effect, during  
30 the pendency of that order, the Attorney General may authorize, without an order under section  
31 703 or 704, ~~electronic surveillance section 704, the targeting of that United States person for~~  
32 the purpose of acquiring foreign intelligence information ~~targeting that United States person~~  
33 while such person is reasonably believed to be located outside the United States.

34 “(2) ~~Physical search.~~—If an order authorizing a physical search  
35 has been obtained under section 304 and that order is still in  
36 effect, during the pendency of that order the Attorney General  
37 may authorize, without an order under section 703 or 704, a  
38 physical search for the purpose of acquiring foreign intelligence  
39 information targeting that United States person while such

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1 ~~person is reasonably believed to be located outside the United~~  
2 ~~States.~~

3 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER**  
4 **TITLE VII.**

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

9 **“(b) Information Acquired Under Section 703.—Information acquired from an**  
10 **acquisition conducted under section 703 shall be deemed to be**~~Information acquired~~  
11 ~~pursuant to section 702 or 703 shall be considered~~ **information acquired from an electronic**  
12 **surveillance pursuant to title I for purposes of section 106.**

13 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

14 **“(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General**  
15 **shall fully inform, in a manner consistent with national security, the congressional intelligence**  
16 **committees, and the Committees on the Judiciary of the Senate and the House of**  
17 **Representatives, concerning the implementation of this title.**

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

19 **“(1) with respect to section 702—**

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

21 **“(B) with respect to each certification made under ~~paragraph (1)(B) of such section~~**  
22 **section 702(g)(1)(B)(ii), the reasons for exercising the authority under such paragraph;**

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

24 **“(D) a description of the judicial review during the reporting period of any such**  
25 **certifications and targeting and minimization procedures ~~adopted pursuant to~~ required**  
26 **by subsections (d) and (e) of section 702 and utilized with respect to such acquisition,**  
27 **including a copy of any order or pleading in connection with such review that contains**  
28 **a significant legal interpretation of the provisions of section 702;**

29 **“(E) any actions taken to challenge or enforce a directive under ~~paragraph~~**  
30 **paragraphs (4) or (5) of section 702(h);**

31 **“(F) any compliance reviews conducted by the Attorney General or the Director of**  
32 **National Intelligence of acquisitions authorized under ~~subsection~~ section 702(a);**

33 **“(G) a description of any incidents of noncompliance with a directive issued by the**  
34 **Attorney General and the Director of National Intelligence under ~~subsection~~ section**  
35 **702(h), including—**

36 **“(i) incidents of noncompliance by an element of the intelligence community**  
37 **with procedures and guidelines ~~adopted pursuant to~~ submitted in accordance**

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1 with subsections (d), and (e), and ~~(f)~~(f) of section 702; and

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

5 “(H) any procedures implementing section 702;

6 “(2) with respect to section 703—

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

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

9 “(i) granted;

10 “(ii) modified; or

11 “(iii) denied; and

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

15 “(3) with respect to section 704—

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

17 “(B) the total number of such ~~orders~~— **orders**

18 “(i) granted;

19 “(ii) modified; or

20 “(iii) denied; and

21 “(C) the total number of emergency acquisitions authorized by the Attorney General  
22 under ~~subsection~~ **section** 704(d) and the total number of subsequent orders approving  
23 or denying such applications.

24 **“SEC. 708. SAVINGS PROVISION.**

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

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

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

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

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

33 **“TITLE VII—ADDITIONAL PROCEDURES REGARDING**  
34 **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

35 “Sec. 701. Definitions.

1 "Sec.702.Procedures for targeting certain persons outside the United States other than United  
2 States persons.

3 "Sec.703.Certain acquisitions inside the United States of United States persons outside the  
4 United States.

5 "Sec.704.Other acquisitions targeting United States persons outside the United States.

6 "Sec.705.Joint applications and concurrent authorizations.

7 "Sec.706.Use of information acquired under title VII.

8 "Sec.707.Congressional oversight.

9 "Sec.708.Savings provision."

10 (c) Technical and Conforming Amendments.—

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

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

16 (A) in subparagraph (C), by striking "and"; and

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

18 "(E) acquisitions under section 703; and

19 "(F) acquisitions under section 704;"

20 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**  
21 **WHICH ELECTRONIC SURVEILLANCE AND**  
22 **INTERCEPTION OF CERTAIN COMMUNICATIONS MAY**  
23 **BE CONDUCTED.**

24 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of  
25 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

26 "statement of exclusive means by which electronic surveillance and interception of certain  
27 communications may be conducted

28 "Sec. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and  
29 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic  
30 surveillance and the interception of domestic wire, oral, or electronic communications may be  
31 conducted.

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

36 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.

1 1809(a) is amended by striking “authorized by statute” each place it appears in such section and  
2 inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any  
3 express statutory authorization that is an additional exclusive means for conducting electronic  
4 surveillance under section 112.”; and

5 (c) Conforming Amendments.—

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

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

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

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

17 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN**  
18 **COURT ORDERS UNDER THE FOREIGN INTELLIGENCE**  
19 **SURVEILLANCE ACT OF 1978.**

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

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

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

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

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

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

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

3 “(e) Definitions.—In this section:

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

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

## 8 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

11 (1) in subsection (a)—

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

13 (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9),  
14 respectively;

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

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

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

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

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

25 ~~(E)~~(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by  
26 adding “and” at the end; and

27 ~~(F)~~(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by  
28 striking “; and” and inserting a period;

29 (2) by striking subsection (b);

30 (3) by redesignating subsections (c) through (e) as subsections (b) through (d),  
31 respectively; and

32 (4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this  
33 subsection, by striking “or the Director of National Intelligence” and inserting “the Director  
34 of National Intelligence, or the Director of the Central Intelligence Agency”.

## 35 SEC. 105. ISSUANCE OF AN ORDER.

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

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1 (1) in subsection (a)—

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

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

5 (2) in subsection (b), by striking “(a)(3)” and inserting “(a)(2)”;

6 (3) in subsection (c)(1)—

7 (A) in subparagraph (D), by adding “and” at the end;

8 (B) in subparagraph (E), by striking “; and” and inserting a period; and

9 (C) by striking subparagraph (F);

10 (4) by striking subsection (d);

11 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),  
12 respectively;

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

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

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

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

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

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

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

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

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

37 “(5) In the event that such application for approval is denied, or in any other case where the  
38 electronic surveillance is terminated and no order is issued approving the surveillance, no

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1 information obtained or evidence derived from such surveillance shall be received in evidence or  
2 otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,  
3 department, office, agency, regulatory body, legislative committee, or other authority of the  
4 United States, a State, or political subdivision thereof, and no information concerning any United  
5 States person acquired from such surveillance shall subsequently be used or disclosed in any  
6 other manner by Federal officers or employees without the consent of such person, except with  
7 the approval of the Attorney General if the information indicates a threat of death or serious  
8 bodily harm to any person.

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

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

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

## 17 SEC. 106. USE OF INFORMATION.

18 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.  
19 1806) is amended by striking “radio communication” and inserting “communication”.

## 20 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

23 (1) in subsection (a)—

24 (A) by striking paragraph (2);

25 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),  
26 respectively;

27 (C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by  
28 striking “detailed”; and

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

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

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

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

37 (2) in subsection (d)(1)(A), by striking “or the Director of National Intelligence” and  
38



1 inserting "the Director of National Intelligence, or the Director of the Central Intelligence  
2 Agency".

3 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
4 1824) is amended—

5 (1) in subsection (a)—

6 (A) by striking paragraph (1); ~~and~~

7  
8 (B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4),  
9 respectively; and

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

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

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

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

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

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

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

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

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

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

35 "(5)(A) In the event that such application for approval is denied, or in any other case where the  
36 physical search is terminated and no order is issued approving the physical search, no  
37 information obtained or evidence derived from such physical search shall be received in  
38 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court,  
39 grand jury, department, office, agency, regulatory body, legislative committee, or other authority  
40 of the United States, a State, or political subdivision thereof, and no information concerning any

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

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

7 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
8 1801 et seq.) is amended—

9 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking  
10 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

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

## 12 SEC. 108. AMENDMENTS FOR EMERGENCY PEN 13 REGISTERS AND TRAP AND TRACE DEVICES.

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

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

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

## 18 SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE 19 COURT.

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

23 (b) En Banc Authority.—

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

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

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

28 “(2)(A) The court established under this subsection, on its own initiative, or upon the request  
29 of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of  
30 section ~~703(h)~~ 702(h), may hold a hearing or rehearing, en banc, when ordered by a majority of  
31 the judges that constitute such court upon a determination that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **SEC. 110. ~~INSPECTOR GENERAL~~ REVIEW OF PREVIOUS**  
31 **ACTIONS.**

32 (a) Definitions.—In this section:

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

35 (A) the Select Committee on Intelligence and the Committee on the Judiciary of the  
36 Senate; and

37 (B) the Permanent Select Committee on Intelligence and the Committee on the  
38 Judiciary of the House of Representatives.

39 (2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence

1 Surveillance Court” means the court established by section 103(a) of the Foreign  
2 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

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

9 (b) Reviews.—

10 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice,  
11 the Office of the Director of National Intelligence, the National Security Agency, and any  
12 other element of the intelligence community that participated in the President’s Surveillance  
13 Program, shall complete a comprehensive review of, with respect to the oversight authority  
14 and responsibility of each such Inspector General—

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

17 (B) the procedures and substance of, and access to, the legal reviews of the Program;

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

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

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

25 (2) COOPERATION AND COORDINATION.—

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

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

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

34 (B) INTEGRATION OF OTHER REVIEWS.—The Office of Professional  
35 Responsibility of the Department of Justice shall provide the report of any  
36 investigation conducted by such Office on matters relating to the Program to the  
37 Inspector General of the Department of Justice, who shall integrate the factual  
38 findings and conclusions of such investigation into its review

39 (C) COORDINATION.—The Inspectors General shall designate one of the Inspectors  
40 General required to conduct a review under paragraph (1) that is appointed by the

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1 President, by and with the advice and consent of the Senate, to coordinate the conduct  
2 of the reviews and the preparation of the reports.

3 (c) Reports.—

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

9 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the  
10 Inspectors General of the Department of Justice, the Office of the Director of National  
11 Intelligence, the National Security Agency, and any other Inspector General required to  
12 conduct a review under subsection (b)(1), shall submit to the appropriate committees of  
13 Congress and the Commission established under section 301(a), **to the extent practicable,**  
14 a comprehensive report on such reviews that includes any recommendations of any such  
15 Inspectors General within the oversight authority and responsibility of any such Inspector  
16 General **with respect to the reviews.**

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

22 (d) Resources.—

23 (1) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall  
24 ensure that the process for the investigation and adjudication of an application by an  
25 Inspector General or any appropriate staff of an Inspector General for a security clearance  
26 necessary for the conduct of the review under subsection (b)(1) is carried out as  
27 expeditiously as possible.

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

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

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

36 **SEC. 111. WEAPONS OF MASS DESTRUCTION.**

37 (a) Definitions.—

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

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

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

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

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

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

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

7 (B) by adding at the end the following new subparagraph:

8 “(D) engages in the international proliferation of weapons of mass destruction, or  
9 activities in preparation therefor; ~~or~~ or.”.

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

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

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

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

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

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

25 “(4) any weapon that is designed, intended, or has the capability of releasing radiation or  
26 radioactivity causing death, illness, or serious bodily injury to a significant number of  
27 persons.”.

28 (b) Use of Information.—

29 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of  
30 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international  
31 terrorism” and inserting “sabotage, international terrorism, or the international proliferation  
32 of weapons of mass destruction”.

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

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

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1 ~~SEC. 112. STATUTE OF LIMITATIONS. TITLE II—~~  
2 ~~PROTECTIONS FOR ELECTRONIC~~  
3 ~~COMMUNICATION SERVICE PROVIDERS~~

4 ~~(a) In General.—Section 109 of the Foreign Intelligence~~  
5 ~~Surveillance Act of 1978 (50 U.S.C. 1809) is amended by~~  
6 ~~adding at the end the following new subsection:~~

7 ~~“(e) Statute of Limitations.—No person shall be prosecuted,~~  
8 ~~tried, or punished for any offense under this section unless the~~  
9 ~~indictment is found or the information is instituted not later than~~  
10 ~~10 years after the commission of the offense.”.~~

11 ~~(b) Application.—The amendment made by subsection (a) shall~~  
12 ~~apply to any offense committed before the date of the enactment~~  
13 ~~of this Act if the statute of limitations applicable to that offense~~  
14 ~~has not run as of such date.~~

15 ~~TITLE II—PROTECTION OF PERSONS ASSISTING THE~~  
16 ~~GOVERNMENT~~

17 ~~SEC. 201. STATUTORY DEFENSES. SEC. 201.~~  
18 ~~PROCEDURES FOR IMPLEMENTING STATUTORY~~  
19 ~~DEFENSES UNDER THE FOREIGN INTELLIGENCE~~  
20 ~~SURVEILLANCE ACT OF 1978.~~

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

23 ~~“TITLE VIII—PROTECTION OF PERSONS ASSISTING~~  
24 ~~THE GOVERNMENT~~

25 ~~“SEC. 801. DEFINITIONS.~~

26 ~~“In this title:~~

27 ~~“(1) ASSISTANCE.—The term ‘assistance’ means the provision of, or the provision of~~  
28 ~~access to, information (including communication contents, communications records, or~~  
29 ~~other information relating to a customer or communication), facilities, or another form of~~  
30 ~~assistance.~~

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1 ~~“(2) ATTORNEY GENERAL.—THE TERM ‘ATTORNEY GENERAL’ HAS THE MEANING GIVEN~~  
2 ~~THAT TERM IN SECTION 101(G). CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term~~  
3 ~~‘congressional intelligence committees’ means—~~

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

5 ~~“(B) the Permanent Select Committee on Intelligence of the House of~~  
6 ~~Representatives.~~

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

8 ~~“(4) Covered civil action.—The term ‘covered civil action’ means a suit in Federal or~~  
9 ~~State court against any person for providing assistance to an element of the intelligence~~  
10 ~~community.~~

11 ~~“(5) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic~~  
12 ~~communication service provider’ means—~~

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

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

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

19 ~~“(D) any other communication service provider who has access to wire or electronic~~  
20 ~~communications either as such communications are transmitted or as such~~  
21 ~~communications are stored;~~

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

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

26 ~~“(6) Intelligence“(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term~~  
27 ~~‘intelligence community’ has the meaning given that term in ‘element of the intelligence~~  
28 ~~community’ means an element of the intelligence community as specified or designated~~  
29 ~~under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).~~

30 ~~“(7)“(6) PERSON.—The term ‘person’ means—~~

31 ~~“(A) an electronic communication service provider; or~~

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

34 ~~“(i) an order of the court established under section 103(a) directing such~~  
35 ~~assistance;~~

36 ~~“(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title~~  
37 ~~18, United States Code; or~~

38 ~~“(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the~~  
39 ~~Protect America Act of 2007 (Public Law 110-55), or 703(h), in effect on the day~~

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1 before the date of the enactment of the FISA Amendments Act of 2008 or  
2 703(h).

3 ~~“(8)“(7) STATE.—The term ‘State’ means any State, political subdivision of a State, the~~  
4 ~~Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of~~  
5 ~~the United States, and includes any officer, public utility commission, or other body~~  
6 ~~authorized to regulate an electronic communication service provider.~~

7 ~~“SEC. 802. PROCEDURES FOR COVERED CIVIL~~  
8 ~~ACTIONS. IMPLEMENTING STATUTORY DEFENSES.~~

9 ~~“(a) Intervention by Government.—In any covered civil action, the court shall permit the~~  
10 ~~Government to intervene. Whether or not the Government intervenes in the civil action,“(a)~~  
11 ~~General Requirement for Certification.—Notwithstanding any other provision of law, no~~  
12 ~~civil action may lie or be maintained in a Federal or State court against any person for~~  
13 ~~providing assistance to an element of the intelligence community, and shall be promptly~~  
14 ~~dismissed, if the Attorney General may submit any information in any form the Attorney~~  
15 ~~General determines is appropriate and the court shall consider all such submissions. certifies to~~  
16 ~~the court that—~~

17 ~~“(b) Factual and Legal Determinations.—In any covered civil action, any party may~~  
18 ~~submit to the court evidence, briefs, arguments, or other information on any matter with~~  
19 ~~respect to which a privilege based on state secrets is asserted. The court shall review any~~  
20 ~~such submission in accordance with the procedures set forth in section 106(f) and may,~~  
21 ~~based on the review, make any appropriate determination of fact or law. The court may, on~~  
22 ~~motion of“(1) any assistance by that person was provided pursuant to an order of the~~  
23 ~~court established under section 103(a) directing such assistance;~~

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

26 ~~“(3) any assistance by that person was provided pursuant to a directive under~~  
27 ~~sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of~~  
28 ~~the FISA Amendments Act of 2008, or 703(h) directing such assistance; or~~

29 ~~“(4) the person did not provide the alleged assistance.~~

30 ~~“(b) Additional Limitation.—Notwithstanding any other provision of law, no civil action~~  
31 ~~may lie or be maintained in a Federal or State court against an electronic communication~~  
32 ~~service provider for furnishing assistance to an element of the intelligence community, and~~  
33 ~~shall be promptly dismissed, if the Attorney General, take any additional actions the court~~  
34 ~~deems necessary to protect classified information. The court may, to the extent practicable and~~  
35 ~~consistent with national security, request that any party present briefs and arguments on any legal~~  
36 ~~question the court determines is raised by such a submission even if that party does not have full~~  
37 ~~access to the submission. The court shall consider whether the employment of a special master or~~  
38 ~~an expert witness, or both, would facilitate proceedings under this section.~~

39 ~~“(c) Location of Review.—The court may conduct the review in a location and facility~~  
40 ~~specified by certifies to the court that the assistance alleged to have been provided by the~~  
41 ~~electronic communication service provider was—~~

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1           “(1) in connection with an intelligence activity involving communications that was—

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

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

6           “(2) described in a written request or directive, or a series of such requests or  
7           directives, from the Attorney General ~~as necessary to ensure security~~ or the head of an  
8           element of the intelligence community (or the deputy of such person) to the electronic  
9           communication service provider indicating that the activity was—

10                   ~~“(d) Removal.—A covered civil action—~~“(A) authorized by the President; and

11                   “(B) determined to be lawful.

12           “(c) Judicial Review.—

13                   “(1) REVIEW OF CERTIFICATIONS.—A certification made pursuant to subsection (a)  
14                   or (b) shall be reviewed for abuse of discretion and a determination of whether the  
15                   certification is unsupported by substantial evidence or otherwise not in accordance  
16                   with law.

17                   “(2) SUPPLEMENTAL MATERIALS.—In its review of the certifications in subsections  
18                   (a) and (b), the court may examine the court order, certification, or directive described  
19                   in subsection (a) or the written request or directives, or series of such requests or  
20                   directives, described in subsection (b)(1)(B).

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

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

26                   “(2) limit any public disclosure concerning such certification, including any public  
27                   order following such an ex parte review, to a statement that the conditions of section  
28                   802 have been met and a description of the legal standards that govern the order,  
29                   without disclosing the subsection that is the basis for the order.

30           “(e) Role of the Parties.—The court may ask any party to submit arguments on relevant  
31           issues of law, if deemed appropriate by the court.

32           “(f) Nondelegation.—The authority and duties of the Attorney General under this section  
33           shall be performed by the Attorney General (or Acting Attorney General) or a designee in  
34           a position not lower than the Deputy Attorney General.

35           “(g) Appeal.—The courts of appeals shall have jurisdiction of appeals from interlocutory  
36           orders of the district courts of the United States granting or denying a motion to dismiss  
37           under this section.

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

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1 United States Code.

2 ~~“(e) Special Rule for Certain Cases.—For any covered civil action alleging that a person~~  
3 ~~provided assistance to an element of the intelligence community pursuant to a request or~~  
4 ~~directive during the period from September 11, 2001 through January 17, 2007, the Attorney~~  
5 ~~General shall provide to the court any request or directive related to the allegations under the~~  
6 ~~procedures set forth in subsection (b).“(i) Relationship to Other Laws.—Nothing in this~~  
7 ~~section may be construed to limit any otherwise available immunity, privilege, or defense~~  
8 ~~under any other provision of law.~~

9 ~~“(f)“(j) Applicability.—This section shall apply to a civil action pending on or filed after the~~  
10 ~~date of the enactment of this Act.” enactment of the FISA Amendments Act of 2008.~~

11 **“SEC. 803. PREEMPTION.**

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

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

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

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

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

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

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

27 **“(d) Application.—This section shall apply to any investigation, action, or proceeding**  
28 **that is pending on or filed after the date of enactment of the FISA Amendments Act of**  
29 **2008.**

30 **“SEC. 804. REPORTING.**

31 **“(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney**  
32 **General shall fully inform, in a manner consistent with national security, the congressional**  
33 **intelligence committees, the Committee on the Judiciary of the Senate, and the Committee**  
34 **on the Judiciary of the House of Representatives, concerning the implementation of this**  
35 **title.**

36 **“(b) Content.—Each report made under subparagraph (a) shall include—**

37 **“(1) any certifications made under section 802;**

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

39 **and**

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

2   **SEC. 202. TECHNICAL AMENDMENTS.**

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

6   “~~TITLE VII PROTECTION VIII—PROTECTION OF~~  
7   **PERSONS ASSISTING THE GOVERNMENT**

8   “Sec.801.Definitions.

9   “Sec.802.Procedures for ~~covered civil actions.~~” **implementing statutory defenses.**

10   “Sec.803.Preemption.

11   “Sec.804.Reporting.”.

12   **TITLE III—COMMISSION ON WARRANTLESS**  
13   **ELECTRONIC SURVEILLANCE ACTIVITIES**  
14   **INTELLIGENCE COLLECTION, PRIVACY**  
15   **PROTECTION, AND CHANGES IN INFORMATION**  
16   **TECHNOLOGY**

17   **SEC. 301. COMMISSION ON WARRANTLESS**  
18   **ELECTRONIC SURVEILLANCE ACTIVITIES.**  
19   **INTELLIGENCE COLLECTION, PRIVACY**  
20   **PROTECTION, AND CHANGES IN INFORMATION**  
21   **TECHNOLOGY.**

22       (a) Establishment of Commission.—There is established in the legislative branch a  
23       commission to be known as the “Commission on ~~Warrantless Electronic Surveillance Activities~~”  
24       **Intelligence Collection, Privacy Protection, and Changes in Information and**  
25       **Communications Technology**” (in this section referred to as the “Commission”).

26       (b) Duties of Commission.—

27           (1) IN GENERAL.—The Commission shall—

28               (A) ascertain, evaluate, and report upon the facts and circumstances relating to  
29               ~~electronic surveillance activities conducted without a warrant~~ **an intelligence activity**  
30               **involving communications authorized by the President during the period between**  
31               **September 11, 2001 and January 17, 2007 and designed to detect or prevent a**  
32               **terrorist attack, or activities in preparation for a terrorist attack, against the**  
33               **United States;;**

34               ~~(B) evaluate the lawfulness of such activities;~~

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1 ~~(C)~~ examine all programs and activities relating to intelligence collection inside ~~(B)~~  
2 **conduct a comprehensive examination of the legal framework for the collection of**  
3 **intelligence information in the United States or regarding United States persons that**  
4 **were in effect or operation on September 11, 2001, and all such programs and activities**  
5 **undertaken since that date, including the legal framework or justification for those**  
6 **activities; and both inside and outside the United States in light of the threats to**  
7 **the national security, recent and anticipated changes in information and**  
8 **communications technology that may affect the nature of that collection, and**  
9 **constitutional and privacy interests of United States persons; and**

10 ~~(D)~~(C) report to the President and Congress the findings and conclusions of the  
11 Commission and any recommendations the Commission considers appropriate for  
12 changes or improvements in laws, policies, and practices relating to the collection  
13 of intelligence inside the United States and regarding United States persons in  
14 order to enhance national security, protect the privacy of United States persons,  
15 ensure compliance with the Constitution, and improve the effectiveness and  
16 accountability of intelligence programs.

17 (2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the duties of  
18 the Commission under this section in a manner consistent with the need to protect national  
19 security.

20 (3) RELATIONSHIP TO PREVIOUS INQUIRIES.—In fulfilling its duties under subsection  
21 (b)(1)(A), the Commission shall build upon the reports submitted under section 110,  
22 and avoid unnecessary duplication of the review under that section which was  
23 conducted by the Inspectors General of the Department of Justice, the Office of the  
24 Director of National Intelligence, the National Security Agency, and any other  
25 inspector general that participated in it, as well as any related findings, conclusions,  
26 and recommendations of the Office of Professional Responsibility of the Department  
27 of Justice

28 (c) Composition of Commission.—

29 (1) MEMBERS.—The Commission shall be composed of 9 10 members, of whom—

30 (A) ~~5 members~~ 1 member, who shall serve as the chair of the Commission, shall  
31 be appointed by the President;

32 (B) 1 member, who shall serve as the vice chair of the Commission, shall be  
33 appointed jointly by the majority leader of the Senate and the Speaker leader of the  
34 House of Representatives; and who are not of the same party as the President;

35 ~~(B)~~ 4(C) 2 members shall be appointed jointly by the minority leader senior  
36 member of the Senate and the minority leader leadership of the House of  
37 Representatives of the Democratic Party;

38 (D) 2 members shall be appointed by the senior member of the leadership of the  
39 House of Representatives of the Republican Party;

40 (E) 2 members shall be appointed by the senior member of the leadership of the  
41 Senate of the Democratic Party; and

42 (F) 2 members shall be appointed by the senior member of the leadership of the

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1 Senate of the Republican Party.

2 (2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission  
3 may not be an officer or employee of the Federal Government.

4 (3)–

5 (2) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the  
6 Commission should be prominent United States citizens with significant depth of  
7 experience in national security, intelligence, Constitutional law, and ~~civil liberties~~. **civil**  
8 **liberties and privacy, and information and telecommunications technology matters.**

9 (3) Chair, vice chair.—

10 (A) Chair.—~~The Chair~~ (4) DEADLINE FOR APPOINTMENT.—All members of the  
11 Commission shall be **appointed by June 1, 2009**, jointly appointed by the majority leader  
12 of the Senate and the Speaker of the House of Representatives from among the members  
13 appointed under paragraph (1)(A).

14 (B) Vice chair.—The Vice Chair of the Commission shall be jointly appointed by the  
15 minority leader of the Senate and the minority leader of the House of Representatives from  
16 among the members appointed under paragraph (1)(B).

17 (4) Deadline for appointment.—All members of the Commission shall be appointed not  
18 later than 90 days after the date of the enactment of this Act.

19 (5) INITIAL MEETING.—The Commission shall hold its first meeting and begin operations  
20 not later than 45 days after the date on which a majority of its members have been  
21 appointed, **as soon as possible but not later than August 1, 2009.**

22 (6) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet upon  
23 the call of the Chair.

24 (7) QUORUM.—A majority of the members of the Commission shall constitute a quorum,  
25 but **the Commission may provide that** a lesser number may hold hearings.

26 (8) VACANCIES.—Any vacancy in the Commission shall not affect its powers and shall be  
27 filled in the same manner in which the original appointment was made.

28 (d) Powers of Commission.—

29 (1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Chair, any  
30 subcommittee or member thereof may, for the purpose of carrying out this section, hold  
31 such hearings and sit and act at such times and places, take such testimony, receive such  
32 evidence, and administer such oaths as the Commission, such designated subcommittee, or  
33 designated member may determine advisable.

34 (2) SUBPOENAS.—

35 (A) ISSUANCE.— AUTHORIZATION AND ISSUANCE.—

36 (i) IN GENERAL.—The Commission ~~may issue subpoenas requiring the~~  
37 ~~attendance and testimony of witnesses and the production of any evidence relating~~  
38 **is authorized to subpoena witnesses to attend and testify and to produce**  
39 **evidence pertaining** to any matter that the Commission is empowered to  
40 investigate under this section. The attendance of witnesses and the production of

1 evidence may be required from any place within the United States at any  
2 designated place of hearing within the United States. **The Commission may by**  
3 **rule delegate to the Chair and Vice Chair, acting jointly, the authority to**  
4 **authorize subpoenas under this paragraph.**

5 **(ii) ISSUANCE.—Subject to clause (i), subpoenas authorized**~~(ii) Signature.—~~  
6 ~~Subpoenas issued under this paragraph may be issued under the signature of the~~  
7 ~~Chair of the Commission, the chair of any subcommittee created by a majority of~~  
8 ~~the Commission or by any member designated by the chair, or any member~~  
9 ~~designated by a majority of the Commission and may be served by any person~~  
10 ~~designated by such Chair, subcommittee chair, or member. the Chair or a~~  
11 ~~member designated to sign the subpoena.~~

12 **(B) ENFORCEMENT.—**

13 **\*\* 3 (i) JURISDICTION.—**In the case of contumacy or failure to obey a  
14 subpoena issued under subparagraph (A), the United States district court for the  
15 judicial district in which the subpoenaed person resides, is served, or may be  
16 found, or where the subpoena is returnable, may issue an order requiring such  
17 person to appear at any designated place to testify or to produce documentary or  
18 other evidence. Any failure to obey the order of the court may be punished by the  
19 court as a contempt of that court.

20 **(i)(ii) IN GENERAL.—**If a person refuses to obey a subpoena issued under  
21 subparagraph (A), the Commission ~~may apply, upon a majority vote, may~~  
22 **apply, either through the Attorney General or another attorney of its**  
23 **choosing,** to a United States district court for an order requiring that person to  
24 appear before the Commission to give testimony, produce evidence, or both,  
25 relating to the matter under investigation. The application may be made within the  
26 judicial district where the hearing is conducted or where that person is found,  
27 resides, or transacts business. Any failure to obey the order of the court may be  
28 punished by the court as civil contempt.

29  
30 ~~\* 3 (ii) Jurisdiction.—In the case of contumacy or failure to obey a subpoena~~  
31 ~~issued under subparagraph (A), the United States district court for the judicial~~  
32 ~~district in which the subpoenaed person resides, is served, or may be found, or~~  
33 ~~where the subpoena is returnable, may issue an order requiring such person to~~  
34 ~~appear at any designated place to testify or to produce documentary or other~~  
35 ~~evidence. Any failure to obey the order of the court may be punished by the court~~  
36 ~~as a contempt of that court.~~

37 **(iii) ADDITIONAL ENFORCEMENT.—**In the case of the failure of a witness to  
38 comply with any subpoena or to testify when summoned under authority of this  
39 paragraph, the Commission, by majority vote, may certify a statement of fact  
40 attesting to such failure to the appropriate United States attorney, who shall bring  
41 the matter before the grand jury for its action, under the same statutory authority  
42 and procedures as if the United States attorney had received a certification under  
43 sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C.

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1 192 through 194).

2 (3) CONTRACTING.—The Commission may, to such extent and in such amounts as are  
3 provided in appropriations Acts, enter into contracts to enable the Commission to discharge  
4 its duties under this section.

5 (4) INFORMATION FROM FEDERAL AGENCIES.—

6 (A) IN GENERAL.—The Commission is authorized to secure directly from any  
7 executive department, bureau, agency, board, commission, office, independent  
8 establishment, or instrumentality of the ~~Government~~ **executive branch** documents,  
9 information, suggestions, estimates, and statistics for the purposes of this section. Each  
10 such department, bureau, agency, board, commission, office, independent  
11 establishment, or instrumentality shall furnish such documents, information,  
12 suggestions, estimates, and statistics directly to the Commission upon request made by  
13 the Chair, ~~the chair of any subcommittee created by a majority of the Commission,~~ or  
14 any member designated by a majority of the Commission.

15 (B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be  
16 received, handled, stored, and disseminated by members of the Commission and its  
17 staff in a manner consistent with all applicable statutes, regulations, and Executive  
18 orders.

19 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

20 (A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services  
21 shall provide to the Commission on a reimbursable basis administrative support and  
22 other services for the performance of the Commission's functions.

23 (B) DIRECTOR OF NATIONAL INTELLIGENCE.—**The Director of National**  
24 **Intelligence shall provide to the Commission appropriate space and technical**  
25 **facilities approved by the Commission and other services for the performance of**  
26 **the Commission's functions.**

27 (C) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed  
28 in subparagraph (A), departments and agencies of the United States may provide to the  
29 Commission such services, funds, facilities, staff, and other support services as they  
30 may determine advisable and as may be authorized by law.

31 (6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of  
32 services or property.

33 (7) POSTAL SERVICES.—The Commission may use the United States mails in the same  
34 manner and under the same conditions as departments and agencies of the United States.

35 (e) Staff of Commission.—

36 (1) IN GENERAL.—

37 (A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with ~~the~~ Vice  
38 Chair and in accordance with rules agreed upon by the Commission, may appoint and  
39 fix the compensation of an executive director and such other personnel as may be  
40 necessary to enable the Commission to carry out its functions, without regard to the  
41 provisions of title 5, United States Code, governing appointments in the competitive

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1 service, and without regard to the provisions of chapter 51 and subchapter III of  
2 chapter 53 of such title relating to classification and General Schedule pay rates, except  
3 that no rate of pay fixed under this paragraph may exceed the equivalent of that  
4 payable for a position at level ~~V~~ IV of the Executive Schedule under section 5316 of  
5 title 5, United States Code.

6 (B) PERSONNEL AS FEDERAL EMPLOYEES.—

7 (i) IN GENERAL.—The executive director and any personnel of the Commission  
8 who are employees shall be employees under section 2105 of title 5, United States  
9 Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that  
10 title.

11 (ii) MEMBERS OF COMMISSION.—Clause (i) shall not be construed to apply to  
12 members of the Commission.

13 (2) DETAILEES.—A Federal Government employee may be detailed to the Commission  
14 without reimbursement from the Commission, and such detailee shall retain the rights,  
15 status, and privileges of his or her regular employment without interruption.

16 (3) CONSULTANT SERVICES.—The Commission is authorized to procure the services of  
17 experts and consultants in accordance with section 3109 of title 5, United States Code, at  
18 rates not to exceed the daily rate paid a person occupying a position at level ~~IV~~ III of the  
19 Executive Schedule under section 5315 of title 5, United States Code.

20 (f) Security Clearances for Commission Members and Staff.—

21 (1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or  
22 departments shall cooperate with the Commission in expeditiously providing to the  
23 Commission members and staff appropriate security clearances to the extent possible  
24 pursuant to existing procedures and requirements, ~~except that no~~. No person shall be  
25 provided with access to classified information under this section without the appropriate  
26 security clearances.

27 (2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission, and  
28 commission staff, as authorized by the Chair ~~or the designee of the~~ and Vice Chair, who  
29 have obtained appropriate security clearances, shall have access to classified information  
30 related to the ~~surveillance intelligence~~ activities within the scope of the examination of the  
31 Commission and any other related classified information that the members of the  
32 Commission determine relevant to carrying out the duties of the Commission under this  
33 section.

34 (3) ~~Facilities and resources.—The Director of National Intelligence shall provide the~~  
35 ~~Commission with appropriate space and technical facilities approved by the Commission.~~

36 (g) Compensation and Travel Expenses.—

37 (1) COMPENSATION.—Each member of the Commission ~~may~~ shall be compensated at a  
38 the rate ~~not equal~~ to ~~exceed~~ the daily equivalent of the annual rate of basic pay in effect for  
39 a position at level ~~IV~~ III of the Executive Schedule under section 5315 of title 5, United  
40 States Code, for each day during which that member is engaged in the actual performance  
41 of the duties of the Commission.

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1 (2) TRAVEL EXPENSES.—While away from their homes or regular places of business in  
2 the performance of services for the Commission, members of the Commission shall be  
3 allowed travel expenses, including per diem in lieu of subsistence, in the same manner as  
4 persons employed intermittently in the Government service are allowed expenses under  
5 section 5703(b) of title 5, United States Code.

6 (h) Nonapplicability of Federal Advisory Committee Act.—

7 (1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply  
8 to the Commission.

9 (2) PUBLIC MEETINGS.—The Commission shall hold public hearings and meetings to the  
10 extent appropriate.

11 (3) PUBLIC HEARINGS.—Any public ~~hearings~~ **hearing** of the Commission shall be  
12 conducted in a manner consistent with the protection of information provided to or  
13 developed for or by the Commission as required by any applicable statute, regulation, or  
14 Executive order.

15 (i) Reports and Recommendations of Commission.—

16 (1) INTERIM REPORTS.—The Commission may submit to the President and Congress  
17 interim reports containing such findings, conclusions, and recommendations for corrective  
18 measures as have been agreed to by a majority of Commission members.

19 (2) FINAL REPORT.—Not later than ~~one year~~ **18 months** after the date of its first meeting,  
20 the Commission, ~~in consultation with appropriate representatives of the intelligence-~~  
21 ~~community,~~ shall submit to the President and Congress a final report containing such  
22 information, analysis, findings, conclusions, and recommendations as have been agreed to  
23 by a majority of Commission members **and such minority and additional views as a**  
24 **member may wish to include.**

25 (3) FORM.—The reports submitted under paragraphs (1) and (2) shall be submitted in  
26 unclassified form, but may include a classified annex.

27 (4) RECOMMENDATIONS FOR DECLASSIFICATION.—The Commission may make  
28 recommendations to the appropriate department or agency of the Federal Government  
29 regarding the declassification of documents or portions of documents.

30 (j) Termination.—

31 (1) IN GENERAL.—The Commission, and all the authorities of this section, shall terminate  
32 ~~60~~ **90** days after the date on which the final report is submitted under subsection (i)(2).

33 (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the  
34 ~~60~~ **90**-day period referred to in paragraph (1) for the purpose of concluding its activities,  
35 including providing testimony to committees of Congress concerning its report and  
36 disseminating the final report, **except that nothing under this paragraph shall limit the**  
37 **ability of the Chair, the Vice Chair, or any member of the Commission to provide**  
38 **additional testimony to committees of Congress concerning the report after that time.**

39 (k) Definitions.—In this section:

40 (1) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning

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

2 (2) UNITED STATES PERSON.—The term “United States person” has the meaning given the  
3 term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
4 1801(i)).

5 (l) Funding.—

6 (1) IN GENERAL.—There are authorized to be appropriated such sums as may be  
7 necessary to carry out the activities of the Commission under this section.

8 (2) DURATION OF AVAILABILITY.—Amounts made available to the Commission under  
9 paragraph (1) shall remain available until the termination of the Commission.

10 (m) Effective Date.—This section shall take effect on January 21, 2009.

11 TITLE IV—OTHER PROVISIONS

12 SEC. 401. SEVERABILITY.

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

17 SEC. 402. EFFECTIVE DATE.

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

20 SEC. 403. REPEALS.

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

22 (1) AMENDMENTS TO FISA.—

23 (A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and  
24 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,  
25 and 1805c) are repealed.

26 (B) TECHNICAL AND CONFORMING AMENDMENTS.—

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

30 (ii) CONFORMING AMENDMENTS.—Except as provided in section 404, section  
31 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is  
32 amended—

33 (I) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting  
34 “501(f)(1) or 702(h)(4)”; and

35 (II) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting  
36 “501(f)(1) or 702(h)(4)”.

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

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

6 (b) FISA Amendments Act of 2008.—

7 (1) IN GENERAL.—Except as provided in section 404, effective December 31, ~~2009~~ **2011**,  
8 title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a),  
9 is repealed.

10 (2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, ~~2009~~—  
11 **2011**—

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

14 (B) except as provided in section 404, section 601(a)(1) of such Act (50 U.S.C.  
15 1871(a)(1)) is amended to read as such section read on the day before the date of the  
16 enactment of this Act; and

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

## 20 SEC. 404. TRANSITION PROCEDURES.

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

22 (1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any  
23 other provision of law, any order, authorization, or directive issued or made pursuant to  
24 section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of  
25 the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in  
26 effect until the expiration of such order, authorization, or directive.

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

31 (A) subject to paragraph (3), section 105A of such Act, as added by section 2 of the  
32 Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to  
33 apply to any acquisition conducted pursuant to an order, authorization, or directive  
34 referred to in paragraph (1); and

35 (B) sections 105B and 105C of ~~such Act (as so added)~~ **the Foreign Intelligence**  
36 **Surveillance Act of 1978, as added by sections 2 and 3, respectively, of the Protect**  
37 **America Act of 2007**, shall continue to apply with respect to an order, authorization,  
38 or directive referred to in paragraph (1) until the later of—

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

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

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

8           (4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign  
9 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of  
10 2007, shall continue to apply with respect to any directives issued pursuant to such section  
11 105B.

12           (5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding  
13 any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50  
14 U.S.C. 1801 et seq.), section 103(e) of the **Foreign Intelligence Surveillance Act (50**  
15 **U.S.C. 1803(e))**, as amended by section 5(a) of the Protect America Act of 2007 (Public  
16 Law 110-55; 121 Stat. 556), shall continue to apply with respect to a directive issued  
17 pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by  
18 section 2 of the Protect America Act of 2007, until the ~~expiration of all orders,~~  
19 ~~authorizations, and directives issued or made pursuant to such section.~~

20 later of—

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

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

25 (6) REPORTING REQUIREMENTS.—

26           (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act,  
27 **any amendment made by this Act**, the Protect America Act of 2007 (Public Law  
28 110-55), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),  
29 section 4 of the Protect America Act of 2007 shall continue to apply until the date that  
30 the certification described in subparagraph (B) is submitted.

31           (B) CERTIFICATION.—The certification described in this subparagraph is a  
32 certification—

33                   (i) made by the Attorney General;

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

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

40                   (iv) that states that the information required to be included under such section 4  
41 relating to any acquisition conducted under such section 105B has been included

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1 in a semi-annual report required by such section 4.

2 (7) EFFECTIVE DATE.—Paragraphs (1) through ~~(6)~~(7) shall take effect as if enacted on  
3 August 5, 2007.

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

5 (1) ORDERS IN EFFECT ON DECEMBER 31, 2009. — ~~NOTWITHSTANDING 2011.~~ —  
6 **Notwithstanding** any other provision of this Act ~~or of~~, **any amendment made by this Act,**  
7 **or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),** any order,  
8 authorization, or directive issued or made under title VII of the Foreign Intelligence  
9 Surveillance Act of 1978, as amended by section 101(a), shall continue in effect until the  
10 date of the expiration of such order, authorization, or directive.

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

17 **later of—**

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

19 **(B) the date on which final judgement is entered for any petition or other**  
20 **litigation relating to such order, authorization, or directive.**

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

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

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

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

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

33 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section  
34 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the  
35 Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

36 (4) REPORTING REQUIREMENTS.—

37 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or  
38 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section  
39 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections  
40 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until

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1 the date that the certification described in subparagraph (B) is submitted.

2 (B) CERTIFICATION.—The certification described in this subparagraph is a  
3 certification—

4 (i) made by the Attorney General;

5 (ii) submitted to the Select Committee on Intelligence of the Senate, the  
6 Permanent Select Committee on Intelligence of the House of Representatives, and  
7 the Committees on the Judiciary of the Senate and the House of Representatives;

8 (iii) that states that there will be no further acquisitions carried out under title  
9 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section  
10 101(a), after the date of such certification; and

11 (iv) that states that the information required to be included in a review,  
12 assessment, or report under section 601 of such Act, as amended by section  
13 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating  
14 to any acquisition conducted under title VII of such Act, as amended by section  
15 101(a), has been included in a review, assessment, or report under such section  
16 601, 702(l), or 707.

17 (5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS  
18 OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section  
19 2.5 of Executive Order 12333 to intentionally target a United States person reasonably  
20 believed to be located outside the United States shall continue in effect, and shall constitute  
21 a sufficient basis for conducting such an acquisition targeting a United States person located  
22 outside the United States until the earlier of—

23 (A) the date that such authorization expires; or

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

25 ~~SEC. 405. NO RIGHTS UNDER THE FISA AMENDMENTS ACT OF 2008 FOR~~  
26 ~~UNDOCUMENTED ALIENS.~~

27 ~~This Act and the amendments made by this Act shall not be construed to prohibit~~  
28 ~~surveillance of, or grant any rights to, an alien not permitted to be in or remain in the~~  
29 ~~United States.~~

30 ~~SEC. 406. SURVEILLANCE TO PROTECT THE UNITED STATES.~~

31 ~~This Act and the amendments made by this Act shall not be construed to prohibit the~~  
32 ~~intelligence community (as defined in section 3(4) of the National Security Act of~~  
33 ~~1947 (50 U.S.C. 401a(4))) from conducting lawful surveillance that is necessary to—~~

34 ~~(1) prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist~~  
35 ~~organization from attacking the United States, any United States person, or any ally of~~  
36 ~~the United States;~~

37 ~~(2) ensure the safety and security of members of the United States Armed Forces or~~  
38 ~~any other officer or employee of the Federal Government involved in protecting the~~  
39 ~~national security of the United States; or~~

40 ~~(3) protect the United States, any United States person, or any ally of the United~~

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1 ~~States from threats posed by weapons of mass destruction or other threats to national~~  
2 ~~security.~~

3 ~~Attest:~~

4 ~~Clerk.66514~~

5 ~~110th CONGRESS~~

6 ~~2d Session~~

7 ~~H.R. 3773~~

8

9 ~~HOUSE AMENDMENT TO SENATE AMENDMENT~~