

1
2 Be it enacted by the Senate and House of Representatives of the United States of America in
3 Congress assembled,

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

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

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

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

9 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

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

11 Sec.102.Statement of exclusive means by which electronic surveillance and interception of
12 certain communications may be conducted. Deleted: domestic

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

15 Sec.104.Applications for court orders.

16 Sec.105.Issuance of an order.

17 Sec.106.Use of information.

18 Sec.107.Amendments for physical searches.

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

20 Sec.109.Foreign Intelligence Surveillance Court.

21 Sec.110.Review of previous actions.

22 Sec.111.Weapons of mass destruction. Deleted: Sec.110.Weapons

23 [Sec. 112. Statute of Limitations] Deleted: Sec.111.Technical and
conforming amendments.¶

24 **[TITLE II—PROTECTIONS FOR ELECTRONIC**
25 **COMMUNICATION SERVICE PROVIDERS**

26 Sec.201.Definitions.

27 Sec.202.Limitations on civil actions for electronic communication service providers.

28 Sec.203.Procedures for implementing statutory defenses under the Foreign Intelligence
29 Surveillance Act of 1978.

30 Sec.204.Preemption of State investigations.

31 Sec.205.Technical amendments.]

32 [TITLE III – COMMISSION ON WARRANTLESS SURVEILLANCE ACTIVITIES]

33 **TITLE III—OTHER PROVISIONS**

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- 1 Sec.301.Severability.
- 2 Sec.302.Effective date
- 3 Sec. 303. Repeals.
- 4 Sec. 304. Transition procedures.

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5 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**
6 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**
7 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

- 10 (1) by striking title VII; and
- 11 (2) by adding after title VI the following new title:

12 **“TITLE VII—ADDITIONAL PROCEDURES REGARDING**
13 **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

14 **“SEC. 701. [LIMITATION ON DEFINITION OF**
15 **ELECTRONIC SURVEILLANCE.**

16 “Nothing in the definition of electronic surveillance under section 101(f) shall be construed to
17 encompass surveillance that is targeted in accordance with this title at a person reasonably
18 believed to be located outside the United States.]

19 **“SEC. [702.] DEFINITIONS.**

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

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24 “(b) Additional Definitions.—

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

- 27 “(A) the Select Committee on Intelligence of the Senate; and
- 28 “(B) the Permanent Select Committee on Intelligence of the House of
29 Representatives.

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

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

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

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

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

7 “(C) a provider of a remote computing service, as that term is defined in section
8 2711 of title 18, United States Code;

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

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

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

Deleted: “(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the intelligence community’ means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”

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16 **“SEC. [702.] PROCEDURES FOR TARGETING CERTAIN**
17 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**
18 **UNITED STATES PERSONS.**

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

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

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

27 “(2) may not intentionally target a person reasonably believed to be located outside the
28 United States [if the purpose of such acquisition is][in order] to target a particular, known
29 person reasonably believed to be in the United States;

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

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

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

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37 “(c) Conduct of Acquisition.—

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38 “(1) [IN GENERAL.]—An acquisition authorized under subsection (a) may be conducted

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1 only in accordance with—

2 “(A) the certification made by the Attorney General and the Director of National
3 Intelligence submitted in accordance with subsection (g) [for a determination under
4 paragraph (1)(B) of such subsection]; and

5 “(B) the targeting and minimization procedures submitted in accordance with
6 subsections (d) and (e) [and the guidelines adopted in accordance with subsection
7 (f)].

8 [“(2) CONSTRUCTION.—Nothing in [this Act][the definition of electronic surveillance]
9 shall be construed to require an application under section 104 for an acquisition that is
10 targeted in accordance with this section at a person reasonably believed to be located outside
11 the United States.]

12 “(d) Targeting Procedures.—

13 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
14 of National Intelligence, shall adopt targeting procedures that are reasonably designed to
15 ensure that any acquisition authorized under subsection (a) is limited to targeting persons
16 reasonably believed to be located outside the United States and does not result in the
17 intentional acquisition of any communication as to which the sender and all intended
18 recipients are known at the time of the acquisition to be located in the United States.

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

21 “(e) Minimization Procedures.—

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

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

28 [“(f) Guidelines for Compliance with Limitations. —

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

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

32 “(B) that an application is filed under section 104 or section 303, as appropriate, if
33 required by [any other section of] this Act.

34 (2) TRAINING. -- The Director of National Intelligence shall establish a training program
35 for appropriate intelligence community personnel to ensure that the guidelines adopted pursuant
36 to paragraph (1) are properly implemented.

37 (3) SUBMISSION TO CONGRESS. – The Attorney General shall provide the guidelines adopted
38 pursuant to paragraph (1) to—

39 (A) the congressional intelligence committees; and

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1 (B) the Committees on the Judiciary of the House of Representatives and the
2 Senate.]

3 [(f) Guidelines for Compliance With Limitations.—

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

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

7 “(B) that an application is filed under section 104 or 303, if required by this Act.

8 “(2) CRITERIA.—With respect to subsection (b)(2), the guidelines adopted pursuant to
9 paragraph (1) shall contain specific criteria for determining whether a significant purpose of
10 an acquisition is to acquire the communications of a specific United States person
11 reasonably believed to be located in the United States. Such criteria shall include
12 consideration of whether—

13 “(A) the department or agency of the Federal Government conducting the
14 acquisition has made an inquiry to another department or agency of the Federal
15 Government to gather information on the specific United States person;

16 “(B) the department or agency of the Federal Government conducting the
17 acquisition has provided information that identifies the specific United States person to
18 another department or agency of the Federal Government;

19 “(C) the department or agency of the Federal Government conducting the
20 acquisition determines that the specific United States person has been the subject of
21 ongoing interest or repeated investigation by a department or agency of the Federal
22 Government; and

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

24 “(3) TRAINING.—The Director of National Intelligence shall establish a training program
25 for appropriate personnel of the intelligence community to ensure that the guidelines
26 adopted pursuant to paragraph (1) are properly implemented.

27 “(4) SUBMISSION TO CONGRESS AND FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The
28 Attorney General shall submit the guidelines adopted pursuant to paragraph (1) to—

29 “(A) the congressional intelligence committees;

30 “(B) the Committees on the Judiciary of the House of Representatives and the
31 Senate; and

32 “(C) the Foreign Intelligence Surveillance Court.]

33 “(g) Certification.—

34 “(1) IN GENERAL.—

35 “(A) REQUIREMENT.—In order to conduct an acquisition under subsection (a), the
36 Attorney General and the Director of National Intelligence shall provide to the Foreign
37 Intelligence Surveillance Court, under oath, a written certification and any supporting
38 affidavit, under seal, as described in this subsection.

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

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

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5 ~~“(ii) EXCEPTION.—If the Attorney General and the Director of National~~
6 ~~Intelligence determine that immediate action by the Government is required and~~
7 ~~time does not permit the preparation of a certification under this subsection prior~~
8 ~~to the initiation of an acquisition, the Attorney General and the Director of~~
9 ~~National Intelligence shall prepare and submit such certification to the Foreign~~
10 ~~Intelligence Surveillance Court, including the determination, as soon as possible~~
11 ~~but in no event more than 7 days after such determination is made.]~~

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12 “(i) EXCEPTION.—If the Attorney General and the Director of National
13 Intelligence determine that immediate action by the Government is required and
14 time does not permit the issuance of an order pursuant to subsection (i)(3) prior to
15 the initiation of an acquisition, the Attorney General and the Director of National
16 Intelligence may authorize the acquisition and shall submit to the Foreign
17 Intelligence Surveillance Court a certification [including]and] the determination
18 under this subsection as soon as possible but in no event more than 7 days after
19 such determination is made.]

20 “(ii) EMERGENCY AUTHORIZATION.—If the Attorney General and the Director
21 of National Intelligence determine that an emergency situation exists, immediate
22 action by the Government is required, and time does not permit the completion of
23 judicial review pursuant to subsection (i) prior to the initiation of an acquisition,
24 the Attorney General and the Director of National Intelligence may authorize the
25 acquisition and shall submit to the Foreign Intelligence Surveillance Court
26 certification under this subsection [including]and] the determination as soon as
27 possible but in no event more than 7 days after such determination is made.]

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

29 “(A) attest that—

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

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

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35 “(II) does not result in the intentional acquisition of any communication as to
36 which the sender and all intended recipients are known at the time of the
37 acquisition to be located in the United States;

Deleted: States, and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

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

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

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42 “(I) meet the definition of minimization procedures under section 101(h)

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1 or section 301(4), as appropriate; and

2 “(II) have been approved by, or submitted for approval by, the Foreign
3 Intelligence Surveillance Court;

4 “(iv) the procedures [and guidelines] referred to in clauses (i), (ii) [and (iii)] are
5 consistent with the requirements of the fourth amendment to the Constitution of
6 the United States;

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

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

11 “(vii) the acquisition [complies with the limitations in subsection (b):] [does not
12 constitute electronic surveillance, as limited by section 701; and]

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

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

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

17 “(C) include —

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

20 “(ii) if the acquisition has begun or the effective date is less than 30 days from
21 the submission of the written certification to the court—

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

23 “(II) a description of why initiation of the acquisition is required in less
24 than 30 days from the submission of the written certification to the court; and

25 “(III) if the acquisition is authorized under paragraph (1)(B)(ii), a
26 description of [the basis for the determination that an emergency situation
27 exists, and] why immediate action by the Government is required and time
28 does not permit the issuance of an order pursuant to subsection (i)(3) prior to
29 the initiation of the acquisition.]

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

33 “(4) MAINTENANCE OF CERTIFICATION.—The Attorney General shall maintain such
34 certification, under security measures adopted by the Chief Justice of the United States and
35 the Attorney General, in consultation with the Director of National Intelligence.

36 “(5) REVIEW.—The certification required by this subsection shall be subject to judicial
37 review pursuant to subsection (i).

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

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Deleted: and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States or the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States;

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“(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and
“(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

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Deleted: The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made.

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

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

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

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

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

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18 “(4) **CHALLENGING OF DIRECTIVES.**—

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

23 “(B) **ASSIGNMENT.**—The presiding judge of the Court shall assign the petition filed
24 under subparagraph (A) to 1 of the judges serving in the pool established by section
25 103(e)(1) not later than 24 hours after the filing of the petition.

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

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

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39 “(E) **PROCEDURES FOR PLENARY REVIEW.**—If a judge determines that a petition filed
40 under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set
41 aside the directive that is the subject of that petition not later than 30 days after being
42 assigned the petition. If the judge does not set aside the directive, the judge shall

1 immediately affirm ~~the directive or order that the directive be modified~~, and order the
2 recipient to comply with the directive in its entirety or as modified. The judge shall
3 provide a written statement for the records of the reasons for a determination under this
4 subparagraph.

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

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

9 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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15 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed
16 under subparagraph (A) to 1 of the judges serving in the pool established by section
17 103(e)(1) not later than 24 hours after the filing of the petition.

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

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“(D) PROCEDURES FOR REVIEW.—The judge shall render a determination not later than 30 days after being assigned a petition filed under subparagraph (A), unless the judge, by order for reasons stated, extends that time if necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States.

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

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

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29 “(6) APPEAL.—

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

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

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

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2 “(1) IN GENERAL.—

3 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
4 Intelligence Surveillance Court shall have jurisdiction to review any certification
5 submitted in accordance with subsection (g) and the targeting and minimization
6 procedures submitted in accordance with subsections (d) and (e), [and any amendments
7 to such certification or procedures].

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8 [“(B) TIME PERIOD FOR REVIEW.— The Court shall review the certification
9 submitted in accordance with subsection (g) and the targeting and minimization
10 procedures submitted in accordance with subsections (d) and (e) and approve or deny
11 an order under this subsection, not later than 30 days after the date on which a
12 certification is submitted.]

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13 [“(C) AMENDMENTS.—The Attorney General and the Director of National
14 Intelligence may amend a certification submitted in accordance with subsection (g) or
15 the targeting and minimization procedures submitted in accordance with subsections
16 (d) and (e) as necessary after such certification or procedures have been submitted for
17 review to the Foreign Intelligence Surveillance Court.]

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

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

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21 “(B) TARGETING PROCEDURES.—The targeting procedures submitted in accordance
22 with subsection (d) to assess whether the procedures are reasonably designed to ensure
23 that the acquisition authorized under subsection (a) is limited to the targeting of
24 persons reasonably believed to be located outside the United States and does not result
25 in the intentional acquisition of any communication as to which the sender and all
26 intended recipients are known at the time of the acquisition to be located in the United
27 States.

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

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31 “(3) ORDERS.—

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32 “(A) APPROVAL.—If the Court finds that a certification submitted in accordance
33 with subsection (g) contains all of the required elements and that the targeting and
34 minimization procedures submitted in accordance with subsections (d) and (e) are
35 consistent with the requirements of those subsections and with the fourth amendment
36 to the Constitution of the United States, the Court shall enter an order approving the
37 certification and the use of the procedures for the acquisition.

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

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1 Government to, at the Government's election and to the extent required by the Court's
2 order—

3 "(i) correct any deficiency identified by the Court not later than 30 days after
4 the date the Court issues the order; or

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5 "(ii) cease [or not begin] the acquisition authorized under subsection (a).]

6 [“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification
7 submitted pursuant to subsection (g) does not contain all of the required elements or
8 that the procedures submitted in accordance with subsections (d) and (e) are not
9 consistent with the requirements of those subsections or the fourth amendment to the
10 Constitution of the United States—

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

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

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

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20 “(II) cease the acquisition authorized under subsection (g)(1)(B).]

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

24 “(4) APPEAL.—

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

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

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

34 “(ii) if the Government appeals an order under this section, subject to the entry
35 of an order under subparagraph (C).

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

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

6 “(5) SCHEDULE.—

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

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

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

24 “(i) certifications prepared in accordance with subsection (g) for
25 reauthorization of authorizations in effect;

26 “(ii) the procedures adopted in accordance with subsections (d) and (e); and

27 “(iii) the annual review required by subsection (1)(3) for the preceding year.

28 “(D) TIMING OF REVIEWS.—The Attorney General and the Director of National
29 Intelligence shall schedule the completion of the annual review required by subsection
30 (1)(3) and a semiannual assessment required by subsection (1)(1) so that they may be
31 submitted to the Court at the time of the consolidated submission under subparagraph
32 (C).

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

37 “(6) COMPLIANCE.—At or before the end of the period of time for which an
38 authorization under subsection (a) expires, the Foreign Intelligence Surveillance Court may
39 assess compliance with the minimization procedures required under subsection (e) by reviewing
40 the circumstances under which information concerning United States persons was acquired,
41 retained, or disseminated.]

42 “(i) Judicial Proceedings.—

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

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“(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time [for good cause] [as necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States].

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

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

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

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

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“(l) Assessments and Reviews.—

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

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“(A) the Foreign Intelligence Surveillance Court;

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“(B) the congressional intelligence committees; and

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“[(C) the Committees on the Judiciary of the House of Representatives and the Senate.]

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

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“(A) are authorized to review the compliance with the targeting and minimization procedures submitted in accordance with subsections (d) and (e) [and the guidelines submitted in accordance with subsection (f)];

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

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

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

5 “(i) the Attorney General;

6 “(ii) the Director of National Intelligence;

7 “(iii) the congressional intelligence committees; and

8 “[(iv) the Committees on the Judiciary of the House of Representatives and the
9 Senate.]

10 “[(v) the Foreign Intelligence Surveillance Court.]

11 “(3) ANNUAL REVIEW.—

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

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

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

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

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

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

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

39 “(i) the Foreign Intelligence Surveillance Court;

40 “(ii) the Attorney General;

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1 “(iii) the Director of National Intelligence;
2 “(iv) the congressional intelligence committees; and
3 “[(v) the Committees on the Judiciary of the House of Representatives and the
4 Senate.]

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5 “SEC. [703]. CERTAIN ACQUISITIONS INSIDE THE
6 UNITED STATES OF UNITED STATES PERSONS
7 OUTSIDE THE UNITED STATES.

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

9 “(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to
10 review an application and enter an order approving the targeting of a United States person
11 reasonably believed to be located outside the United States to acquire foreign intelligence
12 information, if the acquisition constitutes electronic surveillance [(as defined in section
13 101(f), regardless of the limitation of section 701)] or the acquisition of stored electronic
14 communications or stored electronic data that requires an order under this Act and such
15 acquisition is conducted within the United States.

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

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22 “(b) Application.—

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

- 28 “(A) the identity of the Federal officer making the application;
- 29 “(B) the identity, if known, or a description of the United States person who is the
30 target of the acquisition;
- 31 “(C) a statement of the facts and circumstances relied upon to justify the applicant’s
32 belief that the United States person who is the target of the acquisition is—
 - 33 “(i) a person reasonably believed to be located outside the United States; and
 - 34 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
35 a foreign power;

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

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38 “(E) a description of the nature of the information sought and the type of

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1 communications or activities to be subjected to acquisition;
2 “(F) a certification made by the Attorney General or an official specified in section
3 104(a)(6) that—
4 “(i) the certifying official deems the information sought to be foreign
5 intelligence information;
6 “(ii) a significant purpose of the acquisition is to obtain foreign intelligence
7 information;
8 “(iii) such information cannot reasonably be obtained by normal investigative
9 techniques;
10 “(iv) designates the type of foreign intelligence information being sought
11 according to the categories described in section 101(e); and
12 “(v) includes a statement of the basis for the certification that—
13 “(I) the information sought is the type of foreign intelligence information
14 designated; and
15 “(II) such information cannot reasonably be obtained by normal
16 investigative techniques;
17 “(G) a summary statement of the means by which the acquisition will be conducted
18 and whether physical entry is required to effect the acquisition;
19 “(H) the identity of any electronic communication service provider necessary to
20 effect the acquisition, provided, however, that the application is not required to identify
21 the specific facilities, places, premises, or property at which the acquisition authorized
22 under this section will be directed or conducted;
23 “(I) a statement of the facts concerning any previous applications that have been
24 made to any judge of the Foreign Intelligence Surveillance Court involving the United
25 States person specified in the application and the action taken on each previous
26 application; and
27 “(J) a statement of the period of time for which the acquisition is required to be
28 maintained, provided that such period of time shall not exceed 90 days per application.
29 “(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may
30 require any other affidavit or certification from any other officer in connection with the
31 application.
32 “(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to
33 furnish such other information as may be necessary to make the findings required by
34 subsection (c)(1).
35 “(4) CONSTRUCTION.—Nothing in [this Act] [the definition of electronic surveillance]
36 shall be construed to require an application under section 104 for an acquisition that is
37 targeted in accordance with this section at a United States person reasonably believed to be
38 located outside the United States.]
39 “(c) Order.—

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

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

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

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

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

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

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

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

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24 “(3) REVIEW.—

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

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

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

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39 “(D) REVIEW OF CERTIFICATION.—If the judge determines that an application
40 required by subsection (b) does not contain all of the required elements, or that the
41 certification or certifications are clearly erroneous on the basis of the statement made

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

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

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

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

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

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

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

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

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

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

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26 “(C) an electronic communication service provider to maintain under security
27 procedures approved by the Attorney General any records concerning the acquisition
28 or the aid furnished that such electronic communication service provider wishes to
29 maintain; and

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

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

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

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1 “(d) Emergency Authorization.—

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

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

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

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

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

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

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

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day emergency acquisition period,

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

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law, no

39 “(f) Appeal.—

40 “(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The
41 Government may file an appeal with the Foreign Intelligence Surveillance Court of Review
42 for review of an order issued pursuant to subsection (c). The Court of Review shall have

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1 jurisdiction to consider such appeal and shall provide a written statement for the record of
2 the reasons for a decision under this paragraph.

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

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7 “SEC. [704]. OTHER ACQUISITIONS TARGETING UNITED
8 STATES PERSONS OUTSIDE THE UNITED STATES.

9 “(a) Jurisdiction and Scope.—

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

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

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community

21 “(3) LIMITATIONS.—

22 “(A) MOVING OR MISIDENTIFIED TARGETS.—If a targeted United States person is
23 reasonably believed to be in the United States during the pendency of an order issued
24 pursuant to subsection (c), the targeting of such United States person shall cease unless
25 authority is obtained pursuant to this Act or the targeted United States person is again
26 reasonably believed to be located outside the United States during the pendency of
27 such order.

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28 “(B) APPLICABILITY.—If an acquisition is to be conducted inside the United States
29 and could be authorized under section [703], the acquisition may only be conducted if
30 authorized under [section 703] or in accordance with another provision of this Act
31 other than this section.

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shall apply, unless an order or emergency

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(c) Order.—

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

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

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

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

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

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

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

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

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

4 “(3) REVIEW.—

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

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

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

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

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

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

35 “(d) Emergency Authorization.—

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

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

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

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

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

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

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

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28 “(e) Appeal.—

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

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

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

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

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

4 "(b) Concurrent Authorization.—

5 ["(1) ELECTRONIC SURVEILLANCE.—If an order authorizing electronic surveillance has
6 been obtained under section 105 and that order is still in effect, during the pendency of
7 that order, the Attorney General may authorize, without an order under section 703 or
8 704, electronic surveillance for the purpose of acquiring foreign intelligence information
9 targeting that United States person while such person is reasonably believed to be located
10 outside the United States.

11 ["(2) PHYSICAL SEARCH.—If an order authorizing a physical search has been obtained
12 under section 304 and that order is still in effect, during the pendency of that order the
13 Attorney General may authorize, without an order under section 703 or section 704, a
14 physical search for the purpose of acquiring foreign intelligence information targeting
15 that United States person while such person is reasonably believed to be located outside
16 the United States.]

17 "SEC. 706. USE OF INFORMATION ACQUIRED UNDER
18 TITLE VII.

19 "(a) Information Acquired Under Section 702.—Information acquired from an acquisition
20 conducted under section 702 shall be deemed to be information acquired from an electronic
21 surveillance pursuant to title I for purposes of section 106, [except for the purposes of subsection
22 (j) of such section.]

23 "(b) Information Acquired Under Section 703.—Information acquired from an acquisition
24 conducted under section 703 shall be deemed to be information acquired from an electronic
25 surveillance pursuant to title I for purposes of section 106.

26 "SEC. 707. CONGRESSIONAL OVERSIGHT.

27 "(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General
28 shall fully inform, in a manner consistent with national security, the congressional intelligence
29 committees, and the Committees on the Judiciary of the Senate and the House of
30 Representatives, concerning the implementation of this title.

31 "(b) Content.—Each report made under subsection (a) shall include—

32 "(1) with respect to section 702—

33 "(A) any certifications made under section 702(g) during the reporting period;

34 "(B) [with respect to each certification made under section 702(g)(1)(B)(ii), the
35 reasons for exercising the authority under such paragraph:]

36 "(C) any directives issued under section 702(h) during the reporting period;

37 "(D) a description of the judicial review during the reporting period of any such
38 certifications and targeting and minimization procedures required by subsections (d)
39 and (e) of section 702 and utilized with respect to such acquisition, including a copy of

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1 any order or pleading in connection with such review that contains a significant legal
2 interpretation of the provisions of section 702;

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

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

7 ~~“(G) a description of any incidents of noncompliance with a directive issued by the~~
8 ~~Attorney General and the Director of National Intelligence under section 702(h),~~
9 ~~including—~~

10 ~~“(i) incidents of noncompliance by an element of the intelligence community~~
11 ~~with procedures [and guidelines] submitted in accordance with subsections (d)~~
12 ~~and (e) [and (f)] of section 702; and~~

13 ~~“(ii) incidents of noncompliance by a specified person to whom the Attorney~~
14 ~~General and Director of National Intelligence issued a directive under section~~
15 ~~702(h); and~~

16 ~~“(H) any procedures implementing section 702;~~

17 ~~“(2) with respect to section 703—~~

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

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

20 ~~“(i) granted;~~

21 ~~“(ii) modified; or~~

22 ~~“(iii) denied; and~~

23 ~~“(C) the total number of emergency acquisitions authorized by the Attorney General~~
24 ~~under section 703(d) and the total number of subsequent orders approving or denying~~
25 ~~such acquisitions; and~~

26 ~~“(3) with respect to section 704—~~

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

28 ~~“(B) the total number of such orders~~

29 ~~“(i) granted;~~

30 ~~“(ii) modified; or~~

31 ~~“(iii) denied; and~~

32 ~~“(C) the total number of emergency acquisitions authorized by the Attorney General~~
33 ~~under section 704(d) and the total number of subsequent orders approving or denying~~
34 ~~such applications.”~~

35 **“SEC. 708. SAVINGS PROVISION**

36 “Nothing in this title shall be construed to limit the authority of the Government to seek an

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1 order or authorization under, or otherwise engage in any activity that is authorized under, any
2 other title of this Act.”

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

- 5 (1) by striking the item relating to title VII;
6 (2) by striking the item relating to section 701; and
7 (3) by adding at the end the following:

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

10 “Sec.701.Definitions.

11 “Sec.702.Procedures for targeting certain persons outside the United States other than United
12 States persons.

13 “Sec.703.Certain acquisitions inside the United States of United States persons outside the
14 United States.

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

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

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

18 “Sec.707.Congressional oversight.

19 “Sec.708.Savings provision.”

20 (c) Technical and Conforming Amendments.—

21 (1) TITLE 18, UNITED STATES CODE.—~~[(A) SECTION 2232.—Section 2232(e) of title~~
22 ~~18, United States Code, is amended by inserting “(as defined in section 101(f) of the~~
23 ~~Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section~~
24 ~~701 of that Act)” after “electronic surveillance”.]~~

25 (B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is
26 amended by inserting “or a court order pursuant to section 704 of the Foreign
27 Intelligence Surveillance Act of 1978” after “assistance”.

28 (2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

29 [(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of
30 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

31 “(e) Definition.—For the purpose of this section, the term ‘electronic surveillance’ means
32 electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of
33 section 701 of this Act.”.

34 (B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978
35 (50 U.S.C. 1810) is amended by—

36 (i) adding an “(a)” before “Civil Action”,

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(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

“(b) Definition.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.]

(C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended —“(A) in subparagraph (C), by striking “and”;
and

“(B) by adding at the end the following new subparagraphs:“(E) acquisitions under section 703; and

“(F) acquisitions under section 704.”;

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

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

“Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted

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

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

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

(c) Conforming Amendments.—

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

“(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification

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Deleted: (d) Termination of Authority.—¶

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2013.¶

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) for information, facilities, or assistance provided during the period such directive was or is in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).¶

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1 shall identify the specific statutory provision, and shall certify that the statutory
2 requirements have been met.”; and]

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

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

8 [(c) Conforming Amendments.—Section 2511(2) of title 18, United States Code, is amended
9 in paragraph (f), by striking “, as defined in section 101 of such Act,” and inserting “(as defined
10 in section 101(f) of such Act regardless of the limitation of section 701 of such Act)”.]

11 SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN 12 COURT ORDERS UNDER THE FOREIGN INTELLIGENCE 13 SURVEILLANCE ACT OF 1978.

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

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

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

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

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

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

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

37 “(e) Definitions.—In this section:

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

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

3 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

6 (1) in subsection (a)—

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

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

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

12 [(D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the
13 matter preceding subparagraph (A)—

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

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

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

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

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

24 (2) by striking subsection (b);

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

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

30 SEC. 105. ISSUANCE OF AN ORDER.

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

33 (1) in subsection (a)—

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

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

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

2 (3) in subsection (c)(1)—

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

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

5 (C) by striking subparagraph (F);

6 (4) by striking subsection (d);

7 (5) by redesignating subsections (e) through (i) as subsections (d) through (h),
8 respectively;

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

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

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

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

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

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

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

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

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

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

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1 the approval of the Attorney General if the information indicates a threat of death or serious
2 bodily harm to any person.

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

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

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

11 SEC. 106. USE OF INFORMATION.

12 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.
13 1806) is amended by striking “radio communication” and inserting “communication”.

14 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

17 (1) in subsection (a)—

18 (A) by striking paragraph (2);

19 (B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8),
20 respectively;

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

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

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

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

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

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

34 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
35 1824) is amended—

36 (1) in subsection (a)—

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

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

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

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

Deleted: reasonably—

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

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

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

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

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

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

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

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

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

38 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
39 1801 et seq.) is amended—

40 (1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking
41 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

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

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

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

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

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

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

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

(b) En Banc Authority.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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21 **[SEC. 110. REVIEW OF PREVIOUS ACTIONS.]**

22 (a) Definitions.—In this section:

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

25 (A) the Select Committee on Intelligence and the Committee on the Judiciary of the
26 Senate; and

27 (B) the Permanent Select Committee on Intelligence and the Committee on the
28 Judiciary of the House of Representatives.

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

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

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38 (b) Reviews.—

39 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice,

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1 the Office of the Director of National Intelligence, the National Security Agency, and any
2 other element of the intelligence community that participated in the President's Surveillance
3 Program, shall complete a comprehensive review of, with respect to the oversight authority
4 and responsibility of each such Inspector General—

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

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

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

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

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

15 (2) COOPERATION AND COORDINATION.—

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

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

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

24 (B) COORDINATION.—The Inspectors General shall designate one of the Inspectors
25 General required to conduct a review under paragraph (1) that is appointed by the
26 President, by and with the advice and consent of the Senate, to coordinate the conduct
27 of the reviews and the preparation of the reports.

28 (c) Reports.—

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

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

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

(d) Resources.—

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

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

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

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

SEC. 111. WEAPONS OF MASS DESTRUCTION.

(a) Definitions.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Deleted: death or serious bodily injury to a significant number of people;

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

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

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14 (b) Use of Information.—

15 (1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of
16 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international
17 terrorism” and inserting “sabotage, international terrorism, or the international proliferation
18 of weapons of mass destruction”.

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

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

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25 **[SEC. 112. STATUTE OF LIMITATIONS.**

26 (a) In General.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
27 1809) is amended by adding at the end the following new subsection:

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

31 (b) Application.—The amendment made by subsection (a) shall apply to any offense
32 committed before the date of the enactment of this Act if the statute of limitations applicable to
33 that offense has not run as of such date.]

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Deleted: SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS. [Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended— [(1) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”; and [(2) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”.]

34 **[TITLE II—PROTECTIONS FOR ELECTRONIC**
35 **COMMUNICATION SERVICE PROVIDERS**

36 **SEC. 201. DEFINITIONS.**

37 In this title:

38 (1) ASSISTANCE.—The term “assistance” means the provision of, or the provision of

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1 access to, information (including communication contents, communications records, or
2 other information relating to a customer or communication), facilities, or another form of
3 assistance.

4 (2) CONTENTS.—The term “contents” has the meaning given that term in section 101(n)
5 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

6 (3) COVERED CIVIL ACTION.—The term “covered civil action” means a civil action filed
7 in a Federal or State court that—

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

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

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

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

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

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

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

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

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

27 (5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term “element of the intelligence
28 community” means an element of the intelligence community specified in or designated
29 under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

30 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR**
31 **ELECTRONIC COMMUNICATION SERVICE PROVIDERS.**

32 (a) Limitations.—

33 (1) IN GENERAL.—Notwithstanding any other provision of law, a covered civil action
34 shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if
35 the Attorney General certifies to the court that—

36 (A) the assistance alleged to have been provided by the electronic communication
37 service provider was—

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

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1 was—
2 (I) authorized by the President during the period beginning on September
3 11, 2001, and ending on January 17, 2007; and

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

6 (ii) described in a written request or directive from the Attorney General or the
7 head of an element of the intelligence community (or the deputy of such person)
8 to the electronic communication service provider indicating that the activity
9 was—

10 (I) authorized by the President; and

11 (II) determined to be lawful; or

12 (B) the electronic communication service provider did not provide the alleged
13 assistance.

14 (2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review
15 by a court for abuse of discretion.

16 (b) Review of Certifications.—If the Attorney General files a declaration under section 1746
17 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a)
18 would harm the national security of the United States, the court shall—

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

20 (2) limit any public disclosure concerning such certification, including any public order
21 following such an ex parte review, to a statement that the conditions of subsection (a) have
22 been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the
23 certification.

24 (c) Nondelegation.—The authority and duties of the Attorney General under this section shall
25 be performed by the Attorney General (or Acting Attorney General) or a designee in a position
26 not lower than the Deputy Attorney General.

27 (d) Civil Actions in State Court.—A covered civil action that is brought in a State court shall
28 be deemed to arise under the Constitution and laws of the United States and shall be removable
29 under section 1441 of title 28, United States Code.

30 (e) Rule of Construction.—Nothing in this section may be construed to limit any otherwise
31 available immunity, privilege, or defense under any other provision of law.

32 (f) Effective Date and Application.—This section shall apply to any covered civil action that is
33 pending on or filed after the date of enactment of this Act.

34 **SEC. 203. PROCEDURES FOR IMPLEMENTING**
35 **STATUTORY DEFENSES UNDER THE FOREIGN**
36 **INTELLIGENCE SURVEILLANCE ACT OF 1978.**

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

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1 “TITLE VIII—PROTECTION OF PERSONS ASSISTING
2 THE GOVERNMENT

3 “SEC. 801. DEFINITIONS.

4 “In this title:

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

9 “(2) ATTORNEY GENERAL.—The term ‘Attorney General’ has the meaning give that term
10 in section 101(g).

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

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

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

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

18 “(C) a provider of a remote computing service, as that term is defined in section
19 2711 of title 18, United States Code;

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

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

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

27 “(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘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 “(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

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1 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before
2 | the date of the enactment of the FISA Amendments Act of 2008 or 702(h).

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3 “(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 IMPLEMENTING**
8 **STATUTORY DEFENSES.**

9 “(a) Requirement for Certification.—

10 “(1) IN GENERAL.—Notwithstanding any other provision of law, no civil action may lie or
11 be maintained in a Federal or State court against any person for providing assistance to an
12 element of the intelligence community, and shall be promptly dismissed, if the Attorney
13 General certifies to the court that—

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

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

18 “(C) any assistance by that person was provided pursuant to a directive under
19 sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of
20 | the FISA Amendments Act of 2008, or 702(h) directing such assistance; or

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

22 “(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review
23 by a court for abuse of discretion.

24 “(b) Limitations on Disclosure.—If the Attorney General files a declaration under section
25 1746 of title 28, United States Code, that disclosure of a certification made pursuant to
26 subsection (a) would harm the national security of the United States, the court shall—

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

28 “(2) limit any public disclosure concerning such certification, including any public order
29 following such an ex parte review, to a statement that the conditions of subsection (a) have
30 been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the
31 certification.

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

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

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

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1 **SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.**

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

4 **“SEC. 803. PREEMPTION.**

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

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

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

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

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

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

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

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

22 **SEC. 205. TECHNICAL AMENDMENTS.**

23 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978
24 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end
25 the following:

26 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**
27 **THE GOVERNMENT**

28 **“Sec.801.Definitions.**

29 **“Sec.802.Procedures for implementing statutory defenses.**

30 **“Sec.803.Preemption.”.]**

31
32 **ITITLE II—PROTECTION OF PERSONS ASSISTING THE**
33 **GOVERNMENT**

34 **SEC. 201. STATUTORY DEFENSES.**

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1 The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by
2 adding after title VII the following:

3 “TITLE VIII—PROTECTION OF PERSONS ASSISTING
4 THE GOVERNMENT

5 “SEC. 801. DEFINITIONS.

6 “In this title:

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

11 “(2) ATTORNEY GENERAL.—The term ‘Attorney General’ has the meaning given that term
12 in section 101(g).

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

14 “(4) COVERED CIVIL ACTION.—The term ‘covered civil action’ means a suit in Federal or
15 State court against any person for providing assistance to an element of the intelligence
16 community.

17 “(5) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic
18 communication service provider’ means—

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

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

23 “(C) a provider of a remote computing service, as that term is defined in section
24 2711 of title 18, United States Code;

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

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

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

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

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

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

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

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

3 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title
4 18, United States Code; or

5 “(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the
6 Protect America Act of 2007 (Public Law 110-55), or 703(h).

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

11 “SEC. 802. PROCEDURES FOR COVERED CIVIL
12 ACTIONS.

13 “(a) Intervention by Government.— In any covered civil action, the court shall permit the
14 Government to intervene. Whether or not the Government intervenes in the civil action, the
15 Attorney General may submit any information in any form the Attorney General determines is
16 appropriate and the court shall consider all such submissions.

17 “(b) Factual and Legal Determinations.—In any covered civil action, any party may submit to
18 the court evidence, briefs, arguments, or other information on any matter with respect to which a
19 privilege based on state secrets is asserted. The court shall review any such submission in
20 accordance with the procedures set forth in section 106(f) and may, based on the review, make
21 any appropriate determination of fact or law. The court may, on motion of the Attorney General,
22 take any additional actions the court deems necessary to protect classified information. The court
23 may, to the extent practicable and consistent with national security, request that any party present
24 briefs and arguments on any legal question the court determines is raised by such a submission
25 even if that party does not have full access to the submission. The court shall consider whether
26 the employment of a special master or an expert witness, or both, would facilitate proceedings
27 under this section.

28 “(c) Location of Review.—The court may conduct the review in a location and facility
29 specified by the Attorney General as necessary to ensure security.

30 ** 2 “(d) Removal.—A covered civil action that is brought in a State court shall be deemed to
31 arise under the Constitution and laws of the United States and shall be removable under section
32 1441 of title 28, United States Code.

33 “(e) Special Rule for Certain Cases.—For any covered civil action alleging that a person
34 provided assistance to an element of the intelligence community pursuant to a request or
35 directive during the period from September 11, 2001 through January 17, 2007, the Attorney
36 General shall provide to the court any request or directive related to the allegations under the
37 procedures set forth in subsection (b).

38 “(f) Applicability.—This section shall apply to a civil action pending on or filed after the date
39 of the enactment of this Act.”.

40 SEC. 202. TECHNICAL AMENDMENTS.

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1 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978
2 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following:

3 “TITLE VIII-PROTECTION OF PERSONS ASSISTING THE
4 GOVERNMENT

5 “Sec.801.Definitions

6 “Sec.802.Procedures for covered civil actions.”.]

7 [TITLE III—COMMISSION ON WARRANTLESS
8 ELECTRONIC SURVEILLANCE ACTIVITIES

9 SEC. 301. COMMISSION ON WARRANTLESS
10 ELECTRONIC SURVEILLANCE ACTIVITIES.

11 (a) Establishment of Commission.—There is established in the legislative branch a
12 commission to be known as the “Commission on Warrantless Electronic Surveillance Activities”
13 (in this section referred to as the “Commission”).

14 (b) Duties of Commission.—

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

16 (A) ascertain, evaluate, and report upon the facts and circumstances relating to
17 electronic surveillance activities conducted without a warrant between September 11,
18 2001 and January 17, 2007;

19 (B) evaluate the lawfulness of such activities;

20 (C) examine all programs and activities relating to intelligence collection inside the
21 United States or regarding United States persons that were in effect or operation on
22 September 11, 2001, and all such programs and activities undertaken since that date,
23 including the legal framework or justification for those activities; and

24 (D) report to the President and Congress the findings and conclusions of the
25 Commission and any recommendations the Commission considers appropriate.

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

29 (c) Composition of Commission.—

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

31 (A) 5 members shall be appointed jointly by the majority leader of the Senate and
32 the Speaker of the House of Representatives; and

33 (B) 4 members shall be appointed jointly by the minority leader of the Senate and
34 the minority leader of the House of Representatives.

35 (2) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the
36 Commission should be prominent United States citizens with significant depth of

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1 experience in national security, Constitutional law, and civil liberties.

2 (3) CHAIR; VICE CHAIR.—

3 (A) CHAIR.—The Chair of the Commission shall be jointly appointed by the
4 majority leader of the Senate and the Speaker of the House of Representatives from
5 among the members appointed under paragraph (1)(A).

6 (B) VICE CHAIR.—The Vice Chair of the Commission shall be jointly appointed by
7 the minority leader of the Senate and the minority leader of the House of
8 Representatives from among the members appointed under paragraph (1)(B).

9 (4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed
10 not later than 90 days after the date of the enactment of this Act.

11 (5) INITIAL MEETING.—The Commission shall hold its first meeting and begin operations
12 not later than 45 days after the date on which a majority of its members have been
13 appointed.

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

16 (7) QUORUM.—A majority of the members of the Commission shall constitute a quorum,
17 but a lesser number may hold hearings.

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

20 (d) Powers of Commission.—

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

26 (2) SUBPOENAS.—

27 (A) ISSUANCE.—

28 (i) IN GENERAL.—The Commission may issue subpoenas requiring the
29 attendance and testimony of witnesses and the production of any evidence relating
30 to any matter that the Commission is empowered to investigate under this section.
31 The attendance of witnesses and the production of evidence may be required from
32 any place within the United States at any designated place of hearing within the
33 United States.

34 (ii) SIGNATURE.—Subpoenas issued under this paragraph may be issued under
35 the signature of the Chair of the Commission, the chair of any subcommittee
36 created by a majority of the Commission, or any member designated by a majority
37 of the Commission and may be served by any person designated by such Chair,
38 subcommittee chair, or member.

39 (B) ENFORCEMENT.—

40 (i) IN GENERAL.—If a person refuses to obey a subpoena issued under

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1 subparagraph (A), the Commission may apply to a United States district court for
2 an order requiring that person to appear before the Commission to give testimony,
3 produce evidence, or both, relating to the matter under investigation. The
4 application may be made within the judicial district where the hearing is
5 conducted or where that person is found, resides, or transacts business. Any
6 failure to obey the order of the court may be punished by the court as civil
7 contempt.

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

15 (iii) ADDITIONAL ENFORCEMENT.—In the case of the failure of a witness to
16 comply with any subpoena or to testify when summoned under authority of this
17 paragraph, the Commission, by majority vote, may certify a statement of fact
18 attesting to such failure to the appropriate United States attorney, who shall bring
19 the matter before the grand jury for its action, under the same statutory authority
20 and procedures as if the United States attorney had received a certification under
21 sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C.
22 192 through 194).

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

26 (4) INFORMATION FROM FEDERAL AGENCIES.—

27 (A) IN GENERAL.—The Commission is authorized to secure directly from any
28 executive department, bureau, agency, board, commission, office, independent
29 establishment, or instrumentality of the Government documents, information,
30 suggestions, estimates, and statistics for the purposes of this section. Each department,
31 bureau, agency, board, commission, office, independent establishment, or
32 instrumentality shall furnish such documents, information, suggestions, estimates, and
33 statistics directly to the Commission upon request made by the Chair, the chair of any
34 subcommittee created by a majority of the Commission, or any member designated by
35 a majority of the Commission.

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

40 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

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

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

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

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

9 (e) Staff of Commission.—

10 (1) IN GENERAL.—

11 (A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with Vice
12 Chair and in accordance with rules agreed upon by the Commission, may appoint and
13 fix the compensation of an executive director and such other personnel as may be
14 necessary to enable the Commission to carry out its functions, without regard to the
15 provisions of title 5, United States Code, governing appointments in the competitive
16 service, and without regard to the provisions of chapter 51 and subchapter III of
17 chapter 53 of such title relating to classification and General Schedule pay rates, except
18 that no rate of pay fixed under this paragraph may exceed the equivalent of that
19 payable for a position at level V of the Executive Schedule under section 5316 of title
20 5, United States Code.

21 (B) PERSONNEL AS FEDERAL EMPLOYEES.—

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

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

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

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

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

36 (1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or
37 departments shall cooperate with the Commission in expeditiously providing to the
38 Commission members and staff appropriate security clearances to the extent possible
39 pursuant to existing procedures and requirements, except that no person shall be provided
40 with access to classified information under this section without the appropriate security
41 clearances.

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1 (2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission and
2 commission staff, as authorized by the Chair or the designee of the Chair, who have
3 obtained appropriate security clearances, shall have access to classified information related
4 to the surveillance activities within the scope of the examination of the Commission and any
5 other related classified information that the members of the Commission determine relevant
6 to carrying out the duties of the Commission under this section.

7 (3) FACILITIES AND RESOURCES.—The Director of National Intelligence shall provide the
8 Commission with appropriate space and technical facilities approved by the Commission.

9 (g) Compensation and Travel Expenses.—

10 (1) COMPENSATION.—Each member of the Commission may be compensated at a rate not
11 to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level
12 IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day
13 during which that member is engaged in the actual performance of the duties of the
14 Commission.

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

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

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

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

25 (3) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a
26 manner consistent with the protection of information provided to or developed for or by the
27 Commission as required by any applicable statute, regulation, or Executive order.

28 (i) Reports and Recommendations of Commission.—

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

32 (2) FINAL REPORT.—Not later than one year after the date of its first meeting, the
33 Commission, in consultation with appropriate representatives of the intelligence
34 community, shall submit to the President and Congress a final report containing such
35 information, analysis, findings, conclusions, and recommendations as have been agreed to
36 by a majority of Commission members.

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

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

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1 (j) Termination.—

2 (1) IN GENERAL.—The Commission, and all the authorities of this section, shall terminate
3 60 days after the date on which the final report is submitted under subsection (i)(2).

4 (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the
5 60-day period referred to in paragraph (1) for the purpose of concluding its activities,
6 including providing testimony to committees of Congress concerning its report and
7 disseminating the final report.

8 (k) Definitions.—In this section:

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

11 (2) UNITED STATES PERSON.—The term “United States person” has the meaning given the
12 term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
13 1801(i)).

14 (l) Funding.—

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

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

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19 TITLE III—OTHER PROVISIONS

20 SEC. 301. SEVERABILITY.

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

25 SEC. 302. EFFECTIVE DATE.

26 Except as provided in section 304, the amendments made by this Act shall take effect on the
27 date of the enactment of this Act.

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28 SEC. 302. REPEALS.

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

30 (1) AMENDMENTS TO FISA.—

31 (A) IN GENERAL.—Except as provided in section 304, sections 105A, 105B, and
32 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,
33 and 1805c) are repealed.

34 (B) TECHNICAL AND CONFORMING AMENDMENTS.—

35 (i) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign
36 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 nt) is amended by striking the

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items relating to sections 105A, 105B, and 105C.

(ii) Conforming amendments.—Except as provided in section 304, section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

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

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

(2) REPORTING REQUIREMENTS.—Except as provided in section 304, section 4 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 555) is repealed.

(3) Transition procedures.—Except as provided in section 304, subsection (b) of section 6 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) is repealed.

(b) FISA Amendments Act of 2008.—

(1) IN GENERAL.—Except as provided in section 304, effective December 31, 2011, title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), is repealed.

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

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

(B) except as provided in section 304, section 601(a)(1) of such Act (50 U.S.C. 1871(a)(1)) is amended to read as such section read on the day before the date of the enactment of this Act; and

(C) except as provided in section 304, section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by striking “or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978”.

SEC. 304. TRANSITION PROCEDURES.

(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—

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

(2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS,

Deleted: (c) Transitions Procedures.—

(1) PROTECTION FROM LIABILITY.—Notwithstanding subsection (b)(1), subsection (f) of section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain in effect with respect to any directives issued pursuant to such section 105B for information, facilities, or assistance provided during the period such directive was or is in effect.

(2) ORDERS IN EFFECT.—

(A) ORDERS IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

(i) any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 or section 6(b) of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) shall remain in effect until the date of expiration of such order, and

(ii) at the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall reauthorize such order if the facts and circumstances continue to justify issuance of such order under the provisions of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

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Deleted: (B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such order. Any such order shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended.

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(A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, any authorization or directive in effect on the date of the enactment of this Act issued pursuant to the Protect America Act of 2007, or any amendment made by that Act, shall remain in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the [...]

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1 AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act or of
2 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

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

7 (B) sections 105B and 105C of such Act (as so added) shall continue to apply with
8 respect to an order, authorization, or directive referred to in paragraph (1) until the
9 expiration of such order, authorization, or directive.

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

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

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

27 (6) REPORTING REQUIREMENTS.—

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

33 (B) CERTIFICATION.—The certification described in this subparagraph is a
34 certification—

35 (i) made by the Attorney General;

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

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

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

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

6 (b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.—

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

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

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

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

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

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

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

30 (E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section
31 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the
32 Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

33 (4) REPORTING REQUIREMENTS.—

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

39 (B) CERTIFICATION.—The certification described in this subparagraph is a
40 certification—

Deleted: (5) NEW ORDERS.—
Notwithstanding any other provision of
this Act or of the Foreign Intelligence
Surveillance Act of 1978—
(A) the government may file an
application for an order under the Foreign
Intelligence Surveillance Act of 1978, as
in effect on the day before the date of the
enactment of the Protect America Act of
2007, except as amended by sections 102,
103, 104, 105, 106, 107, 108, 109, and
110 of this Act; and
(B) the court established under section
103(a) of the Foreign Intelligence
Surveillance Act of 1978 shall enter an
order granting such an application if the
application meets the requirements of
such Act, as in effect on the day before
the date of the enactment of the Protect
America Act of 2007, except as amended
by sections 102, 103, 104, 105, 106, 107,
108, 109, and 110 of this Act.
(6) EXTANT AUTHORIZATIONS.—At the
request of the applicant, the court
established under section 103(a) of the
Foreign Intelligence Surveillance Act of
1978 shall extinguish any extant
authorization to conduct electronic
surveillance or physical search entered
pursuant to such Act.
(7) APPLICABLE PROVISIONS.—Any
surveillance conducted pursuant to an
order entered pursuant to this subsection
shall be subject to the provisions of the
Foreign Intelligence Surveillance Act of
1978, as in effect on the day before the
date of the enactment of the Protect
America Act of 2007, except as amended
by sections 102, 103, 104, 105, 106, 107,
108, 109, and 110 of this Act.

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1 (i) made by the Attorney General;
2 (ii) submitted to the Select Committee on Intelligence of the Senate, the
3 Permanent Select Committee on Intelligence of the House of Representatives, and
4 the Committees on the Judiciary of the Senate and the House of Representatives;
5 (iii) that states that there will be no further acquisitions carried out under title
6 VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section
7 101(a), after the date of such certification; and

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

13 ~~(5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS~~
14 ~~OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section~~
15 ~~2.5 of Executive Order 12333 to intentionally target a United States person reasonably~~
16 ~~believed to be located outside the United States shall continue in effect, and shall constitute~~
17 ~~a sufficient basis for conducting such an acquisition targeting a United States person located~~
18 ~~outside the United States until the earlier of—~~

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- 19 (A) the date that authorization expires; or
20 (B) the date that is 90 days after the date of the enactment of this Act.
21

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(3) AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—

(A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.— Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, any authorization or directive in effect on the date of the enactment of this Act issued pursuant to the Protect America Act of 2007, or any amendment made by that Act, shall remain in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except as provided in paragraph (4) of this subsection, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), as construed in accordance with section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a)).

(B) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DECEMBER 31, 2013.— Any authorization or directive issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended, and, except as provided in section 707 of the Foreign Intelligence Surveillance Act of 1978, as so amended, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, to the extent that such section 101(f) is limited by section 701 of the Foreign Intelligence Surveillance Act of 1978, as so amended).

(4) USE OF INFORMATION ACQUIRED UNDER PROTECT AMERICA ACT