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AMENDMENT:

Strike out all after the enacting clause and insert:

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

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

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

Sec.1.Short title; table of contents.

**TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

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

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

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

Sec.104.Applications for court orders.

Sec.105.Issuance of an order.

Sec.106.Use of information.

Sec.107.Amendments for physical searches.

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

Sec.109.Foreign Intelligence Surveillance Court.

Sec.110.Weapons of mass destruction.

Sec.111.Technical and conforming amendments.

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

Sec.201.Definitions.

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

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

Sec.204.Preemption of State investigations.

Sec.205.Technical amendments.

**TITLE III—OTHER PROVISIONS**

Sec.301.Severability.

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1 Sec.302.Effective date; repeal; transition procedures.

2 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

3 SEC. 101. ADDITIONAL PROCEDURES REGARDING  
4 CERTAIN PERSONS OUTSIDE THE UNITED STATES.

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

7 (1) by striking title VII; and

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

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

11 “SEC. 701. LIMITATION ON DEFINITION OF  
12 ELECTRONIC SURVEILLANCE.

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

16 “SEC. 702. DEFINITIONS.

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

21 “(b) Additional Definitions.—

22 “(1) Congressional intelligence committees.—The term ‘congressional intelligence  
23 committees’ means—

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

25 “(B) the Permanent Select Committee on Intelligence of the House of  
26 Representatives.

27 “(2) Foreign intelligence surveillance court; court.—The terms ‘Foreign Intelligence  
28 Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

29 “(3) Foreign intelligence surveillance court of review; court of review.—The terms  
30 ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the court  
31 established by section 103(b).

32 “(4) Electronic communication service provider.—The term ‘electronic communication  
33 service provider’ means—

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

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

3           “(C) a provider of a remote computing service, as that term is defined in section  
4 2711 of title 18, United States Code;

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

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

10           “(5) Element of the intelligence community.—The term ‘element of the intelligence  
11 community’ means an element of the intelligence community specified in or designated  
12 under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

13 **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN**  
14 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**  
15 **UNITED STATES PERSONS.**

16           “(a) Authorization.—Notwithstanding any other law, the Attorney General and the Director of  
17 National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons  
18 reasonably believed to be located outside the United States to acquire foreign intelligence  
19 information.

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

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

23           “(2) may not intentionally target a person reasonably believed to be located outside the  
24 United States if the purpose of such acquisition is to target a particular, known person  
25 reasonably believed to be in the United States, except in accordance with title I or title III;

26           “(3) may not intentionally target a United States person reasonably believed to be located  
27 outside the United States, except in accordance with sections 704, 705, or 706;

28           “(4) shall not intentionally acquire any communication as to which the sender and all  
29 intended recipients are known at the time of the acquisition to be located in the United  
30 States; and

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

33           “(c) Conduct of Acquisition.—An acquisition authorized under subsection (a) may be  
34 conducted only in accordance with—

35           “(1) a certification made by the Attorney General and the Director of National  
36 Intelligence pursuant to subsection (f); and

37           “(2) the targeting and minimization procedures required pursuant to subsections (d) and  
38 (e).

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1 “(d) Targeting Procedures.—

2 “(1) Requirement to adopt.—The Attorney General, in consultation with the Director of  
3 National Intelligence, shall adopt targeting procedures that are reasonably designed to  
4 ensure that any acquisition authorized under subsection (a) is limited to targeting persons  
5 reasonably believed to be located outside the United States and does not result in the  
6 intentional acquisition of any communication as to which the sender and all intended  
7 recipients are known at the time of the acquisition to be located in the United States.

8 “(2) Judicial review.—The procedures referred to in paragraph (1) shall be subject to  
9 judicial review pursuant to subsection (h).

10 “(e) Minimization Procedures.—

11 “(1) Requirement to adopt.—The Attorney General, in consultation with the Director of  
12 National Intelligence, shall adopt minimization procedures that meet the definition of  
13 minimization procedures under section 101(h) or section 301(4) for acquisitions authorized  
14 under subsection (a).

15 “(2) Judicial review.—The minimization procedures required by this subsection shall be  
16 subject to judicial review pursuant to subsection (h).

17 “(f) Certification.—

18 “(1) In general.—

19 “(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an  
20 acquisition authorized under subsection (a), the Attorney General and the Director of  
21 National Intelligence shall provide, under oath, a written certification, as described in  
22 this subsection.

23 “(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence  
24 determine that immediate action by the Government is required and time does not  
25 permit the preparation of a certification under this subsection prior to the initiation of  
26 an acquisition, the Attorney General and the Director of National Intelligence shall  
27 prepare such certification, including such determination, as soon as possible but in no  
28 event more than 7 days after such determination is made.

29 “(2) Requirements.—A certification made under this subsection shall—

30 “(A) attest that—

31 “(i) there are reasonable procedures in place for determining that the  
32 acquisition authorized under subsection (a) is targeted at persons reasonably  
33 believed to be located outside the United States and that such procedures have  
34 been approved by, or will be submitted in not more than 5 days for approval by,  
35 the Foreign Intelligence Surveillance Court pursuant to subsection (h);

36 “(ii) there are reasonable procedures in place for determining that the  
37 acquisition authorized under subsection (a) does not result in the intentional  
38 acquisition of any communication as to which the sender and all intended  
39 recipients are known at the time of the acquisition to be located in the United  
40 States, and that such procedures have been approved by, or will be submitted in  
41 not more than 5 days for approval by, the Foreign Intelligence Surveillance Court

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1 pursuant to subsection (h);

2 “(iii) the procedures referred to in clauses (i) and (ii) are consistent with the  
3 requirements of the fourth amendment to the Constitution of the United States and  
4 do not permit the intentional targeting of any person who is known at the time of  
5 acquisition to be located in the United States or the intentional acquisition of any  
6 communication as to which the sender and all intended recipients are known at  
7 the time of acquisition to be located in the United States;

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

10 “(v) the minimization procedures to be used with respect to such acquisition—

11 “(I) meet the definition of minimization procedures under section 101(h)  
12 or section 301(4); and

13 “(II) have been approved by, or will be submitted in not more than 5 days  
14 for approval by, the Foreign Intelligence Surveillance Court pursuant to  
15 subsection (h);

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

18 “(vii) the acquisition does not constitute electronic surveillance, as limited by  
19 section 701; and

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

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

23 “(ii) the head of any element of the intelligence community.

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

27 “(4) Submission to the court.—The Attorney General shall transmit a copy of a  
28 certification made under this subsection, and any supporting affidavit, under seal to the  
29 Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5  
30 days after such certification is made. Such certification shall be maintained under security  
31 measures adopted by the Chief Justice of the United States and the Attorney General, in  
32 consultation with the Director of National Intelligence.

33 “(5) Review.—The certification required by this subsection shall be subject to judicial  
34 review pursuant to subsection (h).

35 “(g) Directives and Judicial Review of Directives.—

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

39 “(A) immediately provide the Government with all information, facilities, or  
40 assistance necessary to accomplish the acquisition in a manner that will protect the

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1           secretary of the acquisition and produce a minimum of interference with the services  
2           that such electronic communication service provider is providing to the target; and

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

6           “(2) Compensation.—The Government shall compensate, at the prevailing rate, an  
7           electronic communication service provider for providing information, facilities, or  
8           assistance pursuant to paragraph (1).

9           “(3) Release from liability.—Notwithstanding any other law, no cause of action shall lie  
10          in any court against any electronic communication service provider for providing any  
11          information, facilities, or assistance in accordance with a directive issued pursuant to  
12          paragraph (1).

13          “(4) Challenging of directives.—

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

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

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

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

34                 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition  
35                 described in subparagraph (C) requires plenary review, the judge shall affirm, modify,  
36                 or set aside the directive that is the subject of that petition not later than 30 days after  
37                 being assigned the petition, unless the judge, by order for reasons stated, extends that  
38                 time as necessary to comport with the due process clause of the fifth amendment to the  
39                 Constitution of the United States. Unless the judge sets aside the directive, the judge  
40                 shall immediately affirm or affirm with modifications the directive, and order the  
41                 recipient to comply with the directive in its entirety or as modified. The judge shall  
42                 provide a written statement for the records of the reasons for a determination under this  
43                 subparagraph.

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

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

5           “(5) Enforcement of directives.—

6           “(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued  
7 pursuant to paragraph (1), the Attorney General may file a petition for an order to  
8 compel compliance with the directive with the Foreign Intelligence Surveillance Court,  
9 which shall have jurisdiction to review such a petition.

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

13           “(C) STANDARDS FOR REVIEW.—A judge considering a petition filed under  
14 subparagraph (A) shall issue an order requiring the electronic communication service  
15 provider to comply with the directive or any part of it, as issued or as modified, if the  
16 judge finds that the directive meets the requirements of this section, and is otherwise  
17 lawful.

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

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

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

28           “(6) Appeal.—

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

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

41           “(h) Judicial Review of Certifications and Procedures.—

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1 “(1) In general.—

2 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
3 Intelligence Surveillance Court shall have jurisdiction to review any certification  
4 required by subsection (c) and the targeting and minimization procedures adopted  
5 pursuant to subsections (d) and (e).

6 “(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the Court  
7 any such certification or procedure, or amendment thereto, not later than 5 days after  
8 making or amending the certification or adopting or amending the procedures.

9 “(2) Certifications.—The Court shall review a certification provided under subsection (f)  
10 to determine whether the certification contains all the required elements.

11 “(3) Targeting procedures.—The Court shall review the targeting procedures required by  
12 subsection (d) to assess whether the procedures are reasonably designed to ensure that the  
13 acquisition authorized under subsection (a) is limited to the targeting of persons reasonably  
14 believed to be located outside the United States and does not result in the intentional  
15 acquisition of any communication as to which the sender and all intended recipients are  
16 known at the time of the acquisition to be located in the United States.

17 “(4) Minimization procedures.—The Court shall review the minimization procedures  
18 required by subsection (e) to assess whether such procedures meet the definition of  
19 minimization procedures under section 101(h) or section 301(4).

20 “(5) Orders.—

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

27 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required  
28 by subsection (f) does not contain all of the required elements, or that the procedures  
29 required by subsections (d) and (e) are not consistent with the requirements of those  
30 subsections or the fourth amendment to the Constitution of the United States, the Court  
31 shall issue an order directing the Government to, at the Government’s election and to  
32 the extent required by the Court’s order—

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

35 “(ii) cease the acquisition authorized under subsection (a).

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

39 “(6) Appeal.—

40 “(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order  
41 under this section to the Foreign Intelligence Surveillance Court of Review, which

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1 shall have jurisdiction to review such order. For any decision affirming, reversing, or  
2 modifying an order of the Foreign Intelligence Surveillance Court, the Court of  
3 Review shall provide for the record a written statement of its reasons.

4 “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any  
5 acquisitions affected by an order under paragraph (5)(B) may continue—

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

8 “(ii) if the Government appeals an order under this section, until the Court of  
9 Review enters an order under subparagraph (C).

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

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

20 “(i) Expedited Judicial Proceedings.—Judicial proceedings under this section shall be  
21 conducted as expeditiously as possible.

22 “(j) Maintenance and Security of Records and Proceedings.—

23 “(1) Standards.—A record of a proceeding under this section, including petitions filed,  
24 orders granted, and statements of reasons for decision, shall be maintained under security  
25 measures adopted by the Chief Justice of the United States, in consultation with the  
26 Attorney General and the Director of National Intelligence.

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

31 “(3) Retention of records.—A directive made or an order granted under this section shall  
32 be retained for a period of not less than 10 years from the date on which such directive or  
33 such order is made.

34 “(k) Assessments and Reviews.—

35 “(1) Semiannual assessment.—Not less frequently than once every 6 months, the  
36 Attorney General and Director of National Intelligence shall assess compliance with the  
37 targeting and minimization procedures required by subsections (e) and (f) and shall submit  
38 each such assessment to—

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

40 “(B) the congressional intelligence committees.

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1           “(2) Agency assessment.—The Inspectors General of the Department of Justice and of  
2 any element of the intelligence community authorized to acquire foreign intelligence  
3 information under subsection (a) with respect to their department, agency, or element—

4           “(A) are authorized to review the compliance with the targeting and minimization  
5 procedures required by subsections (d) and (e);

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

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

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

15           “(i) the Attorney General;

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

17           “(iii) the congressional intelligence committees.

18           “(3) Annual review.—

19           “(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence  
20 community conducting an acquisition authorized under subsection (a) shall direct the  
21 element to conduct an annual review to determine whether there is reason to believe  
22 that foreign intelligence information has been or will be obtained from the acquisition.  
23 The annual review shall provide, with respect to such acquisitions authorized under  
24 subsection (a)—

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

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

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

33           “(iv) a description of any procedures developed by the head of an element of  
34 the intelligence community and approved by the Director of National Intelligence  
35 to assess, in a manner consistent with national security, operational requirements  
36 and the privacy interests of United States persons, the extent to which the  
37 acquisitions authorized under subsection (a) acquire the communications of  
38 United States persons, as well as the results of any such assessment.

39           “(B) USE OF REVIEW.—The head of each element of the intelligence community that  
40 conducts an annual review under subparagraph (A) shall use each such review to

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1 evaluate the adequacy of the minimization procedures utilized by such element or the  
2 application of the minimization procedures to a particular acquisition authorized under  
3 subsection (a).

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

7 “(i) the Foreign Intelligence Surveillance Court;

8 “(ii) the Attorney General;

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

10 “(iv) the congressional intelligence committees.

11 **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE**  
12 **UNITED STATES OF UNITED STATES PERSONS**  
13 **OUTSIDE THE UNITED STATES.**

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

15 “(1) In general.—The Foreign Intelligence Surveillance Court shall have jurisdiction to  
16 enter an order approving the targeting of a United States person reasonably believed to be  
17 located outside the United States to acquire foreign intelligence information, if such  
18 acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the  
19 limitation of section 701) or the acquisition of stored electronic communications or stored  
20 electronic data that requires an order under this Act, and such acquisition is conducted  
21 within the United States.

22 “(2) Limitation.—In the event that a United States person targeted under this subsection  
23 is reasonably believed to be located in the United States during the pendency of an order  
24 issued pursuant to subsection (c), such acquisition shall cease until authority, other than  
25 under this section, is obtained pursuant to this Act or the targeted United States person is  
26 again reasonably believed to be located outside the United States during the pendency of an  
27 order issued pursuant to subsection (c).

28 “(b) Application.—

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

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

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

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

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- 1           “(i) a person reasonably believed to be located outside the United States; and  
2           “(ii) a foreign power, an agent of a foreign power, or an officer or employee of  
3           a foreign power;  
4           “(D) a statement of the proposed minimization procedures that meet the definition of  
5           minimization procedures under section 101(h) or section 301(4);  
6           “(E) a description of the nature of the information sought and the type of  
7           communications or activities to be subjected to acquisition;  
8           “(F) a certification made by the Attorney General or an official specified in section  
9           104(a)(6) that—  
10           “(i) the certifying official deems the information sought to be foreign  
11           intelligence information;  
12           “(ii) a significant purpose of the acquisition is to obtain foreign intelligence  
13           information;  
14           “(iii) such information cannot reasonably be obtained by normal investigative  
15           techniques;  
16           “(iv) designates the type of foreign intelligence information being sought  
17           according to the categories described in section 101(e); and  
18           “(v) includes a statement of the basis for the certification that—  
19           “(I) the information sought is the type of foreign intelligence information  
20           designated; and  
21           “(II) such information cannot reasonably be obtained by normal  
22           investigative techniques;  
23           “(G) a summary statement of the means by which the acquisition will be conducted  
24           and whether physical entry is required to effect the acquisition;  
25           “(H) the identity of any electronic communication service provider necessary to  
26           effect the acquisition, provided, however, that the application is not required to identify  
27           the specific facilities, places, premises, or property at which the acquisition authorized  
28           under this section will be directed or conducted;  
29           “(I) a statement of the facts concerning any previous applications that have been  
30           made to any judge of the Foreign Intelligence Surveillance Court involving the United  
31           States person specified in the application and the action taken on each previous  
32           application; and  
33           “(J) a statement of the period of time for which the acquisition is required to be  
34           maintained, provided that such period of time shall not exceed 90 days per application.  
35           “(2) Other requirements of the attorney general.—The Attorney General may require any  
36           other affidavit or certification from any other officer in connection with the application.  
37           “(3) Other requirements of the judge.—The judge may require the applicant to furnish  
38           such other information as may be necessary to make the findings required by subsection  
39           (c)(1).

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1 “(c) Order.—

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

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

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

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

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

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

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

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

26 “(3) Review.—

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

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

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

41 “(D) REVIEW OF CERTIFICATION.—If the judge determines that an application

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1 required by subsection (b) does not contain all of the required elements, or that the  
2 certification or certifications are clearly erroneous on the basis of the statement made  
3 under subsection (b)(1)(F)(v) and any other information furnished under subsection  
4 (b)(3), the judge shall enter an order so stating and provide a written statement for the  
5 record of the reasons for such determination. The Government may appeal an order  
6 under this clause pursuant to subsection (f).

7 “(4) Specifications.—An order approving an acquisition under this subsection shall  
8 specify—

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

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

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

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

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

19 “(5) Directions.—An order approving acquisitions under this subsection shall direct—

20 “(A) that the minimization procedures 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 this subsection in a manner that will protect the secrecy of  
24 the acquisition and produce a minimum of interference with the services that such  
25 electronic communication service provider is providing to the target;

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.

33 “(6) Duration.—An order approved under this paragraph 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 is  
37 approved by an order or extension under this section, the judge may assess compliance with  
38 the minimization procedures by reviewing the circumstances under which information  
39 concerning United States persons was acquired, retained, or disseminated.

40 “(d) Emergency Authorization.—

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1       “(1) Authority for emergency authorization.—Notwithstanding any other provision of  
2 this Act, if the Attorney General reasonably determines that—

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

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

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

14       “(2) Minimization procedures.—If the Attorney General authorizes such emergency  
15 acquisition, the Attorney General shall require that the minimization procedures required by  
16 this section for the issuance of a judicial order be followed.

17       “(3) Termination of emergency authorization.—In the absence of a judicial order  
18 approving such acquisition, the acquisition shall terminate when the information sought is  
19 obtained, when the application for the order is denied, or after the expiration of 7 days from  
20 the time of authorization by the Attorney General, whichever is earliest.

21       “(4) Use of information.—In the event that such application for approval is denied, or in  
22 any other case where the acquisition is terminated and no order is issued approving the  
23 acquisition, no information obtained or evidence derived from such acquisition, except  
24 under circumstances in which the target of the acquisition is determined not to be a United  
25 States person during the pendency of the 7-day emergency acquisition period, shall be  
26 received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or  
27 before any court, grand jury, department, office, agency, regulatory body, legislative  
28 committee, or other authority of the United States, a State, or political subdivision thereof,  
29 and no information concerning any United States person acquired from such acquisition  
30 shall subsequently be used or disclosed in any other manner by Federal officers or  
31 employees without the consent of such person, except with the approval of the Attorney  
32 General if the information indicates a threat of death or serious bodily harm to any person.

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

37       “(f) Appeal.—

38               “(1) Appeal to the foreign intelligence surveillance court of review.—The Government  
39 may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of  
40 an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to  
41 consider such appeal and shall provide a written statement for the record of the reasons for a  
42 decision under this paragraph.

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

5 **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**  
6 **STATES PERSONS OUTSIDE THE UNITED STATES.**

7 **“(a) Jurisdiction and Scope.—**

8           “(1) Jurisdiction.—The Foreign Intelligence Surveillance Court shall have jurisdiction to  
9 enter an order pursuant to subsection (c).

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

18 **“(3) Limitations.—**

19           “(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United  
20 States person is reasonably believed to be in the United States during the pendency of  
21 an order issued pursuant to subsection (c), such acquisition shall cease until authority is  
22 obtained pursuant to this Act or the targeted United States person is again reasonably  
23 believed to be located outside the United States during the pendency of an order issued  
24 pursuant to subsection (c).

25           “(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States  
26 and could be authorized under section 704, the procedures of section 704 shall apply,  
27 unless an order or emergency acquisition authority has been obtained under a provision  
28 of this Act other than under this section.

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

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

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

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

39           “(B) a foreign power, an agent of a foreign power, or an officer or employee of a  
40 foreign power;

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1 “(3) a statement of the proposed minimization procedures that meet the definition of  
2 minimization procedures under section 101(h) or section 301(4);

3 “(4) a certification made by the Attorney General, an official specified in section  
4 104(a)(6), or the head of an element of the intelligence community that—

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

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

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

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

14 “(c) Order.—

15 “(1) Findings.—If, upon an application made pursuant to subsection (b), a judge having  
16 jurisdiction under subsection (a) finds that—

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

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

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

23 “(B) the proposed minimization procedures, with respect to their dissemination  
24 provisions, meet the definition of minimization procedures under section 101(h) or  
25 section 301(4); and

26 “(C) the application which has been filed contains all statements and certifications  
27 required by subsection (b) and the certification provided under subsection (b)(4) is not  
28 clearly erroneous on the basis of the information furnished under subsection (b),

29 the Court shall issue an ex parte order so stating.

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

37 “(3) Review.—

38 “(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under  
39 subsection (a)(1) shall be limited to that required to make the findings described in  
40 paragraph (1). The judge shall not have jurisdiction to review the means by which an

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1 acquisition under this section may be conducted.

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

7 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the  
8 minimization procedures applicable to dissemination of information obtained through  
9 an acquisition under this subsection do not meet the definition of minimization  
10 procedures under section 101(h) or section 301(4), the judge shall enter an order so  
11 stating and provide a written statement for the record of the reasons for such  
12 determination. The Government may appeal an order under this clause pursuant to  
13 subsection (e).

14 “(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the  
15 certification provided under subsection (b)(4) is clearly erroneous on the basis of the  
16 information furnished under subsection (b), the judge shall enter an order so stating  
17 and provide a written statement for the record of the reasons for such determination.  
18 The Government may appeal an order under this subparagraph pursuant to subsection  
19 (e).

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

23 “(5) Compliance.—At or prior to the end of the period of time for which an order or  
24 extension is granted under this section, the judge may assess compliance with the  
25 minimization procedures by reviewing the circumstances under which information  
26 concerning United States persons was disseminated, provided that the judge may not inquire  
27 into the circumstances relating to the conduct of the acquisition.

28 “(d) Emergency Authorization.—

29 “(1) Authority for emergency authorization.—Notwithstanding any other provision in this  
30 subsection, if the Attorney General reasonably determines that—

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

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

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

41 “(2) Minimization procedures.—If the Attorney General authorizes such emergency  
42 acquisition, the Attorney General shall require that the minimization procedures required by

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1 this section be followed.

2 “(3) Termination of emergency authorization.—In the absence of an order under  
3 subsection (c), the acquisition shall terminate when the information sought is obtained, if  
4 the application for the order is denied, or after the expiration of 7 days from the time of  
5 authorization by the Attorney General, whichever is earliest.

6 “(4) Use of information.—In the event that such application is denied, or in any other  
7 case where the acquisition is terminated and no order is issued approving the acquisition, no  
8 information obtained or evidence derived from such acquisition, except under  
9 circumstances in which the target of the acquisition is determined not to be a United States  
10 person during the pendency of the 7-day emergency acquisition period, shall be received in  
11 evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any  
12 court, grand jury, department, office, agency, regulatory body, legislative committee, or  
13 other authority of the United States, a State, or political subdivision thereof, and no  
14 information concerning any United States person acquired from such acquisition shall  
15 subsequently be used or disclosed in any other manner by Federal officers or employees  
16 without the consent of such person, except with the approval of the Attorney General if the  
17 information indicates a threat of death or serious bodily harm to any person.

18 “(e) Appeal.—

19 “(1) Appeal to the court of review.—The Government may file an appeal with the  
20 Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to  
21 subsection (c). The Court of Review shall have jurisdiction to consider such appeal and  
22 shall provide a written statement for the record of the reasons for a decision under this  
23 paragraph.

24 “(2) Certiorari to the supreme court.—The Government may file a petition for a writ of  
25 certiorari for review of the decision of the Court of Review issued under paragraph (1). The  
26 record for such review shall be transmitted under seal to the Supreme Court of the United  
27 States, which shall have jurisdiction to review such decision.

28 **“SEC. 706. JOINT APPLICATIONS AND CONCURRENT**  
29 **AUTHORIZATIONS.**

30 “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under  
31 section 704 or section 705 is proposed to be conducted both inside and outside the United States,  
32 a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue  
33 simultaneously, upon the request of the Government in a joint application complying with the  
34 requirements of section 704(b) or section 705(b), orders under section 704(c) or section 705(c),  
35 as applicable.

36 “(b) Concurrent Authorization.—If an order authorizing electronic surveillance or physical  
37 search has been obtained under section 105 or section 304 and that order is still in effect, the  
38 Attorney General may authorize, without an order under section 704 or section 705, an  
39 acquisition of foreign intelligence information targeting that United States person while such  
40 person is reasonably believed to be located outside the United States.

41 **“SEC. 707. USE OF INFORMATION ACQUIRED UNDER**

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1 **TITLE VII.**

2 “(a) Information Acquired Under Section 703.—Information acquired from an acquisition  
3 conducted under section 703 shall be deemed to be information acquired from an electronic  
4 surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection  
5 (j) of such section.

6 “(b) Information Acquired Under Section 704.—Information acquired from an acquisition  
7 conducted under section 704 shall be deemed to be information acquired from an electronic  
8 surveillance pursuant to title I for purposes of section 106.

9 **“SEC. 708. CONGRESSIONAL OVERSIGHT.**

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

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

15 “(1) with respect to section 703—

16 “(A) any certifications made under subsection 703(f) during the reporting period;

17 “(B) any directives issued under subsection 703(g) during the reporting period;

18 “(C) a description of the judicial review during the reporting period of any such  
19 certifications and targeting and minimization procedures utilized with respect to such  
20 acquisition, including a copy of any order or pleading in connection with such review  
21 that contains a significant legal interpretation of the provisions of this section;

22 “(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5)  
23 of section 703(g);

24 “(E) any compliance reviews conducted by the Department of Justice or the Office  
25 of the Director of National Intelligence of acquisitions authorized under subsection  
26 703(a);

27 “(F) a description of any incidents of noncompliance with a directive issued by the  
28 Attorney General and the Director of National Intelligence under subsection 703(g),  
29 including—

30 “(i) incidents of noncompliance by an element of the intelligence community  
31 with procedures adopted pursuant to subsections (d) and (e) of section 703; and

32 “(ii) incidents of noncompliance by a specified person to whom the Attorney  
33 General and Director of National Intelligence issued a directive under subsection  
34 703(g); and

35 “(G) any procedures implementing this section;

36 “(2) with respect to section 704—

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

38 “(B) the total number of such orders either granted, modified, or denied; and

1           “(C) the total number of emergency acquisitions authorized by the Attorney General  
2           under section 704(d) and the total number of subsequent orders approving or denying  
3           such acquisitions; and

4           “(3) with respect to section 705—

5                 “(A) the total number of applications made for orders under 705(b);

6                 “(B) the total number of such orders either granted, modified, or denied; and

7                 “(C) the total number of emergency acquisitions authorized by the Attorney General  
8                 under subsection 705(d) and the total number of subsequent orders approving or  
9                 denying such applications.”.

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

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

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

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

15           **“TITLE VII—ADDITIONAL PROCEDURES REGARDING**  
16           **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

17           “Sec.701.Limitation on definition of electronic surveillance.

18           “Sec.702.Definitions.

19           “Sec.703.Procedures for targeting certain persons outside the United States other than United  
20           States persons.

21           “Sec.704.Certain acquisitions inside the United States of United States persons outside the  
22           United States.

23           “Sec.705.Other acquisitions targeting United States persons outside the United States.

24           “Sec.706.Joint applications and concurrent authorizations.

25           “Sec.707.Use of information acquired under title VII.

26           “Sec.708.Congressional oversight.”.

27           (c) Technical and Conforming Amendments.—

28                 (1) Title 18, united states code.—

29                         (A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by  
30                         inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of  
31                         1978, regardless of the limitation of section 701 of that Act)” after “electronic  
32                         surveillance”.

33                         (B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is  
34                         amended by inserting “or a court order pursuant to section 705 of the Foreign  
35                         Intelligence Surveillance Act of 1978” after “assistance”.

36                 (2) Foreign intelligence surveillance act of 1978.—

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1 (A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978  
2 (50 U.S.C. 1809) is amended by adding at the end the following:

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

6 (B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978  
7 (50 U.S.C. 1810) is amended by—

- 8 (i) adding an “(a)” before “Civil Action”,  
9 (ii) redesignating subsections (a) through (c) as paragraphs (1) through (3),  
10 respectively; and  
11 (iii) adding at the end the following:

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

15 (C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of  
16 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and  
17 inserting the following:

- 18 “(C) pen registers under section 402;  
19 “(D) access to records under section 501;  
20 “(E) acquisitions under section 704; and  
21 “(F) acquisitions under section 705;”

22 (d) Termination of Authority.—

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

25 (2) Continuing applicability.—Section 703(g)(3) of the Foreign Intelligence Surveillance  
26 Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any  
27 directive issued pursuant to section 703(g) of that Act (as so amended) for information,  
28 facilities, or assistance provided during the period such directive was or is in effect. Section  
29 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a))  
30 shall remain in effect with respect to an order or request for emergency assistance under that  
31 section. The use of information acquired by an acquisition conducted under section 703 of  
32 that Act (as so amended) shall continue to be governed by the provisions of section 707 of  
33 that Act (as so amended).

34 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**  
35 **WHICH ELECTRONIC SURVEILLANCE AND**  
36 **INTERCEPTION OF DOMESTIC COMMUNICATIONS**  
37 **MAY BE CONDUCTED.**

38 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of

1 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

2 “statement of exclusive means by which electronic surveillance and interception of domestic  
3 communications may be conducted

4 “Sec. 112. The procedures of chapters 119, 121, and 206 of title 18, United States Code, and  
5 this Act shall be the exclusive means by which electronic surveillance (as defined in section  
6 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or  
7 electronic communications may be conducted.”

8 (b) Table of Contents.—The table of contents in the first section of the Foreign Intelligence  
9 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after the item relating to  
10 section 111, the following:

11 “Sec. 112. Statement of exclusive means by which electronic surveillance and interception of  
12 domestic communications may be conducted.”

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

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

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

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

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

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

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

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

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

3 “(e) Definitions.—In this section:

4 “(1) Foreign intelligence surveillance court; court.—The term “‘Foreign Intelligence  
5 Surveillance Court’” means the court established by section 103(a).

6 “(2) Foreign intelligence surveillance court of review; court of review.—The term  
7 ‘Foreign Intelligence Surveillance Court of Review’ means the court established by section  
8 103(b).”.

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

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

12 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

30 (2) by striking subsection (b);

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

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

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

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

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1 amended—

2 (1) in subsection (a)—

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

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

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

7 (3) in subsection (c)(1)—

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

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

10 (C) by striking subparagraph (F);

11 (4) by striking subsection (d);

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

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

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

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

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

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

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

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

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

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

38 “(5) In the event that such application for approval is denied, or in any other case where the

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

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

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

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

## 18 SEC. 106. USE OF INFORMATION.

19 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.  
20 1806) is amended by striking “radio communication” and inserting “communication”.

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

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

24 (1) in subsection (a)—

25 (A) by striking paragraph (2);

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

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

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

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

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

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

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

1 Agency”.

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

4 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
4 1801 et seq.) is amended—

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

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

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

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

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

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

14 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE**  
15 **COURT.**

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

19 (b) En Banc Authority.—

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

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

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

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

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

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

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

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

36 (2) Conforming amendments.—The Foreign Intelligence Surveillance Act of 1978 is

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1 further amended—

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

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

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

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

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

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

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

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

24 “(h)(1) Nothing in this Act shall be considered to reduce or contravene the inherent authority  
25 of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order  
26 or a rule of such Court or with a procedure approved by such Court.

27 “(2) In this subsection, the terms ‘Foreign Intelligence Surveillance Court’ and ‘Court’ mean  
28 the court established by subsection (a).”

## 29 SEC. 110. WEAPONS OF MASS DESTRUCTION.

30 (a) Definitions.—

31 (1) Foreign power.—Subsection (a)(4) of section 101 of the Foreign Intelligence  
32 Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting “, the international  
33 proliferation of weapons of mass destruction,” after “international terrorism”.

34 (2) Agent of a foreign power.—Subsection (b)(1) of such section 101 is amended—

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

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

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

38 “(D) engages in the international proliferation of weapons of mass destruction, or

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

4 (3) Foreign intelligence information.—Subsection (e)(1)(B) of such section 101 is  
5 amended by striking “sabotage or international terrorism” and inserting “sabotage,  
6 international terrorism, or the international proliferation of weapons of mass destruction”.

7 (4) Weapon of mass destruction.—Such section 101 is amended by inserting after  
8 subsection (o) the following:

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

10 “(1) any destructive device described in section 921(a)(4)(A) of title 18, United States  
11 Code, that is intended or has the capability to cause death or serious bodily injury to a  
12 significant number of people;

13 “(2) any weapon that is designed or intended to cause death or serious bodily injury  
14 through the release, dissemination, or impact of toxic or poisonous chemicals or their  
15 precursors;

16 “(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined  
17 in section 178 of title 18, United States Code); or

18 “(4) any weapon that is designed to release radiation or radioactivity at a level dangerous  
19 to human life.”.

20 (b) Use of Information.—

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

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

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

## 31 SEC. 111. TECHNICAL AND CONFORMING 32 AMENDMENTS.

33 Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is  
34 amended—

35 (1) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”;  
36 and

37 (2) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”.

## 38 TITLE II—PROTECTIONS FOR ELECTRONIC

1 COMMUNICATION SERVICE PROVIDERS

2 SEC. 201. DEFINITIONS.

3 In this title:

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

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

10 (3) Covered civil action.—The term “covered civil action” means a civil action filed in a  
11 Federal or State court that—

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

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

16 (4) Electronic communication service provider.—The term “electronic communication  
17 service provider” means—

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

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

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

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

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

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

31 (5) Element of the intelligence community.—The term “element of the intelligence  
32 community” means an element of the intelligence community specified in or designated  
33 under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

34 SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR  
35 ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

36 (a) Limitations.—

37 (1) In general.—Notwithstanding any other provision of law, a covered civil action shall

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1 not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if the  
2 Attorney General certifies to the court that—

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

5 (i) in connection with an intelligence activity involving communications that  
6 was—

7 (I) authorized by the President during the period beginning on September  
8 11, 2001, and ending on January 17, 2007; and

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

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

15 (I) authorized by the President; and

16 (II) determined to be lawful; or

17 (B) the electronic communication service provider did not provide the alleged  
18 assistance.

19 (2) Review.—A certification made pursuant to paragraph (1) shall be subject to review by  
20 a court for abuse of discretion.

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

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

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

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

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

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

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

39 **SEC. 203. PROCEDURES FOR IMPLEMENTING**



1 STATUTORY DEFENSES UNDER THE FOREIGN  
2 INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

5 “TITLE VIII—PROTECTION OF PERSONS ASSISTING  
6 THE GOVERNMENT

7 “SEC. 801. DEFINITIONS.

8 “In this title:

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

13 “(2) Attorney general.—The term ‘Attorney General’ has the meaning give that term in  
14 section 101(g).

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

16 “(4) Electronic communication service provider.—The term ‘electronic communication  
17 service provider’ means—

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

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

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

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

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

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

31 “(5) Element of the intelligence community.—The term ‘element of the intelligence  
32 community’ means an element of the intelligence community as specified or designated  
33 under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

34 “(6) 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

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1 furnish assistance pursuant to—

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

4 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title  
5 18, United States Code; or

6 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before  
7 the date of the enactment of the FISA Amendments Act of 2008 or 703(h).

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

12 **“SEC. 802. PROCEDURES FOR IMPLEMENTING**  
13 **STATUTORY DEFENSES.**

14 **“(a) Requirement for Certification.—**

15 **“(1) In general.—**Notwithstanding any other provision of law, no civil action may lie or  
16 be maintained in a Federal or State court against any person for providing assistance to an  
17 element of the intelligence community, and shall be promptly dismissed, if the Attorney  
18 General certifies to the court that—

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

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

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

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

27 **“(2) Review.—**A certification made pursuant to paragraph (1) shall be subject to review  
28 by a court for abuse of discretion.

29 **“(b) Limitations on Disclosure.—**If the Attorney General files a declaration under section  
30 1746 of title 28, United States Code, that disclosure of a certification made pursuant to  
31 subsection (a) would harm the national security of the United States, the court shall—

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

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

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

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1 United States Code.

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

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

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

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

9 **“SEC. 803. PREEMPTION.**

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

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

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

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

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

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

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

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

27 **SEC. 205. TECHNICAL AMENDMENTS.**

28 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978  
29 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end  
30 the following:

31 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING  
32 THE GOVERNMENT**

33 **“Sec.801.Definitions.**

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

35 **“Sec.803.Preemption.”**

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1 TITLE III—OTHER PROVISIONS

2 SEC. 301. SEVERABILITY.

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

7 SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION  
8 PROCEDURES.

9 (a) In General.—Except as provided in subsection (c), the amendments made by this Act shall  
10 take effect on the date of the enactment of this Act.

11 (b) Repeal.—

12 (1) In general.—Except as provided in subsection (c), sections 105A, 105B, and 105C of  
13 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are  
14 repealed.

15 (2) Table of contents.—The table of contents in the first section of the Foreign  
16 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the  
17 items relating to sections 105A, 105B, and 105C.

18 (c) Transitions Procedures.—

19 (1) Protection from liability.—Notwithstanding subsection (b)(1), subsection (l) of  
20 section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain in effect  
21 with respect to any directives issued pursuant to such section 105B for information,  
22 facilities, or assistance provided during the period such directive was or is in effect.

23 (2) Orders in effect.—

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

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

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

36 (B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title VII of  
37 the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this  
38 Act, in effect on December 31, 2013, shall continue in effect until the date of the

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1 expiration of such order. Any such order shall be governed by the applicable  
2 provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended.

3 (3) Authorizations and directives in effect.—

4 (A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.—

5 Notwithstanding any other provision of this Act or of the Foreign Intelligence  
6 Surveillance Act of 1978, any authorization or directive in effect on the date of the  
7 enactment of this Act issued pursuant to the Protect America Act of 2007, or any  
8 amendment made by that Act, shall remain in effect until the date of expiration of such  
9 authorization or directive. Any such authorization or directive shall be governed by the  
10 applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the  
11 amendment made by that Act, and, except as provided in paragraph (4) of this  
12 subsection, any acquisition pursuant to such authorization or directive shall be deemed  
13 not to constitute electronic surveillance (as that term is defined in section 101(f) of the  
14 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), as construed in  
15 accordance with section 105A of the Foreign Intelligence Surveillance Act of 1978 (50  
16 U.S.C. 1805a)).

17 (B) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DECEMBER 31, 2013.—Any  
18 authorization or directive issued under title VII of the Foreign Intelligence Surveillance  
19 Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013,  
20 shall continue in effect until the date of the expiration of such authorization or  
21 directive. Any such authorization or directive shall be governed by the applicable  
22 provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended, and,  
23 except as provided in section 707 of the Foreign Intelligence Surveillance Act of 1978,  
24 as so amended, any acquisition pursuant to such authorization or directive shall be  
25 deemed not to constitute electronic surveillance (as that term is defined in section  
26 101(f) of the Foreign Intelligence Surveillance Act of 1978, to the extent that such  
27 section 101(f) is limited by section 701 of the Foreign Intelligence Surveillance Act of  
28 1978, as so amended).

29 (4) Use of information acquired under protect america act.—Information acquired from  
30 an acquisition conducted under the Protect America Act of 2007, and the amendments made  
31 by that Act, shall be deemed to be information acquired from an electronic surveillance  
32 pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
33 seq.) for purposes of section 106 of that Act (50 U.S.C. 1806), except for purposes of  
34 subsection (j) of such section.

35 (5) New orders.—Notwithstanding any other provision of this Act or of the Foreign  
36 Intelligence Surveillance Act of 1978—

37 (A) the government may file an application for an order under the Foreign  
38 Intelligence Surveillance Act of 1978, as in effect on the day before the date of the  
39 enactment of the Protect America Act of 2007, except as amended by sections 102,  
40 103, 104, 105, 106, 107, 108, 109, and 110 of this Act; and

41 (B) the court established under section 103(a) of the Foreign Intelligence  
42 Surveillance Act of 1978 shall enter an order granting such an application if the  
43 application meets the requirements of such Act, as in effect on the day before the date

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1 of the enactment of the Protect America Act of 2007, except as amended by sections  
2 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

3 (6) Extant authorizations.—At the request of the applicant, the court established under  
4 section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall extinguish any  
5 extant authorization to conduct electronic surveillance or physical search entered pursuant  
6 to such Act.

7 (7) Applicable provisions.—Any surveillance conducted pursuant to an order entered  
8 pursuant to this subsection shall be subject to the provisions of the Foreign Intelligence  
9 Surveillance Act of 1978, as in effect on the day before the date of the enactment of the  
10 Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107,  
11 108, 109, and 110 of this Act.

12 (8) Transition procedures concerning the targeting of united states persons overseas.—  
13 Any authorization in effect on the date of enactment of this Act under section 2.5 of  
14 Executive Order 12333 to intentionally target a United States person reasonably believed to  
15 be located outside the United States shall remain in effect, and shall constitute a sufficient  
16 basis for conducting such an acquisition targeting a United States person located outside the  
17 United States until the earlier of—

18 (A) the date that authorization expires; or

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

20 Attest:

21 Secretary.66514

22 110th CONGRESS

23 2d Session

24 H.R. 3773

25

26 AMENDMENT