

**SEC. \_\_. CLARIFICATION ON THE DEFINITION OF ELECTRONIC SURVEILLANCE.**

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is hereby amended by adding a new section 112 as follows:

"Section 112. Clarifications on the Definition of Electronic Surveillance. (1) Whenever a member of the Intelligence Community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a), as amended, intentionally acquires the communications of a non-U.S. person reasonably believed to be located outside the United States and the primary purpose of such acquisition to acquire the communications of a particular, known person reasonably believed to be located in the United States, such activities shall be considered "electronic surveillance" as defined in section 101(f) (1).

**Sec. 401. DEFINITION OF ELECTRONIC SURVEILLANCE.**

Subsection (f) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended by inserting after subsection (f)(4) the following:

*"Provided, that nothing in this definition shall be construed to encompass surveillance directed at a person reasonably believed to be located outside of the United States."*

**SEC. 402. AUTHORIZATION FOR THE ACQUISITION OF CERTAIN  
FOREIGN INTELLIGENCE INFORMATION.**

Title I of the Foreign Intelligence Surveillance Act is amended by adding after section 102 (50 U.S.C. § 1802) the following:

**''AUTHORIZATION FOR ACQUISITION OF FOREIGN INTELLIGENCE  
INFORMATION**

**''SEC. 102A. (a) IN GENERAL.**—Notwithstanding any other law, the President, acting through the Attorney General may, for periods of up to one year, authorize the acquisition of foreign intelligence information concerning persons reasonably believed to be outside the United States if the Attorney General certifies in writing under oath that the Attorney General has determined that—

''(1) the acquisition does not constitute electronic surveillance;

''(2) the acquisition involves obtaining the foreign intelligence information from or with the assistance of a communications service provider, custodian, or other person (including any officer, employee, agent, or other specified person of such service provider, custodian, or other person) who has access to communications, either as they are transmitted or

while they are stored, or equipment that is being or may be used to transmit or store such communications;

“(3) a significant purpose of the acquisition is to obtain foreign intelligence information; and

“(4) the minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h).

“(b) SPECIFIC PLACE NOT REQUIRED.—A

certification under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.

“(c) SUBMISSION OF CERTIFICATION.—The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of a certification made under subsection (a). Such certification shall be maintained under security measures established by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless the certification is necessary to determine the legality of the acquisition under section 102B.

“(d) MINIMIZATION PROCEDURES.—An acquisition under this section may be conducted only in accordance with the certification of the Attorney General and the minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under section 108(a).

“DIRECTIVES RELATING TO ELECTRONIC SURVEILLANCE AND OTHER ACQUISITIONS OF FOREIGN INTELLIGENCE INFORMATION

“SEC. 102B. (a) DIRECTIVE.—With respect to an authorization of an acquisition under section 102A, the Attorney General may direct a person to—

“(1) immediately provide the Government with all information, facilities, and assistance necessary to accomplish the acquisition of foreign intelligence information in such a manner as will protect the secrecy of the acquisition and produce a minimum of interference with the services that such person is providing to the target; and

“(2) maintain under security procedures approved by the Attorney General and the Director of National

Intelligence any records concerning the acquisition or the aid furnished that such person wishes to maintain.

“(b) COMPENSATION.—The Government shall compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to subsection (a).

“(c) FAILURE TO COMPLY.—In the case of a failure to comply with a directive issued pursuant to subsection (a), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the directive. The court shall issue an order requiring the person to comply with the directive if it finds that the directive was issued in accordance with subsection (a) and is otherwise lawful. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person may be found.

“(d) REVIEW OF PETITIONS.—(1) (A) A person receiving a directive issued pursuant to subsection (a) may challenge the legality of that directive by filing a petition with the pool established under section 103(e)(1).

“(B) The presiding judge designated pursuant to section 103(b) shall assign a petition filed under subparagraph (A) to one of the judges

serving in the pool established by section 103(e) (1). Not later than 48 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines the petition is not frivolous, the assigned judge shall, within 72 hours, consider the petition in accordance with the procedures established under section 103(e) (2) and provide a written statement for the record of the reasons for any determination under this subsection.

((2) A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that such directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with such directive.

“(3) Any directive not explicitly modified or set aside under this subsection shall remain in full effect.

“(e) APPEALS.—The Government or a person receiving a directive reviewed pursuant to subsection (d) may file a petition with the Court of Review established under section 103(b) for review of the decision issued pursuant to subsection (d) not later than 7 days after the issuance of such decision. Such court of review shall have jurisdiction to consider such petitions and shall provide for the record a written statement of the reasons for its decision. On petition for a writ of certiorari by the Government or any person receiving such directive, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

“(f) PROCEEDINGS.—Judicial proceedings under this section shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.



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

“(h) LIABILITY.—No cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with a directive under this section.

“(i) RETENTION OF DIRECTIVES AND ORDERS.—A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.”.

(b) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after the item relating to section 102 the following:

“102A. Authorization for acquisition of foreign intelligence information.

“102B. Directives relating to electronic surveillance and other acquisitions of foreign intelligence information.

**SEC. 403. TECHNICAL AMENDMENT AND CONFORMING  
AMENDMENTS.**

Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(A) in paragraph (1), by striking ``501(f)(1)'' and inserting ``102B(d) or 501(f)(1)''; and

(B) in paragraph (2), by striking ``501(f)(1)'' and inserting ``102B(d) or 501(f)(1)''.

**SEC. 404. EFFECTIVE DATE.**

(a) Except as otherwise provided, the amendments made by this Act shall take effect immediately after the date of the enactment of this Act.

(b) Notwithstanding any other provision of this Act, any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall remain in effect until the date of expiration of such order, and, at the request of the applicant, the court established under section 103 (a) of such Act (50 U.S.C. 1803(a)) may reauthorize such order as long as the facts and circumstances continue to justify issuance of such order under the provisions of the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the applicable effective date of this Act. The court established under section 103(a) of such Act shall extinguish any such order at the request of the applicant.