

110TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on

A BILL

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Foreign Intelligence Surveillance Act of 1978 Amend-
6 ments Act of 2008” or the “FISA Amendments Act of
7 2008”.

8 (b) **TABLE OF CONTENTS.**—The table of contents for
9 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 *certain 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. *Review of previous actions.*
- Sec. 111. ~~Weapons~~ Sec. 110. Weapons of mass destruction.
- Sec. 111. ~~Technical and conforming amendments.~~
- [Sec. 112. *Statute of limitations.*]**

**[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—COMMISSION ON WARRANTLESS SURVEILLANCE
ACTIVITIES].**

TITLE III—OTHER PROVISIONS

- Sec. 301. *Severability.*
- Sec. 302. *Effective date.*
- Sec. 303. *Repeals.*
- Sec. 304. *Transition ; ~~repeal~~; transition procedures.*

- 1 **TITLE I—FOREIGN**
- 2 **INTELLIGENCE SURVEILLANCE**
- 3 **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
- 4 **PERSONS OUTSIDE THE UNITED STATES.**
- 5 (a) IN GENERAL.—The Foreign Intelligence Surveil-
- 6 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—
- 7 (1) by striking title VII; and
- 8 (2) by adding after title VI the following new
- 9 title:

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES REGARDING CERTAIN**
3 **PERSONS OUTSIDE THE**
4 **UNITED STATES**

5 **“SEC. 701. /LIMITATION ON DEFINITION OF ELECTRONIC**
6 **SURVEILLANCE.**

7 “Nothing in the definition of electronic surveillance
8 under section 101(f) shall be construed to encompass sur-
9 veillance that is targeted in accordance with this title at
10 a person reasonably believed to be located outside the
11 United States./

12 **“SEC. [702]. DEFINITIONS.**

13 “(a) IN GENERAL.—The terms ‘agent of a foreign
14 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
15 lance’, ‘foreign intelligence information’, ‘foreign power’,
16 ~~‘minimization procedures’~~, ‘person’, ‘United States’, and
17 ‘United States person’ shall have the meanings given such
18 terms in section 101, except as specifically provided in this
19 title.

20 **“(b) ADDITIONAL DEFINITIONS.—**

21 **“(1) CONGRESSIONAL INTELLIGENCE COMMIT-**
22 **TEES.—**The term ‘congressional intelligence commit-
23 tees’ means—

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

1 “(B) the Permanent Select Committee on
2 Intelligence of the House of Representatives.

3 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT; COURT.—The terms ‘Foreign Intelligence
5 Surveillance Court’ and ‘Court’ mean the court es-
6 tablished by section 103(a).

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

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

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

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

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

24 “(D) any other communication service pro-
25 vider who has access to wire or electronic com-

1 munications either as such communications are
2 transmitted or as such communications are
3 stored; or

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

7 ~~“(5) ELEMENT OF THE INTELLIGENCE COMMU-~~
8 ~~NITY.—The term ‘element of the intelligence com-~~
9 ~~munity’ means an element of the intelligence com-~~
10 ~~munity specified in or designated under section 3(4)~~
11 ~~of the National Security Act of 1947 (50 U.S.C.~~
12 ~~401a(4)).~~

13 “(5) *INTELLIGENCE COMMUNITY.—The term ‘in-*
14 ~~telligence community’ has the meaning given the term~~
15 ~~in section 3(4) of the National Security Act of 1947~~
16 ~~(50 U.S.C. 401a(4)).~~

17 **“SEC. [703.702]. PROCEDURES FOR TARGETING CERTAIN**
18 **PERSONS OUTSIDE THE UNITED STATES**
19 **OTHER THAN UNITED STATES PERSONS.**

20 “(a) **AUTHORIZATION.—**Notwithstanding any other
21 *provision of law, [pursuant to an order issued in accord-*
22 ~~ance with subsection (i)(3) or a determination under sub-~~
23 ~~section (g)(1)(B)(ii)]~~, law, the Attorney General and the
24 Director of National Intelligence may authorize jointly, for
25 *a period periods of up to 1 year [from the effective date*

1 of the authorization,] ; the targeting of persons reasonably
2 believed to be located outside the United States to acquire
3 foreign intelligence information.

4 “(b) LIMITATIONS.—An acquisition authorized under
5 subsection (a)—

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

9 “(2) may not intentionally target a person rea-
10 sonably believed to be located outside the United
11 States [if the purpose of such acquisition is] [*in*
12 *order*] to target a particular, known person reason-
13 ably believed to be in the United States; ~~States; ex-~~
14 ~~cept in accordance with title I or title III;~~

15 “(3) may not intentionally target a United
16 States person reasonably believed to be located out-
17 side the United States; ~~States; except in accordance~~
18 ~~with sections 704, 705, or 706;~~

19 “(4) *may shall* not intentionally acquire any
20 communication as to which the sender and all in-
21 tended recipients are known at the time of the ac-
22 quisition to be located in the United States; and

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

1 “(c) CONDUCT OF ACQUISITION.—~~An acquisition au-~~
2 ~~thorized under subsection (a) may be conducted only in~~
3 ~~accordance with—~~

4 “(1) **[IN GENERAL]**.—*An acquisition author-*
5 *ized under subsection (a) may be conducted only in*
6 *accordance with—*

7 “(A) *the certification made by the Attorney*
8 *General and the Director of National Intel-*
9 *ligence submitted in accordance with subsection*
10 *(g) [or a determination under paragraph (1)(B)*
11 *of such subsection] ; ~~pursuant to subsection (f);~~*
12 *and*

13 “(B) ~~(2)~~ *the targeting and minimization*
14 *procedures submitted in accordance with re-*
15 *quired ~~pursuant to~~ subsections (d) and (e) [and*
16 *the guidelines adopted in accordance with sub-*
17 *section (f)].*

18 “[(2) CONSTRUCTION.—*Nothing in [this Act]*
19 *[the definition of electronic surveillance] shall be con-*
20 *strued to require an application under section 104 for*
21 *an acquisition that is targeted in accordance with*
22 *this section at a person reasonably believed to be lo-*
23 *cated outside the United States.]*

24 “(d) TARGETING PROCEDURES.—

1 “(1) REQUIREMENT TO ADOPT.—The Attorney
2 General, in consultation with the Director of Na-
3 tional Intelligence, shall adopt targeting procedures
4 that are reasonably designed to ensure that any ac-
5 quisition authorized under subsection (a) is limited
6 to targeting persons reasonably believed to be lo-
7 cated outside the United States and does not result
8 in the intentional acquisition of any communication
9 as to which the sender and all intended recipients
10 are known at the time of the acquisition to be lo-
11 cated in the United States.

12 “(2) JUDICIAL REVIEW.—The procedures *re-*
13 *quired by referred to in* paragraph (1) shall be sub-
14 ject to judicial review pursuant to subsection (i). ~~(h)~~.

15 “(e) MINIMIZATION PROCEDURES.—

16 “(1) REQUIREMENT TO ADOPT.—The Attorney
17 General, in consultation with the Director of Na-
18 tional Intelligence, shall adopt minimization proce-
19 dures that meet the definition of minimization proce-
20 dures under section 101(h) or section 301(4), *as ap-*
21 *propriate*, for acquisitions authorized under sub-
22 section (a).

23 “(2) JUDICIAL REVIEW.—The minimization
24 procedures required by *paragraph (1) this subsection*

1 shall be subject to judicial review pursuant to sub-
2 section (i) . ~~(h)~~.

3 “[f] *GUIDELINES FOR COMPLIANCE WITH LIMITA-*
4 *TIONS.—*

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

8 “(A) *compliance with the limitations in*
9 *subsection (b); and*

10 “(B) *that an application is filed under sec-*
11 *tion 104 or section 303, as appropriate, if re-*
12 *quired by [any other section of] this Act.*

13 “(2) *TRAINING.—The Director of National Intel-*
14 *ligence shall establish a training program for appro-*
15 *priate intelligence community personnel to ensure*
16 *that the guidelines adopted pursuant to paragraph*
17 *(1) are properly implemented.*

18 “(3) *SUBMISSION TO CONGRESS.—The Attorney*
19 *General shall provide the guidelines adopted pursuant*
20 *to paragraph (1) to—*

21 “(A) *the congressional intelligence commit-*
22 *tees; and*

23 “(B) *the Committees on the Judiciary of the*
24 *House of Representatives and the Senate.]*

1 “(f) *GUIDELINES FOR COMPLIANCE WITH LIMITA-*
2 *TIONS.—*

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

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

8 “(B) *that an application is filed under sec-*
9 *tion 104 or 303, if required by this Act.*

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

18 “(A) *the department or agency of the Fed-*
19 *eral Government conducting the acquisition has*
20 *made an inquiry to another department or agen-*
21 *cy of the Federal Government to gather informa-*
22 *tion on the specific United States person;*

23 “(B) *the department or agency of the Fed-*
24 *eral Government conducting the acquisition has*
25 *provided information that identifies the specific*

1 *United States person to another department or*
2 *agency of the Federal Government;*

3 “(C) *the department or agency of the Fed-*
4 *eral Government conducting the acquisition de-*
5 *termines that the specific United States person*
6 *has been the subject of ongoing interest or re-*
7 *peated investigation by a department or agency*
8 *of the Federal Government; and*

9 “(D) *the specific United States person is a*
10 *natural person.*

11 “(3) *TRAINING.—The Director of National Intel-*
12 *ligence shall establish a training program for appro-*
13 *priate personnel of the intelligence community to en-*
14 *sure that the guidelines adopted pursuant to para-*
15 *graph (1) are properly implemented.*

16 “(4) *SUBMISSION TO CONGRESS AND FOREIGN*
17 *INTELLIGENCE SURVEILLANCE COURT.—The Attorney*
18 *General shall submit the guidelines adopted pursuant*
19 *to paragraph (1) to—*

20 “(A) *the congressional intelligence commit-*
21 *tees;*

22 “(B) *the Committees on the Judiciary of the*
23 *House of Representatives and the Senate; and*

24 “(C) *the Foreign Intelligence Surveillance*
25 *Court.]*

