

WITHHOLD

110TH CONGRESS
2D SESSION

S. _____

Exemption 5

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 communications 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.]*

1 “(g) CERTIFICATION.—

2 “(1) IN GENERAL.—

3 “(A) REQUIREMENT.—Subject to subpara-
4 graph (B), *In order to conduct an acquisition*
5 *under subsection (a), prior to the initiation of*
6 *an acquisition authorized under subsection (a),*
7 *the Attorney General and the Director of Na-*
8 *tional Intelligence shall provide to the Foreign*
9 *Intelligence Surveillance Court, ; under oath, a*
10 *written certification and any supporting affi-*
11 *davit, under seal, as described in this sub-*
12 *section.*

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

15 “(i) IN GENERAL.—*Except as provided*
16 *in clause (ii), the Attorney General and Di-*
17 *rector of National Intelligence shall provide*
18 *a copy of a certification made under this*
19 *subsection to the Foreign Intelligence Sur-*
20 *veillance Court prior to the initiation of an*
21 *acquisition under subsection (a).*

22 “[ii) EXCEPTION.—If the Attorney
23 General and the Director of National Intel-
24 ligence determine that immediate action by
25 the Government is required and time does

1 not permit the preparation of a certifi-
2 cation under this subsection prior to the
3 initiation of an acquisition, the Attorney
4 General and the Director of National Intel-
5 ligence shall prepare *and submit* such cer-
6 tification to the *Foreign Intelligence Sur-*
7 *veillance Court*, including ~~such~~ the deter-
8 mination, as soon as possible but in no
9 event more than 7 days after such deter-
10 mination is made.]

11 “[(ii) *EXCEPTION.—If the Attorney*
12 *General and the Director of National Intel-*
13 *ligence determine that immediate action by*
14 *the Government is required and time does*
15 *not permit the issuance of an order pursu-*
16 *ant to subsection (i)(3) prior to the initi-*
17 *ation of an acquisition, the Attorney Gen-*
18 *eral and the Director of National Intel-*
19 *ligence may authorize the acquisition and*
20 *shall submit to the Foreign Intelligence Sur-*
21 *veillance Court a certification [including]*
22 *[and] the determination under this sub-*
23 *section as soon as possible but in no event*
24 *more than 7 days after such determination*
25 *is made.]*

1 **["(i) EMERGENCY AUTHORIZATION.—**
2 *If the Attorney General and the Director of*
3 *National Intelligence determine that an*
4 *emergency situation exists, immediate ac-*
5 *tion by the Government is required, and*
6 *time does not permit the completion of judi-*
7 *cial review pursuant to subsection (i) prior*
8 *to the initiation of an acquisition, the At-*
9 *torney General and the Director of National*
10 *Intelligence may authorize the acquisition*
11 *and shall submit to the Foreign Intelligence*
12 *Surveillance Court certification under this*
13 *subsection [including][and] the determina-*
14 *tion as soon as possible but in no event*
15 *more than 7 days after such determination*
16 *is made.]*

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

19 **“(A) attest that—**

20 **“(i) there are reasonable procedures**
21 *in place that have been approved or sub-*
22 *mitted for approval to the Foreign Intel-*
23 *ligence Surveillance Court, for determining*
24 *that the acquisition authorized under sub-*
25 *section (a)—*

1 “(I) is targeted at persons rea-
2 sonably believed to be located outside
3 the United States; and that such pro-
4 cedures have been approved by, or will
5 be submitted in not more than 5 days
6 for approval by, the Foreign Intel-
7 ligence Surveillance Court pursuant to
8 subsection (h);

9 “(II)(ii) there are reasonable pro-
10 cedures in place for determining that
11 the acquisition authorized under sub-
12 section (a) does not result in the in-
13 tentional acquisition of any commu-
14 nication as to which the sender and
15 all intended recipients are known at
16 the time of the acquisition to be lo-
17 cated in the United States; States;
18 and that such procedures have been
19 approved by, or will be submitted in
20 not more than 5 days for approval by,
21 the Foreign Intelligence Surveillance
22 Court pursuant to subsection (h);

23 [“(ii) guidelines have been adopted in
24 accordance with subsection (f) to ensure
25 compliance with the limitations in sub-

1 *section (b) and to ensure that applications*
2 *are filed under section 104 or section 303,*
3 *if required by this Act;】*

4 *“(iii) the minimization procedures to*
5 *be used with respect to such acquisition—*

6 *“(I) meet the definition of mini-*
7 *mization procedures under section*
8 *101(h) or section 301(4), as appro-*
9 *priate; and*

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

13 *“(iv) the procedures [and guidelines]*
14 *referred to in clauses (i), (ii) [and (iii)]*
15 *(ii) are consistent with the requirements of*
16 *the fourth amendment to the Constitution*
17 *of the United States; and do not permit*
18 *the intentional targeting of any person who*
19 *is known at the time of acquisition to be*
20 *located in the United States or the inten-*
21 *tional acquisition of any communication as*
22 *to which the sender and all intended recipi-*
23 *ents are known at the time of acquisition*
24 *to be located in the United States;*

1 “(v)(iv) a significant purpose of the
2 acquisition is to obtain foreign intelligence
3 information;

4 “~~(v)~~ the minimization procedures to
5 be used with respect to such acquisition—

6 “(I) meet the definition of mini-
7 mization procedures under section
8 101(h) or section 301(4); and

9 “(II) have been approved by, or
10 will be submitted in not more than 5
11 days for approval by, the Foreign In-
12 telligence Surveillance Court pursuant
13 to subsection (h);

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

18 “(vii) the acquisition *[complies with*
19 *the limitations in subsection (b);]* [does
20 not constitute electronic surveillance, as
21 limited by section 701; and]

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

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

3 “(ii) the head of any element of the
4 intelligence *community*; and ~~community~~.

5 **【“(C) include—】**

6 **【“(i) an effective date for the author-**
7 **ization that is between 30 and 60 days from**
8 **the submission of the written certification to**
9 **the court; or】**

10 **【“(ii) if the acquisition has begun or**
11 **the effective date is less than 30 days from**
12 **the submission of the written certification to**
13 **the court—】**

14 **【“(I) the date the acquisition**
15 **began or the effective date for the ac-**
16 **quisition;】**

17 **【“(II) a description of why initi-**
18 **ation of the acquisition is required in**
19 **less than 30 days from the submission**
20 **of the written certification to the court;**
21 **and】**

22 **【“(III) if the acquisition is au-**
23 **thorized under paragraph (1)(B)(ii), a**
24 **description of [the basis for the deter-**
25 **mination that an emergency situation**

1 *exists, and] why immediate action by*
2 *the Government is required and time*
3 *does not permit the issuance of an*
4 *order pursuant to subsection (i)(3)*
5 *prior to the initiation of the acquisi-*
6 *tion.]*

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

12 “(4) ~~SUBMISSION TO THE COURT MAINTENANCE~~
13 ~~OF CERTIFICATION.~~—The Attorney General shall
14 transmit a copy of a certification made under this
15 subsection, and any supporting affidavit, under seal
16 to the Foreign Intelligence Surveillance Court as
17 soon as possible, but in no event more than 5 days
18 after such certification is made. *The Attorney Gen-*
19 *eral shall maintain s S* uch certification shall be
20 maintained under security measures adopted by the
21 Chief Justice of the United States and the Attorney
22 General, in consultation with the Director of Na-
23 tional Intelligence.

1 “(5) REVIEW.—The certification required by
2 this subsection shall be subject to judicial review
3 pursuant to subsection (i) ~~(h)~~.

4 “~~(h)~~(g) DIRECTIVES AND JUDICIAL REVIEW OF DI-
5 RECTIVES.—

6 “(1) AUTHORITY.—With respect to an acquisi-
7 tion authorized under subsection (a), the Attorney
8 General and the Director of National Intelligence
9 may direct, in writing, an electronic communication
10 service provider to—

11 “(A) immediately provide the Government
12 with all information, facilities, or assistance
13 necessary to accomplish the acquisition *author-*
14 *ized in accordance with this section* in a manner
15 that will protect the secrecy of the acquisition
16 and produce a minimum of interference with
17 the services that such electronic communication
18 service provider is providing to the *target of the*
19 *acquisition*; and

20 “(B) maintain under security procedures
21 approved by the Attorney General and the Di-
22 rector of National Intelligence any records con-
23 cerning the acquisition or the aid furnished that
24 such electronic communication service provider
25 wishes to maintain.

1 “(2) COMPENSATION.—The Government shall
2 compensate, at the prevailing rate, an electronic
3 communication service provider for providing infor-
4 mation, facilities, or assistance pursuant to para-
5 graph (1).

6 “(3) RELEASE FROM LIABILITY.—
7 ~~Notwithstanding any other law, no~~ cause of action
8 shall lie in any court against any electronic commu-
9 nication service provider for providing any informa-
10 tion, facilities, or assistance in accordance with a di-
11 rective issued pursuant to paragraph (1).

12 “(4) CHALLENGING OF DIRECTIVES.—

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

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

1 “(C) STANDARDS FOR REVIEW.—A judge
2 considering a petition to modify or set aside a
3 directive may grant such petition only if the
4 judge finds that the directive does not meet the
5 requirements of this section, or is otherwise un-
6 lawful.

7 “(D) PROCEDURES FOR INITIAL RE-
8 VIEW.—A judge shall conduct an initial review
9 of a petition filed under subparagraph (A) not
10 later than 5 days after being assigned such a
11 petition. described in subparagraph (C). If the
12 judge determines that the petition *does not con-*
13 sist ~~consists~~ of claims, defenses, or other legal
14 contentions that are ~~not~~ warranted by existing
15 law or by a nonfrivolous argument for extend-
16 ing, modifying, or reversing existing law or for
17 establishing new law, the judge shall imme-
18 diately deny the petition and affirm the direc-
19 tive or any part of the directive that is the sub-
20 ject of the petition and order the recipient to
21 comply with the directive or any part of it.
22 Upon making such a determination or promptly
23 thereafter, the judge shall provide a written
24 statement for the record of the reasons for a
25 determination under this subparagraph.

1 “(E) PROCEDURES FOR PLENARY RE-
2 VIEW.—If a judge determines that a petition
3 *filed under described in* subparagraph (A) ~~(C)~~
4 requires plenary review, the judge shall affirm,
5 modify, or set aside the directive that is the
6 subject of that petition not later than 30 days
7 after being assigned the *petition* . ~~If petition,~~
8 ~~unless the judge does not set, by order for rea-~~
9 ~~sons stated, extends that time as necessary to~~
10 ~~comport with the due process clause of the fifth~~
11 ~~amendment to the Constitution of the United~~
12 ~~States. Unless the judge sets aside the direc-~~
13 ~~tive, the judge shall immediately affirm or af-~~
14 ~~firm with modifications the directive or order~~
15 ~~that the directive be modified, ; and order the~~
16 recipient to comply with the directive in its en-
17 tirety or as modified. The judge shall provide a
18 written statement for the records of the reasons
19 for a determination under this subparagraph.

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

23 “(G) CONTEMPT OF COURT.—Failure to
24 obey an order of the Court issued under this

1 paragraph may be punished by the Court as
2 contempt of court.

3 “(5) ENFORCEMENT OF DIRECTIVES.—

4 “(A) ORDER TO COMPEL.—*If an electronic*
5 *communication service provider fails to*~~COMPEL~~*In*
6 *the case of a failure to comply with a directive*
7 *issued pursuant to paragraph (1), the Attorney*
8 *General may file a petition for an order to com-*
9 *pel the electronic communication service provider*
10 *to comply* ~~compliance~~ *with the directive with the*
11 *Foreign Intelligence Surveillance Court, which*
12 *shall have jurisdiction to review such a petition.*

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

19 “(C) ~~PROCEDURES STANDARDS FOR RE-~~
20 ~~VIEW.~~—A judge considering a petition filed
21 under subparagraph (A) shall issue an order re-
22 quiring the electronic communication service
23 provider to comply with the directive or any
24 part of it, as issued or as modified, *not later*
25 *than 30 days after being assigned the petition if*

1 the judge finds that the directive meets the re-
2 quirements of this section, and is otherwise law-
3 ful.

4 “(D) PROCEDURES FOR REVIEW.—The
5 judge shall render a determination not later
6 than 30 days after being assigned a petition
7 filed under subparagraph (A); unless the judge,
8 by order for reasons stated, extends that time
9 if necessary to comport with the due process
10 clause of the fifth amendment to the Constitu-
11 tion of the United States. The judge shall pro-
12 vide a written statement for the record of the
13 reasons for a determination under this para-
14 graph.

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

19 “(E)(F) PROCESS.—Any process under
20 this paragraph may be served in any judicial
21 district in which the electronic communication
22 service provider may be found.

23 “(6) APPEAL.—

24 “(A) APPEAL TO THE COURT OF RE-
25 VIEW.—The Government or an electronic com-

1 munication service provider receiving a directive
2 issued pursuant to paragraph (1) may file a pe-
3 tition with the Foreign Intelligence Surveillance
4 Court of Review for review of *a* ~~the~~ decision
5 issued pursuant to paragraph (4) or (5). The
6 Court of Review shall have jurisdiction to con-
7 sider such a petition and shall provide a written
8 statement for the record of the reasons for a
9 decision under this paragraph.

10 “(B) CERTIORARI TO THE SUPREME
11 COURT.—The Government or an electronic com-
12 munication service provider receiving a directive
13 issued pursuant to paragraph (1) may file a pe-
14 tition for a writ of certiorari for review of the
15 decision of the Court of Review issued under
16 subparagraph (A). The record for such review
17 shall be transmitted under seal to the Supreme
18 Court of the United States, which shall have ju-
19 risdiction to review such decision.

20 “(i)(h) JUDICIAL REVIEW OF CERTIFICATIONS AND
21 PROCEDURES.—

22 “(1) IN GENERAL.—

23 “(A) REVIEW BY THE FOREIGN INTEL-
24 LIGENCE SURVEILLANCE COURT.—The Foreign
25 Intelligence Surveillance Court shall have juris-

1 diction to review any certification ~~required by~~
2 *submitted in accordance with* subsection (e g)
3 and the targeting and minimization procedures
4 *submitted in accordance with* ~~adopted pursuant~~
5 to subsections (d) and (e), **[and any amend-**
6 *ments to such certification or procedures]*. ~~(e).~~

7 “[(B) *TIME PERIOD FOR REVIEW* .—SUB-
8 MISSION TO THE COURT.—The Attorney Gen-
9 eral shall submit to the Court any such *The*
10 Court shall review the certification submitted in
11 accordance with subsection (g) and the targeting
12 and minimization procedures submitted in ac-
13 cordance with subsections (d) and (e) and ap-
14 prove or deny an order under this subsection
15 procedure, ~~or amendment thereto,~~ not later
16 than 30 ~~5~~ days after ~~making or amending~~ the
17 date on which a certification is submitted. ~~or~~
18 adopting or amending the procedures.]

19 **[“(C) AMENDMENTS.**—The Attorney Gen-
20 eral and the Director of National Intelligence
21 may amend a certification submitted in accord-
22 ance with subsection (g) or the targeting and
23 minimization procedures submitted in accord-
24 ance with subsections (d) and (e) as necessary
25 after such certification or procedures have been

1 *submitted for review to the Foreign Intelligence*
2 *Surveillance Court.】*

3 “(2) *REVIEW. —CERTIFICATIONS.—The The*
4 *Court shall review the following:*

5 “(A) *CERTIFICATION.—A a certification*
6 *submitted in accordance with provided under*
7 *subsection (g) (f) to determine whether the cer-*
8 *tification contains all the required elements.*

9 “(B)(3) *TARGETING PROCEDURES.—The*
10 *Court shall review the targeting procedures re-*
11 *quired by submitted in accordance with sub-*
12 *section (d) to assess whether the procedures are*
13 *reasonably designed to ensure that the acquisi-*
14 *tion authorized under subsection (a) is limited*
15 *to the targeting of persons reasonably believed*
16 *to be located outside the United States and*
17 *does not result in the intentional acquisition of*
18 *any communication as to which the sender and*
19 *all intended recipients are known at the time of*
20 *the acquisition to be located in the United*
21 *States.*

22 “(C)(4) *MINIMIZATION PROCEDURES.—*
23 *The Court shall review the minimization proce-*
24 *dures required by submitted in accordance with*
25 *subsection (e) to assess whether such proce-*

1 dures meet the definition of minimization proce-
2 dures under section 101(h) or section 301(4), as
3 *appropriate. 301(4).*

4 “(3)(5) ORDERS.—

5 “(A) APPROVAL.—If the Court finds that
6 a certification ~~required by~~ *submitted in accord-*
7 *ance with* subsection (g) ~~(f)~~ contains all of the
8 required elements and that the targeting and
9 minimization procedures ~~required by~~ *submitted*
10 *in accordance with* subsections (d) and (e) are
11 consistent with the requirements of those sub-
12 sections and with the fourth amendment to the
13 Constitution of the United States, the Court
14 shall enter an order approving the *certification*
15 *and the continued* use of the procedures for the
16 acquisition. ~~authorized under subsection (a).~~

17 “[(B) CORRECTION OF DEFICIENCIES.—If
18 the Court finds that a certification required ~~by~~
19 *submitted in accordance with* subsection (g) ~~(f)~~
20 does not contain all of the required elements, or
21 that the procedures ~~required by~~ *submitted in*
22 *accordance with* subsections (d) and (e) are not
23 consistent with the requirements of those sub-
24 sections or the fourth amendment to the Con-
25 stitution of the United States, the Court shall

1 issue an order directing the Government to, at
2 the Government's election and to the extent re-
3 quired by the Court's order—

4 “(i) correct any deficiency identified
5 by the Court's ~~order~~ not later than 30 days
6 after the date the Court issues the order;
7 or

8 “(ii) cease [*or not begin*] the acquisi-
9 tion authorized under subsection (a).]

10 **【“(B) CORRECTION OF DEFICIENCIES.—If**
11 *the Court finds that a certification submitted*
12 *pursuant to subsection (g) does not contain all of*
13 *the required elements or that the procedures sub-*
14 *mitted in accordance with subsections (d) and*
15 *(e) are not consistent with the requirements of*
16 *those subsections or the fourth amendment to the*
17 *Constitution of the United States—】*

18 **【“(i) in the case of a certification sub-**
19 *mitted in accordance with subsection*
20 *(g)(1)(A), the Court shall deny the order,*
21 *identify any deficiency in the certification*
22 *or procedures, and provide the Government*
23 *with an opportunity to correct such defi-*
24 *ciency; and.】*

1 **【“(ii) in the case of a certification**
2 *submitted in accordance with subsection*
3 *(g)(1)(B), the Court shall issue an order di-*
4 *recting the Government to, at the Govern-*
5 *ment’s election and to the extent required by*
6 *the Court’s order—】*

7 **【“(I) correct any deficiency iden-**
8 *tified by the Court’s order not later*
9 *than 30 days after the date the Court*
10 *issues the order; or】*

11 **【“(II) cease the acquisition au-**
12 *thorized under subsection (g)(1)(B).】*

13 **“(C) REQUIREMENT FOR WRITTEN STATE-**
14 **MENT.—**In support of its orders under this sub-
15 section, the Court shall provide, simultaneously
16 with the orders, for the record a written state-
17 ment of its reasons.

18 **“(4)(6) APPEAL.—**

19 **“(A) APPEAL TO THE COURT OF RE-**
20 **VIEW.—**The Government may appeal any order
21 under this section to the Foreign Intelligence
22 Surveillance Court of Review, which shall have
23 jurisdiction to review such order. For any deci-
24 sion affirming, reversing, or modifying an order
25 of the Foreign Intelligence Surveillance Court,

1 the Court of Review shall provide for the record
2 a written statement of its reasons.

3 “(B) CONTINUATION OF ACQUISITION
4 PENDING REHEARING OR APPEAL.—Any acqui-
5 sitions affected by an order under paragraph
6 (3)(B) ~~(5)(B)~~ may continue—

7 “(i) during the pendency of any re-
8 hearing of the order by the Court en banc;
9 and

10 “(ii) if the Government appeals an
11 order under this section, *subject to* ~~until~~
12 the *entry* ~~Court~~ of Review enters an order
13 under subparagraph (C).

14 “(C) IMPLEMENTATION PENDING AP-
15 PEAL.—Not later than 60 days after the filing
16 of an appeal of an order *issued* under para-
17 graph (3)(B) ~~(5)(B)~~ directing the correction of
18 a deficiency, the Court of Review shall deter-
19 mine, and enter a corresponding order regard-
20 ing, whether all or any part of the correction
21 order, as issued or modified, shall be imple-
22 mented during the pendency of the appeal.

23 “(D) CERTIORARI TO THE SUPREME
24 COURT.—The Government may file a petition
25 for a writ of certiorari for review of a decision

1 of the Court of Review issued under subpara-
2 graph (A). The record for such review shall be
3 transmitted under seal to the Supreme Court of
4 the United States, which shall have jurisdiction
5 to review such decision.

6 **["(5) SCHEDULE.—]**

7 **["(A) REPLACEMENT OF AUTHORIZATIONS**
8 **IN EFFECT.—***In order to replace an authoriza-*
9 *tion issued pursuant to section 105B of the For-*
10 *oreign Intelligence Surveillance Act of 1978, as*
11 *added by section 2 of the Protect America Act of*
12 *2007 (Public Law 110-55) with an authorization*
13 *under this section, the Attorney General and the*
14 *Director of National Intelligence shall, to the ex-*
15 *tent practicable, submit to the Court the certifi-*
16 *cation prepared in accordance with subsection*
17 *(g) and the procedures adopted in accordance*
18 *with subsections (d) and (e) [and the guidelines*
19 *adopted pursuant to subsection (f)] at least 30*
20 *days before the expiration of such authoriza-*
21 *tion.]*

22 **["(B) REAUTHORIZATION OF AUTHORIZA-**
23 **TIONS IN EFFECT.—***In order to replace an au-*
24 *thorization issued pursuant to this section, the*
25 *Attorney General and the Director of National*

1 *Intelligence shall, to the extent practicable, sub-*
2 *mit to the Court the certification prepared in ac-*
3 *cordance with section (g) and the procedures*
4 *adopted in accordance with subsections (d) and*
5 *(e) [and the guidelines adopted pursuant to sub-*
6 *section (f)] at least 30 days prior to the expira-*
7 *tion of such authorization.]*

8 **[(C) CONSOLIDATED SUBMISSIONS.—***The*
9 *Attorney General and Director of National Intel-*
10 *ligence shall, to the extent practicable, annually*
11 *submit to the Court a consolidation of—]*

12 **[(i)** *certifications prepared in accord-*
13 *ance with subsection (g) for reauthorization*
14 *of authorizations in effect;]*

15 **[(ii)** *the procedures adopted in ac-*
16 *cordance with subsections (d) and (e); and]*

17 **[(iii)** *the annual review required by*
18 *subsection (l)(3) for the preceding year.]*

19 **[(D) TIMING OF REVIEWS.—***The Attorney*
20 *General and the Director of National Intelligence*
21 *shall schedule the completion of the annual re-*
22 *view required by subsection (l)(3) and a semi-*
23 *annual assessment required by subsection (l)(1)*
24 *so that they may be submitted to the Court at the*

1 *time of the consolidated submission under sub-*
2 *paragraph (C).】*

3 【“(E) CONSTRUCTION.—The requirements
4 of subparagraph (C) shall not be construed to
5 preclude the Attorney General and the Director
6 of National Intelligence from submitting certifi-
7 cations for additional authorizations at other
8 times during the year as necessary.】

9 【“(6) COMPLIANCE.—At or before the end of the
10 period of time for which an authorization under sub-
11 section (a) expires, the Foreign Intelligence Surveil-
12 lance Court may assess compliance with the mini-
13 mization procedures required under subsection (e) by
14 reviewing the circumstances under which information
15 concerning United States persons was acquired, re-
16 tained, or disseminated.】

17 “(j) ~~EXPEDITED~~ JUDICIAL PROCEEDINGS.—

18 “(1) EXPEDITED PROCEEDINGS.—Judicial pro-
19 ceedings under this section shall be conducted as ex-
20 peditiously as possible.

21 “(2) TIME LIMITS.—A time limit for a judicial
22 decision in this section shall apply unless the Court,
23 the Court of Review, or any judge of either the Court
24 or the Court of Review, by order for reasons stated,
25 extends that time [for good cause] [as necessary to

1 *comport with the due process clause of the fifth*
2 *amendment to the Constitution of the United States】.*

3 “(k)(j) MAINTENANCE AND SECURITY OF RECORDS
4 AND PROCEEDINGS.—

5 “(1) STANDARDS.—*【The Foreign Intelligence*
6 *Surveillance Court】【Administrative Office of the*
7 *Courts of the United States】 shall maintain A a*
8 record of a proceeding under this section, including
9 petitions filed, orders granted, and statements of
10 reasons for decision, ~~shall be maintained~~ under secu-
11 rity measures adopted by the Chief Justice of the
12 United States, in consultation with the Attorney
13 General and the Director of National Intelligence.

14 “(2) FILING AND REVIEW.—All petitions under
15 this section shall be filed under seal. In any pro-
16 ceedings under this section, the court shall, upon re-
17 quest of the Government, review *ex parte* and in
18 *camera* any Government submission, or portions of
19 a submission, which may include classified informa-
20 tion.

21 “(3) RETENTION OF RECORDS.—*The Director of*
22 *National Intelligence and the Attorney General shall*
23 *retain a RECORDSA directive made or an order*
24 *granted under this section shall be retained for a pe-*

1 rioid of not less than 10 years from the date on
2 which such directive or such order is made.

3 “(1)(~~k~~) ASSESSMENTS AND REVIEWS.—

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

12 “(A) the Foreign Intelligence Surveillance
13 Court; ~~and~~

14 “(B) the congressional intelligence *commit-*
15 *tees; and committees.*

16 **【“(C) the Committees on the Judiciary of**
17 **the House of Representatives and the Senate.】**

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

24 “(A) are authorized to review the compli-
25 ance with the targeting and minimization proce-

1 dures ~~required by~~ *submitted in accordance with*
2 subsections (d) and (e) **[and the guidelines sub-**
3 *mitted in accordance with subsection (f)]*;

4 “(B) with respect to acquisitions author-
5 ized under subsection (a), shall review the num-
6 ber of disseminated intelligence reports con-
7 taining a reference to a United States person
8 identity and the number of United States per-
9 son identities subsequently disseminated by the
10 element concerned in response to requests for
11 identities that were not referred to by name or
12 title in the original reporting;

13 “(C) with respect to acquisitions author-
14 ized under subsection (a), shall review the num-
15 ber of targets that were later determined to be
16 located in the United States and, to the extent
17 possible, whether their communications were re-
18 viewed; and

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

20 “(i) the Attorney General;

21 “(ii) the Director of National Intel-
22 ligence; ~~and~~

23 “(iii) the congressional intelligence
24 committees; ~~and committees.~~

1 “[(iv) the Committees on the Judiciary
2 of the House of Representatives and the
3 Senate.]

4 “[(v) the Foreign Intelligence Surveil-
5 lance Court.]

6 “(3) ANNUAL REVIEW.—

7 “(A) REQUIREMENT TO CONDUCT.—The
8 head of *each* ~~an~~ element of the intelligence com-
9 munity conducting an acquisition authorized
10 under subsection (a) shall ~~direct the element to~~
11 conduct an annual review to determine whether
12 there is reason to believe that foreign intel-
13 ligence information has been or will be obtained
14 from the acquisition. The annual review shall
15 provide, with respect to such acquisitions au-
16 thorized under subsection (a)—

17 “(i) ~~an accounting~~ of the number *and*
18 *nature* of disseminated intelligence reports
19 containing a reference to a United States
20 person identity;

21 “(ii) ~~an accounting~~ of the number *and*
22 *nature* of United States person identities
23 subsequently disseminated by that element
24 in response to requests for identities that

1 were not referred to by name or title in the
2 original reporting;

3 “(iii) the number of targets that were
4 later determined to be located in the
5 United States and, to the extent possible,
6 whether their communications were re-
7 viewed; and

8 “(iv) a description of any procedures
9 developed by the head of ~~an~~ *such* element
10 of the intelligence community and ap-
11 proved by the Director of National Intel-
12 ligence to assess, in a manner consistent
13 with national security, operational require-
14 ments and the privacy interests of United
15 States persons, the extent to which the ac-
16 quisitions authorized under subsection (a)
17 acquire the communications of United
18 States persons, *and as well as* the results
19 of any such assessment.

20 “(B) USE OF REVIEW.—The head of each
21 element of the intelligence community that con-
22 ducts an annual review under subparagraph (A)
23 shall use each such review to evaluate the ade-
24 quacy of the minimization procedures utilized
25 by such element or the application of the mini-

1 mization procedures to a particular acquisition
2 authorized under subsection (a).

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

7 “(i) the Foreign Intelligence Surveil-
8 lance Court;

9 “(ii) the Attorney General;

10 “(iii) the Director of National Intel-
11 ligence; ~~and~~

12 “(iv) the congressional intelligence
13 ~~committees; and committees.~~

14 *["(v) the Committees on the Judiciary*
15 *of the House of Representatives and the*
16 *Senate.]*

17 **“SEC. [704.703.] CERTAIN ACQUISITIONS INSIDE THE UNITED**
18 **STATES OF UNITED STATES PERSONS OUT-**
19 **SIDE THE UNITED STATES.**

20 “(a) JURISDICTION OF THE FOREIGN INTELLIGENCE
21 SURVEILLANCE COURT.—

22 “(1) IN GENERAL.—The Foreign Intelligence
23 Surveillance Court shall have jurisdiction *review an*
24 *application and* to enter an order approving the tar-
25 geting of a United States person reasonably believed

1 to be located outside the United States to acquire
2 foreign intelligence information, if ~~such~~ *the* acquisi-
3 tion constitutes electronic surveillance [(as defined
4 in section 101(f), regardless of the limitation of sec-
5 tion 701)] or the acquisition of stored electronic
6 communications or stored electronic data that re-
7 quires an order under this Act, and such acquisition
8 is conducted within the United States.

9 “(2) LIMITATION.—~~If~~ ~~In~~ ~~the~~ ~~event~~ ~~that~~ a
10 United States person targeted under this subsection
11 is reasonably believed to be located in the United
12 States during the pendency of an order issued pur-
13 suant to subsection (c), such acquisition shall cease
14 ~~unless until~~ authority, other than under this section,
15 is obtained pursuant to this Act or the targeted
16 United States person is again reasonably believed to
17 be located outside the United States during the
18 pendency of an order issued pursuant to subsection
19 (c).

20 “(b) APPLICATION.—

21 “(1) IN GENERAL.—Each application for an
22 order under this section shall be made by a Federal
23 officer in writing upon oath or affirmation to a
24 judge having jurisdiction under subsection (a)(1).
25 Each application shall require the approval of the

1 Attorney General based upon the Attorney General's
2 finding that it satisfies the criteria and requirements
3 of such application, as set forth in this section, and
4 shall include—

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

7 “(B) the identity, if known, or a descrip-
8 tion of the United States person who is the tar-
9 get of the acquisition;

10 “(C) a statement of the facts and cir-
11 cumstances relied upon to justify the appli-
12 cant's belief that the United States person who
13 is the target of the acquisition is—

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

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

19 “(D) a statement of ~~the~~ proposed mini-
20 mization procedures that meet the definition of
21 minimization procedures *in under* section
22 101(h) or section 301(4), *as appropriate;*
23 ~~301(4);~~

1 “(E) a description of the nature of the in-
2 formation sought and the type of communica-
3 tions or activities to be subjected to acquisition;

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

7 “(i) the certifying official deems the
8 information sought to be foreign intel-
9 ligence information;

10 “(ii) a significant purpose of the ac-
11 quisition is to obtain foreign intelligence
12 information;

13 “(iii) such information cannot reason-
14 ably be obtained by normal investigative
15 techniques;

16 “(iv) designates the type of foreign in-
17 telligence information being sought accord-
18 ing to the categories described in section
19 101(e); and

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

22 “(I) the information sought is
23 the type of foreign intelligence infor-
24 mation designated; and

1 “(II) such information cannot
2 reasonably be obtained by normal in-
3 vestigative techniques;

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

8 “(H) the identity of any electronic commu-
9 nication service provider necessary to effect the
10 acquisition, provided, however, that the applica-
11 tion is not required to identify the specific fa-
12 cilities, places, premises, or property at which
13 the acquisition authorized under this section
14 will be directed or conducted;

15 “(I) a statement of the facts concerning
16 any previous applications that have been made
17 to any judge of the Foreign Intelligence Surveil-
18 lance Court involving the United States person
19 specified in the application and the action taken
20 on each previous application; and

21 “(J) a statement of the period of time for
22 which the acquisition is required to be main-
23 tained, provided that such period of time shall
24 not exceed 90 days per application.

1 “(2) OTHER REQUIREMENTS OF THE ATTOR-
2 NEY GENERAL.—The Attorney General may require
3 any other affidavit or certification from any other
4 officer in connection with the application.

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

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

15 “(c) ORDER.—

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

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

24 “(B) on the basis of the facts submitted by
25 the applicant, for the United States person who

1 is the target of the acquisition, there is prob-
2 able cause to believe that the target is—

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

5 “(ii) a foreign power, an agent of a
6 foreign power, or an officer or employee of
7 a foreign power;

8 “(C) the proposed minimization procedures
9 meet the definition of minimization procedures
10 under section 101(h) or section 301(4), *as ap-*
11 *propriate; 301(4);* and

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

19 “(2) PROBABLE CAUSE.—In determining
20 whether or not probable cause exists for purposes of
21 ~~an order under~~ paragraph (1)(B), ~~(1)~~, a judge hav-
22 ing jurisdiction under subsection (a)(1) may consider
23 past activities of the target, *and as well as* facts and
24 circumstances relating to current or future activities
25 of the target. *No* ~~However, no~~ United States person

1 may be considered a foreign power, agent of a for-
2 eign power, or officer or employee of a foreign power
3 solely upon the basis of activities protected by the
4 first amendment to the Constitution of the United
5 States.

6 “(3) REVIEW.—

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

11 “(B) REVIEW OF PROBABLE CAUSE.—If
12 the judge determines that the facts submitted
13 under subsection (b) are insufficient to estab-
14 lish probable cause ~~to issue an order~~ under
15 paragraph (1)(B), ~~(1)~~, the judge shall enter an
16 order so stating and provide a written state-
17 ment for the record of the reasons for such de-
18 termination. The Government may appeal an
19 order under this *subparagraph* clause pursuant
20 to subsection (f).

21 “(C) REVIEW OF MINIMIZATION PROCE-
22 DURES.—If the judge determines that the pro-
23 posed minimization procedures *referred to in re-*
24 *quired under* paragraph (1)(C) do not meet the
25 definition of minimization procedures under sec-

1 tion 101(h) or section 301(4), *as appropriate*,
2 the judge shall enter an order so stating and
3 provide a written statement for the record of
4 the reasons for such determination. The Gov-
5 ernment may appeal an order under this *sub-*
6 *paragraph* clause pursuant to subsection (f).

7 “(D) REVIEW OF CERTIFICATION.—If the
8 judge determines that an application required
9 by subsection (b) does not contain all of the re-
10 quired elements, or that the certification or cer-
11 tifications are clearly erroneous on the basis of
12 the statement made under subsection
13 (b)(1)(F)(v) and any other information fur-
14 nished under subsection (b)(3), the judge shall
15 enter an order so stating and provide a written
16 statement for the record of the reasons for such
17 determination. The Government may appeal an
18 order under this *subparagraph* clause pursuant
19 to subsection (f).

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

22 “(A) the identity, if known, or a descrip-
23 tion of the United States person who is the tar-
24 get of the acquisition identified or described in

1 the application pursuant to subsection
2 (b)(1)(B);

3 “(B) if provided in the application pursu-
4 ant to subsection (b)(1)(H), the nature and lo-
5 cation of each of the facilities or places at
6 which the acquisition will be directed;

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

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

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

15 “(5) DIRECTIONS.—An order approving *an ac-*
16 *quisition acquisitions* under this subsection shall di-
17 rect—

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

21 “(B) an electronic communication service
22 provider to provide to the Government forthwith
23 all information, facilities, or assistance nec-
24 essary to accomplish the acquisition authorized
25 under *such order this subsection* in a manner

1 that will protect the secrecy of the acquisition
2 and produce a minimum of interference with
3 the services that such electronic communication
4 service provider is providing to the target of the
5 *acquisition*; ;

6 “(C) an electronic communication service
7 provider to maintain under security procedures
8 approved by the Attorney General any records
9 concerning the acquisition or the aid furnished
10 that such electronic communication service pro-
11 vider wishes to maintain; and

12 “(D) that the Government compensate, at
13 the prevailing rate, such electronic communica-
14 tion service provider for providing such infor-
15 mation, facilities, or assistance.

16 “(6) DURATION.—An order approved under this
17 *subsection* ~~paragraph~~ shall be effective for a period
18 not to exceed 90 days and such order may be re-
19 newed for additional 90-day periods upon submission
20 of renewal applications meeting the requirements of
21 subsection (b).

22 “(7) COMPLIANCE.—At or prior to the end of
23 the period of time for which an acquisition is ap-
24 proved by an order or extension under this section,
25 the judge may assess compliance with the minimiza-

1 tion procedures *referred to in paragraph (1)(C)* by
2 reviewing the circumstances under which informa-
3 tion concerning United States persons was acquired,
4 retained, or disseminated.

5 “(d) EMERGENCY AUTHORIZATION.—

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

10 “(A) an emergency situation exists with re-
11 spect to the acquisition of foreign intelligence
12 information for which an order may be obtained
13 under subsection (c) before an order author-
14 izing such acquisition can with due diligence be
15 obtained, and

16 “(B) the factual basis for issuance of an
17 order under this subsection to approve such ac-
18 quisition exists,

19 the Attorney General may authorize *such the emer-*
20 gency acquisition if a judge having jurisdiction
21 under subsection (a)(1) is informed by the Attorney
22 General, or a designee of the Attorney General, at
23 the time of such authorization that the decision has
24 been made to conduct such acquisition and if an ap-
25 plication in accordance with this subsection is made

1 to a judge of the Foreign Intelligence Surveillance
2 Court as soon as practicable, but not more than 7
3 days after the Attorney General authorizes such ac-
4 quisition.

5 “(2) MINIMIZATION PROCEDURES.—If the At-
6 torney General authorizes *an such emergency* acqui-
7 sition *under paragraph (1), ;* the Attorney General
8 shall require that the minimization procedures *re-*
9 *ferred to in subsection (c)(1) (C) required by this see-*
10 *tion* for the issuance of a judicial order be followed.

11 “(3) TERMINATION OF EMERGENCY AUTHOR-
12 IZATION.—In the absence of a judicial order approv-
13 ing *an such* acquisition *under paragraph (1), such ;*
14 ~~the~~ acquisition shall terminate when the information
15 sought is obtained, when the application for the
16 order is denied, or after the expiration of 7 days
17 from the time of authorization by the Attorney Gen-
18 eral, whichever is earliest.

19 “(4) USE OF INFORMATION.—~~In the event that~~
20 ~~such~~ *If an* application for approval *submitted pursu-*
21 *ant to paragraph (1)* is denied, or in any other case
22 where the acquisition is terminated and no order is
23 issued approving the acquisition, no information ob-
24 tained or evidence derived from such acquisition, ex-
25 cept under circumstances in which the target of the

1 acquisition is determined not to be a United States
2 person, ~~during the pendency of the 7-day emergency~~
3 ~~acquisition period~~, shall be received in evidence or
4 otherwise disclosed in any trial, hearing, or other
5 proceeding in or before any court, grand jury, de-
6 partment, office, agency, regulatory body, legislative
7 committee, or other authority of the United States,
8 a State, or political subdivision thereof, and no in-
9 formation concerning any United States person ac-
10 quired from such acquisition shall subsequently be
11 used or disclosed in any other manner by Federal of-
12 ficers or employees without the consent of such per-
13 son, except with the approval of the Attorney Gen-
14 eral if the information indicates a threat of death or
15 serious bodily harm to any person.

16 “(e) RELEASE FROM LIABILITY.—~~Notwithstanding~~
17 ~~any other law, no~~ No cause of action shall lie in any court
18 against any electronic communication service provider for
19 providing any information, facilities, or assistance in ac-
20 cordance with an order or request for emergency assist-
21 ance issued pursuant to subsections (c) or (d).

22 “(f) APPEAL.—

23 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
24 SURVEILLANCE COURT OF REVIEW.—The Govern-
25 ment may file an appeal with the Foreign Intel-

1 ligence Surveillance Court of Review for review of an
2 order issued pursuant to subsection (c). The Court
3 of Review shall have jurisdiction to consider such ap-
4 peal and shall provide a written statement for the
5 record of the reasons for a decision under this para-
6 graph.

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

14 **“SEC. [705704]. OTHER ACQUISITIONS TARGETING UNITED**
15 **STATES PERSONS OUTSIDE THE UNITED**
16 **STATES.**

17 “(a) JURISDICTION AND SCOPE.—

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

21 “(2) SCOPE.—No element of the intelligence
22 community *department or agency of the Federal Gov-*
23 *ernment* may intentionally target, for the purpose of
24 acquiring foreign intelligence information, a United
25 States person reasonably believed to be located out-

1 side the United States under circumstances in which
2 the targeted United States person has a reasonable
3 expectation of privacy and a warrant would be re-
4 quired if the acquisition were conducted inside the
5 United States for law enforcement purposes, unless
6 a judge of the Foreign Intelligence Surveillance
7 Court has entered an order *with respect to such tar-*
8 *geted United States person* or the Attorney General
9 has authorized an emergency acquisition pursuant to
10 subsections (c) or (d) or any other provision of this
11 Act.

12 “(3) LIMITATIONS.—

13 “(A) MOVING OR MISIDENTIFIED TAR-
14 GETS.—~~In the event that the~~ *If a* targeted
15 United States person is reasonably believed to
16 be in the United States during the pendency of
17 an order issued pursuant to subsection (c), ~~such~~
18 ~~acquisition~~ *the targeting of such United States*
19 *person shall cease* ~~until~~ *unless* authority is ob-
20 tained pursuant to this Act or the targeted
21 United States person is again reasonably be-
22 lieved to be located outside the United States
23 during the pendency of ~~an such order issued~~
24 ~~pursuant to subsection (c).~~

1 “(B) APPLICABILITY.—If ~~the~~ *an* acquisition
2 tion is to be conducted inside the United States
3 and could be authorized under section [~~704~~
4 703], the ~~procedures of section 704 shall apply,~~
5 unless an order or emergency acquisition *may*
6 *only be conducted if authorized authority has*
7 been obtained under [section 703] or in accord-
8 ance with another ~~a~~ provision of this Act other
9 than ~~under~~ this section.

10 “(b) APPLICATION.—Each application for an order
11 under this section shall be made by a Federal officer in
12 writing upon oath or affirmation to a judge having juris-
13 diction under subsection (a)(1). Each application shall re-
14 quire the approval of the Attorney General based upon the
15 Attorney General’s finding that it satisfies the criteria and
16 requirements of such application as set forth in this sec-
17 tion and shall include—

18 “(1) *the identity of the Federal officer making*
19 *the application;*

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

23 “(23) a statement of the facts and cir-
24 cumstances relied upon to justify the applicant’s be-

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

3 “(A) a person reasonably believed to be lo-
4 cated outside the United States; and

5 “(B) a foreign power, an agent of a foreign
6 power, or an officer or employee of a foreign
7 power;

8 “(34) a statement of the proposed minimization
9 procedures that meet the definition of minimization
10 procedures under section 101(h) or section 301(4),
11 *as appropriate;*

12 “(45) a certification made by the Attorney Gen-
13 eral, an official specified in section 104(a)(6), or the
14 head of an element of the intelligence community
15 that—

16 “(A) the certifying official deems the infor-
17 mation sought to be foreign intelligence infor-
18 mation; and

19 “(B) a significant purpose of the acquisi-
20 tion is to obtain foreign intelligence informa-
21 tion;

22 “(56) a statement of the facts concerning any
23 previous applications that have been made to any
24 judge of the Foreign Intelligence Surveillance Court
25 involving the United States person specified in the

1 application and the action taken on each previous
2 application; and

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

7 “(c) ORDER.—

8 “(1) FINDINGS.—~~If, u~~ *U* pon an application
9 made pursuant to subsection (b), *the Foreign Intel-*
10 *ligence Surveillance Court a judge having jurisdiction*
11 ~~under subsection (a)~~ *shall enter an ex parte order as*
12 *requested or as modified by the Court if the Court*
13 *finds that—*

14 “(A) *the application has been made by a*
15 *Federal officer and approved by the Attorney*
16 *General;*

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

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

23 “(ii) a foreign power, an agent of a
24 foreign power, or an officer or employee of
25 a foreign power;

1 “(BC) the proposed minimization proce-
2 dures, with respect to their dissemination provi-
3 sions, meet the definition of minimization pro-
4 cedures under section 101(h) or section 301(4),
5 *as appropriate*; and

6 “(CD) the application ~~which~~ *that* has been
7 filed contains all statements and certifications
8 required by subsection (b) and the certification
9 provided under subsection (b)(4 5) is not clear-
10 ly erroneous on the basis of the information
11 furnished under subsection (b);).

12 the Court shall issue an *ex parte* order so stating.

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

25 “(3) REVIEW.—

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

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

17 “(C) REVIEW OF MINIMIZATION PROCE-
18 DURES.—If the judge determines that the mini-
19 mization procedures [applicable to dissemina-
20 tion of information obtained through an acqui-
21 sition under this subsection] do not meet the
22 definition of minimization procedures under sec-
23 tion 101(h) or section 301(4), *as appropriate*,
24 the judge shall enter an order so stating and
25 provide a written statement for the record of

1 the reasons for such determination. The Gov-
2 ernment may appeal an order under this clause
3 pursuant to subsection (e).

4 “(D) SCOPE OF REVIEW OF CERTIFI-
5 CATION.—If the judge determines that *an ap-*
6 *plication under subsection (b) does not contain*
7 *all the required elements, or that the certifi-*
8 *cation provided under subsection (b)(4 5) is*
9 clearly erroneous on the basis of the informa-
10 tion furnished under subsection (b), the judge
11 shall enter an order so stating and provide a
12 written statement for the record of the reasons
13 for such determination. The Government may
14 appeal an order under this ~~subparagraph~~ *clause*
15 pursuant to subsection (e).

16 “(4) DURATION.—An order under this para-
17 graph shall be effective for a period not to exceed 90
18 days and such order may be renewed for additional
19 90-day periods upon submission of renewal applica-
20 tions meeting the requirements of subsection (b).

21 “(5) COMPLIANCE.—At or prior to the end of
22 the period of time for which an order or extension
23 is granted under this section, the judge may assess
24 compliance with the minimization procedures *re-*
25 *ferred to in paragraph (1)(C)* by reviewing the cir-

1 cumstances under which information concerning
2 United States persons was disseminated, provided
3 that the judge may not inquire into the cir-
4 cumstances relating to the conduct of the acqui-
5 sition.

6 “(d) EMERGENCY AUTHORIZATION.—

7 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
8 TION.—Notwithstanding any other provision in *of*
9 this subsection, if the Attorney General reasonably
10 determines that—

11 “(A) an emergency situation exists with re-
12 spect to the acquisition of foreign intelligence
13 information for which an order may be obtained
14 under subsection (c) before an order under that
15 subsection may, with due diligence, be obtained,
16 and

17 “(B) the factual basis for *the* issuance of
18 an order under this section exists,
19 the Attorney General may authorize the emergency
20 acquisition if a judge having jurisdiction under sub-
21 section (a)(1) is informed by the Attorney General
22 or a designee of the Attorney General at the time of
23 such authorization that the decision has been made
24 to conduct such acquisition and if an application in
25 accordance with this subsection is made to a judge

1 of the Foreign Intelligence Surveillance Court as
2 soon as practicable, but not more than 7 days after
3 the Attorney General authorizes such acquisition.

4 “(2) MINIMIZATION PROCEDURES.—If the At-
5 torney General authorizes ~~such~~ *an* emergency acqui-
6 sition *under paragraph (1)*, the Attorney General
7 shall require that the minimization procedures re-
8 quired ~~by this section~~ *referred to in subsection*
9 *(c)(1)(C)* be followed.

10 “(3) TERMINATION OF EMERGENCY AUTHOR-
11 IZATION.—In the absence of an order under sub-
12 section (c), ~~the~~ *an emergency* acquisition *under para-*
13 *graph (1)* shall terminate when the information
14 sought is obtained, if the application for the order
15 is denied, or after the expiration of 7 days from the
16 time of authorization by the Attorney General,
17 whichever is earliest.

18 “(4) USE OF INFORMATION.—~~In the event that~~
19 ~~such application~~ *If and application submitted to the*
20 *Court pursuant to paragraph (1)* is denied, or in any
21 other case where the acquisition is terminated and
22 no order *with respect to the target of the acquisition*
23 is issued ~~approving the acquisition~~ *under subsection*
24 *(c)*, no information obtained or evidence derived
25 from such acquisition, except under circumstances in

1 which the target of the acquisition is determined not
2 to be a United States person ~~during the pendency of~~
3 ~~the 7-day emergency acquisition period~~, shall be re-
4 ceived in evidence or otherwise disclosed in any trial,
5 hearing, or other proceeding in or before any court,
6 grand jury, department, office, agency, regulatory
7 body, legislative committee, or other authority of the
8 United States, a State, or political subdivision there-
9 of, and no information concerning any United States
10 person acquired from such acquisition shall subse-
11 quently be used or disclosed in any other manner by
12 Federal officers or employees without the consent of
13 such person, except with the approval of the Attor-
14 ney General if the information indicates a threat of
15 death or serious bodily harm to any person.

16 “(e) APPEAL.—

17 “(1) APPEAL TO THE COURT OF REVIEW.—The
18 Government may file an appeal with the Foreign In-
19 telligence Surveillance Court of Review for review of
20 an order issued pursuant to subsection (c). The
21 Court of Review shall have jurisdiction to consider
22 such appeal and shall provide a written statement
23 for the record of the reasons for a decision under
24 this paragraph.

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

8 **“SEC. [706705]. JOINT APPLICATIONS AND CONCURRENT AU-**
9 **THORIZATIONS.**

10 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
11 quisition targeting a United States person under section
12 [703 704] or section [704 705] is proposed to be con-
13 ducted both inside and outside the United States, a judge
14 having jurisdiction under section [703(a)(1) 704(a)(1)] or
15 section [704(a)(1) 705(a)(1)] may issue simultaneously,
16 upon the request of the Government in a joint application
17 complying with the requirements of section [703(b) 704(b)
18] *and or* section [704(b), 705(b),] orders under section
19 [703(c) 704(e)] *and or* section [704(c), 705(e),] as appro-
20 prie applicable.

21 “(b) CONCURRENT AUTHORIZATION.—

22 “[(1) *ELECTRONIC SURVEILLANCE.*—If ~~if~~ an
23 order authorizing electronic surveillance *has been ob-*
24 *tained under section 105 and that order is still in ef-*
25 *fect, during the pendency of that order, the Attorney*

1 *General may authorize, without an order under sec-*
2 *tion 703 or 704, electronic surveillance for the pur-*
3 *pose of acquiring foreign intelligence information tar-*
4 *geting that United States person while such person is*
5 *reasonably believed to be located outside the United*
6 *States.*

7 “(2) *PHYSICAL SEARCH.*—*If an order author-*
8 *izing a ~~or~~ physical search has been obtained under*
9 *section ~~105 or section~~ 304 and that order is still in*
10 *effect, during the pendency of that order the Attor-*
11 *ney General may authorize, without an order under*
12 *section ~~704 or~~ section 703 or section 704, 705, a*
13 *physical search for the purpose of acquiring foreign*
14 *intelligence information ~~an acquisition of foreign in-~~*
15 *telligence information targeting that United States*
16 *person while such person is reasonably believed to be*
17 *located outside the United States.]*

18 “**SEC. ~~706.707. USE OF INFORMATION ACQUIRED UNDER~~**
19 **TITLE VII.**

20 “(a) **INFORMATION ACQUIRED UNDER SECTION 702**
21 **703.**—*Information acquired from an acquisition con-*
22 *ducted under section 702 ~~703~~ shall be deemed to be infor-*
23 *mation acquired from an electronic surveillance pursuant*
24 *to title I for purposes of section 106, [except for the pur-*
25 *poses of subsection (j) of such section.]*

1 “(b) INFORMATION ACQUIRED UNDER SECTION 703
2 704.—Information acquired from an acquisition con-
3 ducted under section 703 704 shall be deemed to be infor-
4 mation acquired from an electronic surveillance pursuant
5 to title I for purposes of section 106.

6 **“SEC. 708707. CONGRESSIONAL OVERSIGHT.**

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

14 “(b) CONTENT.—Each report made under *subsection*
15 *subparagraph* (a) shall include—

16 “(1) with respect to section 702— 703—

17 “(A) any certifications made under ~~sub~~
18 section 702(g) 703(f) during the reporting pe-
19 riod;

20 “(B) **[with respect to each certification**
21 **made under section 702(g)(1)(B)(ii), the reasons**
22 **for exercising the authority under such para-**
23 **graph;]**

24 “(C) any directives issued under ~~sub~~ sec-
25 tion 702(h) 703(g) during the reporting period;

1 “(D)(C) a description of the judicial review
2 during the reporting period of any such certifi-
3 cations and targeting and minimization proce-
4 dures *required by subsections (d) and (e) of sec-*
5 *tion 702 and* utilized with respect to such acqui-
6 sition, including a copy of any order or pleading
7 in connection with such review that contains a
8 significant legal interpretation of the provisions
9 of ~~this~~ section 702;

10 “(E)(D) any actions taken to challenge or
11 enforce a directive under paragraphs (4) or (5)
12 of section 702(h); ~~703(g)~~;

13 “(F)(E) any compliance reviews conducted
14 by the *Attorney General* ~~Department of Justice~~
15 or the ~~Office of the~~ Director of National Intel-
16 ligence of acquisitions authorized under ~~sub~~ sec-
17 tion 702(a); ~~703(a)~~;

18 “(G)(F) a description of any incidents of
19 noncompliance with a directive issued by the
20 Attorney General and the Director of National
21 Intelligence under ~~sub~~ section 702(h), ~~703(g)~~,
22 including—

23 “(i) incidents of noncompliance by an
24 element of the intelligence community with
25 procedures *[and guidelines]* submitted in

1 *accordance with* ~~adopted pursuant to~~ sub-
2 sections (d) and (e) **[and (f)]** of section
3 702; ~~703~~; and

4 “(ii) incidents of noncompliance by a
5 specified person to whom the Attorney
6 General and Director of National Intel-
7 ligence issued a directive under ~~sub~~ section
8 702(h); ~~703(g)~~; and

9 “(GH) any procedures implementing ~~this~~
10 section 702;

11 “(2) with respect to section 703— ~~704—~~

12 “(A) the total number of applications made
13 for orders under section 703(b); ~~704(b)~~;

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

15 “(i) ~~either granted~~;

16 “(ii) ~~granted, modified; modified~~; or

17 “(iii) denied; and

18 “(C) the total number of emergency acqui-
19 sitions authorized by the Attorney General
20 under section 703(d) ~~704(d)~~ and the total num-
21 ber of subsequent orders approving or denying
22 such acquisitions; and

23 “(3) with respect to section 704— ~~705—~~

24 “(A) the total number of applications made
25 for orders under 704(b); ~~705(b)~~;

1 “(B) the total number of such orders
2 “(i) ~~either granted;~~
3 “(ii) ~~granted, modified; modified,~~ or
4 “(iii) denied; and
5 “(C) the total number of emergency acqui-
6 sitions authorized by the Attorney General
7 under ~~sub~~ section 704(d) ~~705(d)~~ and the total
8 number of subsequent orders approving or de-
9 nying such applications.

10 **“SEC. 708. SAVINGS PROVISION.**

11 *“Nothing in this title shall be construed to limit the*
12 *authority of the Government to seek an order or authoriza-*
13 *tion under, or otherwise engage in any activity that is au-*
14 *thorized under, any other title of this Act.”.*

15 (b) TABLE OF CONTENTS.—The table of contents in
16 the first section of the Foreign Intelligence Surveillance
17 Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

- 18 (1) by striking the item relating to title VII;
19 (2) by striking the item relating to section 701;
20 and
21 (3) by adding at the end the following:

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

~~“Sec. 701. Definitions.~~

~~“Sec. 702. Procedures~~ ~~Sec. 701. Limitation on definition of electronic surveil-~~
~~lance.~~

~~“Sec. 702. Definitions.~~

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

~~“Sec. 703. Certain Sec. 704. Certain~~ acquisitions inside the United States of United States persons outside the United States.

~~“Sec. 704. Other Sec. 705. Other~~ acquisitions targeting United States persons outside the United States.

~~“Sec. 705. Joint Sec. 706.~~ Joint applications and concurrent authorizations.

~~“Sec. Sec. 707. Use 706.~~ Use of information acquired under title VII.

~~“Sec. 707. Congressional Sec. 708. Congressional~~ oversight.”

~~“Sec. 708. Savings provision.”~~

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) TITLE 18, UNITED STATES CODE.—

3 [(A) SECTION 2232.—Section 2232(e) of
4 title 18, United States Code, is amended by in-
5 serting “(as defined in section 101(f) of the
6 Foreign Intelligence Surveillance Act of 1978,
7 regardless of the limitation of section 701 of
8 that Act)” after “electronic surveillance”.]

9 (B) SECTION 2511.—Section
10 2511(2)(a)(ii)(A) of title 18, United States
11 Code, is amended by inserting “or a court order
12 pursuant to section 704 705 of the Foreign In-
13 telligence Surveillance Act of 1978” after “as-
14 sistance”.

15 (2) FOREIGN INTELLIGENCE SURVEILLANCE
16 ACT OF 1978.—

17 [(A) SECTION 109.—Section 109 of the
18 Foreign Intelligence Surveillance Act of 1978
19 (50 U.S.C. 1809) is amended by adding at the
20 end the following:

1 “(e) DEFINITION.—For the purpose of this section,
2 the term ‘electronic surveillance’ means electronic surveil-
3 lance as defined in section 101(f) of this Act regardless
4 of the limitation of section 701 of this Act.”.

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

8 (i) adding an “(a)” before “CIVIL AC-
9 TION”,

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

13 (iii) adding at the end the following:

14 “(b) DEFINITION.—For the purpose of this section,
15 the term ‘electronic surveillance’ means electronic surveil-
16 lance as defined in section 101(f) of this Act regardless
17 of the limitation of section 701 of this Act.]”.

18 (C) SECTION 601.—Section 601(a)(1) of
19 the Foreign Intelligence Surveillance Act of
20 1978 (50 U.S.C. 1871(a)(1)) is amended— by
21 striking subparagraphs (C) and (D) and insert-
22 ing the following:

23 (Ⓐ) in subparagraph (C), by striking
24 “and”; and

1 (B) by adding at the end the following new
2 subparagraphs: pen registers under section 402;
3 “(D) access to records under section 501;
4 “(E) acquisitions under section 703; 704;
5 and
6 “(F) acquisitions under section 704; 705;”.

7 (d) TERMINATION OF AUTHORITY.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by subsections
10 (a)(2), (b), and (c) shall cease to have effect on De-
11 cember 31, 2013.

12 (2) CONTINUING APPLICABILITY.—Section
13 703(g)(3) of the Foreign Intelligence Surveillance
14 Act of 1978 (as amended by subsection (a)) shall re-
15 main in effect with respect to any directive issued
16 pursuant to section 703(g) of that Act (as so
17 amended) for information, facilities, or assistance
18 provided during the period such directive was or is
19 in effect. Section 704(e) of the Foreign Intelligence
20 Surveillance Act of 1978 (as amended by subsection
21 (a)) shall remain in effect with respect to an order
22 or request for emergency assistance under that sec-
23 tion. The use of information acquired by an acquisi-
24 tion conducted under section 703 of that Act (as so

1 amended) shall continue to be governed by the provi-
2 sions of section 707 of that Act (as so amended).

3 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
4 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
5 **TION OF CERTAIN DOMESTIC COMMUNICA-**
6 **TIONS MAY BE CONDUCTED.**

7 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
8 the Foreign Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1801 et seq.) is amended by adding at the end
10 the following new section:

11 “~~STATEMENT~~ STATEMENT OF EXCLUSIVE MEANS BY
12 WHICH ELECTRONIC SURVEILLANCE AND INTERCEP-
13 TION OF ~~CERTAIN DOMESTIC~~ COMMUNICATIONS MAY
14 BE CONDUCTED

15 “SEC. 112. [(a) *Except as provided in subsection (b),*
16 *the*] The procedures of chapters 119, 121, and 206 of title
17 18, United States Code, and this Act shall be the exclusive
18 means by which electronic surveillance (as defined in sec-
19 tion 101(f), regardless of the limitation of section 701)
20 and the interception of domestic wire, oral, or electronic
21 communications may be conducted.”

22 [(b) *Only an express statutory authorization for elec-*
23 *tronic surveillance or the interception of domestic wire,*
24 *oral, or electronic communications, other than as an*
25 *amendment to this Act or chapters 119, 121, or 206 of title*

1 18, *United States Code*, shall constitute an additional exclu-
2 sive means for the purpose of subsection (a).”.]

3 **[(b) OFFENSE.—Section 109(a) of the Foreign Intel-**
4 **ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is**
5 **amended by striking “authorized by statute” each place it**
6 **appears in such section and inserting “authorized by this**
7 **Act, chapter 119, 121, or 206 of title 18, United States**
8 **Code, or any express statutory authorization that is an ad-**
9 **ditional exclusive means for conducting electronic surveil-**
10 **lance under section 112.”; and]**

11 **[(c) CONFORMING AMENDMENTS.—]**

12 **[(1) TITLE 18, UNITED STATES CODE.—Section**
13 **2511(2)(a) of title 18, United States Code, is amended**
14 **by adding at the end the following:]**

15 **[(“iii) If a certification under sub-**
16 **paragraph (ii)(B) for assistance to obtain**
17 **foreign intelligence information is based on**
18 **statutory authority, the certification shall**
19 **identify the specific statutory provision,**
20 **and shall certify that the statutory require-**
21 **ments have been met.”; and]**

22 **(2)(b) TABLE OF CONTENTS.—The table of con-**
23 **tents in the first section of the Foreign Intelligence**
24 **Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)**

1 is amended by *inserting* ~~adding~~ after the item relat-
2 ing to section 111, the following *new item*:

*“Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of certain domestic communications may be con-
ducted.”.*

3 [(c) CONFORMING AMENDMENTS.—Section 2511(2)
4 of title 18, United States Code, is amended in paragraph
5 (f), by striking “, as defined in section 101 of such Act,”
6 and inserting “(as defined in section 101(f) of such Act
7 regardless of the limitation of section 701 of such Act)”.]

8 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
9 **ORDERS UNDER THE FOREIGN INTEL-**
10 **LIGENCE SURVEILLANCE ACT OF 1978.**

11 (a) INCLUSION OF CERTAIN ORDERS IN SEMIANNUAL
12 REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of
13 section 601 of the Foreign Intelligence Surveillance Act
14 of 1978 (50 U.S.C. 1871) is amended by striking “(not
15 including orders)” and inserting “, orders,”.

16 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
17 OTHER ORDERS.—Such section 601 is further amended
18 by adding at the end the following:

19 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
20 General shall submit to the committees of Congress re-
21 ferred to in subsection (a)—

22 “(1) a copy of any decision, order, or opinion
23 issued by the Foreign Intelligence Surveillance Court
24 or the Foreign Intelligence Surveillance Court of Re-

1 view that includes significant construction or inter-
2 pretation of any provision of this Act, and any
3 pleadings, applications, or memoranda of law associ-
4 ated with such decision, order, or opinion, not later
5 than 45 days after such decision, order, or opinion
6 is issued; and

7 “(2) a copy of any such decision, order, or opin-
8 ion, and any pleadings, applications, or memoranda
9 of law associated with such decision, order, or opin-
10 ion, that was issued during the 5-year period ending
11 on the date of the enactment of the FISA Amend-
12 ments Act of 2008 and not previously submitted in
13 a report under subsection (a).

14 “(d) PROTECTION OF NATIONAL SECURITY.—The
15 Attorney General, in consultation with the Director of Na-
16 tional Intelligence, may authorize redactions of materials
17 described in subsection (c) that are provided to the com-
18 mittees of Congress referred to in subsection (a), if such
19 redactions are necessary to protect the national security
20 of the United States and are limited to sensitive sources
21 and methods information or the identities of targets.”.

22 (c) DEFINITIONS.—Such section 601, as amended by
23 subsections (a) and (b), is further amended by adding at
24 the end the following:

25 “(e) DEFINITIONS.—In this section:

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

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

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

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

12 (1) in subsection (a)—

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

14 (B) by redesignating paragraphs (3)
15 through (10) as paragraphs (2) through (9), re-
16 spectively;

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

20 (D) in paragraph (6), as redesignated by
21 subparagraph (B) of this paragraph, in the
22 matter preceding subparagraph (A)—

23 (i) by striking “Affairs or” and insert-
24 ing “Affairs,”; and

1 (ii) by striking “Senate—” and insert-
2 ing “Senate, or the Deputy Director of the
3 Federal Bureau of Investigation, if des-
4 ignated by the President as a certifying of-
5 ficial—”;

6 (E) in paragraph (7), as redesignated by
7 subparagraph (B) of this paragraph, by striking
8 “statement of” and inserting “summary state-
9 ment of”;

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

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

16 (2) by striking subsection (b);
17 (3) by redesignating subsections (c) through (e)
18 as subsections (b) through (d), respectively; and

19 (4) in paragraph (1)(A) of subsection (d), as re-
20 designated by paragraph (3) of this subsection, by
21 striking “or the Director of National Intelligence”
22 and inserting “the Director of National Intelligence,
23 or the Director of the Central Intelligence Agency”.

1 **SEC. 105. ISSUANCE OF AN ORDER.**

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

4 (1) in subsection (a)—

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

6 (B) by redesignating paragraphs (2)
7 through (5) as paragraphs (1) through (4), re-
8 spectively;

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

11 (3) in subsection (c)(1)—

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

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

16 (C) by striking subparagraph (F);

17 (4) by striking subsection (d);

18 (5) by redesignating subsections (e) through (i)
19 as subsections (d) through (h), respectively;

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

22 “(e)(1) Notwithstanding any other provision of this
23 title, the Attorney General may authorize the emergency
24 employment of electronic surveillance if the Attorney Gen-
25 eral—

1 “(A) reasonably determines that an emergency
2 situation exists with respect to the employment of
3 electronic surveillance to obtain foreign intelligence
4 information before an order authorizing such surveil-
5 lance can with due diligence be obtained;

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

9 “(C) informs, either personally or through a
10 designee, a judge having jurisdiction under section
11 103 at the time of such authorization that the deci-
12 sion has been made to employ emergency electronic
13 surveillance; and

14 “(D) makes an application in accordance with
15 this title to a judge having jurisdiction under section
16 103 as soon as practicable, but not later than 7 days
17 after the Attorney General authorizes such surveil-
18 lance.

19 “(2) If the Attorney General authorizes the emer-
20 gency employment of electronic surveillance under para-
21 graph (1), the Attorney General shall require that the
22 minimization procedures required by this title for the
23 issuance of a judicial order be followed.

24 “(3) In the absence of a judicial order approving such
25 electronic surveillance, the surveillance shall terminate

1 when the information sought is obtained, when the appli-
2 cation for the order is denied, or after the expiration of
3 7 days from the time of authorization by the Attorney
4 General, whichever is earliest.

5 “(4) A denial of the application made under this sub-
6 section may be reviewed as provided in section 103.

7 “(5) In the event that such application for approval
8 is denied, or in any other case where the electronic surveil-
9 lance is terminated and no order is issued approving the
10 surveillance, no information obtained or evidence derived
11 from such surveillance shall be received in evidence or oth-
12 erwise disclosed in any trial, hearing, or other proceeding
13 in or before any court, grand jury, department, office,
14 agency, regulatory body, legislative committee, or other
15 authority of the United States, a State, or political sub-
16 division thereof, and no information concerning any
17 United States person acquired from such surveillance shall
18 subsequently be used or disclosed in any other manner by
19 Federal officers or employees without the consent of such
20 person, except with the approval of the Attorney General
21 if the information indicates a threat of death or serious
22 bodily harm to any person.

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

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

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

9 **SEC. 106. USE OF INFORMATION.**

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

14 **SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.**

15 (a) APPLICATIONS.—Section 303 of the Foreign In-
16 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
17 amended—

18 (1) in subsection (a)—

19 (A) by striking paragraph (2);

20 (B) by redesignating paragraphs (3)
21 through (9) as paragraphs (2) through (8), re-
22 spectively;

23 (C) in paragraph (2), as redesignated by
24 subparagraph (B) of this paragraph, by striking
25 “detailed”;

1 (D) in paragraph (3)(C), as redesignated
2 by subparagraph (B) of this paragraph, by in-
3 serting “or is about to be” before “owned”; and
4 [(E) in paragraph (6), as redesignated by
5 subparagraph (B) of this paragraph, in the
6 matter preceding subparagraph (A)—

7 (i) by striking “Affairs or” and insert-
8 ing “Affairs,”; and

9 (ii) by striking “Senate—” and insert-
10 ing “Senate, or the Deputy Director of the
11 Federal Bureau of Investigation, if des-
12 ignated by the President as a certifying of-
13 ficial—”; and/

14 (2) in subsection (d)(1)(A), by striking “or the
15 Director of National Intelligence” and inserting “the
16 Director of National Intelligence, or the Director of
17 the Central Intelligence Agency”.

18 (b) ORDERS.—Section 304 of the Foreign Intel-
19 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
20 amended—

21 (1) in subsection (a)—

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

23 (B) by redesignating paragraphs (2)
24 through (5) as paragraphs (1) through (4), re-
25 spectively; and

1 (2) by amending subsection (e) to read as fol-
2 lows:

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

7 “(A) *reasonably* determines that an emergency
8 situation exists with respect to the employment of a
9 physical search to obtain foreign intelligence infor-
10 mation before an order authorizing such physical
11 search can with due diligence be obtained;

12 “(B) *reasonably* determines that the factual
13 basis for issuance of an order under this title to ap-
14 prove such physical search exists;

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

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

1 “(2) If the Attorney General authorizes the emer-
2 gency employment of a physical search under paragraph
3 (1), the Attorney General shall require that the minimiza-
4 tion procedures required by this title for the issuance of
5 a judicial order be followed.

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

12 “(4) A denial of the application made under this sub-
13 section may be reviewed as provided in section 103.

14 “(5)(A) In the event that such application for ap-
15 proval is denied, or in any other case where the physical
16 search is terminated and no order is issued approving the
17 physical search, no information obtained or evidence de-
18 rived from such physical search shall be received in evi-
19 dence or otherwise disclosed in any trial, hearing, or other
20 proceeding in or before any court, grand jury, department,
21 office, agency, regulatory body, legislative committee, or
22 other authority of the United States, a State, or political
23 subdivision thereof, and no information concerning any
24 United States person acquired from such physical search
25 shall subsequently be used or disclosed in any other man-

1 ner by Federal officers or employees without the consent
2 of such person, except with the approval of the Attorney
3 General if the information indicates a threat of death or
4 serious bodily harm to any person.

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

7 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
8 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
9 is amended—

10 (1) in section 304(a)(4), as redesignated by
11 subsection (b) of this section, by striking

12 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

13 (2) in section 305(k)(2), by striking
14 “303(a)(7)” and inserting “303(a)(6)”.

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

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

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

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

23 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

24 (a) DESIGNATION OF JUDGES.—Subsection (a) of
25 section 103 of the Foreign Intelligence Surveillance Act

1 of 1978 (50 U.S.C. 1803) is amended by inserting “at
2 least” before “seven of the United States judicial cir-
3 cuits”.

4 (b) EN BANC AUTHORITY.—

5 (1) IN GENERAL.—Subsection (a) of section
6 103 of the Foreign Intelligence Surveillance Act of
7 1978, as amended by subsection (a) of this section,
8 is further amended—

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

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

12 “(2)(A) The court established under this subsection,
13 ~~may~~, on its own initiative, or upon the request of the Gov-
14 ernment in any proceeding or a party under section 501(f)
15 or paragraph (4) or (5) of section 702(h), ~~may 703(h)~~,
16 hold a hearing or rehearing, en banc, when ordered by a
17 majority of the judges that constitute such court upon a
18 determination that—

19 “(i) en banc consideration is necessary to se-
20 cure or maintain uniformity of the court’s decisions;
21 or

22 “(ii) the proceeding involves a question of ex-
23 ceptional importance.

24 “(B) Any authority granted by this Act to a judge
25 of the court established under this subsection may be exer-

1 cised by the court en banc. When exercising such author-
2 ity, the court en banc shall comply with any requirements
3 of this Act on the exercise of such authority.

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

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

10 (A) in subsection (a) of section 103, as
11 amended by this subsection, by inserting “(ex-
12 cept when sitting en banc under paragraph
13 (2))” after “no judge designated under this
14 subsection”; and

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

18 (c) STAY OR MODIFICATION DURING AN APPEAL.—
19 Section 103 of the Foreign Intelligence Surveillance Act
20 of 1978 (50 U.S.C. 1803) is amended—

21 (1) by redesignating subsection (f) as sub-
22 section (g); and

23 (2) by inserting after subsection (e) the fol-
24 lowing new subsection:

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

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

17 (d) AUTHORITY OF FOREIGN INTELLIGENCE SUR-
18 VEILLANCE COURT.—Section 103 of the Foreign Intel-
19 ligence Surveillance Act of 1978 (50 U.S.C. 1803), as
20 amended by this Act, is amended by adding at the end
21 the following:

22 “(i)(h)(1) Nothing in this Act shall be *construed con-*
23 *sidered* to reduce or contravene the inherent authority of
24 the *court established by subsection (a) Foreign Intelligence*
25 *Surveillance Court* to determine, or enforce, compliance

1 with an order or a rule of such ~~court~~ Court or with a pro-
2 cedure approved by such ~~court~~ Court.

3 “(2) In this subsection, the terms ‘Foreign Intel-
4 ligence Surveillance Court’ and ‘Court’ mean the court es-
5 tablished by subsection (a).”

6 **SEC. [110. REVIEW OF PREVIOUS ACTIONS.**

7 (a) *DEFINITIONS.*—“(2) In this section:

8 (1) *APPROPRIATE COMMITTEES OF CONGRESS.*—

9 The term “appropriate committees of Congress”
10 means—

11 (A) ~~subsection~~, the *Select Committee on In-*
12 *telligence and the Committee on the Judiciary of*
13 *the Senate; and*

14 (B) *the Permanent Select Committee on*
15 *terms ‘Foreign Intelligence and the Committee*
16 *on the Judiciary of the House of Representatives.*

17 (2) *FOREIGN INTELLIGENCE SURVEILLANCE*
18 *COURT.*—The term “Foreign Intelligence Surveillance
19 Court” means the court established by section 103(a)
20 of the ~~terms ‘Foreign Intelligence Surveillance Act of~~
21 *1978 (50 U.S.C. 1803(a)).*

22 (3) *PRESIDENT’S SURVEILLANCE PROGRAM AND*
23 *PROGRAM.*—The terms “President’s Surveillance Pro-
24 gram” and “Program” mean the intelligence activity
25 involving communications that was authorized by the

1 *President during the period beginning on September*
2 *11, 2001, and ending on January 17, 2007, including*
3 *the program referred to by the President in a radio*
4 *address on December 17, 2005 (commonly known as*
5 *the Terrorist Surveillance Program). Court¹ and*
6 ~~“Court”~~ *mean the court established by subsection*
7 ~~(a).”~~

8 (b) *REVIEWS.—*

9 (1) *REQUIREMENT TO CONDUCT.—The Inspectors*
10 *General of the Department of Justice, the Office of the*
11 *Director of National Intelligence, the National Secu-*
12 *rity Agency, and any other element of the intelligence*
13 *community that participated in the President’s Sur-*
14 *veillance Program, shall complete a comprehensive re-*
15 *view of, with respect to the oversight authority and*
16 *responsibility of each such Inspector General—*

17 (A) *all of the facts necessary to describe the*
18 *establishment, implementation, product, and use*
19 *of the product of the Program;*

20 (B) *the procedures and substance of, and*
21 *access to, the legal reviews of the Program;*

22 (C) *communications with, and participa-*
23 *tion of, individuals and entities in the private*
24 *sector related to the Program;*

1 (D) *interaction with the Foreign Intel-*
2 *ligence Surveillance Court and transition to*
3 *court orders related to the Program; and*

4 (E) *any other matters identified by any*
5 *such Inspector General that would enable that*
6 *Inspector General to complete a review of the*
7 *Program, with respect to such Department or*
8 *element.*

9 (2) *COOPERATION AND COORDINATION.—*

10 (A) *COOPERATION.—Each Inspector Gen-*
11 *eral required to conduct a review under para-*
12 *graph (1) shall—*

13 (i) *work in conjunction, to the extent*
14 *practicable, with any other Inspector Gen-*
15 *eral required to conduct such a review; and*

16 (ii) *utilize to the extent practicable,*
17 *and not unnecessarily duplicate or delay,*
18 *such reviews or audits that have been com-*
19 *pleted or are being undertaken by any such*
20 *Inspector General or by any other office of*
21 *the Executive Branch related to the Pro-*
22 *gram.*

23 (B) *COORDINATION.—The Inspectors Gen-*
24 *eral shall designate one of the Inspectors General*
25 *required to conduct a review under paragraph*

1 (1) that is appointed by the President, by and
2 with the advice and consent of the Senate, to co-
3 ordinate the conduct of the reviews and the prep-
4 aration of the reports.

5 (c) *REPORTS.*—

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

15 (2) *FINAL REPORT.*—Not later than 1 year after
16 the date of the enactment of this Act, the Inspectors
17 General of the Department of Justice, the Office of the
18 Director of National Intelligence, the National Secu-
19 rity Agency, and any other Inspector General re-
20 quired to conduct a review under subsection (b)(1),
21 shall submit to the appropriate committees of Con-
22 gress, to the extent practicable, a comprehensive re-
23 port on such reviews that includes any recommenda-
24 tions of any such Inspectors General within the over-

1 *sight authority and responsibility of any such Inspec-*
2 *tor General with respect to the reviews.*

3 (3) *FORM.—A report submitted under this sub-*
4 *section shall be submitted in unclassified form, but*
5 *may include a classified annex. The unclassified re-*
6 *port shall not disclose the name or identity of any in-*
7 *dividual or entity of the private sector that partici-*
8 *ipated in the Program or with whom there was com-*
9 *munication about the Program* [, *to the extent that*
10 *information is classified.*]

11 (d) *RESOURCES.—*

12 (1) *EXPEDITED SECURITY CLEARANCE.—The Di-*
13 *rector of National Intelligence shall ensure that the*
14 *process for the investigation and adjudication of an*
15 *application by an Inspector General or any appro-*
16 *priate staff of an Inspector General for a security*
17 *clearance necessary for the conduct of the review*
18 *under subsection (b)(1) is carried out as expeditiously*
19 *as possible.*

20 (2) *ADDITIONAL PERSONNEL FOR THE INSPEC-*
21 *TORS GENERAL.—An Inspector General required to*
22 *conduct a review under subsection (b)(1) and submit*
23 *a report under subsection (c) is authorized to hire*
24 *such additional personnel as may be necessary to*
25 *carry out such review and prepare such report in a*

1 *prompt and timely manner. Personnel authorized to*
2 *be hired under this paragraph—*

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

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

8 **SEC. 111. ~~110.~~ WEAPONS OF MASS DESTRUCTION.**

9 (a) DEFINITIONS.—

10 (1) FOREIGN POWER.—Subsection (a)(4) of sec-
11 tion 101 of the Foreign Intelligence Surveillance Act
12 of 1978 (50 U.S.C. 1801(a)) is amended—
13 1801(a)(4)) is amended by inserting “, the inter-
14 national proliferation of weapons of mass destruc-
15 tion,” after “international terrorism”.

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

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

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

22 “(7) an entity not substantially composed of
23 United States persons that is engaged in the inter-
24 national proliferation of weapons of mass destruc-
25 tion.”.

1 (2) AGENT OF A FOREIGN POWER.—Subsection

2 (b)(1) of such section 101 is amended—

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

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

7 ~~(C)~~ by adding at the end the following new
8 *subparagraph* ~~subparagraphs~~:

9 “(D) engages in the international prolifera-
10 tion of weapons of mass destruction, or activi-
11 ties in preparation therefor; or”.

12 ~~“(E) engages in the international prolifera-
13 tion of weapons of mass destruction, or activi-
14 ties in preparation therefor, for or on behalf of
15 a foreign power; or”.~~

16 (3) FOREIGN INTELLIGENCE INFORMATION.—

17 Subsection (e)(1)(B) of such section 101 is amended
18 by striking “sabotage or international terrorism”
19 and inserting “sabotage, international terrorism, or
20 the international proliferation of weapons of mass
21 destruction”.

22 (4) WEAPON OF MASS DESTRUCTION.—Such
23 section 101 is amended by *adding at the end* ~~insert-~~
24 ~~ing after subsection (e)~~ the following *new subsection*:

25 ;

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

2 “(1) any *explosive, incendiary, or poison gas de-*
3 *structive device described in section 921(a)(4)(A) of*
4 *title 18, United States Code, that is intended or has*
5 *the capability to cause a mass casualty incident;*
6 *death or serious bodily injury to a significant num-*
7 *ber of people;*

8 “(2) any weapon that is designed or intended to
9 cause death or serious bodily injury *to a significant*
10 *number of persons* through the release, dissemina-
11 tion, or impact of toxic or poisonous chemicals or
12 their precursors;

13 “(3) any weapon involving a biological agent,
14 toxin, or vector (as such terms are defined in section
15 178 of title 18, United States Code) *that is designed,*
16 *intended, or has the capability of causing death, ill-*
17 *ness, or serious bodily injury to a significant number*
18 *of persons; ; or*

19 “(4) any weapon that is designed, *intended, or*
20 *has the capability of releasing to release radiation or*
21 *radioactivity causing death, illness, or serious bodily*
22 *injury to at a significant number of persons. level*
23 *dangerous to human life.”.*

24 (b) USE OF INFORMATION.—

1 (1) IN GENERAL.—Section 106(k)(1)(B) of the
2 Foreign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
4 otage or international terrorism” and inserting “sab-
5 otage, international terrorism, or the international
6 proliferation of weapons of mass destruction”.

7 (2) PHYSICAL SEARCHES.—Section
8 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
9 is amended by striking “sabotage or international
10 terrorism” and inserting “sabotage, international
11 terrorism, or the international proliferation of weap-
12 ons of mass destruction”.

13 (c) TECHNICAL AND CONFORMING AMENDMENT.—
14 Section 301(1) of the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting
16 “*weapon* “~~“*weapon* of mass destruction~~,” after “*person*,”
17 “~~“*person*”~~”.

18 **[SEC. 112. STATUTE OF LIMITATIONS.]**

19 **[(a) IN GENERAL.—Section 109 of the Foreign Intel-**
20 **ligence Surveillance Act of 1978 (50 U.S.C. 1809) is amend-**
21 **ed by adding at the end the following new subsection:]**

22 **["(e) STATUTE OF LIMITATIONS.—No person shall be**
23 **prosecuted, tried, or punished for any offense under this sec-**
24 **tion unless the indictment is found or the information is**

1 *instituted not later than 10 years after the commission of*
2 *the offense.”.]*

3 **[(b) APPLICATION.—***The amendment made by sub-*
4 *section (a) shall apply to any offense committed before the*
5 *date of the enactment of this Act if the statute of limitations*
6 *applicable to that offense has not run as of such date.]*

7 **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

8 Section 103(c) of the Foreign Intelligence Surveil-
9 lance Act of 1978 (50 U.S.C. 1803(c)) is amended—

10 (1) in paragraph (1), by striking “105B(h) or
11 501(f)(1)” and inserting “501(f)(1) or 703”; and

12 (2) in paragraph (2), by striking “105B(h) or
13 501(f)(1)” and inserting “501(f)(1) or 703”.

14 **[TITLE II—PROTECTIONS FOR**
15 **ELECTRONIC COMMUNICA-**
16 **TION SERVICE PROVIDERS]**

17 **[SEC. 201. DEFINITIONS.**

18 In this title:]

19 **[(1) ASSISTANCE.—**The term “assistance”
20 means the provision of, or the provision of access to,
21 information (including communication contents,
22 communications records, or other information relat-
23 ing to a customer or communication), facilities, or
24 another form of assistance.]

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

5 **[(3) COVERED CIVIL ACTION.—**The term “cov-
6 ered civil action” means a civil action filed in a Fed-
7 eral or State court that—**]**

8 **[(A)** alleges that an electronic communica-
9 tion service provider furnished assistance to an
10 element of the intelligence community; and**]**

11 **[(B)** seeks monetary or other relief from
12 the electronic communication service provider
13 related to the provision of such assistance.**]**

14 **[(4) ELECTRONIC COMMUNICATION SERVICE**
15 **PROVIDER.—**The term “electronic communication
16 service provider” means—**]**

17 **[(A)** a telecommunications carrier, as that
18 term is defined in section 3 of the Communica-
19 tions Act of 1934 (47 U.S.C. 153);**]**

20 **[(B)** a provider of an electronic commu-
21 nication service, as that term is defined in sec-
22 tion 2510 of title 18, United States Code;**]**

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

1 [(D) any other communication service pro-
2 vider who has access to wire or electronic com-
3 munications either as such communications are
4 transmitted or as such communications are
5 stored;]

6 [(E) a parent, subsidiary, affiliate, suc-
7 cessor, or assignee of an entity described in
8 subparagraph (A), (B), (C), or (D); or]

9 [(F) an officer, employee, or agent of an
10 entity described in subparagraph (A), (B), (C),
11 (D), or (E).]

12 [(5) ELEMENT OF THE INTELLIGENCE COMMU-
13 NITY.—The term “element of the intelligence com-
14 munity” means an element of the intelligence com-
15 munity specified in or designated under section 3(4)
16 of the National Security Act of 1947 (50 U.S.C.
17 401a(4)).]

18 **[SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**
19 **TRONIC COMMUNICATION SERVICE PRO-**
20 **VIDERS.]**

21 [(a) LIMITATIONS.—]

22 [(1) IN GENERAL.—Notwithstanding any other
23 provision of law, a covered civil action shall not lie
24 or be maintained in a Federal or State court, and

1 shall be promptly dismissed, if the Attorney General
2 certifies to the court that—】

3 【(A) the assistance alleged to have been
4 provided by the electronic communication serv-
5 ice provider was—】

6 【(i) in connection with an intelligence
7 activity involving communications that
8 was—】

9 【(I) authorized by the President
10 during the period beginning on Sep-
11 tember 11, 2001, and ending on Jan-
12 uary 17, 2007; and】

13 【(II) designed to detect or pre-
14 vent a terrorist attack, or activities in
15 preparation for a terrorist attack,
16 against the United States; and】

17 【(ii) described in a written request or
18 directive from the Attorney General or the
19 head of an element of the intelligence com-
20 munity (or the deputy of such person) to
21 the electronic communication service pro-
22 vider indicating that the activity was—】

23 【(I) authorized by the President;
24 and】

1 【(II) determined to be lawful;
2 or】

3 【(B) the electronic communication service
4 provider did not provide the alleged assistance.】

5 【(2) REVIEW.—A certification made pursuant
6 to paragraph (1) shall be subject to review by a
7 court for abuse of discretion.】

8 【(b) REVIEW OF CERTIFICATIONS.—If the Attorney
9 General files a declaration under section 1746 of title 28,
10 United States Code, that disclosure of a certification made
11 pursuant to subsection (a) would harm the national secu-
12 rity of the United States, the court shall—】

13 【(1) review such certification in camera and ex
14 parte; and】

15 【(2) limit any public disclosure concerning such
16 certification, including any public order following
17 such an ex parte review, to a statement that the con-
18 ditions of subsection (a) have been met, without dis-
19 closing the subparagraph of subsection (a)(1) that is
20 the basis for the certification.】

21 【(c) NONDELEGATION.—The authority and duties of
22 the Attorney General under this section shall be performed
23 by the Attorney General (or Acting Attorney General) or
24 a designee in a position not lower than the Deputy Attor-
25 ney General.】

1 【“(1) ASSISTANCE.—The term ‘assistance’
2 means the provision of, or the provision of access to,
3 information (including communication contents,
4 communications records, or other information relat-
5 ing to a customer or communication), facilities, or
6 another form of assistance.】

7 【“(2) ATTORNEY GENERAL.—The term ‘Attor-
8 ney General’ has the meaning give that term in sec-
9 tion 101(g).】

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

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

15 【“(A) a telecommunications carrier, as
16 that term is defined in section 3 of the Commu-
17 nications 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
25 provider who has access to wire or electronic

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

4 【“(E) a parent, subsidiary, affiliate, suc-
5 cessor, or assignee of an entity described in
6 subparagraph (A), (B), (C), or (D); or】

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

10 【“(5) ELEMENT OF THE INTELLIGENCE COM-
11 MUNITY.—The term ‘element of the intelligence com-
12 munity’ means an element of the intelligence com-
13 munity as specified or designated under section 3(4)
14 of the National Security Act of 1947 (50 U.S.C.
15 401a(4)).】

16 【“(6) PERSON.—The term ‘person’ means—】

17 【“(A) an electronic communication service
18 provider; or】

19 【“(B) a landlord, custodian, or other per-
20 son who may be authorized or required to fur-
21 nish assistance pursuant to—】

22 【“(i) an order of the court established
23 under section 103(a) directing such assist-
24 ance;】

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

4 【“(iii) a directive under section
5 102(a)(4), 105B(e), as in effect on the day
6 before the date of the enactment of the
7 FISA Amendments Act of 2008 or 702(h).
8 ~~703(h)~~ -】

9 【“(7) STATE.—The term ‘State’ means any
10 State, political subdivision of a State, the Common-
11 wealth of Puerto Rico, the District of Columbia, and
12 any territory or possession of the United States, and
13 includes any officer, public utility commission, or
14 other body authorized to regulate an electronic com-
15 munication service provider.】

16 **【“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
17 **DEFENSES.】**

18 **【“(a) REQUIREMENT FOR CERTIFICATION.—】**

19 【“(1) IN GENERAL.—Notwithstanding any
20 other provision of law, no civil action may lie or be
21 maintained in a Federal or State court against any
22 person for providing assistance to an element of the
23 intelligence community, and shall be promptly dis-
24 missed, if the Attorney General certifies to the court
25 that—】

1 【“(A) any assistance by that person was
2 provided pursuant to an order of the court es-
3 tablished under section 103(a) directing such
4 assistance;】

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

9 【“(C) any assistance by that person was
10 provided pursuant to a directive under sections
11 102(a)(4), 105B(e), as in effect on the day be-
12 fore the date of the enactment of the FISA
13 Amendments Act of 2008, or ~~702(h)~~ ~~703(h)~~ di-
14 recting such assistance; or】

15 【“(D) the person did not provide the al-
16 leged assistance.】

17 【“(2) REVIEW.—A certification made pursuant
18 to paragraph (1) shall be subject to review by a
19 court for abuse of discretion.】

20 【“(b) LIMITATIONS ON DISCLOSURE.—If the Attor-
21 ney General files a declaration under section 1746 of title
22 28, United States Code, that disclosure of a certification
23 made pursuant to subsection (a) would harm the national
24 security of the United States, the court shall—】

1 【“(1) review such certification in camera and
2 ex parte; and】

3 【“(2) limit any public disclosure concerning
4 such certification, including any public order fol-
5 lowing such an ex parte review, to a statement that
6 the conditions of subsection (a) have been met, with-
7 out disclosing the subparagraph of subsection (a)(1)
8 that is the basis for the certification.】

9 【“(c) REMOVAL.—A civil action against a person for
10 providing assistance to an element of the intelligence com-
11 munity that is brought in a State court shall be deemed
12 to arise under the Constitution and laws of the United
13 States and shall be removable under section 1441 of title
14 28, United States Code.】

15 【“(d) RELATIONSHIP TO OTHER LAWS.—Nothing in
16 this section may be construed to limit any otherwise avail-
17 able immunity, privilege, or defense under any other provi-
18 sion of law.】

19 【“(e) APPLICABILITY.—This section shall apply to a
20 civil action pending on or filed after the date of enactment
21 of the FISA Amendments Act of 2008.”.】

22 **【SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.**

23 Title VIII of the Foreign Intelligence Surveillance
24 Act (50 U.S.C. 1801 et seq.), as added by section 203

1 of this Act, is amended by adding at the end the following
2 new section:】

3 **【“SEC. 803. PREEMPTION.】**

4 **【“(a) IN GENERAL.—No State shall have authority**
5 **to—】**

6 **【“(1) conduct an investigation into an elec-**
7 **tronic communication service provider’s alleged as-**
8 **sistance to an element of the intelligence commu-**
9 **nity;】**

10 **【“(2) require through regulation or any other**
11 **means the disclosure of information about an elec-**
12 **tronic communication service provider’s alleged as-**
13 **sistance to an element of the intelligence commu-**
14 **nity;】**

15 **【“(3) impose any administrative sanction on an**
16 **electronic communication service provider for assist-**
17 **ance to an element of the intelligence community;**
18 **or】**

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

1 [“(b) SUITS BY THE UNITED STATES.—The United
2 States may bring suit to enforce the provisions of this sec-
3 tion.]

4 [“(c) JURISDICTION.—The district courts of the
5 United States shall have jurisdiction over any civil action
6 brought by the United States to enforce the provisions of
7 this section.]

8 [“(d) APPLICATION.—This section shall apply to any
9 investigation, action, or proceeding that is pending on or
10 filed after the date of enactment of the FISA Amendments
11 Act of 2008.”.]

12 **[SEC. 205. TECHNICAL AMENDMENTS.**

13 The table of contents in the first section of the For-
14 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
15 1801 et seq.), as amended by section 101(b), is further
16 amended by adding at the end the following:]

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

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.]

1 **[TITLE II—PROTECTION OF PER-**
2 **SONS ASSISTING THE GOV-**
3 **ERNMENT]**

4 **[SEC. 201. STATUTORY DEFENSES.**

5 *The Foreign Intelligence Surveillance Act of 1978 (50*
6 *U.S.C. 1801 et seq.) is amended by adding after title VII*
7 *the following:]*

8 **["TITLE VIII—PROTECTION OF**
9 **PERSONS ASSISTING THE**
10 **GOVERNMENT]**

11 **["SEC. 801. DEFINITIONS.**

12 *"In this title:]*

13 **["(1) ASSISTANCE.—***The term 'assistance'*
14 *means the provision of, or the provision of access to,*
15 *information (including communication contents, com-*
16 *munications records, or other information relating to*
17 *a customer or communication), facilities, or another*
18 *form of assistance.]*

19 **["(2) ATTORNEY GENERAL.—***The term 'Attorney*
20 *General' has the meaning given that term in section*
21 *101(g).]*

22 **["(3) CONTENTS.—***The term 'contents' has the*
23 *meaning given that term in section 101(n).]*

24 **["(4) COVERED CIVIL ACTION.—***The term 'cov-*
25 *ered civil action' means a suit in Federal or State*

1 *court against any person for providing assistance to*
2 *an element of the intelligence community.]*

3 **["(5) ELECTRONIC COMMUNICATION SERVICE**
4 **PROVIDER.—The term ‘electronic communication serv-**
5 **ice provider’ means—]**

6 **["(A) a telecommunications carrier, as that**
7 **term is defined in section 3 of the Communica-**
8 **tions Act of 1934 (47 U.S.C. 153);]**

9 **["(B) a provider of electronic communica-**
10 **tion service, as that term is defined in section**
11 **2510 of title 18, United States Code;]**

12 **["(C) a provider of a remote computing**
13 **service, as that term is defined in section 2711**
14 **of title 18, United States Code;]**

15 **["(D) any other communication service**
16 **provider who has access to wire or electronic**
17 **communications either as such communications**
18 **are transmitted or as such communications are**
19 **stored;]**

20 **["(E) a parent, subsidiary, affiliate, suc-**
21 **cessor, or assignee of an entity described in sub-**
22 **paragraph (A), (B), (C), or (D); or]**

23 **["(F) an officer, employee, or agent of an**
24 **entity described in subparagraph (A), (B), (C),**
25 **(D), or (E).]**

1 **["(6) INTELLIGENCE COMMUNITY.—***The term*
2 *'intelligence community' has the meaning given that*
3 *term in section 3(4) of the National Security Act of*
4 *1947 (50 U.S.C. 401a(4)).]*

5 **["(7) PERSON.—***The term 'person' means—*

6 **["(A) an electronic communication service**
7 *provider; or]*

8 **["(B) a landlord, custodian, or other per-**
9 *son who may be authorized or required to fur-*
10 *nish assistance pursuant to—]*

11 **["(i) an order of the court established**
12 *under section 103(a) directing such assist-*
13 *ance;]*

14 **["(ii) a certification in writing under**
15 *section 2511(2)(a)(ii)(B) or 2709(b) of title*
16 *18, United States Code; or]*

17 **["(iii) a directive under section**
18 *102(a)(4), 105B(e), as added by section 2 of*
19 *the Protect America Act of 2007 (Public*
20 *Law 110–55), or 703(h).]*

21 **["(8) STATE.—***The term 'State' means any*
22 *State, political subdivision of a State, the Common-*
23 *wealth of Puerto Rico, the District of Columbia, and*
24 *any territory or possession of the United States, and*
25 *includes any officer, public utility commission, or*

1 *other body authorized to regulate an electronic com-*
2 *munication service provider.】*

3 **【“SEC. 802. PROCEDURES FOR COVERED CIVIL ACTIONS.】**

4 **【“(a) INTERVENTION BY GOVERNMENT.—***In any cov-*
5 *ered civil action, the court shall permit the Government to*
6 *intervene. Whether or not the Government intervenes in the*
7 *civil action, the Attorney General may submit any informa-*
8 *tion in any form the Attorney General determines is appro-*
9 *priate and the court shall consider all such submissions.】*

10 **【“(b) FACTUAL AND LEGAL DETERMINATIONS.—***In*
11 *any covered civil action, any party may submit to the court*
12 *evidence, briefs, arguments, or other information on any*
13 *matter with respect to which a privilege based on state se-*
14 *crets is asserted. The court shall review any such submission*
15 *in accordance with the procedures set forth in section 106(f)*
16 *and may, based on the review, make any appropriate deter-*
17 *mination of fact or law. The court may, on motion of the*
18 *Attorney General, take any additional actions the court*
19 *deems necessary to protect classified information. The court*
20 *may, to the extent practicable and consistent with national*
21 *security, request that any party present briefs and argu-*
22 *ments on any legal question the court determines is raised*
23 *by such a submission even if that party does not have full*
24 *access to the submission. The court shall consider whether*

1 *the employment of a special master or an expert witness,*
2 *or both, would facilitate proceedings under this section.】*

3 **【“(c) LOCATION OF REVIEW.—***The court may conduct*
4 *the review in a location and facility specified by the Attor-*
5 *ney General as necessary to ensure security.】*

6 **【“** 2 (d) REMOVAL.—***A covered civil action that is*
7 *brought in a State court shall be deemed to arise under the*
8 *Constitution and laws of the United States and shall be*
9 *removable under section 1441 of title 28, United States*
10 *Code.】*

11 **【“(e) SPECIAL RULE FOR CERTAIN CASES.—***For any*
12 *covered civil action alleging that a person provided assist-*
13 *ance to an element of the intelligence community pursuant*
14 *to a request or directive during the period from September*
15 *11, 2001 through January 17, 2007, the Attorney General*
16 *shall provide to the court any request or directive related*
17 *to the allegations under the procedures set forth in sub-*
18 *section (b).】*

19 **【“(f) APPLICABILITY.—***This section shall apply to a*
20 *civil action pending on or filed after the date of the enact-*
21 *ment of this Act.”.】*

22 **【SEC. 202. TECHNICAL AMENDMENTS.**

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

"TITLE VIII—PROTECTION OF PERSONS ASSISTING THE
GOVERNMENT

"Sec. 801. Definitions.

"Sec. 802. Procedures for covered civil actions."]

1 **[TITLE III—COMMISSION ON**
2 **WARRANTLESS ELECTRONIC**
3 **SURVEILLANCE ACTIVITIES]**

4 **[SEC. 301. COMMISSION ON WARRANTLESS ELECTRONIC**
5 **SURVEILLANCE ACTIVITIES.]**

6 **[(a) ESTABLISHMENT OF COMMISSION.—***There is es-*
7 *tablished in the legislative branch a commission to be*
8 *known as the "Commission on Warrantless Electronic Sur-*
9 *veillance Activities" (in this section referred to as the "Com-*
10 *mission").]*

11 **[(b) DUTIES OF COMMISSION.—]**

12 **[(1) IN GENERAL.—***The Commission shall—]*

13 **[(A) ascertain, evaluate, and report upon**
14 *the facts and circumstances relating to electronic*
15 *surveillance activities conducted without a war-*
16 *rant between September 11, 2001 and January*
17 *17, 2007;]*

18 **[(B) evaluate the lawfulness of such activi-**
19 *ties;]*

20 **[(C) examine all programs and activities**
21 *relating to intelligence collection inside the*
22 *United States or regarding United States per-*
23 *sons that were in effect or operation on Sep-*

1 *tember 11, 2001, and all such programs and ac-*
2 *tivities undertaken since that date, including the*
3 *legal framework or justification for those activi-*
4 *ties; and】*

5 *【(D) report to the President and Congress*
6 *the findings and conclusions of the Commission*
7 *and any recommendations the Commission con-*
8 *siders appropriate.】*

9 *【(2) PROTECTION OF NATIONAL SECURITY.—The*
10 *Commission shall carry out the duties of the Commis-*
11 *sion under this section in a manner consistent with*
12 *the need to protect national security.】*

13 *【(c) COMPOSITION OF COMMISSION.—】*

14 *【(1) MEMBERS.—The Commission shall be com-*
15 *posed of 9 members, of whom—】*

16 *【(A) 5 members shall be appointed jointly*
17 *by the majority leader of the Senate and the*
18 *Speaker of the House of Representatives; and】*

19 *【(B) 4 members shall be appointed jointly*
20 *by the minority leader of the Senate and the mi-*
21 *nority leader of the House of Representatives.】*

22 *【(2) QUALIFICATIONS.—It is the sense of Con-*
23 *gress that individuals appointed to the Commission*
24 *should be prominent United States citizens with sig-*

1 *nificant depth of experience in national security,*
2 *Constitutional law, and civil liberties.】*

3 **【(3) CHAIR; VICE CHAIR.—**

4 **【(A) CHAIR.—***The Chair of the Commission*
5 *shall be jointly appointed by the majority leader*
6 *of the Senate and the Speaker of the House of*
7 *Representatives from among the members ap-*
8 *pointed under paragraph (1)(A).】*

9 **【(B) VICE CHAIR.—***The Vice Chair of the*
10 *Commission shall be jointly appointed by the*
11 *minority leader of the Senate and the minority*
12 *leader of the House of Representatives from*
13 *among the members appointed under paragraph*
14 *(1)(B).】*

15 **【(4) DEADLINE FOR APPOINTMENT.—***All mem-*
16 *bers of the Commission shall be appointed not later*
17 *than 90 days after the date of the enactment of this*
18 *Act.】*

19 **【(5) INITIAL MEETING.—***The Commission shall*
20 *hold its first meeting and begin operations not later*
21 *than 45 days after the date on which a majority of*
22 *its members have been appointed.】*

23 **【(6) SUBSEQUENT MEETINGS.—***After its initial*
24 *meeting, the Commission shall meet upon the call of*
25 *the Chair.】*

1 **[(7) QUORUM.—***A majority of the members of*
2 *the Commission shall constitute a quorum, but a less-*
3 *er number may hold hearings.]*

4 **[(8) VACANCIES.—***Any vacancy in the Commis-*
5 *sion shall not affect its powers and shall be filled in*
6 *the same manner in which the original appointment*
7 *was made.]*

8 **[(d) POWERS OF COMMISSION.—]**

9 **[(1) HEARINGS AND EVIDENCE.—***The Commis-*
10 *sion or, on the authority of the Chair, any sub-*
11 *committee or member thereof may, for the purpose of*
12 *carrying out this section, hold such hearings and sit*
13 *and act at such times and places, take such testi-*
14 *mony, receive such evidence, and administer such*
15 *oaths as the Commission, such designated sub-*
16 *committee, or designated member may determine ad-*
17 *visable.]*

18 **[(2) SUBPOENAS.—**

19 **[(A) ISSUANCE.—**

20 **[(i) IN GENERAL.—***The Commission*
21 *may issue subpoenas requiring the attend-*
22 *ance and testimony of witnesses and the*
23 *production of any evidence relating to any*
24 *matter that the Commission is empowered*
25 *to investigate under this section. The at-*

1 *tendance of witnesses and the production of*
2 *evidence may be required from any place*
3 *within the United States at any designated*
4 *place of hearing within the United States.】*

5 【(ii) *SIGNATURE.*—*Subpoenas issued*
6 *under this paragraph may be issued under*
7 *the signature of the Chair of the Commis-*
8 *sion, the chair of any subcommittee created*
9 *by a majority of the Commission, or any*
10 *member designated by a majority of the*
11 *Commission and may be served by any per-*
12 *son designated by such Chair, subcommittee*
13 *chair, or member.】*

14 【(B) *ENFORCEMENT.*—

15 【(i) *IN GENERAL.*—*If a person refuses*
16 *to obey a subpoena issued under subpara-*
17 *graph (A), the Commission may apply to a*
18 *United States district court for an order re-*
19 *quiring that person to appear before the*
20 *Commission to give testimony, produce evi-*
21 *dence, or both, relating to the matter under*
22 *investigation. The application may be made*
23 *within the judicial district where the hear-*
24 *ing is conducted or where that person is*
25 *found, resides, or transacts business. Any*

1 *failure to obey the order of the court may*
2 *be punished by the court as civil contempt.】*

3 *【(ii) JURISDICTION.—In the case of*
4 *contumacy or failure to obey a subpoena*
5 *issued under subparagraph (A), the United*
6 *States district court for the judicial district*
7 *in which the subpoenaed person resides, is*
8 *served, or may be found, or where the sub-*
9 *poena is returnable, may issue an order re-*
10 *quiring such person to appear at any des-*
11 *ignated place to testify or to produce docu-*
12 *mentary or other evidence. Any failure to*
13 *obey the order of the court may be punished*
14 *by the court as a contempt of that court.】*

15 *【(iii) ADDITIONAL ENFORCEMENT.—In*
16 *the case of the failure of a witness to comply*
17 *with any subpoena or to testify when sum-*
18 *moned under authority of this paragraph,*
19 *the Commission, by majority vote, may cer-*
20 *tify a statement of fact attesting to such*
21 *failure to the appropriate United States at-*
22 *torney, who shall bring the matter before the*
23 *grand jury for its action, under the same*
24 *statutory authority and procedures as if the*
25 *United States attorney had received a cer-*

1 *tification under sections 102 through 104 of*
2 *the Revised Statutes of the United States (2*
3 *U.S.C. 192 through 194).】*

4 **【(3) CONTRACTING.—***The Commission may, to*
5 *such extent and in such amounts as are provided in*
6 *appropriations Acts, enter into contracts to enable the*
7 *Commission to discharge its duties under this sec-*
8 *tion.】*

9 **【(4) INFORMATION FROM FEDERAL AGENCIES.—**

10 **【(A) IN GENERAL.—***The Commission is au-*
11 *thorized to secure directly from any executive de-*
12 *partment, bureau, agency, board, commission, of-*
13 *ice, independent establishment, or instrumen-*
14 *tality of the Government documents, informa-*
15 *tion, suggestions, estimates, and statistics for the*
16 *purposes of this section. Each department, bu-*
17 *reau, agency, board, commission, office, inde-*
18 *pendent establishment, or instrumentality shall*
19 *furnish such documents, information, sugges-*
20 *tions, estimates, and statistics directly to the*
21 *Commission upon request made by the Chair, the*
22 *chair of any subcommittee created by a majority*
23 *of the Commission, or any member designated by*
24 *a majority of the Commission.】*

1 **[(B) RECEIPT, HANDLING, STORAGE, AND**
2 **DISSEMINATION.—***Information shall only be re-*
3 *ceived, handled, stored, and disseminated by*
4 *members of the Commission and its staff in a*
5 *manner consistent with all applicable statutes,*
6 *regulations, and Executive orders.]*

7 **[(5) ASSISTANCE FROM FEDERAL AGENCIES.—**

8 **[(A) GENERAL SERVICES ADMINISTRA-**
9 **TION.—***The Administrator of General Services*
10 *shall provide to the Commission on a reimburs-*
11 *able basis administrative support and other serv-*
12 *ices for the performance of the Commission's*
13 *functions.]*

14 **[(B) OTHER DEPARTMENTS AND AGEN-**
15 **CIES.—***In addition to the assistance prescribed*
16 *in subparagraph (A), departments and agencies*
17 *of the United States may provide to the Commis-*
18 *sion such services, funds, facilities, staff, and*
19 *other support services as they may determine ad-*
20 *visable and as may be authorized by law.]*

21 **[(6) GIFTS.—***The Commission may accept, use,*
22 *and dispose of gifts or donations of services or prop-*
23 *erty.]*

24 **[(7) POSTAL SERVICES.—***The Commission may*
25 *use the United States mails in the same manner and*

1 *under the same conditions as departments and agen-*
2 *cies of the United States.】*

3 **【(e) STAFF OF COMMISSION.—】**

4 **【(1) IN GENERAL.—**

5 **【(A) APPOINTMENT AND COMPENSATION.—**

6 *The Chair, in consultation with Vice Chair and*
7 *in accordance with rules agreed upon by the*
8 *Commission, may appoint and fix the compensa-*
9 *tion of an executive director and such other per-*
10 *sonnel as may be necessary to enable the Com-*
11 *mission to carry out its functions, without re-*
12 *gard to the provisions of title 5, United States*
13 *Code, governing appointments in the competitive*
14 *service, and without regard to the provisions of*
15 *chapter 51 and subchapter III of chapter 53 of*
16 *such title relating to classification and General*
17 *Schedule pay rates, except that no rate of pay*
18 *fixed under this paragraph may exceed the*
19 *equivalent of that payable for a position at level*
20 *V of the Executive Schedule under section 5316*
21 *of title 5, United States Code.】*

22 **【(B) PERSONNEL AS FEDERAL EMPLOY-**
23 **EES.—**

24 **【(i) IN GENERAL.—***The executive di-*
25 *rector and any personnel of the Commission*

1 *who are employees shall be employees under*
2 *section 2105 of title 5, United States Code,*
3 *for purposes of chapters 63, 81, 83, 84, 85,*
4 *87, 89, 89A, 89B, and 90 of that title.】*

5 **【(ii) MEMBERS OF COMMISSION.—**
6 *Clause (i) shall not be construed to apply to*
7 *members of the Commission.】*

8 **【(2) DETAILEES.—***A Federal Government em-*
9 *ployee may be detailed to the Commission without re-*
10 *imbursement from the Commission, and such detailee*
11 *shall retain the rights, status, and privileges of his or*
12 *her regular employment without interruption.】*

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

20 **【(f) SECURITY CLEARANCES FOR COMMISSION MEM-**
21 **BERS AND STAFF.—】**

22 **【(1) EXPEDITIOUS PROVISION OF CLEAR-**
23 **ANCES.—***The appropriate Federal agencies or depart-*
24 *ments shall cooperate with the Commission in expedi-*
25 *tiously providing to the Commission members and*

1 *staff appropriate security clearances to the extent pos-*
2 *sible pursuant to existing procedures and require-*
3 *ments, except that no person shall be provided with*
4 *access to classified information under this section*
5 *without the appropriate security clearances.】*

6 **【(2) ACCESS TO CLASSIFIED INFORMATION.—All**
7 *members of the Commission and commission staff, as*
8 *authorized by the Chair or the designee of the Chair,*
9 *who have obtained appropriate security clearances,*
10 *shall have access to classified information related to*
11 *the surveillance activities within the scope of the ex-*
12 *amination of the Commission and any other related*
13 *classified information that the members of the Com-*
14 *mission determine relevant to carrying out the duties*
15 *of the Commission under this section.】*

16 **【(3) FACILITIES AND RESOURCES.—The Direc-**
17 *tor of National Intelligence shall provide the Commis-*
18 *sion with appropriate space and technical facilities*
19 *approved by the Commission.】*

20 **【(g) COMPENSATION AND TRAVEL EXPENSES.—】**

21 **【(1) COMPENSATION.—Each member of the**
22 *Commission may be compensated at a rate not to ex-*
23 *ceed the daily equivalent of the annual rate of basic*
24 *pay in effect for a position at level IV of the Execu-*
25 *tive Schedule under section 5315 of title 5, United*

1 *States Code, for each day during which that member*
2 *is engaged in the actual performance of the duties of*
3 *the Commission.】*

4 *【(2) TRAVEL EXPENSES.—While away from*
5 *their homes or regular places of business in the per-*
6 *formance of services for the Commission, members of*
7 *the Commission shall be allowed travel expenses, in-*
8 *cluding per diem in lieu of subsistence, in the same*
9 *manner as persons employed intermittently in the*
10 *Government service are allowed expenses under sec-*
11 *tion 5703(b) of title 5, United States Code.】*

12 *【(h) NONAPPLICABILITY OF FEDERAL ADVISORY COM-*
13 *MITTEE ACT.—】*

14 *【(1) IN GENERAL.—The Federal Advisory Com-*
15 *mittee Act (5 U.S.C. App.) shall not apply to the*
16 *Commission.】*

17 *【(2) PUBLIC MEETINGS.—The Commission shall*
18 *hold public hearings and meetings to the extent ap-*
19 *propriate.】*

20 *【(3) PUBLIC HEARINGS.—Any public hearings*
21 *of the Commission shall be conducted in a manner*
22 *consistent with the protection of information provided*
23 *to or developed for or by the Commission as required*
24 *by any applicable statute, regulation, or Executive*
25 *order.】*

1 **[(i) REPORTS AND RECOMMENDATIONS OF COMMIS-**
2 **SION.—]**

3 **[(1) INTERIM REPORTS.—***The Commission may*
4 *submit to the President and Congress interim reports*
5 *containing such findings, conclusions, and rec-*
6 *ommendations for corrective measures as have been*
7 *agreed to by a majority of Commission members.]*

8 **[(2) FINAL REPORT.—***Not later than 1 year*
9 *after the date of its first meeting, the Commission, in*
10 *consultation with appropriate representatives of the*
11 *intelligence community, shall submit to the President*
12 *and Congress a final report containing such informa-*
13 *tion, analysis, findings, conclusions, and rec-*
14 *ommendations as have been agreed to by a majority*
15 *of Commission members.]*

16 **[(3) FORM.—***The reports submitted under para-*
17 *graphs (1) and (2) shall be submitted in unclassified*
18 *form, but may include a classified annex.]*

19 **[(4) RECOMMENDATIONS FOR DECLASSIFICA-**
20 **TION.—***The Commission may make recommendations*
21 *to the appropriate department or agency of the Fed-*
22 *eral Government regarding the declassification of doc-*
23 *uments or portions of documents.]*

24 **[(j) TERMINATION.—]**

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

5 **[(2) ADMINISTRATIVE ACTIVITIES BEFORE TER-**
6 **MINATION.—***The Commission may use the 60-day pe-*
7 *riod referred to in paragraph (1) for the purpose of*
8 *concluding its activities, including providing testi-*
9 *mony to committees of Congress concerning its report*
10 *and disseminating the final report.]*

11 **[(k) DEFINITIONS.—***In this section:]*

12 **[(1) INTELLIGENCE COMMUNITY.—***The term “in-*
13 *telligence community” has the meaning given the*
14 *term in section 3(4) of the National Security Act of*
15 *1947 (50 U.S.C. 401a(4)).]*

16 **[(2) UNITED STATES PERSON.—***The term*
17 *“United States person” has the meaning given the*
18 *term in section 101(i) of the Foreign Intelligence Sur-*
19 *veillance Act of 1978 (50 U.S.C. 1801(i)).]*

20 **[(l) FUNDING.—]**

21 **[(1) IN GENERAL.—***There are authorized to be*
22 *appropriated such sums as may be necessary to carry*
23 *out the activities of the Commission under this sec-*
24 *tion.]*

1 Surveillance Act of 1978 (50 U.S.C. 1805a,
2 1805b, and 1805c) are repealed.

3 (B) *TECHNICAL AND CONFORMING AMEND-*
4 *MENTS.*—

5 (i)(2) *TABLE OF CONTENTS.*—The
6 table of contents in the first section of the
7 Foreign Intelligence Surveillance Act of
8 1978 (50 U.S.C. 1801 *nt*) et seq.) is
9 amended by striking the items relating to
10 sections 105A, 105B, and 105C.

11 (c) *TRANSITIONS PROCEDURES.*—

12 (1) *PROTECTION FROM LIABILITY.*—Notwith-
13 standing subsection (b)(1), subsection (1) of section
14 105B of the Foreign Intelligence Surveillance Act of
15 1978 shall remain in effect with respect to any di-
16 rectives issued pursuant to such section 105B for in-
17 formation, facilities, or assistance provided during
18 the period such directive was or is in effect.

19 (2) *ORDERS IN EFFECT.*—

20 (A) *ORDERS IN EFFECT ON DATE OF EN-*
21 *ACTMENT.*—Notwithstanding any other provi-
22 sion of this Act or of the Foreign Intelligence
23 Surveillance Act of 1978—

24 (i) any order in effect on the date of
25 enactment of this Act issued pursuant to

1 the Foreign Intelligence Surveillance Act of
2 1978 or section 6(b) of the Protect Amer-
3 ica Act of 2007 (Public Law 110-55; 121
4 Stat. 556) shall remain in effect until the
5 date of expiration of such order; and

6 (ii) at the request of the applicant,
7 the court established under section 103(a)
8 of the Foreign Intelligence Surveillance Act
9 of 1978 (50 U.S.C. 1803(a)) shall reau-
10 thorize such order if the facts and cir-
11 cumstances continue to justify issuance of
12 such order under the provisions of such
13 Act, as in effect on the day before the date
14 of the enactment of the Protect America
15 Act of 2007, except as amended by sec-
16 tions 102, 103, 104, 105, 106, 107, 108,
17 109, and 110 of this Act.

18 (ii) *CONFORMING AMENDMENTS.*—*Ex-*
19 *cept as provided in section 304, section*
20 *103(e) of the Foreign Intelligence Surveil-*
21 *lance Act of 1978 (50 U.S.C. 1803(e)) is*
22 *amended—*

23 (I) *in paragraph (1), by striking*
24 *“105B(h) or 501(f)(1)” and inserting*
25 *“501(f)(1) or 702(h)(4)”*; and

1 (II) in paragraph (2), by striking
2 “105B(h) or 501(f)(1)” and inserting
3 “501(f)(1) or 702(h)(4)”.

4 (2) REPORTING REQUIREMENTS.—Except as pro-
5 vided in section 304, section 4 of the Protect America
6 Act of 2007 (Public Law 110-55; 121 Stat. 555) is re-
7 pealed.

8 (3) TRANSITION PROCEDURES.—Except as pro-
9 vided in section 304, subsection (b) of section 6 of the
10 Protect America Act of 2007 (Public Law 110-55; 121
11 Stat. 556) is repealed.

12 (b) FISA AMENDMENTS ACT OF 2008.—

13 ~~(B) ORDERS IN EFFECT ON DECEMBER 31,~~
14 2013.—Any order issued under title VII of the
15 Foreign Intelligence Surveillance Act of 1978,
16 as amended by section 101 of this Act, in effect
17 on ~~December 31, 2013,~~ shall continue in effect
18 until the date of the expiration of such order.
19 Any such order shall be governed by the appli-
20 cable provisions of the Foreign Intelligence Sur-
21 veillance Act of 1978, as so amended.

22 (1) IN GENERAL.—Except as provided in section
23 304, ~~effective December 31, 2011,~~ title VII of the For-
24 eign Intelligence Surveillance Act of 1978, as amend-
25 ed by section 101(a), is repealed.

1 (2) *TECHNICAL AND CONFORMING AMEND-*
2 *MENTS.—Effective December 31, 2011—*

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

6 (B) *except as provided in section 304, sec-*
7 *tion 601(a)(1) of such Act (50 U.S.C.*
8 *1871(a)(1)) is amended to read as such section*
9 *read on the day before the date of the enactment*
10 *of this Act; and*

11 (C) *except as provided in section 304, sec-*
12 *tion 2511(2)(a)(ii)(A) of title 18, United States*
13 *Code, is amended by striking “or a court order*
14 *pursuant to section 704 of the Foreign Intel-*
15 *ligence Surveillance Act of 1978”.*

16 **SEC. 304. TRANSITION PROCEDURES.**

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

19 (1) *CONTINUED EFFECT OF ORDERS, AUTHOR-*
20 *IZATIONS, DIRECTIVES.—Notwithstanding any other*
21 *provision of law, any order, authorization, or direc-*
22 *tive issued or made pursuant to section 105B of the*
23 *Foreign Intelligence Surveillance Act of 1978, as*
24 *added by section 2 of the Protect America Act of 2007*
25 *(Public Law 110-55; 121 Stat. 552), shall continue in*

1 *effect until the expiration of such order, authoriza-*
2 *tion, or directive.*

3 (3) AUTHORIZATIONS AND DIRECTIVES IN EF-
4 FECT.—

5 (A) AUTHORIZATIONS AND DIRECTIVES IN
6 EFFECT ON DATE OF ENACTMENT.—Notwith-
7 standing any other provision of this Act or of
8 the Foreign Intelligence Surveillance Act of
9 1978, any authorization or directive in effect on
10 the date of the enactment of this Act issued
11 pursuant to the Protect America Act of 2007,
12 or any amendment made by that Act, shall re-
13 main in effect until the date of expiration of
14 such authorization or directive. Any such au-
15 thorization or directive shall be governed by the
16 applicable provisions of the Protect America Act
17 of 2007 (121 Stat. 552), and the amendment
18 made by that Act, and, except as provided in
19 paragraph (4) of this subsection, any acquisi-
20 tion pursuant to such authorization or directive
21 shall be deemed not to constitute electronic sur-
22 veillance (as that term is defined in section
23 101(f) of the Foreign Intelligence Surveillance
24 Act of 1978 (50 U.S.C. 1801(f)), as construed
25 in accordance with section 105A of the Foreign

1 Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1805a)).

3 (B) AUTHORIZATIONS AND DIRECTIVES IN
4 EFFECT ON DECEMBER 31, 2013.—Any author-
5 ization or directive issued under title VII of the
6 Foreign Intelligence Surveillance Act of 1978,
7 as amended by section 101 of this Act, in effect
8 on December 31, 2013, shall continue in effect
9 until the date of the expiration of such author-
10 ization or directive. Any such authorization or
11 directive shall be governed by the applicable
12 provisions of the Foreign Intelligence Surveil-
13 lance Act of 1978, as so amended, and, except
14 as provided in section 707 of the Foreign Intel-
15 ligence Surveillance Act of 1978, as so amend-
16 ed, any acquisition pursuant to such authoriza-
17 tion or directive shall be deemed not to con-
18 stitute electronic surveillance (as that term is
19 defined in section 101(f) of the Foreign Intel-
20 ligence Surveillance Act of 1978, to the extent
21 that such section 101(f) is limited by section
22 701 of the Foreign Intelligence Surveillance Act
23 of 1978, as so amended).

24 (4) USE OF INFORMATION ACQUIRED UNDER
25 PROTECT AMERICA ACT.—

1 (2) *APPLICABILITY OF PROTECT AMERICA ACT OF*
2 *2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DI-*
3 *RECTIVES.—Notwithstanding any other provision of*
4 *this Act or of the Foreign Intelligence Surveillance*
5 *Act of 1978 (50 U.S.C. 1801 et seq.)—*

6 . (A) *subject to paragraph (3), section 105A*
7 *of such Act, as added by section 2 of the Protect*
8 *America Act of 2007 (Public Law 110-55; 121*
9 *Stat. 552), shall continue to apply to any acqui-*
10 *sition conducted pursuant to an order, author-*
11 *ization, or directive referred to in paragraph (1);*
12 *and*

13 (B) *sections 105B and 105C of such Act (as*
14 *so added) shall continue to apply with respect to*
15 *an order, authorization, or directive referred to*
16 *in paragraph (1) until the expiration of such*
17 *order, authorization, or directive.*

18 (3) *USE OF INFORMATION.—Information ac-*
19 *quired from an acquisition conducted pursuant to an*
20 *order, authorization, or directive referred to in para-*
21 *graph (1) [under the Protect America Act of 2007,*
22 *and the amendments made by that Act,] shall be*
23 *deemed to be information acquired from an elec-*
24 *tronic surveillance pursuant to title I of the Foreign*
25 *Intelligence Surveillance Act of 1978 (50 U.S.C.*

1 1801 et seq.) for purposes of section 106 of such
2 that Act (50 U.S.C. 1806), [except for purposes of
3 subsection (j) of such section].

4 (4) *PROTECTION FROM LIABILITY.*—Subsection
5 (l) of section 105B of the Foreign Intelligence Surveil-
6 lance Act of 1978, as added by section 2 of the Protect
7 America Act of 2007, shall continue to apply with re-
8 spect to any directives issued pursuant to such section
9 105B.

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

22 (6) *REPORTING REQUIREMENTS.*—

23 (A) *CONTINUED APPLICABILITY.*—Notwith-
24 standing any other provision of this Act, the
25 Protect America Act of 2007 (Public Law 110-

1 55), or the Foreign Intelligence Surveillance Act
2 of 1978 (50 U.S.C. 1801 et seq.), section 4 of the
3 Protect America Act of 2007 shall continue to
4 apply until the date that the certification de-
5 scribed in subparagraph (B) is submitted.

6 (B) CERTIFICATION.—The certification de-
7 scribed in this subparagraph is a certification—

8 (i) made by the Attorney General;

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

12 (iii) that states that there will be no
13 further acquisitions carried out under sec-
14 tion 105B of the Foreign Intelligence Sur-
15 veillance Act of 1978, as added by section 2
16 of the Protect America Act of 2007, after the
17 date of such certification; and

18 (iv) that states that the information re-
19 quired to be included under such section 4
20 relating to any acquisition conducted under
21 such section 105B has been included in a
22 semi-annual report required by such section

23 4.

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

1 (b) *TRANSITION PROCEDURES FOR FISA AMENDMENTS*
2 *ACT OF 2008 PROVISIONS.—*

3 (1) *ORDERS IN EFFECT ON DECEMBER 31,*
4 *2011.—Notwithstanding any other provision of this*
5 *Act or of the Foreign Intelligence Surveillance Act of*
6 *1978 (50 U.S.C. 1801 et seq.), any order, authoriza-*
7 *tion, or directive issued or made under title VII of the*
8 *Foreign Intelligence Surveillance Act of 1978, as*
9 *amended by section 101(a), shall continue in effect*
10 *until the date of the expiration of such order, author-*
11 *ization, or directive.*

12 (2) *APPLICABILITY OF TITLE VII OF FISA TO*
13 *CONTINUED ORDERS, AUTHORIZATIONS, DIREC-*
14 *TIVES.—Notwithstanding any other provision of this*
15 *Act or of the Foreign Intelligence Surveillance Act of*
16 *1978 (50 U.S.C. 1801 et seq.), with respect to any*
17 *order, authorization, or directive referred to in para-*
18 *graph (1), title VII of such Act, as amended by sec-*
19 *tion 101(a), shall continue to apply until the expira-*
20 *tion of such order, authorization, or directive.*

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