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2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

7 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

13 Sec.104.Applications for court orders.

14 Sec.105.Issuance of an order.

15 Sec.106.Use of information.

16 Sec.107.Amendments for physical searches.

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

18 Sec.109.Foreign Intelligence Surveillance Court.

19 Sec.110.Weapons of mass destruction.

20 TITLE II—PROTECTIONS FOR ELECTRONIC
21 COMMUNICATION SERVICE PROVIDERS

22 Sec.201.Procedures for implementing statutory defenses under the Foreign Intelligence
23 Surveillance Act of 1978.

24 ~~Sec.202.Preemption of State investigations.~~

25 ~~Sec.203.Reporting.~~

26 ~~Sec.204.Technical~~ Sec.202. Technical amendments.

27 TITLE III—REVIEW OF PREVIOUS ACTIONS

28 Sec.301.Review of previous actions.

29 TITLE IV—OTHER PROVISIONS

30 Sec.401.Severability.

31 Sec.402.Effective date.

32 Sec.403.Repeals.

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1 Sec.404.Transition procedures.

2 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

7 (1) by striking title VII; and

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

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

11 “SEC. 701. DEFINITIONS.

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

16 “(b) Additional Definitions.—

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

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

20 “(B) the Permanent Select Committee on Intelligence of the House of
21 Representatives.

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

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

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

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

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

33 “(C) a provider of a remote computing service, as that term is defined in section
34 2711 of title 18, United States Code;

35 “(D) any other communication service provider who has access to wire or electronic

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

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

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

7 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN**
8 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**
9 **UNITED STATES PERSONS.**

10 “(a) Authorization.—Notwithstanding any other provision of law, upon the issuance of an
11 order in accordance with subsection (i)(3) or a determination under subsection ~~(g)(1)(B)(c)(2)~~,
12 the Attorney General and the Director of National Intelligence may authorize jointly, for a period
13 of up to 1 year from the effective date of the authorization, the targeting of persons reasonably
14 believed to be located outside the United States to acquire foreign intelligence information.

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

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

18 “(2) may not intentionally target a person reasonably believed to be located outside the
19 United States if the purpose of such acquisition is to target a particular, known person
20 reasonably believed to be in the United States;

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

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

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

28 “(c) Conduct of Acquisition.—

29 “(1) IN GENERAL.—An acquisition authorized under subsection (a) shall be conducted
30 only in accordance with—

31 “(A) ~~the targeting and minimization procedures required by~~ **adopted in accordance**
32 **with subsections (d) and (e); and**

33 “(B) ~~upon submission of the certification in accordance with subsection (g), such~~
34 **certification.** “(2) DETERMINATION.—**A determination under this paragraph and for the**
35 **purposes of subsection (a) is a determination by the Attorney General and the Director**
36 **of National Intelligence that exigent circumstances exist because, without immediate**
37 **implementation of an authorization under paragraph (a), intelligence important to the**
38 **national security of the United States may be lost or not timely acquired and time does**
39 **not permit the issuance of an order pursuant to subsection (i)(3) prior to the**

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1 | implementation of such authorization.

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2 | “(3) TIMING OF DETERMINATION.—The Attorney General and the Director of
3 | National Intelligence may make the determination under paragraph (2)—

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4 | “(A) before the submission of a certification under subsection (g); or

5 | “(B) by amending a certification pursuant to subsection (i)(1)(C) at any time
6 | during which judicial review under subsection (i) of such certification is pending.

7 | “(4) CONSTRUCTION.—Nothing in title I shall be construed to require an application for a
8 | court order under such title for an acquisition that is targeted in accordance with this section
9 | at a person reasonably believed to be located outside the United States.

10 | “(d) Targeting Procedures.—

11 | “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
12 | of National Intelligence, shall adopt targeting procedures that are reasonably designed to
13 | to—

14 | “(A) ensure that any acquisition authorized under subsection (a) is limited to
15 | targeting persons reasonably believed to be located outside the United States and does
16 | not intentionally acquire; and

17 | “(B) prevent the intentional acquisition of any communication as to which the
18 | sender and all intended recipients are known at the time of the acquisition to be located
19 | in the United States.

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

22 | “(e) Minimization Procedures.—

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

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

29 | “(f) Guidelines for Compliance With Limitations.—

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

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

33 | “(B) that an application for a court order is filed if required by any other section of
34 | this Act as required by this Act.

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

38 | “(3)“(2) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines
39 | adopted pursuant to paragraph (1) to—

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- 1 “(A) the congressional intelligence committees;
- 2 “(B) the Committee on the Judiciary of the Senate;
- 3 “(C) the Committee on the Judiciary of the House of Representatives; and
- 4 “(D) the Foreign Intelligence Surveillance Court.

5 “(g) Certification.—

6 “(1) IN GENERAL.—

7 “(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an
8 acquisition authorized under subsection (a), the Attorney General and the Director of
9 National Intelligence shall provide to the Foreign Intelligence Surveillance Court,
10 under oath, a written certification and any supporting affidavit, under seal, in
11 accordance with this subsection.

12 “(B) EXCEPTION.—If Exception.—

13 ~~“(i) In general.—If the Attorney General and the Director of National Intelligence determine that~~
14 ~~exigent circumstances exist because, without immediate implementation of an authorization~~
15 ~~under subsection (a), intelligence important to the national security of the United States may be~~
16 ~~lost or not timely acquired make a determination under subsection (c)(2) and time does not~~
17 ~~permit the issuance of an order pursuant to submission of a certification under this subsection~~
18 ~~(i)(3) prior to the initiation of an acquisition implementation of an authorization under~~
19 ~~subsection (a), the Attorney General and the Director of National Intelligence may authorize the~~
20 ~~acquisition and, if no certification for such acquisition has been submitted to the Foreign~~
21 ~~Intelligence Surveillance Court, shall submit to the Court a certification for such authorization~~
22 ~~as soon as practicable but in no event later than 7 days after such determination is made.~~

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23 ~~“(ii) Timing.—The Attorney General and the Director of National Intelligence may make~~
24 ~~a determination in clause (i) before the filing of the certification or at any time during which~~
25 ~~judicial review under subsection (i) is pending.~~

26 ~~“(iii) Notification of determination of exigent circumstances.—If the Attorney General~~
27 ~~and the Director of National Intelligence make a determination under clause (i) after the~~
28 ~~submission of a certification for such acquisition to the Foreign Intelligence Surveillance~~
29 ~~Court, the Attorney General and the Director of National Intelligence shall notify the Court~~
30 ~~of such determination.~~

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

32 “(A) attest that—

33 “(i) there are reasonable procedures in place that have been approved, have
34 been submitted for approval, or will be submitted with the certification for
35 approval by the Foreign Intelligence Surveillance Court Court to—

36 “(I) ensure that the acquisition authorized under subsection (a)(a)—

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

39 “(II) does not intentionally acquire to prevent the intentional acquisition
40 of any communication as to which the sender and all intended recipients are

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1 known at the time of the acquisition to be located in the United States;

2 “(ii) the minimization procedures to be used with respect to such acquisition—

3 “(I) meet the definition of minimization procedures under section 101(h)
4 or section 301(4), as appropriate; and

5 “(II) have been approved, have been submitted for approval, or will be
6 submitted with the certification for approval by the Foreign Intelligence
7 Surveillance Court;

8 “(iii) guidelines have been adopted in accordance with subsection (f) to ensure
9 compliance with the limitations in subsection (b) and to ensure that applications
10 for court orders are filed as required by this Act;

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11 “(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are
12 consistent with the requirements of the fourth amendment to the Constitution of
13 the United States;

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

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

18 “(vii) the acquisition complies with the limitations in subsection (b);

19 “(B) include the procedures adopted in accordance with subsections (d) and (e);

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

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

23 “(ii) the head of an element of the intelligence community;

24 “(C)“(D) include—

25 “(i) an effective date for the authorization that is at least 30 days after the
26 submission of the written certification to the court; or

27 “(ii) if the acquisition has begun or the effective date is less than 30 days after
28 the submission of the written certification to the court, the date the acquisition
29 began or the effective date for the acquisition; and

30 “(E) if“(D) in the case of a certification submitted after the Attorney General and the
31 Director of National Intelligence make a determination under paragraph (1)(B)(i)
32 subsection (c)(2), include a statement that such determination has been made.

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33 “(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of National
34 Intelligence may advance or delay the effective date referred to in paragraph (2)(C)(2)(D)
35 by submitting an amended certification in accordance with this subsection to the Foreign
36 Intelligence Surveillance Court for review pursuant to subsection (i).

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

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1 “(5) MAINTENANCE OF CERTIFICATION.—The Attorney General or a designee of the
2 Attorney General shall maintain a copy of a certification made under this subsection.

3 “(6) REVIEW.—The certification required by this subsection shall be subject to judicial
4 review pursuant to subsection (i).

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

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

9 “(A) immediately provide the Government with all information, facilities, or
10 assistance necessary to accomplish the acquisition in a manner that will protect the
11 secrecy of the acquisition and produce a minimum of interference with the services
12 that such electronic communication service provider is providing to the target of the
13 acquisition; and

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

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

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

23 “(4) CHALLENGING OF DIRECTIVES.—

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

28 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed
29 under subparagraph (A) to 1 of the judges serving in the pool established by section
30 103(e)(1) not later than 24 hours after the filing of the petition.

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

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

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1 thereafter, the judge shall provide a written statement for the record of the reasons for a
2 determination under this subparagraph.

3 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition
4 described in subparagraph (A) requires plenary review, the judge shall affirm, modify,
5 or set aside the directive that is the subject of that petition not later than 30 days after
6 being assigned the petition. If the Court does not set aside the directive, the judge shall
7 immediately affirm or affirm with modifications the directive, and order the recipient
8 to comply with the directive in its entirety or as modified. The judge shall provide a
9 written statement for the record of the reasons for a determination under this
10 subparagraph.

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

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

15 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

35 “(6) APPEAL.—

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

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

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

8 “(1) IN GENERAL.—

9 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
10 Intelligence Surveillance Court shall have jurisdiction to review any certification
11 submitted in accordance with subsection (g) and the targeting and minimization
12 procedures adopted pursuant to in accordance with subsections (d) and (e), and any
13 amendments to such certification or procedures.

14 “(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted
15 in accordance with subsection (g) and the targeting and minimization procedures
16 submitted adopted in accordance with subsections (d) and (e) and shall complete such
17 review and issue an order under paragraph (3) not later than 30 days after the date on
18 which such certification and procedures are submitted.

19 “(C) AMENDMENTS.—The Attorney General and the Director of National
20 Intelligence may amend a certification submitted in accordance with subsection (g) or
21 the targeting and minimization procedures submitted adopted in accordance with
22 subsections (d) and (e) as necessary at any time, including if the Court is conducting
23 or has completed review of such certification or such procedures, and shall submit
24 such amended certification or amended procedures to the Court not later than 7 days
25 after amending such certification or such procedures. The Court shall review any
26 amendment under this subparagraph under the procedures set forth in this subsection.
27 The Attorney General and the Director of National Intelligence may authorize the use
28 of an amended certification or amended procedures pending the Court’s review of such
29 amended certification or amended procedures.

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

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

33 “(B) TARGETING PROCEDURES.—The targeting procedures required by adopted in
34 accordance with subsection (d) to assess whether the procedures are reasonably
35 designed to to—

36 “(i) ensure that the acquisition authorized under subsection (a) is limited to the
37 targeting of persons reasonably believed to be located outside the United States
38 and does not intentionally acquire; and

39 “(ii) prevent the intentional acquisition of any communication as to which
40 the sender and all intended recipients are known at the time of the acquisition to
41 be located in the United States.

42 “(C) MINIMIZATION PROCEDURES.—The minimization procedures submitted in

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1 accordance with subsection (e) to assess whether such procedures meet the definition
2 of minimization procedures under section 101(h) or section 301(4), as appropriate.

3 “(3) ORDERS.—

4 “(A) APPROVAL.— If the Court finds that a certification submitted in accordance
5 with subsection (g) contains all of the required elements and that the targeting and
6 minimization procedures ~~submitted~~ **adopted** in accordance with subsections (d) and (e)
7 are consistent with the requirements of those subsections and with the fourth
8 amendment to the Constitution of the United States, the Court shall enter an order
9 approving the certification and the use, or continued use in the case of an acquisition
10 **authorized pursuant to a determination** under subsection ~~(g)(1)(B)(c)(2)~~, of the
11 procedures for the acquisition.

12 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification submitted
13 in accordance with subsection (g) does not contain all of the required elements, or that
14 the procedures ~~submitted~~ **adopted** in accordance with subsections (d) and (e) are not
15 consistent with the requirements of those subsections or the fourth amendment to the
16 Constitution of the United States, the Court shall issue an order directing the
17 Government to, at the Government’s election and to the extent required by the Court’s
18 order—

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

21 “(ii) cease, or not begin, the acquisition authorized under subsection (a).

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

25 “(4) APPEAL.—

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

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

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

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

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

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

6 “(5) SCHEDULE.—

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

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

23 “(C) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the
24 Attorney General and the Director of National Intelligence seek to replace an
25 authorization made pursuant to this section by filing a certification pursuant to
26 paragraph (B), that authorization, and any directives issued thereunder and any
27 order related thereto, shall remain in effect, notwithstanding the expiration
28 provided for in section 702(a) of this Act, until the Court issues an order with
29 respect to that certification under paragraph (3), at which time the provisions of
30 that paragraph and paragraph (4) shall apply.

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of that paragraph and paragraph (4)
shall apply

31 “(j) Judicial Proceedings.—

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

34 “(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless
35 the Court, the Court of Review, or any judge of either the Court or the Court of Review, by
36 order for reasons stated, extends that time as necessary for good cause in a manner
37 consistent with national security.

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

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

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

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

8 “(1) Assessments and Reviews.—

9 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the
10 Attorney General and Director of National Intelligence shall assess compliance with the
11 targeting and minimization procedures ~~required by~~ **adopted in accordance with**
12 subsections (d) and (e) and the guidelines adopted in accordance with subsection (f) and
13 shall submit each such assessment to—

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

15 “(B) consistent with the Rules of the House of Representatives, the Standing
16 Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any
17 successor Senate resolution—

18 “(i) ~~(B)~~ the congressional intelligence committees; and

19 ~~(C)~~“(ii) the Committees on the Judiciary of the House of Representatives and
20 the Senate.

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

25 “(A) are authorized to review the compliance with the targeting and minimization
26 procedures ~~required by~~ **adopted in accordance with** subsections (d) and (e) and the
27 guidelines ~~submitted~~ **adopted** in accordance with subsection (f);

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

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

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

37 “(i) the Attorney General;

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

39 “(iii) consistent with the Rules of the House of Representatives, the
40 Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress

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1 or any successor Senate resolution—

2 “(I)~~(iii)~~ the congressional intelligence committees; and

3 ~~(iv)~~“(II) the Committees on the Judiciary of the House of
4 Representatives and the Senate.

5 “(3) ANNUAL REVIEW.—

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

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

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

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

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

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

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

33 “(i) the Foreign Intelligence Surveillance Court;

34 “(ii) the Attorney General;

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

36 “(iv) consistent with the Rules of the House of Representatives, the
37 Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress
38 or any successor Senate resolution—

39 “(I)~~(iv)~~ the congressional intelligence committees; and

40 ~~(v)~~“(II) the Committees on the Judiciary of the House of Representatives

1 and the Senate.

2 “SEC. 703. CERTAIN ACQUISITIONS INSIDE THE
3 UNITED STATES TARGETING UNITED STATES
4 PERSONS OUTSIDE THE UNITED STATES.

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

6 “(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to
7 review an application and to enter an order approving the targeting of a United States
8 person reasonably believed to be located outside the United States to acquire foreign
9 intelligence information, if the acquisition constitutes electronic surveillance or the
10 acquisition of stored electronic communications or stored electronic data that requires an
11 order under this Act, and such acquisition is conducted within the United States.

12 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably
13 believed to be located in the United States during the effective period of an order issued
14 pursuant to subsection (c), an acquisition targeting such United States person under this
15 section shall cease unless the targeted United States person is again reasonably believed to
16 be located outside the United States while an order issued pursuant to subsection (c) is in
17 effect. **Nothing in this section shall be construed to limit the authority of the**
18 **Government to seek an order or authorization under, or otherwise engage in any**
19 **activity that is authorized under, any other title of this Act.**

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of title 18, United States Code

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20 “(b) Application.—

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

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

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

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

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

32 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
33 a foreign power;

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

36 “(E) a description of the nature of the information sought and the type of
37 communications or activities to be subjected to acquisition;

38 “(F) a certification made by the Attorney General or an official specified in section
39 104(a)(6) that—

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1 “(i) the certifying official deems the information sought to be foreign
2 intelligence information;

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

5 “(iii) such information cannot reasonably be obtained by normal investigative
6 techniques;

7 “(iv) designates the type of foreign intelligence information being sought
8 according to the categories described in section 101(e); and

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

10 “(I) the information sought is the type of foreign intelligence information
11 designated; and

12 “(II) such information cannot reasonably be obtained by normal
13 investigative techniques;

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

16 “(H) the identity of any electronic communication service provider necessary to
17 effect the acquisition, provided, however, that the application is not required to identify
18 the specific facilities, places, premises, or property at which the acquisition authorized
19 under this section will be directed or conducted;

20 “(I) a statement of the facts concerning any previous applications that have been
21 made to any judge of the Foreign Intelligence Surveillance Court involving the United
22 States person specified in the application and the action taken on each previous
23 application; and

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

26 “(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may
27 require any other affidavit or certification from any other officer in connection with the
28 application.

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

32
33 ~~“(4) Construction.—Nothing in title I shall be construed to require an application for a~~
34 ~~court order under such title for an acquisition that is targeted in accordance with this section at a~~
35 ~~United States person reasonably believed to be located outside the United States.~~

36 “(c) Order.—

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

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