

1 quire that the minimization procedures referred to in
2 subsection (c)(1)(C) be followed.

3 “(3) TERMINATION OF EMERGENCY AUTHOR-
4 IZATION.—In the absence of an order under sub-
5 section (c), an emergency acquisition under para-
6 graph (1) shall terminate when the information
7 sought is obtained, if the application for the order
8 is denied, or after the expiration of 7 days from the
9 time of authorization by the Attorney General,
10 whichever is earliest.

11 “(4) USE OF INFORMATION.—If an application
12 submitted to the Court pursuant to paragraph (1) is
13 denied, or in any other case where the acquisition is
14 terminated and no order with respect to the target
15 of the acquisition is issued under subsection (c), no
16 information obtained or evidence derived from such
17 acquisition, except under circumstances in which the
18 target of the acquisition is determined not to be a
19 United States person, shall be received in evidence
20 or otherwise disclosed in any trial, hearing, or other
21 proceeding in or before any court, grand jury, de-
22 partment, office, agency, regulatory body, legislative
23 committee, or other authority of the United States,
24 a State, or political subdivision thereof, and no in-
25 formation concerning any United States person ac-

1 quired from such acquisition shall subsequently be
2 used or disclosed in any other manner by Federal of-
3 ficers or employees without the consent of such per-
4 son, except with the approval of the Attorney Gen-
5 eral if the information indicates a threat of death or
6 serious bodily harm to any person.

7 “(e) APPEAL.—

8 “(1) APPEAL TO THE COURT OF REVIEW.—The
9 Government may file a petition with the Foreign In-
10 telligence Surveillance Court of Review for review of
11 an order issued pursuant to subsection (c). The
12 Court of Review shall have jurisdiction to consider
13 such petition and shall provide a written statement
14 for the record of the reasons for a decision under
15 this paragraph.

16 “(2) CERTIORARI TO THE SUPREME COURT.—
17 The Government may file a petition for a writ of
18 certiorari for review of a decision of the Court of Re-
19 view issued under paragraph (1). The record for
20 such review shall be transmitted under seal to the
21 Supreme Court of the United States, which shall
22 have jurisdiction to review such decision.”

1 **"SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-**
2 **THORIZATIONS.**

3 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
4 quisition targeting a United States person under section
5 703 or section 704 is proposed to be conducted both inside
6 and outside the United States, a judge having jurisdiction
7 under section 703(a)(1) or section 704(a)(1) may issue si-
8 multaneously, upon the request of the Government in a
9 joint application complying with the requirements of sec-
10 tion 703(b) and section 704(b), orders under section
11 703(c) and section 704(c), as appropriate.

12 “(b) CONCURRENT AUTHORIZATION.—If an order
13 authorizing electronic surveillance or physical search has
14 been obtained under section 105 or section 304 and that
15 order is still in effect, during the effective period of that
16 order, the Attorney General may authorize, without an
17 order under section 703 or section 704, the targeting of
18 that United States person for the purpose of acquiring for-
19 eign intelligence information while such person is reason-
20 ably believed to be located outside the United States.

21 **"SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE**
22 **VII.**

23 “(a) INFORMATION ACQUIRED UNDER SECTION
24 702.—Information acquired from an acquisition con-
25 ducted under section 702 shall be deemed to be informa-
26 tion acquired from an electronic surveillance pursuant to

1 title I for purposes of section 106, except for the purposes
2 of subsection (j) of such section.

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

8 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

9 “(a) SEMIANNUAL REPORT.—Not less frequently
10 than once every 6 months, the Attorney General shall fully
11 inform, in a manner consistent with national security, the
12 congressional intelligence committees and the Committees
13 on the Judiciary of the Senate and the House of Rep-
14 resentatives, consistent with the Rules of the House of
15 Representatives, the Standing Rules of the Senate, and
16 Senate Resolution 400 of the 94th Congress or any suc-
17 cessor Senate resolution, concerning the implementation
18 of this title.

19 “(b) CONTENT.—Each report made under subsection
20 (a) shall include—

21 “(1) with respect to section 702—

22 “(A) any certifications made under section
23 702(g) during the reporting period;

1 “(B) with respect to each determination
2 made under section 702(c)(2), the reasons for
3 exercising the authority under such section;

4 “(C) any directives issued under section
5 702(h) during the reporting period;

6 “(D) a description of the judicial review
7 during the reporting period of any such certifi-
8 cations and targeting and minimization proce-
9 dures adopted in accordance with subsections
10 (d) and (e) of section 702 and utilized with re-
11 spect to an acquisition under such section, in-
12 cluding a copy of any order or pleading in con-
13 nection with such review that contains a signifi-
14 cant legal interpretation of the provisions of
15 section 702;

16 “(E) any actions taken to challenge or en-
17 force a directive under paragraph (4) or (5) of
18 section 702(h);

19 “(F) any compliance reviews conducted by
20 the Attorney General or the Director of Na-
21 tional Intelligence of acquisitions authorized
22 under section 702(a);

23 “(G) a description of any incidents of non-
24 compliance with a directive issued by the Attor-

1 ney General and the Director of National Intel-
2 ligence under section 702(h), including—

3 “(i) incidents of noncompliance by an
4 element of the intelligence community with
5 procedures and guidelines adopted in ac-
6 cordance with subsections (d), (e), and (f)
7 of section 702; and

8 “(ii) incidents of noncompliance by a
9 specified person to whom the Attorney
10 General and Director of National Intel-
11 ligence issued a directive under section
12 702(h); and

13 “(H) any procedures implementing section
14 702;

15 “(2) with respect to section 703—

16 “(A) the total number of applications made
17 for orders under section 703(b);

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

19 “(i) granted;

20 “(ii) modified; and

21 “(iii) denied; and

22 “(C) the total number of emergency acqui-
23 sitions authorized by the Attorney General
24 under section 703(d) and the total number of

1 subsequent orders approving or denying such
2 acquisitions; and

3 “(3) with respect to section 704—

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

6 “(B) the total number of such orders

7 “(i) granted;

8 “(ii) modified; and

9 “(iii) denied; and

10 “(C) the total number of emergency acqui-
11 sitions authorized by the Attorney General
12 under section 704(d) and the total number of
13 subsequent orders approving or denying such
14 applications.

15 **“SEC. 708. SAVINGS PROVISION.**

16 “Nothing in this title shall be construed to limit the
17 authority of the Government to seek an order or author-
18 ization under, or otherwise engage in any activity that is
19 authorized under, any other title of this Act.”.

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

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

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

25 and

1 (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 for targeting certain persons outside the United States
other than United States persons.

“Sec. 703. Certain acquisitions inside the United States targeting United
States persons outside the United States.

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

“Sec. 705. Joint applications and concurrent authorizations.

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

“Sec. 707. Congressional oversight.

“Sec. 708. Savings provision.”.

2 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

3 (1) TITLE 18, UNITED STATES CODE.—Section
4 2511(2)(a)(ii)(A) of title 18, United States Code, is
5 amended by inserting “or a court order pursuant to
6 section 704 of the Foreign Intelligence Surveillance
7 Act of 1978” after “assistance”.

8 (2) FOREIGN INTELLIGENCE SURVEILLANCE
9 ACT OF 1978.—Section 601(a)(1) of the Foreign In-
10 telligence Surveillance Act of 1978 (50 U.S.C.
11 1871(a)(1)) is amended—

12 (A) in subparagraph (C), by striking
13 “and”; and

14 (B) by adding at the end the following new
15 subparagraphs:

16 “(E) acquisitions under section 703; and

17 “(F) acquisitions under section 704;”.

1 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
2 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
3 **TION OF CERTAIN COMMUNICATIONS MAY BE**
4 **CONDUCTED.**

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

9 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
10 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
11 TAIN COMMUNICATIONS MAY BE CONDUCTED

12 “SEC. 112. (a) Except as provided in subsection (b),
13 the procedures of chapters 119, 121, and 206 of title 18,
14 United States Code, and this Act shall be the exclusive
15 means by which electronic surveillance and the intercep-
16 tion of domestic wire, oral, or electronic communications
17 may be conducted.

18 “(b) Only an express statutory authorization for elec-
19 tronic surveillance or the interception of domestic wire,
20 oral, or electronic communications, other than as an
21 amendment to this Act or chapters 119, 121, or 206 of
22 title 18, United States Code, shall constitute an additional
23 exclusive means for the purpose of subsection (a).”.

24 (b) OFFENSE.—Section 109(a) of the Foreign Intel-
25 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
26 amended by striking “authorized by statute” each place

1 it appears and inserting “authorized by this Act, chapter
2 119, 121, or 206 of title 18, United States Code, or any
3 express statutory authorization that is an additional exclu-
4 sive means for conducting electronic surveillance under
5 section 112.”; and

6 (c) CONFORMING AMENDMENTS.—

7 (1) TITLE 18, UNITED STATES CODE.—Section
8 2511(2)(a) of title 18, United States Code, is
9 amended by adding at the end the following:

10 “(iii) If a certification under subpara-
11 graph (ii)(B) for assistance to obtain for-
12 eign intelligence information is based on
13 statutory authority, the certification shall
14 identify the specific statutory provision,
15 and shall certify that the statutory require-
16 ments have been met.”; and

17 (2) TABLE OF CONTENTS.—The table of con-
18 tents in the first section of the Foreign Intelligence
19 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
20 is amended by inserting after the item relating to
21 section 111, the following new item:

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

1 SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT
2 ORDERS UNDER THE FOREIGN INTEL-
3 LIGENCE SURVEILLANCE ACT OF 1978.

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

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

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

15 “(1) a copy of any decision, order, or opinion
16 issued by the Foreign Intelligence Surveillance Court
17 or the Foreign Intelligence Surveillance Court of Re-
18 view that includes significant construction or inter-
19 pretation of any provision of this Act, and any
20 pleadings, applications, or memoranda of law associ-
21 ated with such decision, order, or opinion, not later
22 than 45 days after such decision, order, or opinion
23 is issued; and

24 “(2) a copy of any such decision, order, or opin-
25 ion, and any pleadings, applications, or memoranda
26 of law associated with such decision, order, or opin-

1 ion, that was issued during the 5-year period ending
2 on the date of the enactment of the FISA Amend-
3 ments Act of 2008 and not previously submitted in
4 a report under subsection (a).

5 “(d) PROTECTION OF NATIONAL SECURITY.—The
6 Attorney General, in consultation with the Director of Na-
7 tional Intelligence, may authorize redactions of materials
8 described in subsection (c) that are provided to the com-
9 mittees of Congress referred to in subsection (a), if such
10 redactions are necessary to protect the national security
11 of the United States and are limited to sensitive sources
12 and methods information or the identities of targets.”.

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

16 “(e) DEFINITIONS.—In this section:

17 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
18 COURT.—The term ‘Foreign Intelligence Surveillance
19 Court’ means the court established under section
20 103(a).

21 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
22 COURT OF REVIEW.—The term ‘Foreign Intelligence
23 Surveillance Court of Review’ means the court estab-
24 lished under section 103(b).”.

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

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

4 (1) in subsection (a)—

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

6 (B) by redesignating paragraphs (3)
7 through (10) as paragraphs (2) through (9), re-
8 spectively;

9 (C) in paragraph (5), as redesignated by
10 subparagraph (B) of this paragraph, by striking
11 “detailed”;

12 (D) in paragraph (6), as redesignated by
13 subparagraph (B) of this paragraph, in the
14 matter preceding subparagraph (A)—

15 (i) by striking “Affairs or” and insert-
16 ing “Affairs,”; and

17 (ii) by striking “Senate—” and insert-
18 ing “Senate, or the Deputy Director of the
19 Federal Bureau of Investigation, if des-
20 ignated by the President as a certifying of-
21 ficial—”;

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

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

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

7 (2) by striking subsection (b);

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

10 (4) in paragraph (1)(A) of subsection (d), as re-
11 designated by paragraph (3) of this subsection, by
12 striking “or the Director of National Intelligence”
13 and inserting “the Director of National Intelligence,
14 or the Director of the Central Intelligence Agency”.

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

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

18 (1) in subsection (a)—

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

20 (B) by redesignating paragraphs (2)
21 through (5) as paragraphs (1) through (4), re-
22 spectively;

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

25 (3) in subsection (c)(1)—

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

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

5 (C) by striking subparagraph (F);

6 (4) by striking subsection (d);

7 (5) by redesignating subsections (e) through (i)
8 as subsections (d) through (h), respectively;

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

11 “(e)(1) Notwithstanding any other provision of this
12 title, the Attorney General may authorize the emergency
13 employment of electronic surveillance if the Attorney Gen-
14 eral—

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

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

23 “(C) informs, either personally or through a
24 designee, a judge having jurisdiction under section
25 103 at the time of such authorization that the deci-

1 sion has been made to employ emergency electronic
2 surveillance; and

3 “(D) makes an application in accordance with
4 this title to a judge having jurisdiction under section
5 103 as soon as practicable, but not later than 7 days
6 after the Attorney General authorizes such surveil-
7 lance.

8 “(2) If the Attorney General authorizes the emer-
9 gency employment of electronic surveillance under para-
10 graph (1), the Attorney General shall require that the
11 minimization procedures required by this title for the
12 issuance of a judicial order be followed.

13 “(3) In the absence of a judicial order approving such
14 electronic surveillance, the surveillance shall terminate
15 when the information sought is obtained, when the appli-
16 cation for the order is denied, or after the expiration of
17 7 days from the time of authorization by the Attorney
18 General, whichever is earliest.

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

21 “(5) In the event that such application for approval
22 is denied, or in any other case where the electronic surveil-
23 lance is terminated and no order is issued approving the
24 surveillance, no information obtained or evidence derived
25 from such surveillance shall be received in evidence or oth-

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

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

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

15 “(i) In any case in which the Government makes an
16 application to a judge under this title to conduct electronic
17 surveillance involving communications and the judge
18 grants such application, upon the request of the applicant,
19 the judge shall also authorize the installation and use of
20 pen registers and trap and trace devices, and direct the
21 disclosure of the information set forth in section
22 402(d)(2).”.

23 **SEC. 106. USE OF INFORMATION.**

24 Subsection (i) of section 106 of the Foreign Intel-
25 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is

1 amended by striking “radio communication” and inserting
2 “communication”.

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

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

7 (1) in subsection (a)—

8 (A) by striking paragraph (2);

9 (B) by redesignating paragraphs (3)
10 through (9) as paragraphs (2) through (8), re-
11 spectively;

12 (C) in paragraph (2), as redesignated by
13 subparagraph (B) of this paragraph, by striking
14 “detailed”;

15 (D) in paragraph (3)(C), as redesignated
16 by subparagraph (B) of this paragraph, by in-
17 serting “or is about to be” before “owned”; and

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

21 (i) by striking “Affairs or” and insert-
22 ing “Affairs,”; and

23 (ii) by striking “Senate—” and insert-
24 ing “Senate, or the Deputy Director of the
25 Federal Bureau of Investigation, if des-

1 ignated by the President as a certifying of-
2 ficial—”; and

3 (2) in subsection (d)(1)(A), by striking “or the
4 Director of National Intelligence” and inserting “the
5 Director of National Intelligence, or the Director of
6 the Central Intelligence Agency”.

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

10 (1) in subsection (a)—

11 (A) by striking paragraph (1);

12 (B) by redesignating paragraphs (2)
13 through (5) as paragraphs (1) through (4), re-
14 spectively; and

15 (C) in paragraph (2)(B), as redesignated
16 by subparagraph (B) of this paragraph, by in-
17 serting “or is about to be” before “owned”; and
18 (2) by amending subsection (e) to read as fol-

19 lows:

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

23 “(A) reasonably determines that an emergency
24 situation exists with respect to the employment of a
25 physical search to obtain foreign intelligence infor-

1 mation before an order authorizing such physical
2 search can with due diligence be obtained;

3 “(B) reasonably determines that the factual
4 basis for issuance of an order under this title to ap-
5 prove such physical search exists;

6 “(C) informs, either personally or through a
7 designee, a judge of the Foreign Intelligence Surveil-
8 lance Court at the time of such authorization that
9 the decision has been made to employ an emergency
10 physical search; and

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

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

21 “(3) In the absence of a judicial order approving such
22 physical search, the physical search shall terminate when
23 the information sought is obtained, when the application
24 for the order is denied, or after the expiration of 7 days

1 from the time of authorization by the Attorney General,
2 whichever is earliest.

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

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

21 “(6) The Attorney General shall assess compliance
22 with the requirements of paragraph (5).”.

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

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

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

SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS

AND TRAP AND TRACE DEVICES.

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

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

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

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

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

(b) EN BANC AUTHORITY.—

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

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

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

3 “(2)(A) The court established under this subsection
4 may, on its own initiative, or upon the request of the Gov-
5 ernment in any proceeding or a party under section 501(f)
6 or paragraph (4) or (5) of section 702(h), hold a hearing
7 or rehearing, en banc, when ordered by a majority of the
8 judges that constitute such court upon a determination
9 that—

10 “(i) en banc consideration is necessary to se-
11 cure or maintain uniformity of the court’s decisions;
12 or

13 “(ii) the proceeding involves a question of ex-
14 ceptional importance.

15 “(B) Any authority granted by this Act to a judge
16 of the court established under this subsection may be exer-
17 cised by the court en banc. When exercising such author-
18 ity, the court en banc shall comply with any requirements
19 of this Act on the exercise of such authority.

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

23 (2) CONFORMING AMENDMENTS.—The Foreign
24 Intelligence Surveillance Act of 1978 is further
25 amended—

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

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

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

12 (1) by redesignating subsection (f) as sub-
13 section (g); and

14 (2) by inserting after subsection (e) the fol-
15 lowing new subsection:

16 “(f)(1) A judge of the court established under sub-
17 section (a), the court established under subsection (b) or
18 a judge of that court, or the Supreme Court of the United
19 States or a justice of that court, may, in accordance with
20 the rules of their respective courts, enter a stay of an order
21 or an order modifying an order of the court established
22 under subsection (a) or the court established under sub-
23 section (b) entered under any title of this Act, while the
24 court established under subsection (a) conducts a rehear-
25 ing, while an appeal is pending to the court established

1 under subsection (b), or while a petition of certiorari is
2 pending in the Supreme Court of the United States, or
3 during the pendency of any review by that court.

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

7 (d) **AUTHORITY OF FOREIGN INTELLIGENCE SUR-**
8 **VEILLANCE COURT.**—Section 103 of the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C. 1803), as
10 amended by this Act, is amended by adding at the end
11 the following:

12 “(i) Nothing in this Act shall be construed to reduce
13 or contravene the inherent authority of the court estab-
14 lished by subsection (a) to determine, or enforce, compli-
15 ance with an order or a rule of such court or with a proce-
16 dure approved by such court.”.

17 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

18 (a) **DEFINITIONS.**—

19 (1) **FOREIGN POWER.**—Subsection (a) of sec-
20 tion 101 of the Foreign Intelligence Surveillance Act
21 of 1978 (50 U.S.C. 1801(a)) is amended—

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

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

1 (C) by adding at the end the following new
2 paragraph:

3 “(7) an entity not substantially composed of
4 United States persons that is engaged in the inter-
5 national proliferation of weapons of mass destruc-
6 tion.”.

7 (2) AGENT OF A FOREIGN POWER.—Subsection
8 (b)(1) of such section 101 is amended—

9 (A) in subparagraph (B), by striking “or”
10 at the end;

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

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

15 “(D) engages in the international prolifera-
16 tion of weapons of mass destruction, or activi-
17 ties in preparation therefor; or

18 “(E) engages in the international prolifera-
19 tion of weapons of mass destruction, or activi-
20 ties in preparation therefor for or on behalf of
21 a foreign power; or”.

22 (3) FOREIGN INTELLIGENCE INFORMATION.—
23 Subsection (e)(1)(B) of such section 101 is amended
24 by striking “sabotage or international terrorism”
25 and inserting “sabotage, international terrorism, or

1 the international proliferation of weapons of mass
2 destruction”.

3 (4) WEAPON OF MASS DESTRUCTION.—Such
4 section 101 is amended by adding at the end the fol-
5 lowing new subsection:

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

7 “(1) any explosive, incendiary, or poison gas de-
8 vice that is designed, intended, or has the capability
9 to cause a mass casualty incident;

10 “(2) any weapon that is designed, intended, or
11 has the capability to cause death or serious bodily
12 injury to a significant number of persons through
13 the release, dissemination, or impact of toxic or poi-
14 sonous chemicals or their precursors;

15 “(3) any weapon involving a biological agent,
16 toxin, or vector (as such terms are defined in section
17 178 of title 18, United States Code) that is de-
18 signed, intended, or has the capability to cause
19 death, illness, or serious bodily injury to a signifi-
20 cant number of persons; or

21 “(4) any weapon that is designed, intended, or
22 has the capability to release radiation or radioac-
23 tivity causing death, illness, or serious bodily injury
24 to a significant number of persons.”.

25 (b) USE OF INFORMATION.—

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

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

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

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

SEC. 201. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by section 101, is

1 further amended by adding at the end the following new
2 title:

3 **“TITLE VIII—PROTECTION OF**
4 **PERSONS ASSISTING THE**
5 **GOVERNMENT**

6 **“SEC. 801. DEFINITIONS.**

7 “In this title:

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

14 “(2) CIVIL ACTION.—The term ‘civil action’ in-
15 cludes a covered civil action.

16 “(3) CONGRESSIONAL INTELLIGENCE COMMIT-
17 TEES.—The term ‘congressional intelligence commit-
18 tees’ means—

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

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

23 “(4) CONTENTS.—The term ‘contents’ has the
24 meaning given that term in section 101(n).

1 “(5) COVERED CIVIL ACTION.—The term ‘cov-
2 ered civil action’ means a civil action filed in a Fed-
3 eral or State court that—

4 “(A) alleges that an electronic communica-
5 tion service provider furnished assistance to an
6 element of the intelligence community; and

7 “(B) seeks monetary or other relief from
8 the electronic communication service provider
9 related to the provision of such assistance.

10 “(6) ELECTRONIC COMMUNICATION SERVICE
11 PROVIDER.—The term ‘electronic communication
12 service provider’ means—

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

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

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

22 “(D) any other communication service pro-
23 vider who has access to wire or electronic com-
24 munications either as such communications are

1 transmitted or as such communications are
2 stored;

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

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

9 “(7) INTELLIGENCE COMMUNITY.—The term
10 ‘intelligence community’ has the meaning given the
11 term in section 3(4) of the National Security Act of
12 1947 (50 U.S.C. 401a(4)).

13 “(8) PERSON.—The term ‘person’ means—

14 “(A) an electronic communication service
15 provider; or

16 “(B) a landlord, custodian, or other person
17 who may be authorized or required to furnish
18 assistance pursuant to—

19 “(i) an order of the court established
20 under section 103(a) directing such assist-
21 ance;

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

1 “(iii) a directive under section
2 102(a)(4), 105B(e), as added by section 2
3 of the Protect America Act of 2007 (Public
4 Law 110-55), or 702(h).

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

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

14 “(a) REQUIREMENT FOR CERTIFICATION.—Notwith-
15 standing any other provision of law, a civil action may not
16 lie or be maintained in a Federal or State court against
17 any person for providing assistance to an element of the
18 intelligence community, and shall be promptly dismissed,
19 if the Attorney General certifies to the district court of
20 the United States that—

21 “(1) any assistance by that person was provided
22 pursuant to an order of the court established under
23 section 103(a) directing such assistance;

24 “(2) any assistance by that person was provided
25 pursuant to a certification in writing under section

1 2511(2)(a)(ii)(B) or 2709(b) of title 18, United
2 States Code;

3 “(3) any assistance by that person was provided
4 pursuant to a directive under section 102(a)(4),
5 105B(e), as added by section 2 of the Protect Amer-
6 ica Act of 2007 (Public Law 110-55), or 702(h) di-
7 recting such assistance;

8 “(4) in the case of a covered civil action, the as-
9 sistance alleged to have been provided by the elec-
10 tronic communication service provider was—

11 “(A) in connection with an intelligence ac-
12 tivity involving communications that was—

13 “(i) authorized by the President dur-
14 ing the period beginning on September 11,
15 2001, and ending on January 17, 2007;
16 and

17 “(ii) designed to detect or prevent a
18 terrorist attack, or activities in preparation
19 for a terrorist attack, against the United
20 States; and

21 “(B) the subject of a written request or di-
22 rective, or a series of written requests or direc-
23 tives, from the Attorney General or the head of
24 an element of the intelligence community (or
25 the deputy of such person) to the electronic

1 communication service provider indicating that
2 the activity was—

3 “(i) authorized by the President; and

4 “(ii) determined to be lawful; or

5 “(5) the person did not provide the alleged as-
6 sistance.

7 “(b) JUDICIAL REVIEW.—

8 “(1) REVIEW OF CERTIFICATIONS.—A certifi-
9 cation made pursuant to subsection (a) shall be
10 given effect unless the court finds that such certifi-
11 cation is not supported by substantial evidence pro-
12 vided to the court pursuant to this section.

13 “(2) SUPPLEMENTAL MATERIALS.—In its re-
14 view of a certification made pursuant to subsection
15 (a), the court may examine the court order, certifi-
16 cation, written request, or directive described in sub-
17 section (a) and any relevant court order, certifi-
18 cation, written request, or directive submitted pursu-
19 ant to subsection (d).

20 “(c) LIMITATIONS ON DISCLOSURE.—If the Attorney
21 General files a declaration under section 1746 of title 28,
22 United States Code, that disclosure of a certification made
23 pursuant to subsection (a) or the supplemental materials
24 provided pursuant to subsection (b) or (d) would harm the
25 national security of the United States, the court shall—

1 “(1) review such certification and the supple-
2 mental materials in camera and ex parte; and

3 “(2) limit any public disclosure concerning such
4 certification and the supplemental materials, includ-
5 ing any public order following such in camera and
6 ex parte review, to a statement as to whether the
7 case is dismissed and a description of the legal
8 standards that govern the order, without disclosing
9 the paragraph of subsection (a) that is the basis for
10 the certification.

11 “(d) ROLE OF THE PARTIES.—Any plaintiff or de-
12 fendant in a civil action may submit any relevant court
13 order, certification, written request, or directive to the dis-
14 trict court referred to in subsection (a) for review and
15 shall be permitted to participate in the briefing or argu-
16 ment of any legal issue in a judicial proceeding conducted
17 pursuant to this section, but only to the extent that such
18 participation does not require the disclosure of classified
19 information to such party. To the extent that classified
20 information is relevant to the proceeding or would be re-
21 vealed in the determination of an issue, the court shall
22 review such information in camera and ex parte, and shall
23 issue any part of the court’s written order that would re-
24 veal classified information in camera and ex parte and
25 maintain such part under seal.

1 “(e) NONDELEGATION.—The authority and duties of
2 the Attorney General under this section shall be performed
3 by the Attorney General or a designee in a position not
4 lower than Deputy Attorney General.

5 “(f) APPEAL.—The courts of appeals shall have juris-
6 diction of appeals from interlocutory orders of the district
7 courts of the United States granting or denying a motion
8 to dismiss or for summary judgment under this section.

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

19 “(i) 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. 803. PREEMPTION.**

23 “(a) IN GENERAL.—No State shall have authority
24 to—

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

4 “(2) require through regulation or any other
5 means the disclosure of information about an elec-
6 tronic communication service provider’s alleged as-
7 sistance to an element of the intelligence community;

8 “(3) impose any administrative sanction on an
9 electronic communication service provider for assist-
10 ance to an element of the intelligence community; or

11 “(4) commence or maintain a civil action or
12 other proceeding to enforce a requirement that an
13 electronic communication service provider disclose
14 information concerning alleged assistance to an ele-
15 ment of the intelligence community.

16 “(b) SUITS BY THE UNITED STATES.—The United
17 States may bring suit to enforce the provisions of this sec-
18 tion.

19 “(c) JURISDICTION.—The district courts of the
20 United States shall have jurisdiction over any civil action
21 brought by the United States to enforce the provisions of
22 this section.

23 “(d) APPLICATION.—This section shall apply to any
24 investigation, action, or proceeding that is pending on or

1 commenced after the date of enactment of the FISA
2 Amendments Act of 2008.

3 **"SEC. 804. REPORTING.**

4 “(a) SEMIANNUAL REPORT.—Not less frequently
5 than once every 6 months, the Attorney General shall fully
6 inform, in a manner consistent with national security, the
7 Rules of the House of Representatives, the Standing Rules
8 of the Senate, and Senate Resolution 400 of the 94th Con-
9 gress or any successor Senate resolution, the congressional
10 intelligence committees, the Committee on the Judiciary
11 of the Senate, and the Committee on the Judiciary of the
12 House of Representatives concerning the implementation
13 of this title.

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

16 “(1) any certifications made under section 802;

17 “(2) a description of the judicial review of the
18 certifications made under section 802; and

19 “(3) any actions taken to enforce the provisions
20 of section 803.”.

21 **SEC. 202. TECHNICAL AMENDMENTS.**

22 The table of contents in the first section of the For-
23 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
24 1801 et seq.), as amended by section 101(b), is further
25 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.

“Sec. 804. Reporting.”.

1 **TITLE III—REVIEW OF PREVIOUS**
2 **ACTIONS**

3 **SEC. 301. REVIEW OF PREVIOUS ACTIONS.**

4 (a) DEFINITIONS.—In this section:

5 (1) APPROPRIATE COMMITTEES OF CON-
6 GRESS.—The term “appropriate committees of Con-
7 gress” means—

8 (A) the Select Committee on Intelligence
9 and the Committee on the Judiciary of the Sen-
10 ate; and

11 (B) the Permanent Select Committee on
12 Intelligence and the Committee on the Judici-
13 ary of the House of Representatives.

14 (2) FOREIGN INTELLIGENCE SURVEILLANCE
15 COURT.—The term “Foreign Intelligence Surveil-
16 lance Court” means the court established under sec-
17 tion 103(a) of the Foreign Intelligence Surveillance
18 Act of 1978 (50 U.S.C. 1803(a)).

19 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND
20 PROGRAM.—The terms “President’s Surveillance
21 Program” and “Program” mean the intelligence ac-
22 tivity involving communications that was authorized

1 by the President during the period beginning on
2 September 11, 2001, and ending on January 17,
3 2007, including the program referred to by the
4 President in a radio address on December 17, 2005
5 (commonly known as the Terrorist Surveillance Pro-
6 gram).

7 (b) REVIEWS.—

8 (1) REQUIREMENT TO CONDUCT.—The Inspec-
9 tors General of the Department of Justice, the Of-
10 fice of the Director of National Intelligence, the Na-
11 tional Security Agency, the Department of Defense,
12 and any other element of the intelligence community
13 that participated in the President's Surveillance Pro-
14 gram, shall complete a comprehensive review of, with
15 respect to the oversight authority and responsibility
16 of each such Inspector General—

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

20 (B) access to legal reviews of the Program
21 and access to information about 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) INTEGRATION OF OTHER REVIEWS.—

24 The Office of Professional Responsibility of the
25 Department of Justice shall provide the report

1 of any investigation conducted by such Office
2 on matters relating to the Program, including
3 any investigation of the process through which
4 legal reviews of the Program were conducted
5 and the substance of such reviews, to the In-
6 spector General of the Department of Justice,
7 who shall integrate the factual findings and
8 conclusions of such investigation into its review.

9 (C) COORDINATION.—The Inspectors Gen-
10 eral shall designate one of the Inspectors Gen-
11 eral required to conduct a review under para-
12 graph (1) that is appointed by the President, by
13 and with the advice and consent of the Senate,
14 to coordinate the conduct of the reviews and the
15 preparation of the reports.

16 (c) REPORTS.—

17 (1) PRELIMINARY REPORTS.—Not later than 60
18 days after the date of the enactment of this Act, the
19 Inspectors General of the Department of Justice, the
20 Office of the Director of National Intelligence, the
21 National Security Agency, the Department of De-
22 fense, and any other Inspector General required to
23 conduct a review under subsection (b)(1), shall sub-
24 mit to the appropriate committees of Congress an

1 interim report that describes the planned scope of
2 such review.

3 (2) FINAL REPORT.—Not later than 1 year
4 after the date of the enactment of this Act, the In-
5 spectors General of the Department of Justice, the
6 Office of the Director of National Intelligence, the
7 National Security Agency, the Department of De-
8 fense, and any other Inspector General required to
9 conduct a review under subsection (b)(1), shall sub-
10 mit to the appropriate committees of Congress, to
11 the extent practicable, a comprehensive report on
12 such reviews that includes any recommendations of
13 any such Inspectors General within the oversight au-
14 thority and responsibility of any such Inspector Gen-
15 eral with respect to the reviews.

16 (3) FORM.—A report under this subsection
17 shall be submitted in unclassified form, but may in-
18 clude a classified annex. The unclassified report
19 shall not disclose the name or identity of any indi-
20 vidual or entity of the private sector that partici-
21 pated in the Program or with whom there was com-
22 munication about the Program, to the extent that
23 information is classified.

24 (d) RESOURCES.—

1 (1) EXPEDITED SECURITY CLEARANCE.—The
2 Director of National Intelligence shall ensure that
3 the process for the investigation and adjudication of
4 an application by an Inspector General or any ap-
5 propriate staff of an Inspector General for a security
6 clearance necessary for the conduct of the review
7 under subsection (b)(1) is carried out as expedi-
8 tiously as possible.

9 (2) ADDITIONAL PERSONNEL FOR THE INSPEC-
10 TORS GENERAL.—An Inspector General required to
11 conduct a review under subsection (b)(1) and submit
12 a report under subsection (c) is authorized to hire
13 such additional personnel as may be necessary to
14 carry out such review and prepare such report in a
15 prompt and timely manner. Personnel authorized to
16 be hired under this paragraph—

17 (A) shall perform such duties relating to
18 such a review as the relevant Inspector General
19 shall direct; and

20 (B) are in addition to any other personnel
21 authorized by law.

22 (3) TRANSFER OF PERSONNEL.—The Attorney
23 General, the Secretary of Defense, the Director of
24 National Intelligence, the Director of the National
25 Security Agency, or the head of any other element

1 of the intelligence community may transfer per-
2 sonnel to the relevant Office of the Inspector Gen-
3 eral required to conduct a review under subsection
4 (b)(1) and submit a report under subsection (c) and,
5 in addition to any other personnel authorized by law,
6 are authorized to fill any vacancy caused by such a
7 transfer. Personnel transferred under this paragraph
8 shall perform such duties relating to such review as
9 the relevant Inspector General shall direct.

10 **TITLE IV—OTHER PROVISIONS**

11 **SEC. 401. SEVERABILITY.**

12 If any provision of this Act, any amendment made
13 by this Act, or the application thereof to any person or
14 circumstances is held invalid, the validity of the remainder
15 of the Act, any such amendments, and of the application
16 of such provisions to other persons and circumstances
17 shall not be affected thereby.

18 **SEC. 402. EFFECTIVE DATE.**

19 Except as provided in section 404, the amendments
20 made by this Act shall take effect on the date of the enact-
21 ment of this Act.

22 **SEC. 403. REPEALS.**

23 (a) REPEAL OF PROTECT AMERICA ACT OF 2007
24 PROVISIONS.—

25 (1) AMENDMENTS TO FISA.—

1 (A) IN GENERAL.—Except as provided in
2 section 404, sections 105A, 105B, and 105C of
3 the Foreign Intelligence Surveillance Act of
4 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are
5 repealed.

6 (B) TECHNICAL AND CONFORMING AMEND-
7 MENTS.—

8 (i) TABLE OF CONTENTS.—The table
9 of contents in the first section of the For-
10 eign Intelligence Surveillance Act of 1978
11 (50 U.S.C. 1801 et seq.) is amended by
12 striking the items relating to sections
13 105A, 105B, and 105C.

14 (ii) CONFORMING AMENDMENTS.—Ex-
15 cept as provided in section 404, section
16 103(e) of the Foreign Intelligence Surveil-
17 lance Act of 1978 (50 U.S.C. 1803(e)) is
18 amended—

19 (I) in paragraph (1), by striking
20 “105B(h) or 501(f)(1)” and inserting
21 “501(f)(1) or 702(h)(4)”; and

22 (II) in paragraph (2), by striking
23 “105B(h) or 501(f)(1)” and inserting
24 “501(f)(1) or 702(h)(4)”.

1 (2) REPORTING REQUIREMENTS.—Except as
2 provided in section 404, section 4 of the Protect
3 America Act of 2007 (Public Law 110-55; 121 Stat.
4 555) is repealed.

5 (3) TRANSITION PROCEDURES.—Except as pro-
6 vided in section 404, subsection (b) of section 6 of
7 the Protect America Act of 2007 (Public Law 110-
8 55; 121 Stat. 556) is repealed.

9 (b) FISA AMENDMENTS ACT OF 2008.—

10 (1) IN GENERAL.—Except as provided in sec-
11 tion 404, effective December 31, 2012, title VII of
12 the Foreign Intelligence Surveillance Act of 1978, as
13 amended by section 101(a), is repealed.

14 (2) TECHNICAL AND CONFORMING AMEND-
15 MENTS.—Effective December 31, 2012—

16 (A) the table of contents in the first sec-
17 tion of such Act (50 U.S.C. 1801 et seq.) is
18 amended by striking the items related to title
19 VII;

20 (B) except as provided in section 404, sec-
21 tion 601(a)(1) of such Act (50 U.S.C.
22 1871(a)(1)) is amended to read as such section
23 read on the day before the date of the enact-
24 ment of this Act; and

1 (C) except as provided in section 404, sec-
2 tion 2511(2)(a)(ii)(A) of title 18, United States
3 Code, is amended by striking “or a court order
4 pursuant to section 704 of the Foreign Intel-
5 ligence Surveillance Act of 1978”.

6 **SEC. 404. TRANSITION PROCEDURES.**

7 (a) TRANSITION PROCEDURES FOR PROTECT AMER-
8 ICA ACT OF 2007 PROVISIONS.—

9 (1) CONTINUED EFFECT OF ORDERS, AUTHOR-
10 IZATIONS, DIRECTIVES.—Except as provided in para-
11 graph (7), notwithstanding any other provision of
12 law, any order, authorization, or directive issued or
13 made pursuant to section 105B of the Foreign Intel-
14 ligence Surveillance Act of 1978, as added by section
15 2 of the Protect America Act of 2007 (Public Law
16 110-55; 121 Stat. 552), shall continue in effect until
17 the expiration of such order, authorization, or direc-
18 tive.

19 (2) APPLICABILITY OF PROTECT AMERICA ACT
20 OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS,
21 DIRECTIVES.—Notwithstanding any other provision
22 of this Act, any amendment made by this Act, or the
23 Foreign Intelligence Surveillance Act of 1978 (50
24 U.S.C. 1801 et seq.)—

1 (A) subject to paragraph (3), section 105A
2 of such Act, as added by section 2 of the Pro-
3 tect America Act of 2007 (Public Law 110-55;
4 121 Stat. 552), shall continue to apply to any
5 acquisition conducted pursuant to an order, au-
6 thorization, or directive referred to in para-
7 graph (1); and

8 (B) sections 105B and 105C of the For-
9 eign Intelligence Surveillance Act of 1978, as
10 added by sections 2 and 3, respectively, of the
11 Protect America Act of 2007, shall continue to
12 apply with respect to an order, authorization, or
13 directive referred to in paragraph (1) until the
14 later of—

15 (i) the expiration of such order, au-
16 thorization, or directive; or

17 (ii) the date on which final judgment
18 is entered for any petition or other litiga-
19 tion relating to such order, authorization,
20 or directive.

21 (3) USE OF INFORMATION.—Information ac-
22 quired from an acquisition conducted pursuant to an
23 order, authorization, or directive referred to in para-
24 graph (1) shall be deemed to be information ac-
25 quired from an electronic surveillance pursuant to

1 title I of the Foreign Intelligence Surveillance Act of
2 1978 (50 U.S.C. 1801 et seq.) for purposes of sec-
3 tion 106 of such Act (50 U.S.C. 1806), except for
4 purposes of subsection (j) of such section.

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

11 (5) JURISDICTION OF FOREIGN INTELLIGENCE
12 SURVEILLANCE COURT.—Notwithstanding any other
13 provision of this Act or of the Foreign Intelligence
14 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
15 section 103(e) of the Foreign Intelligence Surveil-
16 lance Act (50 U.S.C. 1803(e)), as amended by sec-
17 tion 5(a) of the Protect America Act of 2007 (Public
18 Law 110-55; 121 Stat. 556), shall continue to apply
19 with respect to a directive issued pursuant to section
20 105B of the Foreign Intelligence Surveillance Act of
21 1978, as added by section 2 of the Protect America
22 Act of 2007, until the later of—

23 (A) the expiration of all orders, authoriza-
24 tions, or directives referred to in paragraph (1);
25 or

1 (B) the date on which final judgment is
2 entered for any petition or other litigation relat-
3 ing to such order, authorization, or directive.

4 (6) REPORTING REQUIREMENTS.—

5 (A) CONTINUED APPLICABILITY.—Not-
6 withstanding any other provision of this Act,
7 any amendment made by this Act, the Protect
8 America Act of 2007 (Public Law 110-55), or
9 the Foreign Intelligence Surveillance Act of
10 1978 (50 U.S.C. 1801 et seq.), section 4 of the
11 Protect America Act of 2007 shall continue to
12 apply until the date that the certification de-
13 scribed in subparagraph (B) is submitted.

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

- 16 (i) made by the Attorney General;
17 (ii) submitted as part of a semi-an-
18 nual report required by section 4 of the
19 Protect America Act of 2007;
20 (iii) that states that there will be no
21 further acquisitions carried out under sec-
22 tion 105B of the Foreign Intelligence Sur-
23 veillance Act of 1978, as added by section
24 2 of the Protect America Act of 2007,
25 after the date of such certification; and

1 (iv) that states that the information
2 required to be included under such section
3 4 relating to any acquisition conducted
4 under such section 105B has been included
5 in a semi-annual report required by such
6 section 4.

7 (7) REPLACEMENT OF ORDERS, AUTHORIZA-
8 TIONS, AND DIRECTIVES.—

9 (A) IN GENERAL.—If the Attorney General
10 and the Director of National Intelligence seek
11 to replace an authorization issued pursuant to
12 section 105B of the Foreign Intelligence Sur-
13 veillance Act of 1978, as added by section 2 of
14 the Protect America Act of 2007 (Public Law
15 110-55), with an authorization under section
16 702 of the Foreign Intelligence Surveillance Act
17 of 1978 (as added by section 101(a) of this
18 Act), the Attorney General and the Director of
19 National Intelligence shall, to the extent prac-
20 ticable, submit to the Foreign Intelligence Sur-
21 veillance Court (as such term is defined in sec-
22 tion 701(b)(2) of such Act (as so added)) a cer-
23 tification prepared in accordance with sub-
24 section (g) of such section 702 and the proce-
25 dures adopted in accordance with subsections