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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

WITHHOLD

Exemption 5

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.Technical amendments.

25 TITLE III—REVIEW OF PREVIOUS ACTIONS

26 Sec.301.Review of previous actions.

27 TITLE IV—OTHER PROVISIONS

28 Sec.401.Severability.

29 Sec.402.Effective date.

30 Sec.403.Repeals.

31 Sec.404.Transition procedures.

32 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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1 SEC. 101. ADDITIONAL PROCEDURES REGARDING
2 CERTAIN PERSONS OUTSIDE THE UNITED STATES.

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

5 (1) by striking title VII; and

6 (2) by adding after title VI the following new title at the end:

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

9 “SEC. 701. DEFINITIONS.

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

14 “(b) Additional Definitions.—

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

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

18 “(B) the Permanent Select Committee on Intelligence of the House of
19 Representatives.

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

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

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

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

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

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

34 “(D) any other communication service provider who has access to wire or electronic
35 communications either as such communications are transmitted or as such
36 communications are stored; or

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

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

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

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

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

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

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

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

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

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

26 “(c) Conduct of Acquisition.—

27 “(1) IN GENERAL.—An acquisition authorized under subsection (a) ~~may~~ **shall** be
28 conducted only in accordance with—

29 ~~“(A) a certification in accordance with subsection (g), as soon as such certification is~~
30 ~~submitted in accordance with such subsection; and~~

31 ~~“(B) the targeting and minimization procedures adopted in accordance with~~
32 ~~subsections (d) and (e); and~~

33 **“(B) upon submission of a certification in accordance with subsection (g), such**
34 **certification.;**

35
36 “(2) DETERMINATION.—A determination under this paragraph **and for purposes of**
37 **subsection (a)** is a determination by the Attorney General and the Director of National
38 Intelligence that exigent circumstances exist because, without immediate implementation of

1 an authorization under ~~paragraph (1)~~ subsection (a), intelligence important to the national
2 security of the United States may be lost or not timely acquired and time does not permit the
3 issuance of an order pursuant to subsection (i)(3) prior to the implementation of such
4 authorization.

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

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

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

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

13 “(d) Targeting Procedures.—

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

16 “(A) ensure that any acquisition authorized under subsection (a) is limited to
17 targeting persons reasonably believed to be located outside the United States; and

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

21 “(2) JUDICIAL REVIEW.—The procedures ~~required by adopted in accordance with~~
22 paragraph (1) shall be subject to judicial review pursuant to subsection (i).

23 “(e) Minimization Procedures.—

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

28 “(2) JUDICIAL REVIEW.—The minimization procedures ~~required by adopted in~~
29 ~~accordance with~~ paragraph (1) shall be subject to judicial review pursuant to subsection (i).

30 “(f) Guidelines for Compliance With Limitations.—

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

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

34 “(B) that an application for a court order is filed as required by this Act.

35 “(2) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines
36 adopted ~~pursuant to in accordance with~~ paragraph (1) to—

37 “(A) the congressional intelligence committees;

38 “(B) the Committee on the Judiciary of the Senate;

1 “(C) the Committee on the Judiciary of the House of Representatives; and

2 “(D) the Foreign Intelligence Surveillance Court.

3 “(g) Certification.—

4 “(1) IN GENERAL.—

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

10 “(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence
11 make a determination under subsection (c)(2) and time does not permit the submission
12 of a certification under this subsection prior to the **implementation of an** authorization
13 ~~referred to in such~~ **under subsection (a)**, the Attorney General and the Director of
14 National Intelligence shall submit to the Court a certification for such authorization as
15 soon as practicable but in no event later than 7 days after such determination is made.

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

17 “(A) attest that—

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

21 “(I) ~~for ensuring~~ **ensure that the an** acquisition authorized under
22 subsection (a) is targeted at persons reasonably believed to be located outside
23 the United States; and

24 “(II) ~~to prevent~~ the intentional acquisition of any communication as to
25 which the sender and all intended recipients are known at the time of the
26 acquisition to be located in the United States;

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

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

30 “(II) have been approved, have been submitted for approval, or will be
31 submitted with the certification for approval by the Foreign Intelligence
32 Surveillance Court;

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

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

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

- 1 “(vi) the acquisition involves obtaining the foreign intelligence information
2 from or with the assistance of an electronic communication service provider; and
3 “(vii) the acquisition complies with the limitations in subsection (b);
4 “(B) include the procedures adopted in accordance with subsections (d) and (e);
5 “(C) be supported, as appropriate, by the affidavit of any appropriate official in the
6 area of national security who is—
7 “(i) appointed by the President, by and with the **advice and** consent of the
8 Senate; or
9 “(ii) the head of an element of the intelligence community;
10 “(D) include—
11 “(i) an effective date for the authorization that is at least 30 days after the
12 submission of the written certification to the court; or
13 “(ii) if the acquisition has begun or the effective date is less than 30 days after
14 the submission of the written certification to the court, the date the acquisition
15 began or the effective date for the acquisition; and
16 “(E) if the Attorney General and the Director of National Intelligence make a
17 determination under subsection ~~(e)(1)(A)(i)(c)(2)~~, include a statement that such
18 determination has been made.
19 “(3) CHANGE IN EFFECTIVE DATE.—The Attorney General and the Director of National
20 Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by
21 submitting an amended certification in accordance with this subsection to the Foreign
22 Intelligence Surveillance Court for review pursuant to subsection (i).
23 “(4) LIMITATION.—A certification made under this subsection is not required to identify
24 the specific facilities, places, premises, or property at which the acquisition authorized
25 under subsection (a) will be directed or conducted.
26 “(5) MAINTENANCE OF CERTIFICATION.—The Attorney General or a designee of the
27 Attorney General shall maintain a copy of a certification made under this subsection.
28 “(6) REVIEW.—~~THE REVIEW.~~—A certification ~~required by~~ **submitted in accordance**
29 **with** this subsection shall be subject to judicial review pursuant to subsection (i).
30 “(h) Directives and Judicial Review of Directives.—
31 “(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the
32 Attorney General and the Director of National Intelligence may direct, in writing, an
33 electronic communication service provider to—
34 “(A) immediately provide the Government with all information, facilities, or
35 assistance necessary to accomplish the acquisition in a manner that will protect the
36 secrecy of the acquisition and produce a minimum of interference with the services
37 that such electronic communication service provider is providing to the target of the
38 acquisition; and
39 “(B) maintain under security procedures approved by the Attorney General and the

1 Director of National Intelligence any records concerning the acquisition or the aid
2 furnished that such electronic communication service provider wishes to maintain.

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

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

9 “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

20 “(D) PROCEDURES FOR INITIAL REVIEW.—A judge shall conduct an initial review of a
21 petition filed under subparagraph (A) not later than 5 days after being assigned such
22 petition. If the judge determines that the petition does not consist of claims, defenses,
23 or other legal contentions that are warranted by existing law or by a nonfrivolous
24 argument for extending, modifying, or reversing existing law or for establishing new
25 law, the judge shall immediately deny the petition and affirm the directive or any part
26 of the directive that is the subject of the petition and order the recipient to comply with
27 the directive or any part of it. Upon making ~~such~~ a determination **under this**
28 **subparagraph** or promptly thereafter, the judge shall provide a written statement for
29 the record of the reasons for a ~~such~~ determination ~~under this subparagraph~~.

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

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

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

42 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

20 “(6) APPEAL.—

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

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

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

34 “(1) IN GENERAL.—

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

40 “(B) TIME PERIOD FOR REVIEW.—The Court shall review the a certification
41 submitted in accordance with subsection (g) and the targeting and minimization
42 procedures adopted in accordance with subsections (d) and (e) and shall complete such

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1 review and issue an order under paragraph (3) not later than 30 days after the date on
2 which such certification and procedures are submitted.

3 “(C) AMENDMENTS.—The Attorney General and the Director of National
4 Intelligence may amend a certification submitted in accordance with subsection (g) or
5 the targeting and minimization procedures adopted in accordance with subsections (d)
6 and (e) as necessary at any time, including if the Court is conducting or has completed
7 review of such certification or such procedures, and shall submit such amended
8 certification or amended procedures to the Court not later than 7 days after amending
9 such certification or such procedures. The Court shall review any amendment under
10 this subparagraph under the procedures set forth in this subsection. The Attorney
11 General and the Director of National Intelligence may authorize the use of an amended
12 certification or amended procedures pending the Court’s review of such amended
13 certification or amended procedures.

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

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

17 “(B) TARGETING PROCEDURES.—The targeting procedures adopted in accordance
18 with subsection (d) to assess whether the procedures are reasonably designed to—

19 “(i) ensure that the acquisition authorized under subsection (a) is limited to the
20 targeting of persons reasonably believed to be located outside the United States;
21 and

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

25 “(C) MINIMIZATION PROCEDURES.—The minimization procedures ~~submitted~~
26 **adopted** in accordance with subsection (e) to assess whether such procedures meet the
27 definition of minimization procedures under section 101(h) or section 301(4), as
28 appropriate.

29 “(3) ORDERS.—

30 “(A) APPROVAL.—If the Court finds that a certification submitted in accordance
31 with subsection (g) contains all of the required elements and that the targeting and
32 minimization procedures adopted in accordance with subsections (d) and (e) are
33 consistent with the requirements of those subsections and with the fourth amendment
34 to the Constitution of the United States, the Court shall enter an order approving the
35 certification and the use, or continued use in the case of an acquisition authorized
36 pursuant to a determination under subsection (c)(2), of the procedures for the
37 acquisition.

38 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification submitted
39 in accordance with subsection (g) does not contain all of the required elements, or that
40 the procedures adopted in accordance with subsections (d) and (e) are not consistent
41 with the requirements of those subsections or the fourth amendment to the Constitution
42 of the United States, the Court shall issue an order directing the Government to, at the

1 Government's election and to the extent required by the Court's order—

2 “(i) correct any deficiency identified by the Court's order not later than 30 days
3 after the date the Court issues the order; or

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

5 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of ~~its orders~~ an order
6 under this subsection, the Court shall provide, simultaneously with the ~~orders~~ order,
7 for the record a written statement of ~~its the~~ reasons for the order.

8 “(4) APPEAL.—

9 “(A) APPEAL TO THE COURT OF REVIEW.—The Government may ~~appeal any order~~
10 ~~under this section to file a petition with~~ the Foreign Intelligence Surveillance Court of
11 Review, ~~which for review of an order under this subsection. The Court of Review~~
12 shall have jurisdiction to ~~review~~ consider such ~~order~~ a petition. For any decision
13 affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance
14 Court, the Court of Review shall provide for the record a written statement of ~~its the~~
15 reasons for the decision.

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

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

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

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

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

32 “(5) SCHEDULE.—

33 “(A) ~~Replacement of authorizations in effect.—If the Attorney General and the~~
34 ~~Director of National Intelligence seek to replace an authorization issued pursuant to~~
35 ~~section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section~~
36 ~~2 of the Protect America Act of 2007 (Public Law 110-55) with an authorization under~~
37 ~~this section, the Attorney General and the Director of National Intelligence shall, to the~~
38 ~~extent practicable, submit to the Court the certification prepared in accordance with~~
39 ~~subsection (g) and the procedures adopted in accordance with subsections (d) and (e) at~~
40 ~~least 30 days before the expiration of such authorization.~~

41 “(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General

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1 and the Director of National Intelligence seek to reauthorize or replace an authorization
2 issued pursuant to this section, the Attorney General and the Director of National
3 Intelligence shall, to the extent practicable, submit to the Court the certification
4 prepared in accordance with subsection (g) and the procedures adopted in accordance
5 with subsections (d) and (e) at least 30 days prior to the expiration of such
6 authorization.

7 ~~“(C)“(B)~~ REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the
8 Attorney General and the Director of National Intelligence seek to **reauthorize or**
9 **replace an authorization** made pursuant to this section by filing a certification pursuant
10 to ~~paragraph (B)~~ **subparagraph (A)**, that authorization, and any directives issued
11 thereunder and any order related thereto, shall remain in effect, **notwithstanding the**
12 **expiration provided for in subsection (a)**, until the Court issues an order with respect
13 to **that such certification** under paragraph (3) at which time the provisions of that
14 paragraph and paragraph (4) shall apply **with respect to such certification**.

15 “(j) Judicial Proceedings.—

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

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

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

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

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

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

35 “(l) Assessments and Reviews.—

36 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the
37 Attorney General and Director of National Intelligence shall assess compliance with the
38 targeting and minimization procedures adopted in accordance with subsections (d) and (e)
39 and the guidelines adopted in accordance with subsection (f) and shall submit each such
40 assessment to—

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

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

4 “(i) the congressional intelligence committees; and

5 “(ii) the Committees on the Judiciary of the House of Representatives and the
6 Senate.

7 “(2) AGENCY ASSESSMENT.—The ~~Inspecters~~ Inspector General of the Department of
8 Justice and the Inspector General of each element of the intelligence community
9 authorized to acquire foreign intelligence information under subsection (a), with respect to
10 the department or element of such Inspector General—

11 “(A) are authorized to review the compliance with the targeting and minimization
12 procedures adopted in accordance with subsections (d) and (e) and the guidelines
13 adopted in accordance with subsection (f);

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

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

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

23 “(i) the Attorney General;

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

25 “(iii) consistent with the Rules of the House of Representatives, the Standing
26 Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any
27 successor Senate resolution—

28 “(I) the congressional intelligence committees; and

29 “(II) the Committees on the Judiciary of the House of Representatives and
30 the Senate.

31 “(3) ANNUAL REVIEW.—

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

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

39 “(ii) an accounting of the number of United States person identities
40 subsequently disseminated by that element in response to requests for identities

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

2 “(iii) the number of targets that were later determined to be located in the
3 United States and, to the extent possible, whether their communications of such
4 targets were reviewed; and

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

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

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

19 “(i) the Foreign Intelligence Surveillance Court;

20 “(ii) the Attorney General;

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

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

25 “(I) the congressional intelligence committees; and

26 “(II) the Committees on the Judiciary of the House of Representatives and
27 the Senate.

28 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE**
29 **UNITED STATES OF TARGETING UNITED STATES**
30 **PERSONS OUTSIDE THE UNITED STATES.**

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

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

38 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably
39 believed to be located in the United States during the effective period of an order issued

1 pursuant to subsection (c), an acquisition targeting such United States person under this
2 section shall cease unless the targeted United States person is again reasonably believed to
3 be located outside the United States while an order issued pursuant to subsection (c) is in
4 effect. Nothing in this ~~paragraph~~ section shall be construed to limit the authority of the
5 Government to seek an order or authorization under, or otherwise engage in any activity
6 that is authorized under, any other title of this Act ~~or chapter 119, 121, or 206 of title 18,~~
7 ~~United States Code.~~

8 “(b) Application.—

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

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

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

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

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

20 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
21 a foreign power;

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

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

26 “(F) a certification made by the Attorney General or an official specified in section
27 104(a)(6) that—

28 “(i) the certifying official deems the information sought to be foreign
29 intelligence information;

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

32 “(iii) such information cannot reasonably be obtained by normal investigative
33 techniques;

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

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

37 “(I) the information sought is the type of foreign intelligence information
38 designated; and

39 “(II) such information cannot reasonably be obtained by normal

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1 investigative techniques;

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

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

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

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

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

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

20 “(c) Order.—

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

24 “(A) the application has been made by a Federal officer and approved by the
25 Attorney General;

26 “(B) on the basis of the facts submitted by the applicant, for the United States person
27 who is the target of the acquisition, there is probable cause to believe that the target
28 is—

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

30 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
31 a foreign power;

32 “(C) the proposed minimization procedures meet the definition of minimization
33 procedures under section 101(h) or section 301(4), as appropriate; and

34 “(D) the application that has been filed contains all statements and certifications
35 required by subsection (b) and the certification or certifications are not clearly
36 erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any
37 other information furnished under subsection (b)(3).

38 “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for
39 purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may
40 consider past activities of the target and facts and circumstances relating to current or future

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1 activities of the target. No United States person may be considered a foreign power, agent
2 of a foreign power, or officer or employee of a foreign power solely upon the basis of
3 activities protected by the first amendment to the Constitution of the United States.

4 “(3) REVIEW.—

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

8 “(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted
9 under subsection (b) are insufficient to establish probable cause under paragraph
10 (1)(B), the judge shall enter an order so stating and provide a written statement for the
11 record of the reasons for such determination. The Government may appeal an order
12 under this subparagraph pursuant to subsection (f).

13 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
14 proposed minimization procedures referred to in paragraph (1)(C) do not meet the
15 definition of minimization procedures under section 101(h) or section 301(4), as
16 appropriate, the judge shall enter an order so stating and provide a written statement
17 for the record of the reasons for such determination. The Government may appeal an
18 order under this subparagraph pursuant to subsection (f).

19 “(D) REVIEW OF CERTIFICATION.—If the judge determines that an application
20 required by subsection (b) does not contain all of the required elements, or that the
21 certification or certifications are clearly erroneous on the basis of the statement made
22 under subsection (b)(1)(F)(v) and any other information furnished under subsection
23 (b)(3), the judge shall enter an order so stating and provide a written statement for the
24 record of the reasons for such determination. The Government may appeal an order
25 under this subparagraph pursuant to subsection (f).

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

28 “(A) the identity, if known, or a description of the United States person who is the
29 target of the acquisition identified or described in the application pursuant to
30 subsection (b)(1)(B);

31 “(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and
32 location of each of the facilities or places at which the acquisition will be directed;

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

35 “(D) a summary of the means by which the acquisition will be conducted and
36 whether physical entry is required to effect the acquisition; and

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

38 “(5) DIRECTIVES.—An order approving an acquisition under this subsection shall direct—

39 “(A) that the minimization procedures referred to in paragraph (1)(C), as approved
40 or modified by the Court, be followed;