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SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec.1.Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

Sec.104.Applications for court orders.

Sec.105.Issuance of an order.

Sec.106.Use of information.

Sec.107.Amendments for physical searches.

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

Sec.109.Foreign Intelligence Surveillance Court.

Sec.110.Weapons of mass destruction.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

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

Sec.202.Technical amendments.

TITLE III—REVIEW OF PREVIOUS ACTIONS

Sec.301.Review of previous actions.

TITLE IV—OTHER PROVISIONS

Sec.401.Severability.

Sec.402.Effective date.

Sec.403.Repeals.

Sec.404.Transition procedures.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

WITHHELD

Exemption 5

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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 at the end the following:

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 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 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) shall be conducted
28 only in accordance with—

29 “(A) the targeting and minimization procedures adopted in accordance with
30 subsections (d) and (e); and

31 “(B) upon submission of a certification in accordance with subsection (g), such
32 certification.

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

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

3 “(A) before the submission of a certification ~~under in accordance with subsection~~
4 (g); or

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

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

10 “(d) Targeting Procedures.— Procedures.—

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

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

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

18 “(2) JUDICIAL REVIEW.—The procedures adopted in accordance with paragraph (1) shall
19 be subject to judicial review pursuant to subsection (i).

20 “(e) Minimization Procedures.—

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

25 “(2) JUDICIAL REVIEW.—The minimization procedures adopted in accordance with
26 paragraph (1) shall be subject to judicial review pursuant to subsection (i).

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

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

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

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

32 “(2) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines
33 adopted in accordance with paragraph (1) to—

34 “(A) the congressional intelligence committees;

35 “(B) the ~~Committee Committees~~ on the Judiciary of the Senate and;

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

37 ~~“(D)“(C) the Foreign Intelligence Surveillance Court.~~

1 “(g) Certification.—

2 “(1) IN GENERAL.—

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

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

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

15 “(A) attest that—

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

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

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

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

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

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

31 “(iii) guidelines have been adopted in accordance with subsection (f) to ensure
32 compliance with the limitations in subsection (b) and to ensure that ~~applications~~
33 ~~an application~~ for a court order is filed as required by this Act;

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

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

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

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

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

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

7 “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

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

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

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

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

41 “(5) ENFORCEMENT OF DIRECTIVES. —

42 “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to

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

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

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

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

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

19 “(6) APPEAL.—

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

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

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

33 “(1) IN GENERAL.—

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

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

1 certification and such procedures are submitted.

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

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

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

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

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

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

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

27 “(3) ORDERS.—

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

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

42 “(i) correct any deficiency identified by the Court’s order not later than 30 days

1 after the date on which the Court issues the order; or

2 “(ii) cease, or not begin, the acquisition authorized under subsection (a).
3 **implementation of the authorization for which such certification was**
4 **submitted.**

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

8 “(4) APPEAL.—

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

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

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

19 “(ii) if the Government ~~appeals~~ **files a petition for review** of an order under
20 this section, until the Court of Review enters an order under subparagraph (C).

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

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

31 “(5) SCHEDULE.—

32 “(A) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General
33 and the Director of National Intelligence seek to reauthorize or replace an authorization
34 issued ~~pursuant to this section~~ **under subsection (a)**, the Attorney General and the
35 Director of National Intelligence shall, to the extent practicable, submit to the Court
36 the certification prepared in accordance with subsection (g) and the procedures adopted
37 in accordance with subsections (d) and (e) at least 30 days prior to the expiration of
38 such authorization.

39 “(B) REAUTHORIZATION OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—If the
40 Attorney General and the Director of National Intelligence seek to reauthorize or
41 replace an authorization ~~made pursuant to this section~~ **issued under subsection (a)** by

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1 filing a certification pursuant to subparagraph (A), that authorization, and any
2 directives issued thereunder and any order related thereto, shall remain in effect,
3 notwithstanding the expiration provided for in subsection (a), until the Court issues an
4 order with respect to such certification under paragraph (3) at which time the
5 provisions of that paragraph and paragraph (4) shall apply with respect to such
6 certification.

7 “(j) Judicial Proceedings.—

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

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

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

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

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

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

28 “(l) Assessments and Reviews.—

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

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

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

38 “(i) the congressional intelligence committees; and

39 “(ii) the Committees on the Judiciary of the House of Representatives and the
40 Senate.

1 “(2) AGENCY ASSESSMENT.—The Inspector General of the Department of Justice and the
2 Inspector General of each element of the intelligence community authorized to acquire
3 foreign intelligence information under subsection (a), with respect to the department or
4 element of such Inspector General—

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

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

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

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

17 “(i) the Attorney General;

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

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

22 “(I) the congressional intelligence committees; and

23 “(II) the Committees on the Judiciary of the House of Representatives and
24 the Senate.

25 “(3) ANNUAL REVIEW.—

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

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

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

36 “(iii) the number of targets that were later determined to be located in the
37 United States and, to the extent possible, whether communications of such targets
38 were reviewed; and

39 “(iv) a description of any procedures developed by the head of such element of
40 the intelligence community and approved by the Director of National Intelligence

1 to assess, in a manner consistent with national security, operational requirements
2 and the privacy interests of United States persons, the extent to which the
3 acquisitions authorized under subsection (a) acquire the communications of
4 United States persons, and the results of any such assessment.

5 “(B) USE OF REVIEW.—The head of each element of the intelligence community that
6 conducts an annual review under subparagraph (A) shall use each such review to
7 evaluate the adequacy of the minimization procedures utilized by such element ~~or~~ and,
8 as appropriate, the application of the minimization procedures to a particular
9 acquisition authorized under subsection (a).

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

13 “(i) the Foreign Intelligence Surveillance Court;

14 “(ii) the Attorney General;

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

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

19 “(I) the congressional intelligence committees; and

20 “(II) the Committees on the Judiciary of the House of Representatives and
21 the Senate.

22 “SEC. 703. CERTAIN ACQUISITIONS INSIDE THE
23 UNITED STATES TARGETING UNITED STATES
24 PERSONS OUTSIDE THE UNITED STATES.

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

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

32 “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably
33 believed to be located in the United States during the effective period of an order issued
34 pursuant to subsection (c), an acquisition targeting such United States person under this
35 section shall cease unless the targeted United States person is again reasonably believed to
36 be located outside the United States while an order issued pursuant to subsection (c) is in
37 effect. Nothing in this section shall be construed to limit the authority of the Government to
38 seek an order or authorization under, or otherwise engage in any activity that is authorized
39 under, any other title of this Act.

1 “(b) Application.—

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

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

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

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

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

13 “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
14 a foreign power;

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

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

19 “(F) a certification made by the Attorney General or an official specified in section
20 104(a)(6) that—

21 “(i) the certifying official deems the information sought to be foreign
22 intelligence information;

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

25 “(iii) such information cannot reasonably be obtained by normal investigative
26 techniques;

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

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

30 “(I) the information sought is the type of foreign intelligence information
31 designated; and

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

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

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

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

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

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

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

13 “(c) Order.—

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

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

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

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

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

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

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

31 “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for
32 purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may
33 consider past activities of the target and facts and circumstances relating to current or future
34 activities of the target. No United States person may be considered a foreign power, agent
35 of a foreign power, or officer or employee of a foreign power solely upon the basis of
36 activities protected by the first amendment to the Constitution of the United States.

37 “(3) REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

34 “(B) if applicable, an electronic communication service provider to provide to the
35 Government forthwith all information, facilities, or assistance necessary to accomplish
36 the acquisition authorized under such order in a manner that will protect the secrecy of
37 the acquisition and produce a minimum of interference with the services that such
38 electronic communication service provider is providing to the target of the acquisition;

39 “(C) if applicable, an electronic communication service provider to maintain under
40 security procedures approved by the Attorney General any records concerning the
41 acquisition or the aid furnished that such electronic communication service provider