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2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

7 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

13 Sec.104.Applications for court orders.

14 Sec.105.Issuance of an order.

15 Sec.106.Use of information.

16 Sec.107.Amendments for physical searches.

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

18 Sec.109.Foreign Intelligence Surveillance Court.

19 Sec.110.Weapons of mass destruction.

20 TITLE II—PROTECTIONS FOR ELECTRONIC  
21 COMMUNICATION SERVICE PROVIDERS

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

24 Sec.202.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

WITHHOLD

Exemption 5

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.~~

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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 ~~orders are~~ 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

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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

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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~~ 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;

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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

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