

1 Purpose: To provide a complete substitute.  
2  
3

4 H. R. 3773  
5

6 To amend the Foreign Intelligence Surveillance Act of 1978  
7 to establish a procedure for authorizing certain acquisitions  
8 of foreign intelligence, and for other purposes.  
9

10 Referred to the Committee on \_\_\_\_\_ and ordered to be  
11 printed

12 Ordered to lie on the table and to be printed

13 AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO  
14 BE PROPOSED BY MR. ROCKEFELLER

15 Viz:

16 ~~HOUSE AMENDMENT TO SENATE AMENDMENT:~~

17 In lieu of the matter proposed to be inserted by the amendment of the Senate House of  
18 Representatives to the amendment of the Senate to the text of the bill, insert the following:

19 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

24 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

30 Sec.104.Applications for court orders.

31 Sec.105.Issuance of an order.

32 Sec.106.Use of information.

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- 1 Sec.107.Amendments for physical searches.
- 2 Sec.108.Amendments for emergency pen registers and trap and trace devices.
- 3 Sec.109.Foreign intelligence surveillance court **Intelligence Surveillance Court.**
- 4 Sec.110.Review of previous actions.
- 5 Sec.111.Weapons of mass destruction.

6 ~~Sec.112.Statute of limitations.~~ **TITLE II—PROTECTIONS**  
7 **FOR ELECTRONIC COMMUNICATION SERVICE**  
8 **PROVIDERS**

- 9 ~~TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT~~  
10 ~~Sec.201.Statutory defenses.~~ **Sec.201.Procedures for implementing statutory defenses under**  
11 **the Foreign Intelligence Surveillance Act of 1978.**  
12 Sec.202.Technical amendments.

13 ~~TITLE III—COMMISSION ON WARRANTLESS~~  
14 ~~ELECTRONIC SURVEILLANCE ACTIVITIES~~  
15 **INTELLIGENCE COLLECTION, PRIVACY**  
16 **PROTECTION, AND CHANGES IN INFORMATION**  
17 **TECHNOLOGY**

- 18 ~~Sec.301.Commission on Warrantless Electronic Surveillance Activities.~~ **Intelligence Collection,**  
19 **Privacy Protection, and Changes in Information Technology.**

20 **TITLE IV—OTHER PROVISIONS**

- 21 Sec.401.Severability.
- 22 Sec.402.Effective date.
- 23 Sec.403.Repeals.
- 24 Sec.404.Transition procedures.
- 25 ~~Sec.405.No rights under the FISA Amendments Act of 2008 for~~  
26 ~~undocumented aliens.~~
- 27 ~~Sec.406.Surveillance to protect the United States.~~

28 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**  
29 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**  
30 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

3 (1) by striking title VII; and

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

5 **“TITLE VII—ADDITIONAL PROCEDURES REGARDING**  
6 **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

7 **“SEC. 701. DEFINITIONS.**

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

12 “(b) Additional Definitions.—

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

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

16 “(B) the Permanent Select Committee on Intelligence of the House of  
17 Representatives.

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

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

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

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

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

29 “(C) a provider of a remote computing service, as that term is defined in section  
30 2711 of title 18, United States Code;

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

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

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

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1 "SEC. 702. PROCEDURES FOR TARGETING CERTAIN  
2 PERSONS OUTSIDE THE UNITED STATES OTHER THAN  
3 UNITED STATES PERSONS.

4 "(a) Authorization.—Notwithstanding any other provision of law, pursuant to an order issued  
5 in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B)(ii), the  
6 Attorney General and the Director of National Intelligence may authorize jointly, for a period of  
7 up to 1 year from the effective date of the authorization, the targeting of persons reasonably  
8 believed to be located outside the United States to acquire foreign intelligence information.

9 "(b) Limitations.—An acquisition authorized under subsection (a)—

10 "(1) may not intentionally target any person known at the time of acquisition to be  
11 located in the United States;

12 "(2) may not intentionally target a person reasonably believed to be located outside the  
13 United States if the purpose of such acquisition is in order to target a particular, known  
14 person reasonably believed to be in the United States;

15 "(3) may not intentionally target a United States person reasonably believed to be located  
16 outside the United States;

17 "(4) may not intentionally acquire any communication as to which the sender and all  
18 intended recipients are known at the time of the acquisition to be located in the United  
19 States; and

20 "(5) shall be conducted in a manner consistent with the fourth amendment to the  
21 Constitution of the United States.

22 "(c) Conduct of Acquisition.—An Acquisition.—

23 "(1) IN GENERAL.—An acquisition authorized under subsection (a) may be conducted  
24 only in accordance with—

25 ~~"(1) a~~ "(A) the certification made by the Attorney General and the Director of  
26 National Intelligence pursuant to subsection (g) or a determination under paragraph  
27 ~~(1)(B) of such subsection; and submitted in accordance with subsection (g); and~~

28 ~~"(2) the procedures and guidelines required pursuant to subsections (d), (e), and~~  
29 ~~(f)."~~ "(B) the targeting and minimization procedures submitted in accordance with  
30 subsections (d) and (e).

31 \*\* 1 ~~(m)~~ "(2) CONSTRUCTION.—Nothing in title I of this Act shall be construed to  
32 require an application under section 104 for an acquisition that is targeted in accordance  
33 with this section at a person reasonably believed to be located outside the United States.

34 "(d) Targeting Procedures.—

35 "(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director  
36 of National Intelligence, shall adopt targeting procedures that are reasonably designed to  
37 ensure that any acquisition authorized under subsection (a) is limited to targeting persons  
38 reasonably believed to be located outside the United States and does not result in the  
39 intentional acquisition of any communication as to which the sender and all intended

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1 recipients are known at the time of the acquisition to be located in the United States.

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

4 “(e) Minimization Procedures.—

5 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director  
6 of National Intelligence, shall adopt minimization procedures ~~that for acquisitions~~  
7 ~~authorized under subsection (a) that—~~

8 ~~“(A) in the case of electronic surveillance, meet the definition of minimization~~  
9 ~~procedures under section 101(h) or section 301(4), as appropriate, for acquisitions~~  
10 ~~authorized under subsection (a).; and~~

11 ~~“(B) in the case of a physical search, meet the definition of minimization procedures~~  
12 ~~under section 301(4).~~

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

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

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

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

19 “(B) that an application is filed under section 104 or 303, if required by this Act.  
20 **section 303, as appropriate, if required by any other section of this Act.**

21 ~~“(2) Criteria.—With respect to subsection (b)(2), the guidelines adopted pursuant to~~  
22 ~~paragraph (1) shall contain specific criteria for determining whether a significant purpose of~~  
23 ~~an acquisition is to acquire the communications of a specific United States person~~  
24 ~~reasonably believed to be located in the United States. Such criteria shall include~~  
25 ~~consideration of whether—~~

26 ~~“(A) the department or agency of the Federal Government conducting the acquisition has~~  
27 ~~made an inquiry to another department or agency of the Federal Government to gather~~  
28 ~~information on the specific United States person;~~

29 ~~“(B) the department or agency of the Federal Government conducting the acquisition has~~  
30 ~~provided information that identifies the specific United States person to another department~~  
31 ~~or agency of the Federal Government;~~

32 ~~“(C) the department or agency of the Federal Government conducting the acquisition~~  
33 ~~determines that the specific United States person has been the subject of ongoing interest or~~  
34 ~~repeated investigation by a department or agency of the Federal Government; and~~

35 ~~“(D) the specific United States person is a natural person.~~

36 “(3)“(2) TRAINING.—The Director of National Intelligence shall establish a training  
37 program for appropriate ~~personnel of the intelligence community~~ personnel to ensure that  
38 the guidelines adopted pursuant to paragraph (1) are properly implemented.

39 “(4) ~~Submission to congress and foreign intelligence surveillance court.—The“(3)~~

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1 **SUBMISSION OF GUIDELINES.**—The Attorney General shall ~~submit~~ **provide** the guidelines  
2 adopted pursuant to paragraph (1) to—

3 “(A) the congressional intelligence committees;

4 “(B) the ~~Committees~~ **Committee** on the Judiciary of the **Senate**;

5 “(C) the ~~Committee on the Judiciary of the House of Representatives and the~~  
6 **Senate**; and

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

8 “(g) Certification.—

9 “(1) IN GENERAL.—

10 “(A) ~~REQUIREMENT.~~—~~SUBJECT TO SUBPARAGRAPH (B), IF REQUIREMENT.~~—**In**  
11 **order to conduct an acquisition under subsection (a)**, the Attorney General and the  
12 Director of National Intelligence ~~seek to authorize an acquisition under this section, the~~  
13 ~~Attorney General and the Director of National Intelligence shall provide~~ **shall provide**  
14 **to the Foreign Intelligence Surveillance Court**, under oath, a written certification, as  
15 ~~described in this subsection.~~

16 “~~(B) Emergency authorization.~~—**If and any supporting affidavit, under seal, in**  
17 **accordance with this subsection.**

18 “(B) **TIMING OF SUBMISSION TO THE COURT.**—

19 “(i) **IN GENERAL.**—**Except as provided in clause (ii), the Attorney General**  
20 **and Director of National Intelligence shall provide a copy of a certification**  
21 **made under this subsection to the Foreign Intelligence Surveillance Court**  
22 **prior to the initiation of an acquisition under subsection (a).**

23 “(ii) **EXCEPTION.**—**If the Attorney General and the Director of National**  
24 **Intelligence determine that an emergency situation exists, immediate action by the**  
25 **Government is required, there should be immediate implementation of the**  
26 **authorization and time does not permit the completion of judicial review**  
27 **issuance of an order pursuant to subsection (i)(3) prior to the initiation of an**  
28 **acquisition implementation of the authorization, the Attorney General and the**  
29 **Director of National Intelligence may authorize the acquisition and shall submit to**  
30 **the Foreign Intelligence Surveillance Court a certification, including the**  
31 **determination under this subsection, as soon as possible but in no event more**  
32 **than 7 days after such determination is made.**

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

34 “(A) attest that—

35 “(i) there are reasonable procedures in place **that have been approved or**  
36 **submitted for approval to the Foreign Intelligence Surveillance Court**, for  
37 determining that the acquisition authorized under subsection (a)—

38 “(I) is targeted at persons reasonably believed to be located outside the  
39 United States ~~and such procedures have been submitted to the Foreign~~  
40 **Intelligence Surveillance Court; and**

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1           “(II) does not result in the intentional acquisition of any communication as  
2           to which the sender and all intended recipients are known at the time of the  
3           acquisition to be located in the United States, ~~and such procedures have been~~  
4           ~~submitted to the Foreign Intelligence Surveillance Court;~~

5           “(ii) guidelines have been adopted in accordance with subsection (f) to ensure  
6           compliance with the limitations in subsection (b) and to ensure that applications  
7           are filed under section 104 or section 303, if required by this Act;

8           “(iii) the minimization procedures to be used with respect to such acquisition—

9                    “(I) meet the definition of minimization procedures under section 101(h)  
10                   or section 301(4) ~~in accordance with subsection (e), as appropriate;~~ and

11                   “(II) have been **approved by, or submitted to for approval by,** the  
12                   Foreign Intelligence Surveillance Court;

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

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

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

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

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

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

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

25           “(C) include—

26                   “(i) an effective date for the authorization that is between 30 and 60 days from  
27                   the submission of the written certification to the court; or

28                   “(ii) if the acquisition has begun or ~~will begin in the effective date is less than~~  
29                   30 days from the submission of the written certification to the court—

30                           “(I) the date the acquisition began or the effective date for the acquisition;

31                           “(II) a description of why ~~implementation was~~ **initiation of the**  
32                           **acquisition is** required in less than 30 days from the submission of the  
33                           written certification to the court; and

34                           “(III) if the acquisition is authorized under paragraph (1)(B), ~~the basis for~~  
35                           ~~the determination that an emergency situation exists, immediate action by the~~  
36                           **government is required;** (ii), **a description of why there should be**  
37                           **immediate implementation of the authorization** and time does not permit  
38                           the completion of judicial review prior to the initiation of the acquisition.  
39                           **issuance of an order pursuant to subsection (i)(3) prior to the**

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implementation of the authorization.

1  
2 ~~“(3)“(3) CHANGE IN EFFECTIVE DATE.—~~The Attorney General and the Director of  
3 National Intelligence may advance or delay the effective date described in paragraph  
4 (2)(C) by amending the certification pursuant to subsection (i)(C) to include the  
5 applicable requirements of paragraph (2)(C).

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

9 ~~“(4) Submission to the court.—~~The ~~“(5) MAINTENANCE OF CERTIFICATION.—~~The  
10 Attorney General shall ~~transmit~~ maintain a copy of a certification made under this  
11 subsection, ~~and any supporting affidavit, under seal to the Foreign Intelligence Surveillance~~  
12 ~~Court before the initiation of an acquisition under this section, except in accordance with~~  
13 ~~paragraph (1)(B).~~ The Attorney General shall maintain such certification under security  
14 measures adopted by the Chief Justice of the United States and the Attorney General, in  
15 consultation with the Director of National Intelligence.

16 ~~“(5) Review.—~~A ~~“(6) REVIEW.—~~The certification ~~submitted pursuant to~~ required by  
17 this subsection shall be subject to judicial review pursuant to subsection (i).

18 ~~“(h) Directives and Judicial Review of Directives.—~~

19 ~~“(1) AUTHORITY.— PURSUANT TO AN ORDER ISSUED IN ACCORDANCE WITH SUBSECTION~~  
20 ~~(1)(3) OR A DETERMINATION UNDER SUBSECTION (C)(1)(B) AUTHORITY.—~~With respect to  
21 an acquisition authorized under subsection (a), the Attorney General and the Director of  
22 National Intelligence may direct, in writing, an electronic communication service provider  
23 to—

24 ~~“(A) immediately provide the Government with all information, facilities, or~~  
25 ~~assistance necessary to accomplish the acquisition authorized in accordance with this~~  
26 ~~section in a manner that will protect the secrecy of the acquisition and produce a~~  
27 ~~minimum of interference with the services that such electronic communication service~~  
28 ~~provider is providing to the target of the acquisition; and~~

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

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

35 ~~“(3) RELEASE FROM LIABILITY.— NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO~~  
36 ~~LIABILITY.—~~No cause of action shall lie in any court against any electronic communication  
37 service provider for providing any information, facilities, or assistance in accordance with a  
38 directive issued pursuant to paragraph (1).

39 ~~“(4) CHALLENGING OF DIRECTIVES.—~~

40 ~~“(A) AUTHORITY TO CHALLENGE.—~~An electronic communication service provider  
41 receiving a directive issued pursuant to paragraph (1) may challenge the directive by

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1 filing a petition with the Foreign Intelligence Surveillance Court, which shall have  
2 jurisdiction to review such a petition.

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

6 “(C) STANDARDS FOR REVIEW.—A JUDGE REVIEW.—The Foreign Intelligence  
7 Surveillance Court considering a petition to modify or set aside a directive may grant  
8 such petition only if the judge Court finds that the directive does not meet the  
9 requirements of this section, or is otherwise unlawful.

10 “(D) PROCEDURES FOR INITIAL REVIEW.—A JUDGE REVIEW.—The Foreign  
11 Intelligence Surveillance Court shall conduct an initial review of a petition filed  
12 under subparagraph (A) not later than 5 days after being assigned such petition. If the  
13 judge Court determines that the petition does not consist of claims, defenses, or other  
14 legal contentions that are warranted by existing law; or by a nonfrivolous argument for  
15 extending, modifying, or reversing existing law; or for establishing new law, the judge  
16 Court shall immediately deny the petition and affirm the directive or any part of the  
17 directive that is the subject of the petition and order the recipient to comply with the  
18 directive or any part of it. Upon making such a determination or promptly thereafter,  
19 the judge Court shall provide a written statement for the record of the reasons for a  
20 determination under this subparagraph.

21 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge the Foreign Intelligence  
22 Surveillance Court determines that a petition filed under subparagraph (A) requires  
23 plenary review, the judge Court shall affirm, modify, or set aside the directive that is  
24 the subject of that petition not later than 30 days after being assigned the petition. If the  
25 judge Court does not set aside the directive, the judge Court shall immediately affirm  
26 or modify the directive or order that the directive be modified, and order the  
27 recipient to comply with the directive in its entirety or as modified. The judge Court  
28 shall provide a written statement for the records record of the reasons for a  
29 determination under this subparagraph.

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

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

34 “(5) ENFORCEMENT OF DIRECTIVES.—

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

40 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed  
41 under subparagraph (A) to 1 of the judges serving in the pool established by section  
42 103(e)(1) not later than 24 hours after the filing of the petition.

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1           “(C) PROCEDURES FOR REVIEW.—A JUDGE REVIEW.—The Foreign Intelligence  
2           **Surveillance Court** considering a petition filed under subparagraph (A) shall issue an  
3           order requiring the electronic communication service provider to comply with the  
4           directive or any part of it, as issued or as modified, not later than 30 days after being  
5           assigned the petition if the **judge Court** finds that the directive meets the requirements  
6           of this section, and is otherwise lawful. The **judge Court** shall provide a written  
7           statement for the record of the reasons for a determination under this paragraph.

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

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

12          “(6) APPEAL.—

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

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

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

26           “(1) IN GENERAL.—

27           “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
28           Intelligence Surveillance Court shall have jurisdiction to review any certification  
29           submitted ~~pursuant to in accordance with~~ subsection (g) and the targeting and  
30           minimization procedures ~~required by~~ **submitted in accordance with** subsections (d)  
31           and (e), **and any amendments to such certification or procedures.**

32           “(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted  
33           ~~pursuant to in accordance with~~ subsection (g) and the targeting and minimization  
34           procedures ~~required by~~ **submitted in accordance with** subsections (d) and (e) and  
35           approve or deny an order under this subsection not later than 30 days after the date on  
36           which a certification is submitted.

37           “(C) AMENDMENTS.—The Attorney General and the Director of National  
38           Intelligence may amend a certification submitted in accordance with subsection  
39           (g) or the targeting and minimization procedures submitted in accordance with  
40           subsections (d) and (e) as necessary after such certification or procedures have  
41           been submitted for review to the Foreign Intelligence Surveillance Court. If an  
42           amendment is submitted subsequent to the issuance of an order under subsection

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1 (i)(3) that significantly modifies such certification or procedures, the Attorney  
2 General and Director of National Intelligence shall seek approval of such  
3 amendment by the Court.

4 “(2) REVIEW.—~~Court~~“(2) Review.—~~The Court~~ shall review the following:

5 “(A) CERTIFICATIONS.—A CERTIFICATION.—A certification submitted pursuant to  
6 in accordance with subsection (g) to determine whether the certification contains all  
7 the required elements.

8 “(B) TARGETING PROCEDURES.—The targeting procedures required by submitted in  
9 accordance with subsection (d) to assess whether the procedures are reasonably  
10 designed to ensure that the acquisition authorized under subsection (a) is limited to the  
11 targeting of persons reasonably believed to be located outside the United States and  
12 does not result in the intentional acquisition of any communication as to which the  
13 sender and all intended recipients are known at the time of the acquisition to be located  
14 in the United States.

15 “(C) MINIMIZATION PROCEDURES.—The minimization procedures required by  
16 submitted in accordance with subsection (e) to assess whether such procedures meet  
17 the definition of minimization procedures under section 101(h) or section 301(4) in  
18 accordance with subsection (e), as appropriate.

19 “(3) ORDERS.—

20 “(A) APPROVAL.—If the Court finds that a certification submitted pursuant to in  
21 accordance with subsection (g) contains all of the required elements and that the  
22 procedures required by targeting and minimization procedures submitted in  
23 accordance with subsections (d) and (e) are consistent with the requirements of those  
24 subsections and with the fourth amendment to the Constitution of the United States, the  
25 Court shall enter an order approving the certification and the use of the procedures for  
26 the acquisition.

27 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required  
28 submitted pursuant to in accordance with subsection (g) does not contain all of the  
29 required elements, or that the procedures required by submitted in accordance with  
30 subsections (d) and (e) are not consistent with the requirements of those subsections or  
31 the fourth amendment to the Constitution of the United States—

32 “(i) in the case of a certification submitted in accordance with subsection (g)(1)(A),  
33 the Court shall deny the order, identify any deficiency in the certification or  
34 procedures, and provide the Government with an opportunity to correct such  
35 deficiency; and

36 “(ii) in the case of a certification submitted in accordance with subsection (g)(1)(B),  
37 the Court shall issue an order directing the Government to, at the Government’s  
38 election and to the extent required by the Court’s order—

39 “(I)“(i) correct any deficiency identified by the Court not later than 30 days  
40 after the date the Court issues the order; or

41 “(II)“(ii) cease, or not begin, the acquisition authorized under subsection  
42 (g)(1)(B)(a).

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

4           “(4) APPEAL.—

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

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

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

14           “(ii) if the Government appeals an order under this section, subject to  
15 ~~subparagraph (C), until the Court of Review enters the entry of an order under~~  
16 ~~subparagraph (A)-(C).~~

17           ~~“(C) IMPLEMENTATION OF EMERGENCY AUTHORITY PENDING APPEAL.—Not later than~~  
18 ~~60 days after the filing of an appeal of an order issued under paragraph (3)(B)(ii)~~  
19 ~~directing the correction of a deficiency, the Court of Review shall determine, and enter~~  
20 ~~a corresponding order regarding, whether all or any part of the correction order, as~~  
21 ~~issued or modified, shall be implemented during the pendency of the appeal.—The~~  
22 ~~Government shall conduct an acquisition affected by such order issued under~~  
23 ~~paragraph (3)(B)(ii) in accordance with an order issued under this subparagraph or~~  
24 ~~shall cease such acquisition.~~

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

30           “(5) SCHEDULE.—

31           ~~“(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—IF THE ATTORNEY GENERAL~~  
32 ~~AND THE DIRECTOR OF NATIONAL INTELLIGENCE SEEK TO REPLACE EFFECT.—When~~  
33 ~~replacing an authorization issued pursuant to section 105B of the Foreign Intelligence~~  
34 ~~Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007~~  
35 ~~(Public Law 110-55) with an authorization under this section, the Attorney General~~  
36 ~~and the Director of National Intelligence shall, to the extent practicable, submit to the~~  
37 ~~Court a the certification under prepared in accordance with subsection (g) and the~~  
38 ~~procedures required by adopted in accordance with subsections (d), (e), and (f)(e) at~~  
39 ~~least 30 days before the expiration of such authorization.~~

40           ~~“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—IF THE ATTORNEY~~  
41 ~~GENERAL AND THE DIRECTOR OF NATIONAL INTELLIGENCE SEEK TO REPLACE~~  
42 ~~EFFECT.—When replacing an authorization issued pursuant to this section, the~~

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1 Attorney General and the Director of National Intelligence shall, to the extent  
2 practicable, submit to the Court a ~~the certification under subsection prepared in~~  
3 **accordance with section (g)** and the procedures ~~required by adopted in accordance~~  
4 **with subsections (d), (e), and (f)(e)** at least 30 days prior to the expiration of such  
5 authorization.

6 “(C) CONSOLIDATED SUBMISSIONS.—The Attorney General and Director of National  
7 Intelligence shall, to the extent practicable, annually submit to the Court a  
8 consolidation of—

9 “(i) certifications ~~under prepared in accordance with~~ subsection (g) for  
10 reauthorization of authorizations in effect;

11 “(ii) the procedures ~~required by adopted in accordance with~~ subsections (d),  
12 (e), and (f)(e); and

13 “(iii) the annual review required by subsection (l)(3) for the preceding year.

14 “(D) TIMING OF REVIEWS.—The Attorney General and the Director of National  
15 Intelligence shall, ~~to the extent practicable~~, schedule the completion of the annual  
16 review ~~under required by~~ subsection (l)(3) and a semiannual assessment ~~under~~  
17 **required by** subsection (l)(1) so that they may be submitted to the Court at the time of  
18 the consolidated submission under subparagraph (C).

19 “(E) CONSTRUCTION.—The requirements of subparagraph (C) shall not be construed  
20 to preclude the Attorney General and the Director of National Intelligence from  
21 submitting certifications for additional authorizations at other times during the year as  
22 necessary.

23 “(6) COMPLIANCE.—At or before the end of the period of time for which a ~~certification~~  
24 ~~submitted pursuant to subsection (g) and procedures required by subsection (d) and (e) are~~  
25 ~~approved by an order under this section~~ **an authorization under subsection (a) expires**,  
26 the Foreign Intelligence Surveillance Court may assess compliance with the minimization  
27 procedures **required by** ~~under~~ subsection (e) by reviewing the circumstances under which  
28 information concerning United States persons was acquired, retained, or disseminated.

29 “(j) Judicial Proceedings.—

30 “(1) EXPEDITED PROCEEDINGS.—Judicial proceedings under this section shall be  
31 conducted as expeditiously as possible.

32 “(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless  
33 the Court, the Court of Review, or any judge of either the Court or the Court of Review, by  
34 order for reasons stated, extends that time for good cause.

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

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

40 “(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In  
41 any proceedings under this section, the court shall, upon request of the Government, review

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1 ex parte and in camera any Government submission, or portions of a submission, which  
2 may include classified information.

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

6 “(l) Assessments and Reviews.—

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

13 “(A) the Foreign Intelligence Surveillance Court;

14 “(B) the congressional intelligence committees;

15 ~~“(B)“(C) the Committees Committee on the Judiciary of the House of~~  
16 ~~Representatives and the Senate; and Senate; and~~

17 ~~“(C) the Foreign Intelligence Surveillance Court.”“(D) the Committee on the~~  
18 **Judiciary of the House of Representatives.**

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

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

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

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

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

36 “(i) the Attorney General;

37 “(ii) the Director of National Intelligence;

38 “(iii) the congressional intelligence committees; and

39 “(iv) the ~~Committees Committee~~ on the Judiciary of the ~~House of~~  
40 ~~Representatives and the Senate; and~~

1                   “(v) the ~~Foreign Intelligence Surveillance Court~~ **Committee on the Judiciary**  
2                   **of the House of Representatives.**

3                   “(3) ANNUAL REVIEW.—

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

9                   “(i) the number and nature of disseminated intelligence reports containing a  
10                   reference to a United States person identity;

11                   “(ii) the number and nature of United States person identities subsequently  
12                   disseminated by that element in response to requests for identities that were not  
13                   referred to by name or title in the original reporting;

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

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

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

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

31                   “(i) the Foreign Intelligence Surveillance Court;

32                   “(ii) the Attorney General;

33                   “(iii) the Director of National Intelligence;

34                   “(iv) the congressional intelligence committees; and

35                   “(v) the Committees on the Judiciary of the Senate; and

36                   “(vi) the **Committee on the Judiciary of the House of Representatives and the**  
37                   **Senate.**

38  
39                   \* 1 ~~“(m) Construction. Nothing in this Act shall be construed~~