

AMENDMENT NO.

Calendar No.

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978,
to modernize and streamline the provisions of that Act,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ROCKEFELLER
(for himself and Mr. BOND)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Foreign Intelligence Surveillance Act of 1978 Amend-
6 ments Act of 2008” or the “FISA Amendments Act of
7 2008”.

8 (b) **TABLE OF CONTENTS.**—The table of contents for
9 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 domestic 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. Technical and conforming amendments.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

- Sec. 201. Definitions.
- Sec. 202. Limitations on civil actions for electronic communication service providers.
- Sec. 203. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 204. Preemption of State investigations.
- Sec. 205. Technical amendments.

TITLE III—OTHER PROVISIONS

- Sec. 301. Severability.
- Sec. 302. Effective date; repeal; transition procedures.

1 **TITLE I—FOREIGN**
 2 **INTELLIGENCE SURVEILLANCE**
 3 **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
 4 **PERSONS OUTSIDE THE UNITED STATES.**

5 (a) IN GENERAL.—The Foreign Intelligence Surveil-
 6 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

- 7 (1) by striking title VII; and
- 8 (2) by adding after title VI the following new
- 9 title:

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES REGARDING CERTAIN**
3 **PERSONS OUTSIDE THE**
4 **UNITED STATES**

5 **“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC**
6 **SURVEILLANCE.**

7 “Nothing in the definition of electronic surveillance
8 under section 101(f) shall be construed to encompass sur-
9 veillance that is targeted in accordance with this title at
10 a person reasonably believed to be located outside the
11 United States.

12 **“SEC. 702. DEFINITIONS.**

13 “(a) **IN GENERAL.**—The terms ‘agent of a foreign
14 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
15 lance’, ‘foreign intelligence information’, ‘foreign power’,
16 ‘minimization procedures’, ‘person’, ‘United States’, and
17 ‘United States person’ shall have the meanings given such
18 terms in section 101, except as specifically provided in this
19 title.

20 **“(b) ADDITIONAL DEFINITIONS.—**

21 **“(1) CONGRESSIONAL INTELLIGENCE COMMIT-**
22 **TEES.**—The term ‘congressional intelligence commit-
23 tees’ means—

24 **“(A) the Select Committee on Intelligence**
25 **of the Senate; and**

1 “(B) the Permanent Select Committee on
2 Intelligence of the House of Representatives.

3 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT; COURT.—The terms ‘Foreign Intelligence
5 Surveillance Court’ and ‘Court’ mean the court es-
6 tablished by section 103(a).

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

12 “(4) ELECTRONIC COMMUNICATION SERVICE
13 PROVIDER.—The term ‘electronic communication
14 service provider’ means—

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

18 “(B) a provider of electronic communica-
19 tion service, as that term is defined in section
20 2510 of title 18, United States Code;

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

24 “(D) any other communication service pro-
25 vider who has access to wire or electronic com-

1 munications either as such communications are
2 transmitted or as such communications are
3 stored; or

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

7 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
8 NITY.—The term ‘element of the intelligence com-
9 munity’ means an element of the intelligence com-
10 munity specified in or designated under section 3(4)
11 of the National Security Act of 1947 (50 U.S.C.
12 401a(4)).

13 **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**
14 **SONS OUTSIDE THE UNITED STATES OTHER**
15 **THAN UNITED STATES PERSONS.**

16 “(a) AUTHORIZATION.—Notwithstanding any other
17 law, the Attorney General and the Director of National
18 Intelligence may authorize jointly, for periods of up to 1
19 year, the targeting of persons reasonably believed to be
20 located outside the United States to acquire foreign intel-
21 ligence information.

22 “(b) LIMITATIONS.—An acquisition authorized under
23 subsection (a)—

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

4 “(2) may not intentionally target a person rea-
5 sonably believed to be located outside the United
6 States if the purpose of such acquisition is to target
7 a particular, known person reasonably believed to be
8 in the United States, except in accordance with title
9 I or title III;

10 “(3) may not intentionally target a United
11 States person reasonably believed to be located out-
12 side the United States, except in accordance with
13 sections 704, 705, or 706; and

14 “(4) shall be conducted in a manner consistent
15 with the fourth amendment to the Constitution of
16 the United States.

17 “(c) CONDUCT OF ACQUISITION.—An acquisition au-
18 thorized under subsection (a) may be conducted only in
19 accordance with—

20 “(1) a certification made by the Attorney Gen-
21 eral and the Director of National Intelligence pursu-
22 ant to subsection (f); and

23 “(2) the targeting and minimization procedures
24 required pursuant to subsections (d) and (e).

25 “(d) TARGETING PROCEDURES.—

1 “(1) REQUIREMENT TO ADOPT.—The Attorney
2 General, in consultation with the Director of Na-
3 tional Intelligence, shall adopt targeting procedures
4 that are reasonably designed to ensure that any ac-
5 quisition authorized under subsection (a) is limited
6 to targeting persons reasonably believed to be lo-
7 cated outside the United States.

8 “(2) JUDICIAL REVIEW.—The procedures re-
9 ferred to in paragraph (1) shall be subject to judicial
10 review pursuant to subsection (h).

11 “(e) MINIMIZATION PROCEDURES.—

12 “(1) REQUIREMENT TO ADOPT.—The Attorney
13 General, in consultation with the Director of Na-
14 tional Intelligence, shall adopt, consistent with the
15 requirements of section 101(h) or section 301(4),
16 minimization procedures for acquisitions authorized
17 under subsection (a).

18 “(2) JUDICIAL REVIEW.—The minimization
19 procedures required by this subsection shall be sub-
20 ject to judicial review pursuant to subsection (h).

21 “(f) CERTIFICATION.—

22 “(1) IN GENERAL.—

23 “(A) REQUIREMENT.—Subject to subpara-
24 graph (B), prior to the initiation of an acquisi-
25 tion authorized under subsection (a), the Attor-

1 ney General and the Director of National Intel-
2 ligence shall provide, under oath, a written cer-
3 tification, as described in this subsection.

4 “(B) EXCEPTION.—If the Attorney Gen-
5 eral and the Director of National Intelligence
6 determine that immediate action by the Govern-
7 ment is required and time does not permit the
8 preparation of a certification under this sub-
9 section prior to the initiation of an acquisition,
10 the Attorney General and the Director of Na-
11 tional Intelligence shall prepare such certifi-
12 cation, including such determination, as soon as
13 possible but in no event more than 168 hours
14 after such determination is made.

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

17 “(A) attest that—

18 “(i) there are reasonable procedures
19 in place for determining that the acquisi-
20 tion authorized under subsection (a) is tar-
21 geted at persons reasonably believed to be
22 located outside the United States and that
23 such procedures have been approved by, or
24 will be submitted in not more than 5 days
25 for approval by, the Foreign Intelligence

1 Surveillance Court pursuant to subsection
2 (h);

3 “(ii) the procedures referred to in
4 clause (i) are consistent with the require-
5 ments of the fourth amendment to the
6 Constitution of the United States and do
7 not permit the intentional targeting of any
8 person who is known at the time of acqui-
9 sition to be located in the United States;

10 “(iii) a significant purpose of the ac-
11 quisition is to obtain foreign intelligence
12 information;

13 “(iv) the minimization procedures to
14 be used with respect to such acquisition—

15 “(I) meet the definition of mini-
16 mization procedures under section
17 101(h) or section 301(4); and

18 “(II) have been approved by, or
19 will be submitted in not more than 5
20 days for approval by, the Foreign In-
21 telligence Surveillance Court pursuant
22 to subsection (h);

23 “(v) the acquisition involves obtaining
24 the foreign intelligence information from or

1 with the assistance of an electronic com-
2 munication service provider; and

3 “(vi) the acquisition does not con-
4 stitute electronic surveillance, as limited by
5 section 701; and

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

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

11 “(ii) the head of any element of the
12 intelligence community.

13 “(3) LIMITATION.—A certification made under
14 this subsection is not required to identify the specific
15 facilities, places, premises, or property at which the
16 acquisition authorized under subsection (a) will be
17 directed or conducted.

18 “(4) SUBMISSION TO THE COURT.—The Attor-
19 ney General shall transmit a copy of a certification
20 made under this subsection, and any supporting affi-
21 davit, under seal to the Foreign Intelligence Surveil-
22 lance Court as soon as possible, but in no event
23 more than 5 days after such certification is made.
24 Such certification shall be maintained under security
25 measures adopted by the Chief Justice of the United

1 States and the Attorney General, in consultation
2 with the Director of National Intelligence.

3 “(5) REVIEW.—The certification required by
4 this subsection shall be subject to judicial review
5 pursuant to subsection (h).

6 “(g) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
7 TIVES.—

8 “(1) AUTHORITY.—With respect to an acquisi-
9 tion authorized under subsection (a), the Attorney
10 General and the Director of National Intelligence
11 may direct, in writing, an electronic communication
12 service provider to—

13 “(A) immediately provide the Government
14 with all information, facilities, or assistance
15 necessary to accomplish the acquisition in a
16 manner that will protect the secrecy of the ac-
17 quisition and produce a minimum of inter-
18 ference with the services that such electronic
19 communication service provider is providing to
20 the target; and

21 “(B) maintain under security procedures
22 approved by the Attorney General and the Di-
23 rector of National Intelligence any records con-
24 cerning the acquisition or the aid furnished that

1 such electronic communication service provider
2 wishes to maintain.

3 “(2) COMPENSATION.—The Government shall
4 compensate, at the prevailing rate, an electronic
5 communication service provider for providing infor-
6 mation, facilities, or assistance pursuant to para-
7 graph (1).

8 “(3) RELEASE FROM LIABILITY.—Notwith-
9 standing any other law, no cause of action shall lie
10 in any court against any electronic communication
11 service provider for providing any information, facili-
12 ties, or assistance in accordance with a directive
13 issued pursuant to paragraph (1).

14 “(4) CHALLENGING OF DIRECTIVES.—

15 “(A) AUTHORITY TO CHALLENGE.—An
16 electronic communication service provider re-
17 ceiving a directive issued pursuant to paragraph
18 (1) may challenge the directive by filing a peti-
19 tion with the Foreign Intelligence Surveillance
20 Court, which shall have jurisdiction to review
21 such a petition.

22 “(B) ASSIGNMENT.—The presiding judge
23 of the Court shall assign the petition filed
24 under subparagraph (A) to 1 of the judges serv-
25 ing in the pool established by section 103(e)(1)

1 not later than 24 hours after the filing of the
2 petition.

3 “(C) STANDARDS FOR REVIEW.—A judge
4 considering a petition to modify or set aside a
5 directive may grant such petition only if the
6 judge finds that the directive does not meet the
7 requirements of this section or is otherwise un-
8 lawful. If the judge does not modify or set aside
9 the directive, the judge shall immediately affirm
10 such directive, and order the recipient to com-
11 ply with the directive. The judge shall provide
12 a written statement for the record of the rea-
13 sons for a determination under this paragraph.

14 “(D) CONTINUED EFFECT.—Any directive
15 not explicitly modified or set aside under this
16 paragraph shall remain in full effect.

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

21 “(5) ENFORCEMENT OF DIRECTIVES.—

22 “(A) ORDER TO COMPEL.—In the case of
23 a failure to comply with a directive issued pur-
24 suant to paragraph (1), the Attorney General
25 may file a petition for an order to compel com-

1 pliance with the directive with the Foreign In-
2 telligence Surveillance Court, which shall have
3 jurisdiction to review such a petition.

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

10 “(C) STANDARDS FOR REVIEW.—A judge
11 considering a petition shall issue an order re-
12 quiring the electronic communication service
13 provider to comply with the directive if the
14 judge finds that the directive was issued in ac-
15 cordance with paragraph (1), meets the require-
16 ments of this section, and is otherwise lawful.
17 The judge shall provide a written statement for
18 the record of the reasons for a determination
19 under this paragraph.

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

24 “(E) PROCESS.—Any process under this
25 paragraph may be served in any judicial district

1 in which the electronic communication service
2 provider may be found.

3 “(6) APPEAL.—

4 “(A) APPEAL TO THE COURT OF RE-
5 VIEW.—The Government or an electronic com-
6 munication service provider receiving a directive
7 issued pursuant to paragraph (1) may file a pe-
8 tition with the Foreign Intelligence Surveillance
9 Court of Review for review of the decision
10 issued pursuant to paragraph (4) or (5) not
11 later than 7 days after the issuance of such de-
12 cision. The Court of Review shall have jurisdic-
13 tion to consider such a petition and shall pro-
14 vide a written statement for the record of the
15 reasons for a decision under this paragraph.

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

1 “(h) JUDICIAL REVIEW OF CERTIFICATIONS AND
2 PROCEDURES.—

3 “(1) IN GENERAL.—

4 “(A) REVIEW BY THE FOREIGN INTEL-
5 LIGENCE SURVEILLANCE COURT.—The Foreign
6 Intelligence Surveillance Court shall have juris-
7 diction to review any certification required by
8 subsection (c) and the targeting and minimiza-
9 tion procedures adopted pursuant to subsections
10 (d) and (e).

11 “(B) SUBMISSION TO THE COURT.—The
12 Attorney General shall submit to the Court any
13 such certification or procedure, or amendment
14 thereto, not later than 5 days after making or
15 amending the certification or adopting or
16 amending the procedures.

17 “(2) CERTIFICATIONS.—The Court shall review
18 a certification provided under subsection (f) to deter-
19 mine whether the certification contains all the re-
20 quired elements.

21 “(3) TARGETING PROCEDURES.—The Court
22 shall review the targeting procedures required by
23 subsection (d) to assess whether the procedures are
24 reasonably designed to ensure that the acquisition
25 authorized under subsection (a) is limited to the tar-

1 getting of persons reasonably believed to be located
2 outside the United States.

3 “(4) MINIMIZATION PROCEDURES.—The Court
4 shall review the minimization procedures required by
5 subsection (e) to assess whether such procedures
6 meet the definition of minimization procedures
7 under section 101(h) or section 301(4).

8 “(5) ORDERS.—

9 “(A) APPROVAL.—If the Court finds that
10 a certification required by subsection (f) con-
11 tains all of the required elements and that the
12 targeting and minimization procedures required
13 by subsections (d) and (e) are consistent with
14 the requirements of those subsections and with
15 the fourth amendment to the Constitution of
16 the United States, the Court shall enter an
17 order approving the continued use of the proce-
18 dures for the acquisition authorized under sub-
19 section (a).

20 “(B) CORRECTION OF DEFICIENCIES.—If
21 the Court finds that a certification required by
22 subsection (f) does not contain all of the re-
23 quired elements, or that the procedures re-
24 quired by subsections (d) and (e) are not con-
25 sistent with the requirements of those sub-

1 sections or the fourth amendment to the Con-
2 stitution of the United States, the Court shall
3 issue an order directing the Government to, at
4 the Government's election and to the extent re-
5 quired by the Court's order—

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

10 “(ii) cease the acquisition authorized
11 under subsection (a).

12 “(C) REQUIREMENT FOR WRITTEN STATE-
13 MENT.—In support of its orders under this sub-
14 section, the Court shall provide, simultaneously
15 with the orders, for the record a written state-
16 ment of its reasons.

17 “(6) APPEAL.—

18 “(A) APPEAL TO THE COURT OF RE-
19 VIEW.—The Government may appeal any order
20 under this section to the Foreign Intelligence
21 Surveillance Court of Review, which shall have
22 jurisdiction to review such order. For any deci-
23 sion affirming, reversing, or modifying an order
24 of the Foreign Intelligence Surveillance Court,

1 the Court of Review shall provide for the record
2 a written statement of its reasons.

3 “(B) CONTINUATION OF ACQUISITION
4 PENDING REHEARING OR APPEAL.—Any acqui-
5 sitions affected by an order under paragraph
6 (5)(B) may continue—

7 “(i) during the pendency of any re-
8 hearing of the order by the Court en banc;
9 and

10 “(ii) during the pendency of any ap-
11 peal of the order to the Foreign Intel-
12 ligence Surveillance Court of Review.

13 “(C) CERTIORARI TO THE SUPREME
14 COURT.—The Government may file a petition
15 for a writ of certiorari for review of a decision
16 of the Court of Review issued under subpara-
17 graph (A). The record for such review shall be
18 transmitted under seal to the Supreme Court of
19 the United States, which shall have jurisdiction
20 to review such decision.

21 “(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial
22 proceedings under this section shall be conducted as expe-
23 ditiously as possible.

24 “(j) MAINTENANCE AND SECURITY OF RECORDS AND
25 PROCEEDINGS.—

1 “(1) STANDARDS.—A record of a proceeding
2 under this section, including petitions filed, orders
3 granted, and statements of reasons for decision,
4 shall be maintained under security measures adopted
5 by the Chief Justice of the United States, in con-
6 sultation with the Attorney General and the Director
7 of National Intelligence.

8 “(2) FILING AND REVIEW.—All petitions under
9 this section shall be filed under seal. In any pro-
10 ceedings under this section, the court shall, upon re-
11 quest of the Government, review ex parte and in
12 camera any Government submission, or portions of
13 a submission, which may include classified informa-
14 tion.

15 “(3) RETENTION OF RECORDS.—A directive
16 made or an order granted under this section shall be
17 retained for a period of not less than 10 years from
18 the date on which such directive or such order is
19 made.

20 “(k) ASSESSMENTS AND REVIEWS.—

21 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
22 quently than once every 6 months, the Attorney
23 General and Director of National Intelligence shall
24 assess compliance with the targeting and minimiza-

1 tion procedures required by subsections (e) and (f)
2 and shall submit each such assessment to—

3 “(A) the Foreign Intelligence Surveillance
4 Court; and

5 “(B) the congressional intelligence commit-
6 tees.

7 “(2) AGENCY ASSESSMENT.—The Inspectors
8 General of the Department of Justice and of any
9 element of the intelligence community authorized to
10 acquire foreign intelligence information under sub-
11 section (a) with respect to their department, agency,
12 or element—

13 “(A) are authorized to review the compli-
14 ance with the targeting and minimization proce-
15 dures required by subsections (d) and (e);

16 “(B) with respect to acquisitions author-
17 ized under subsection (a), shall review the num-
18 ber of disseminated intelligence reports con-
19 taining a reference to a United States person
20 identity and the number of United States per-
21 son identities subsequently disseminated by the
22 element concerned in response to requests for
23 identities that were not referred to by name or
24 title in the original reporting;

1 “(C) with respect to acquisitions author-
2 ized under subsection (a), shall review the num-
3 ber of targets that were later determined to be
4 located in the United States and, to the extent
5 possible, whether their communications were re-
6 viewed; and

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

8 “(i) the Attorney General;

9 “(ii) the Director of National Intel-
10 ligence; and

11 “(iii) the congressional intelligence
12 committees.

13 “(3) ANNUAL REVIEW.—

14 “(A) REQUIREMENT TO CONDUCT.—The
15 head of an element of the intelligence commu-
16 nity conducting an acquisition authorized under
17 subsection (a) shall direct the element to con-
18 duct an annual review to determine whether
19 there is reason to believe that foreign intel-
20 ligence information has been or will be obtained
21 from the acquisition. The annual review shall
22 provide, with respect to such acquisitions au-
23 thorized under subsection (a)—

24 “(i) an accounting of the number of
25 disseminated intelligence reports con-

1 taining a reference to a United States per-
2 son identity;

3 “(ii) an accounting of the number of
4 United States person identities subse-
5 quently disseminated by that element in re-
6 sponse to requests for identities that were
7 not referred to by name or title in the
8 original reporting;

9 “(iii) the number of targets that were
10 later determined to be located in the
11 United States and, to the extent possible,
12 whether their communications were re-
13 viewed; and

14 “(iv) a description of any procedures
15 developed by the head of an element of the
16 intelligence community and approved by
17 the Director of National Intelligence to as-
18 sess, in a manner consistent with national
19 security, operational requirements and the
20 privacy interests of United States persons,
21 the extent to which the acquisitions au-
22 thorized under subsection (a) acquire the
23 communications of United States persons,
24 as well as the results of any such assess-
25 ment.

1 “(B) USE OF REVIEW.—The head of each
2 element of the intelligence community that con-
3 ducts an annual review under subparagraph (A)
4 shall use each such review to evaluate the ade-
5 quacy of the minimization procedures utilized
6 by such element or the application of the mini-
7 mization procedures to a particular acquisition
8 authorized under subsection (a).

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

13 “(i) the Foreign Intelligence Surveil-
14 lance Court;

15 “(ii) the Attorney General;

16 “(iii) the Director of National Intel-
17 ligence; and

18 “(iv) the congressional intelligence
19 committees.

20 **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED**
21 **STATES OF UNITED STATES PERSONS OUT-**
22 **SIDE THE UNITED STATES.**

23 “(a) JURISDICTION OF THE FOREIGN INTELLIGENCE
24 SURVEILLANCE COURT.—

1 “(1) IN GENERAL.—The Foreign Intelligence
2 Surveillance Court shall have jurisdiction to enter an
3 order approving the targeting of a United States
4 person reasonably believed to be located outside the
5 United States to acquire foreign intelligence infor-
6 mation, if such acquisition constitutes electronic sur-
7 veillance (as defined in section 101(f), regardless of
8 the limitation of section 701) or the acquisition of
9 stored electronic communications or stored electronic
10 data that requires an order under this Act, and such
11 acquisition is conducted within the United States.

12 “(2) LIMITATION.—In the event that a United
13 States person targeted under this subsection is rea-
14 sonably believed to be located in the United States
15 during the pendency of an order issued pursuant to
16 subsection (c), such acquisition shall cease until au-
17 thority, other than under this section, is obtained
18 pursuant to this Act or the targeted United States
19 person is again reasonably believed to be located out-
20 side the United States during the pendency of an
21 order issued pursuant to subsection (c).

22 “(b) APPLICATION.—

23 “(1) IN GENERAL.—Each application for an
24 order under this section shall be made by a Federal
25 officer in writing upon oath or affirmation to a

1 judge having jurisdiction under subsection (a)(1).
2 Each application shall require the approval of the
3 Attorney General based upon the Attorney General's
4 finding that it satisfies the criteria and requirements
5 of such application, as set forth in this section, and
6 shall include—

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

9 “(B) the identity, if known, or a descrip-
10 tion of the United States person who is the tar-
11 get of the acquisition;

12 “(C) a statement of the facts and cir-
13 cumstances relied upon to justify the appli-
14 cant's belief that the United States person who
15 is the target of the acquisition is—

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

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

21 “(D) a statement of the proposed mini-
22 mization procedures consistent with the require-
23 ments of section 101(h) or section 301(4);

1 “(E) a description of the nature of the in-
2 formation sought and the type of communica-
3 tions or activities to be subjected to acquisition;

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

7 “(i) the certifying official deems the
8 information sought to be foreign intel-
9 ligence information;

10 “(ii) a significant purpose of the ac-
11 quisition is to obtain foreign intelligence
12 information;

13 “(iii) such information cannot reason-
14 ably be obtained by normal investigative
15 techniques;

16 “(iv) designates the type of foreign in-
17 telligence information being sought accord-
18 ing to the categories described in section
19 101(e); and

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

22 “(I) the information sought is
23 the type of foreign intelligence infor-
24 mation designated; and

1 “(II) such information cannot
2 reasonably be obtained by normal in-
3 vestigative techniques;

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

8 “(H) the identity of any electronic commu-
9 nication service provider necessary to effect the
10 acquisition, provided, however, that the applica-
11 tion is not required to identify the specific fa-
12 cilities, places, premises, or property at which
13 the acquisition authorized under this section
14 will be directed or conducted;

15 “(I) a statement of the facts concerning
16 any previous applications that have been made
17 to any judge of the Foreign Intelligence Surveil-
18 lance Court involving the United States person
19 specified in the application and the action taken
20 on each previous application; and

21 “(J) a statement of the period of time for
22 which the acquisition is required to be main-
23 tained, provided that such period of time shall
24 not exceed 90 days per application.

1 “(2) OTHER REQUIREMENTS OF THE ATTOR-
2 NEY GENERAL.—The Attorney General may require
3 any other affidavit or certification from any other
4 officer in connection with the application.

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

9 “(c) ORDER.—

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

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

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

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

1 “(ii) a foreign power, an agent of a
2 foreign power, or an officer or employee of
3 a foreign power;

4 “(C) the proposed minimization procedures
5 meet the definition of minimization procedures
6 under section 101(h) or section 301(4); and

7 “(D) the application which has been filed
8 contains all statements and certifications re-
9 quired by subsection (b) and the certification or
10 certifications are not clearly erroneous on the
11 basis of the statement made under subsection
12 (b)(1)(F)(v) and any other information fur-
13 nished under subsection (b)(3).

14 “(2) PROBABLE CAUSE.—In determining
15 whether or not probable cause exists for purposes of
16 an order under paragraph (1), a judge having juris-
17 diction under subsection (a)(1) may consider past
18 activities of the target, as well as facts and cir-
19 cumstances relating to current or future activities of
20 the target. However, no United States person may
21 be considered a foreign power, agent of a foreign
22 power, or officer or employee of a foreign power
23 solely upon the basis of activities protected by the
24 first amendment to the Constitution of the United
25 States.

1 “(3) REVIEW.—

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

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

15 “(C) REVIEW OF MINIMIZATION PROCE-
16 DURES.—If the judge determines that the pro-
17 posed minimization procedures required under
18 paragraph (1)(C) do not meet the definition of
19 minimization procedures under section 101(h)
20 or section 301(4), the judge shall enter an
21 order so stating and provide a written state-
22 ment for the record of the reasons for such de-
23 termination. The Government may appeal an
24 order under this clause pursuant to subsection
25 (f).

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

4 “(D) the means by which the acquisition
5 will be conducted and whether physical entry is
6 required to effect the acquisition; and

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

9 “(5) DIRECTIONS.—An order approving acqui-
10 sitions under this subsection shall direct—

11 “(A) that the minimization procedures be
12 followed;

13 “(B) an electronic communication service
14 provider to provide to the Government forthwith
15 all information, facilities, or assistance nec-
16 essary to accomplish the acquisition authorized
17 under this subsection in a manner that will pro-
18 tect the secrecy of the acquisition and produce
19 a minimum of interference with the services
20 that such electronic communication service pro-
21 vider is providing to the target;

22 “(C) an electronic communication service
23 provider to maintain under security procedures
24 approved by the Attorney General any records
25 concerning the acquisition or the aid furnished

1 that such electronic communication service pro-
2 vider wishes to maintain; and

3 “(D) that the Government compensate, at
4 the prevailing rate, such electronic communica-
5 tion service provider for providing such infor-
6 mation, facilities, or assistance.

7 “(6) DURATION.—An order approved under this
8 paragraph shall be effective for a period not to ex-
9 ceed 90 days and such order may be renewed for ad-
10 ditional 90-day periods upon submission of renewal
11 applications meeting the requirements of subsection
12 (b).

13 “(7) COMPLIANCE.—At or prior to the end of
14 the period of time for which an acquisition is ap-
15 proved by an order or extension under this section,
16 the judge may assess compliance with the minimiza-
17 tion procedures by reviewing the circumstances
18 under which information concerning United States
19 persons was acquired, retained, or disseminated.

20 “(d) EMERGENCY AUTHORIZATION.—

21 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
22 TION.—Notwithstanding any other provision of this
23 Act, if the Attorney General reasonably determines
24 that—

1 “(A) an emergency situation exists with re-
2 spect to the acquisition of foreign intelligence
3 information for which an order may be obtained
4 under subsection (c) before an order author-
5 izing such acquisition can with due diligence be
6 obtained; and

7 “(B) the factual basis for issuance of an
8 order under this subsection to approve such ac-
9 quisition exists,

10 the Attorney General may authorize the emergency
11 acquisition if a judge having jurisdiction under sub-
12 section (a)(1) is informed by the Attorney General,
13 or a designee of the Attorney General, at the time
14 of such authorization that the decision has been
15 made to conduct such acquisition and if an applica-
16 tion in accordance with this subsection is made to a
17 judge of the Foreign Intelligence Surveillance Court
18 as soon as practicable, but not more than 168 hours
19 after the Attorney General authorizes such acquisi-
20 tion.

21 “(2) MINIMIZATION PROCEDURES.—If the At-
22 torney General authorizes such emergency acquisi-
23 tion, the Attorney General shall require that the
24 minimization procedures required by this subsection
25 for the issuance of a judicial order be followed.

1 “(3) TERMINATION OF EMERGENCY AUTHOR-
2 IZATION.—In the absence of a judicial order approv-
3 ing such acquisition, the acquisition shall terminate
4 when the information sought is obtained, when the
5 application for the order is denied, or after the expi-
6 ration of 168 hours from the time of authorization
7 by the Attorney General, whichever is earliest.

8 “(4) USE OF INFORMATION.—In the event that
9 such application for approval is denied, or in any
10 other case where the acquisition is terminated and
11 no order is issued approving the acquisition, no in-
12 formation obtained or evidence derived from such ac-
13 quisition, except under circumstances in which the
14 target of the acquisition is determined not to be a
15 United States person during the pendency of the
16 168-hour emergency acquisition period, shall be re-
17 ceived in evidence or otherwise disclosed in any trial,
18 hearing, or other proceeding in or before any court,
19 grand jury, department, office, agency, regulatory
20 body, legislative committee, or other authority of the
21 United States, a State, or political subdivision there-
22 of, and no information concerning any United States
23 person acquired from such acquisition shall subse-
24 quently be used or disclosed in any other manner by
25 Federal officers or employees without the consent of

1 such person, except with the approval of the Attor-
2 ney General if the information indicates a threat of
3 death or serious bodily harm to any person.

4 “(e) RELEASE FROM LIABILITY.—Notwithstanding
5 any other law, no cause of action shall lie in any court
6 against any electronic communication service provider for
7 providing any information, facilities, or assistance in ac-
8 cordance with an order or request for emergency assist-
9 ance issued pursuant to subsections (c) or (d).

10 “(f) APPEAL.—

11 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
12 SURVEILLANCE COURT OF REVIEW.—The Govern-
13 ment may file an appeal with the Foreign Intel-
14 ligence Surveillance Court of Review for review of an
15 order issued pursuant to subsection (c). The Court
16 of Review shall have jurisdiction to consider such ap-
17 peal and shall provide a written statement for the
18 record of the reasons for a decision under this para-
19 graph.

20 “(2) CERTIORARI TO THE SUPREME COURT.—
21 The Government may file a petition for a writ of
22 certiorari for review of the decision of the Court of
23 Review issued under paragraph (1). The record for
24 such review shall be transmitted under seal to the

1 Supreme Court of the United States, which shall
2 have jurisdiction to review such decision.

3 **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**
4 **STATES PERSONS OUTSIDE THE UNITED**
5 **STATES.**

6 **“(a) JURISDICTION AND SCOPE.—**

7 **“(1) JURISDICTION.—**The Foreign Intelligence
8 Surveillance Court shall have jurisdiction to enter an
9 order pursuant to subsection (c).

10 **“(2) SCOPE.—**No element of the intelligence
11 community may intentionally target, for the purpose
12 of acquiring foreign intelligence information, a
13 United States person reasonably believed to be lo-
14 cated outside the United States under circumstances
15 in which the targeted United States person has a
16 reasonable expectation of privacy and a warrant
17 would be required if the acquisition were conducted
18 inside the United States for law enforcement pur-
19 poses, unless a judge of the Foreign Intelligence
20 Surveillance Court has entered an order or the At-
21 torney General has authorized an emergency acquisi-
22 tion pursuant to subsections (c) or (d) or any other
23 provision of this Act.

24 **“(3) LIMITATIONS.—**

1 “(A) MOVING OR MISIDENTIFIED TAR-
2 GETS.—In the event that the targeted United
3 States person is reasonably believed to be in the
4 United States during the pendency of an order
5 issued pursuant to subsection (c), such acquisi-
6 tion shall cease until authority is obtained pur-
7 suant to this Act or the targeted United States
8 person is again reasonably believed to be lo-
9 cated outside the United States during the
10 pendency of an order issued pursuant to sub-
11 section (c).

12 “(B) APPLICABILITY.—If the acquisition is
13 to be conducted inside the United States and
14 could be authorized under section 704, the pro-
15 cedures of section 704 shall apply, unless an
16 order or emergency acquisition authority has
17 been obtained under a provision of this Act
18 other than under this section.

19 “(b) APPLICATION.—Each application for an order
20 under this section shall be made by a Federal officer in
21 writing upon oath or affirmation to a judge having juris-
22 diction under subsection (a)(1). Each application shall re-
23 quire the approval of the Attorney General based upon the
24 Attorney General’s finding that it satisfies the criteria and

1 requirements of such application as set forth in this sec-
2 tion and shall include—

3 “(1) the identity, if known, or a description of
4 the specific United States person who is the target
5 of the acquisition;

6 “(2) a statement of the facts and circumstances
7 relied upon to justify the applicant’s belief that the
8 United States person who is the target of the acqui-
9 sition is—

10 “(A) a person reasonably believed to be lo-
11 cated outside the United States; and

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

15 “(3) a statement of the proposed minimization
16 procedures consistent with the requirements of sec-
17 tion 101(h) or section 301(4);

18 “(4) a certification made by the Attorney Gen-
19 eral, an official specified in section 104(a)(6), or the
20 head of an element of the intelligence community
21 that—

22 “(A) the certifying official deems the infor-
23 mation sought to be foreign intelligence infor-
24 mation; and

1 “(ii) a foreign power, an agent of a
2 foreign power, or an officer or employee of
3 a foreign power;

4 “(B) the proposed minimization proce-
5 dures, with respect to their dissemination provi-
6 sions, meet the definition of minimization pro-
7 cedures under section 101(h) or section 301(4);
8 and

9 “(C) the application which has been filed
10 contains all statements and certifications re-
11 quired by subsection (b) and the certification
12 provided under subsection (b)(4) is not clearly
13 erroneous on the basis of the information fur-
14 nished under subsection (b),

15 the Court shall issue an ex parte order so stating.

16 “(2) PROBABLE CAUSE.—In determining
17 whether or not probable cause exists for purposes of
18 an order under paragraph (1)(A), a judge having ju-
19 risdiction under subsection (a)(1) may consider past
20 activities of the target, as well as facts and cir-
21 cumstances relating to current or future activities of
22 the target. However, no United States person may
23 be considered a foreign power, agent of a foreign
24 power, or officer or employee of a foreign power
25 solely upon the basis of activities protected by the

1 first amendment to the Constitution of the United
2 States.

3 “(3) REVIEW.—

4 “(A) LIMITATIONS ON REVIEW.—Review
5 by a judge having jurisdiction under subsection
6 (a)(1) shall be limited to that required to make
7 the findings described in paragraph (1). The
8 judge shall not have jurisdiction to review the
9 means by which an acquisition under this sec-
10 tion may be conducted.

11 “(B) REVIEW OF PROBABLE CAUSE.—If
12 the judge determines that the facts submitted
13 under subsection (b) are insufficient to estab-
14 lish probable cause to issue an order under this
15 subsection, the judge shall enter an order so
16 stating and provide a written statement for the
17 record of the reasons for such determination.
18 The Government may appeal an order under
19 this clause pursuant to subsection (e).

20 “(C) REVIEW OF MINIMIZATION PROCE-
21 DURES.—If the judge determines that the mini-
22 mization procedures applicable to dissemination
23 of information obtained through an acquisition
24 under this subsection do not meet the definition
25 of minimization procedures under section

1 101(h) or section 301(4), the judge shall enter
2 an order so stating and provide a written state-
3 ment for the record of the reasons for such de-
4 termination. The Government may appeal an
5 order under this clause pursuant to subsection
6 (e).

7 “(D) SCOPE OF REVIEW OF CERTIFI-
8 CATION.—If the judge determines that the cer-
9 tification provided under subsection (b)(4) is
10 clearly erroneous on the basis of the informa-
11 tion furnished under subsection (b), the judge
12 shall enter an order so stating and provide a
13 written statement for the record of the reasons
14 for such determination. The Government may
15 appeal an order under this clause pursuant to
16 subsection (e).

17 “(4) DURATION.—An order under this para-
18 graph shall be effective for a period not to exceed 90
19 days and such order may be renewed for additional
20 90-day periods upon submission of renewal applica-
21 tions meeting the requirements of subsection (b).

22 “(5) COMPLIANCE.—At or prior to the end of
23 the period of time for which an order or extension
24 is granted under this section, the judge may assess
25 compliance with the minimization procedures by re-

1 viewing the circumstances under which information
2 concerning United States persons was disseminated,
3 provided that the judge may not inquire into the cir-
4 cumstances relating to the conduct of the acquisi-
5 tion.

6 “(d) EMERGENCY AUTHORIZATION.—

7 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
8 TION.—Notwithstanding any other provision in this
9 subsection, if the Attorney General reasonably deter-
10 mines that—

11 “(A) an emergency situation exists with re-
12 spect to the acquisition of foreign intelligence
13 information for which an order may be obtained
14 under subsection (c) before an order under that
15 subsection may, with due diligence, be obtained;
16 and

17 “(B) the factual basis for issuance of an
18 order under this section exists,
19 the Attorney General may authorize the emergency
20 acquisition if a judge having jurisdiction under sub-
21 section (a)(1) is informed by the Attorney General
22 or a designee of the Attorney General at the time of
23 such authorization that the decision has been made
24 to conduct such acquisition and if an application in
25 accordance with this subsection is made to a judge

1 of the Foreign Intelligence Surveillance Court as
2 soon as practicable, but not more than 168 hours
3 after the Attorney General authorizes such acqui-
4 sition.

5 “(2) MINIMIZATION PROCEDURES.—If the At-
6 torney General authorizes such emergency acqui-
7 sition, the Attorney General shall require that the
8 minimization procedures required by this subsection
9 be followed.

10 “(3) TERMINATION OF EMERGENCY AUTHOR-
11 IZATION.—In the absence of an order under sub-
12 section (c), the acquisition shall terminate when the
13 information sought is obtained, if the application for
14 the order is denied, or after the expiration of 168
15 hours from the time of authorization by the Attor-
16 ney General, whichever is earliest.

17 “(4) USE OF INFORMATION.—In the event that
18 such application is denied, or in any other case
19 where the acquisition is terminated and no order is
20 issued approving the acquisition, no information ob-
21 tained or evidence derived from such acquisition, ex-
22 cept under circumstances in which the target of the
23 acquisition is determined not to be a United States
24 person during the pendency of the 168-hour emer-
25 gency acquisition period, shall be received in evi-

1 dence or otherwise disclosed in any trial, hearing, or
2 other proceeding in or before any court, grand jury,
3 department, office, agency, regulatory body, legisla-
4 tive committee, or other authority of the United
5 States, a State, or political subdivision thereof, and
6 no information concerning any United States person
7 acquired from such acquisition shall subsequently be
8 used or disclosed in any other manner by Federal of-
9 ficers or employees without the consent of such per-
10 son, except with the approval of the Attorney Gen-
11 eral if the information indicates a threat of death or
12 serious bodily harm to any person.

13 “(e) APPEAL.—

14 “(1) APPEAL TO THE COURT OF REVIEW.—The
15 Government may file an appeal with the Foreign In-
16 telligence Surveillance Court of Review for review of
17 an order issued pursuant to subsection (c). The
18 Court of Review shall have jurisdiction to consider
19 such appeal and shall provide a written statement
20 for the record of the reasons for a decision under
21 this paragraph.

22 “(2) CERTIORARI TO THE SUPREME COURT.—

23 The Government may file a petition for a writ of
24 certiorari for review of the decision of the Court of
25 Review issued under paragraph (1). The record for

1 such review shall be transmitted under seal to the
2 Supreme Court of the United States, which shall
3 have jurisdiction to review such decision.

4 **“SEC. 706. JOINT APPLICATIONS AND CONCURRENT AU-**
5 **THORIZATIONS.**

6 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
7 quisition targeting a United States person under section
8 704 or section 705 is proposed to be conducted both inside
9 and outside the United States, a judge having jurisdiction
10 under section 704(a)(1) or section 705(a)(1) may issue si-
11 multaneously, upon the request of the Government in a
12 joint application complying with the requirements of sec-
13 tion 704(b) or section 705(b), orders under section 704(b)
14 or section 705(b), as applicable.

15 “(b) CONCURRENT AUTHORIZATION.—If an order
16 authorizing electronic surveillance or physical search has
17 been obtained under section 105 or section 304 and that
18 order is still in effect, the Attorney General may authorize,
19 without an order under section 704 or section 705, an ac-
20 quisition of foreign intelligence information targeting that
21 United States person while such person is reasonably be-
22 lieved to be located outside the United States.

1 **“SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE**

2 **VII.**

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

9 “(b) INFORMATION ACQUIRED UNDER SECTION
10 704.—Information acquired from an acquisition con-
11 ducted under section 704 shall be deemed to be informa-
12 tion acquired from an electronic surveillance pursuant to
13 title I for purposes of section 106.

14 **“SEC. 708. CONGRESSIONAL OVERSIGHT.**

15 “(a) SEMIANNUAL REPORT.—Not less frequently
16 than once every 6 months, the Attorney General shall fully
17 inform, in a manner consistent with national security, the
18 congressional intelligence committees, the Committee on
19 the Judiciary of the Senate, and the Committee on the
20 Judiciary of the House of Representatives, concerning the
21 implementation of this title.

22 “(b) CONTENT.—Each report made under subpara-
23 graph (a) shall include—

24 “(1) with respect to section 703—

25 “(A) any certifications made under sub-
26 section 703(f) during the reporting period;

1 “(B) any directives issued under sub-
2 section 703(g) during the reporting period;

3 “(C) a description of the judicial review
4 during the reporting period of any such certifi-
5 cations and targeting and minimization proce-
6 dures utilized with respect to such acquisition,
7 including a copy of any order or pleading in
8 connection with such review that contains a sig-
9 nificant legal interpretation of the provisions of
10 this section;

11 “(D) any actions taken to challenge or en-
12 force a directive under paragraphs (4) or (5) of
13 section 703(g);

14 “(E) any compliance reviews conducted by
15 the Department of Justice or the Office of the
16 Director of National Intelligence of acquisitions
17 authorized under subsection 703(a);

18 “(F) a description of any incidents of non-
19 compliance with a directive issued by the Attor-
20 ney General and the Director of National Intel-
21 ligence under subsection 703(g), including—

22 “(i) incidents of noncompliance by an
23 element of the intelligence community with
24 procedures adopted pursuant to sub-
25 sections (d) and (e) of section 703; and

1 “(ii) incidents of noncompliance by a
2 specified person to whom the Attorney
3 General and Director of National Intel-
4 ligence issued a directive under subsection
5 703(g); and

6 “(G) any procedures implementing this
7 section;

8 “(2) with respect to section 704—

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

11 “(B) the total number of such orders ei-
12 ther granted, modified, or denied; and

13 “(C) the total number of emergency acqui-
14 sitions authorized by the Attorney General
15 under section 704(d) and the total number of
16 subsequent orders approving or denying such
17 acquisitions; and

18 “(3) with respect to section 705—

19 “(A) the total number of applications made
20 for orders under 705(b);

21 “(B) the total number of such orders ei-
22 ther granted, modified, or denied; and

23 “(C) the total number of emergency acqui-
24 sitions authorized by the Attorney General
25 under subsection 705(d) and the total number

1 of subsequent orders approving or denying such
2 applications.”.

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

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

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

8 and

9 (3) by adding at the end the following:

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

“Sec. 701. Limitation on definition of electronic surveillance.

“Sec. 702. Definitions.

“Sec. 703. Procedures for targeting certain persons outside the United States
other than United States persons.

“Sec. 704. Certain acquisitions inside the United States of United States per-
sons outside the United States.

“Sec. 705. Other acquisitions targeting United States persons outside the
United States.

“Sec. 706. Joint applications and concurrent authorizations.

“Sec. 707. Use of information acquired under title VII.

“Sec. 708. Congressional oversight.”.

10 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) TITLE 18, UNITED STATES CODE.—

12 (A) SECTION 2232.—Section 2232(e) of
13 title 18, United States Code, is amended by in-
14 serting “(as defined in section 101(f) of the
15 Foreign Intelligence Surveillance Act of 1978,
16 regardless of the limitation of section 701 of
17 that Act)” after “electronic surveillance”.

18 (B) SECTION 2511.—Section
19 2511(2)(a)(ii)(A) of title 18, United States

1 Code, is amended by inserting “or a court order
2 pursuant to section 705 of the Foreign Intel-
3 ligence Surveillance Act of 1978” after “assist-
4 ance”.

5 (2) FOREIGN INTELLIGENCE SURVEILLANCE
6 ACT OF 1978.—

7 (A) SECTION 109.—Section 109 of the For-
8 eign Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1809) is amended by adding at the end
10 the following:

11 “(e) DEFINITION.—For the purpose of this section,
12 the term ‘electronic surveillance’ means electronic surveil-
13 lance as defined in section 101(f) of this Act regardless
14 of the limitation of section 701 of this Act.”

15 (B) SECTION 110.—Section 110 of the For-
16 eign Intelligence Surveillance Act of 1978 (50
17 U.S.C. 1810) is amended by—

18 (i) adding an “(a)” before “CIVIL AC-
19 TION”,

20 (ii) redesignating subsections (a)
21 through (c) as paragraphs (1) through (3),
22 respectively; and

23 (iii) adding at the end the following:

24 “(b) DEFINITION.—For the purpose of this section,
25 the term ‘electronic surveillance’ means electronic surveil-

1 lance as defined in section 101(f) of this Act regardless
2 of the limitation of section 701 of this Act.”.

3 (C) SECTION 601.—Section 601(a)(1) of
4 the Foreign Intelligence Surveillance Act of
5 1978 (50 U.S.C. 1871(a)(1)) is amended by
6 striking subparagraphs (C) and (D) and insert-
7 ing the following:

8 “(C) pen registers under section 402;
9 “(D) access to records under section 501;
10 “(E) acquisitions under section 704; and
11 “(F) acquisitions under section 705;”.

12 (d) TERMINATION OF AUTHORITY.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the amendments made by subsections
15 (a)(2), (b), and (c) shall cease to have effect on De-
16 cember 31, 2013.

17 (2) CONTINUING APPLICABILITY.—Section
18 703(g)(3) of the Foreign Intelligence Surveillance
19 Act of 1978 (as amended by subsection (a)) shall re-
20 main in effect with respect to any directive issued
21 pursuant to section 703(g) of that Act (as so
22 amended) during the period such directive was in ef-
23 fect. Section 704(e) of the Foreign Intelligence Sur-
24 veillance Act of 1978 (as amended by subsection (a))
25 shall remain in effect with respect to an order or re-

1 quest for emergency assistance under that section.
2 The use of information acquired by an acquisition
3 conducted under section 703 of that Act (as so
4 amended) shall continue to be governed by the provi-
5 sions of section 707 of that Act (as so amended).

6 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
7 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
8 **TION OF DOMESTIC COMMUNICATIONS MAY**
9 **BE CONDUCTED.**

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

14 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
15 TRONIC SURVEILLANCE AND INTERCEPTION OF DO-
16 MESTIC COMMUNICATIONS MAY BE CONDUCTED

17 “SEC. 112. The procedures of chapters 119, 121, and
18 206 of title 18, United States Code, and this Act shall
19 be the exclusive means by which electronic surveillance (as
20 defined in section 101(f), regardless of the limitation of
21 section 701) and the interception of domestic wire, oral,
22 or electronic communications may be conducted.”.

23 (b) TABLE OF CONTENTS.—The table of contents in
24 the first section of the Foreign Intelligence Surveillance
25 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by add-
26 ing after the item relating to section 111, the following:

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

1 (c) CONFORMING AMENDMENTS.—Section 2511(2)
2 of title 18, United States Code, is amended in paragraph
3 (f), by striking “, as defined in section 101 of such Act,”
4 and inserting “(as defined in section 101(f) of such Act
5 regardless of the limitation of section 701 of such Act)”.

6 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
7 **ORDERS UNDER THE FOREIGN INTEL-**
8 **LIGENCE SURVEILLANCE ACT OF 1978.**

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

14 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
15 OTHER ORDERS.—Such section 601, as amended by sub-
16 section (a), is further amended by adding at the end the
17 following:

18 “(c) The Attorney General shall submit to the com-
19 mittees of Congress referred to in subsection (a) a copy
20 of any decision, order, or opinion issued by the Foreign
21 Intelligence Surveillance Court or the Foreign Intelligence
22 Surveillance Court of Review that includes significant con-
23 struction or interpretation of any provision of this Act not

1 later than 45 days after such decision, order, or opinion
2 is issued.”.

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

6 “(d) DEFINITIONS.—In this section:

7 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
8 COURT; COURT.—The term “‘Foreign Intelligence
9 Surveillance Court’” means the court established by
10 section 103(a).

11 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
12 COURT OF REVIEW; COURT OF REVIEW.—The term
13 ‘Foreign Intelligence Surveillance Court of Review’
14 means the court established by section 103(b).”.

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

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

18 (1) in subsection (a)—

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

20 (B) by redesignating paragraphs (3)
21 through (10) as paragraphs (2) through (9), re-
22 spectively;

23 (C) in paragraph (5), as redesignated by
24 subparagraph (B) of this paragraph, by striking
25 “detailed”;

1 (D) in paragraph (6), as redesignated by
2 subparagraph (B) of this paragraph, in the
3 matter preceding subparagraph (A)—

4 (i) by striking “Affairs or” and insert-
5 ing “Affairs,”; and

6 (ii) by striking “Senate—” and insert-
7 ing “Senate, or the Deputy Director of the
8 Federal Bureau of Investigation, if des-
9 ignated by the President as a certifying of-
10 ficial—”;

11 (E) in paragraph (7), as redesignated by
12 subparagraph (B) of this paragraph, by striking
13 “statement of” and inserting “summary state-
14 ment of”;

15 (F) in paragraph (8), as redesignated by
16 subparagraph (B) of this paragraph, by adding
17 “and” at the end; and

18 (G) in paragraph (9), as redesignated by
19 subparagraph (B) of this paragraph, by striking
20 “; and” and inserting a period;

21 (2) by striking subsection (b);

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

24 (4) in paragraph (1)(A) of subsection (d), as re-
25 designated by paragraph (3) of this subsection, by

1 striking “or the Director of National Intelligence”
2 and inserting “the Director of National Intelligence,
3 or the Director of the Central Intelligence Agency”.

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

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

7 (1) in subsection (a)—

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

9 (B) by redesignating paragraphs (2)
10 through (5) as paragraphs (1) through (4), re-
11 spectively;

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

14 (3) in subsection (c)(1)—

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

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

19 (C) by striking subparagraph (F);

20 (4) by striking subsection (d);

21 (5) by redesignating subsections (e) through (i)
22 as subsections (d) through (h), respectively;

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

1 “(e)(1) Notwithstanding any other provision of this
2 title, the Attorney General may authorize the emergency
3 employment of electronic surveillance if the Attorney Gen-
4 eral reasonably—

5 “(A) determines that an emergency situation
6 exists with respect to the employment of electronic
7 surveillance to obtain foreign intelligence informa-
8 tion before an order authorizing such surveillance
9 can with due diligence be obtained;

10 “(B) determines that the factual basis for
11 issuance of an order under this title to approve such
12 electronic surveillance exists;

13 “(C) informs, either personally or through a
14 designee, a judge having jurisdiction under section
15 103 at the time of such authorization that the deci-
16 sion has been made to employ emergency electronic
17 surveillance; and

18 “(D) makes an application in accordance with
19 this title to a judge having jurisdiction under section
20 103 as soon as practicable, but not later than 168
21 hours after the Attorney General authorizes such
22 surveillance.

23 “(2) If the Attorney General authorizes the emer-
24 gency employment of electronic surveillance under para-
25 graph (1), the Attorney General shall require that the

1 minimization procedures required by this title for the
2 issuance of a judicial order be followed.

3 “(3) In the absence of a judicial order approving such
4 electronic surveillance, the surveillance shall terminate
5 when the information sought is obtained, when the appli-
6 cation for the order is denied, or after the expiration of
7 168 hours from the time of authorization by the Attorney
8 General, whichever is earliest.

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

11 “(5) In the event that such application for approval
12 is denied, or in any other case where the electronic surveil-
13 lance is terminated and no order is issued approving the
14 surveillance, no information obtained or evidence derived
15 from such surveillance shall be received in evidence or oth-
16 erwise disclosed in any trial, hearing, or other proceeding
17 in or before any court, grand jury, department, office,
18 agency, regulatory body, legislative committee, or other
19 authority of the United States, a State, or political sub-
20 division thereof, and no information concerning any
21 United States person acquired from such surveillance shall
22 subsequently be used or disclosed in any other manner by
23 Federal officers or employees without the consent of such
24 person, except with the approval of the Attorney General

1 if the information indicates a threat of death or serious
2 bodily harm to any person.

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

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

6 “(i) In any case in which the Government makes an
7 application to a judge under this title to conduct electronic
8 surveillance involving communications and the judge
9 grants such application, upon the request of the applicant,
10 the judge shall also authorize the installation and use of
11 pen registers and trap and trace devices, and direct the
12 disclosure of the information set forth in section
13 402(d)(2).”

14 **SEC. 106. USE OF INFORMATION.**

15 Subsection (i) of section 106 of the Foreign Intel-
16 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is
17 amended by striking “radio communication” and inserting
18 “communication”.

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

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

23 (1) in subsection (a)—

24 (A) by striking paragraph (2);

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

4 (C) in paragraph (2), as redesignated by
5 subparagraph (B) of this paragraph, by striking
6 “detailed”;

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

10 (E) in paragraph (6), as redesignated by
11 subparagraph (B) of this paragraph, in the
12 matter preceding subparagraph (A)—

13 (i) by striking “Affairs or” and insert-
14 ing “Affairs,”; and

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

20 (2) in subsection (d)(1)(A), by striking “or the
21 Director of National Intelligence” and inserting “the
22 Director of National Intelligence, or the Director of
23 the Central Intelligence Agency”.

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

4 (1) in subsection (a)—

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

6 (B) by redesignating paragraphs (2)
7 through (5) as paragraphs (1) through (4), re-
8 spectively; and

9 (2) by amending subsection (e) to read as fol-
10 lows:

11 “(e)(1) Notwithstanding any other provision of this
12 title, the Attorney General may authorize the emergency
13 employment of a physical search if the Attorney General
14 reasonably—

15 “(A) determines that an emergency situation
16 exists with respect to the employment of a physical
17 search to obtain foreign intelligence information be-
18 fore an order authorizing such physical search can
19 with due diligence be obtained;

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

23 “(C) informs, either personally or through a
24 designee, a judge of the Foreign Intelligence Surveil-
25 lance Court at the time of such authorization that

1 the decision has been made to employ an emergency
2 physical search; and

3 “(D) makes an application in accordance with
4 this title to a judge of the Foreign Intelligence Sur-
5 veillance Court as soon as practicable, but not more
6 than 168 hours after the Attorney General author-
7 izes such physical search.

8 “(2) If the Attorney General authorizes the emer-
9 gency employment of a physical search under paragraph
10 (1), the Attorney General shall require that the minimiza-
11 tion procedures required by this title for the issuance of
12 a judicial order be followed.

13 “(3) In the absence of a judicial order approving such
14 physical search, the physical search shall terminate when
15 the information sought is obtained, when the application
16 for the order is denied, or after the expiration of 168
17 hours from the time of authorization by the Attorney Gen-
18 eral, whichever is earliest.

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

21 “(5)(A) In the event that such application for ap-
22 proval is denied, or in any other case where the physical
23 search is terminated and no order is issued approving the
24 physical search, no information obtained or evidence de-
25 rived from such physical search shall be received in evi-

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

12 “(B) The Attorney General shall assess compliance
13 with the requirements of subparagraph (A).”

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

17 (1) in section 304(a)(4), as redesignated by
18 subsection (b) of this section, by striking
19 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

20 (2) in section 305(k)(2), by striking
21 “303(a)(7)” and inserting “303(a)(6)”.

22 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**
23 **AND TRAP AND TRACE DEVICES.**

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

1 (1) in subsection (a)(2), by striking “48 hours”
2 and inserting “168 hours”; and
3 (2) in subsection (c)(1)(C), by striking “48
4 hours” and inserting “168 hours”.

5 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

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

11 (b) EN BANC AUTHORITY.—

12 (1) IN GENERAL.—Subsection (a) of section
13 103 of the Foreign Intelligence Surveillance Act of
14 1978, as amended by subsection (a) of this section,
15 is further amended—

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

17 (B) by adding at the end the following new
18 paragraph:

19 “(2)(A) The court established under this subsection
20 may, on its own initiative, or upon the request of the Gov-
21 ernment in any proceeding or a party under section 501(f)
22 or paragraph (4) or (5) of section 703(h), hold a hearing
23 or rehearing, en banc, when ordered by a majority of the
24 judges that constitute such court upon a determination
25 that—

1 “(i) en banc consideration is necessary to se-
2 cure or maintain uniformity of the court’s decisions;
3 or

4 “(ii) the proceeding involves a question of ex-
5 ceptional importance.

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

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

14 (2) CONFORMING AMENDMENTS.—The Foreign
15 Intelligence Surveillance Act of 1978 is further
16 amended—

17 (A) in subsection (a) of section 103, as
18 amended by this subsection, by inserting “(ex-
19 cept when sitting en banc under paragraph
20 (2))” after “no judge designated under this
21 subsection”; and

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

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

4 (1) by redesignating subsection (f) as sub-
5 section (g); and

6 (2) by inserting after subsection (e) the fol-
7 lowing new subsection:

8 “(f)(1) A judge of the court established under sub-
9 section (a), the court established under subsection (b) or
10 a judge of that court, or the Supreme Court of the United
11 States or a justice of that court, may, in accordance with
12 the rules of their respective courts, enter a stay of an order
13 or an order modifying an order of the court established
14 under subsection (a) or the court established under sub-
15 section (b) entered under any title of this Act, while the
16 court established under subsection (a) conducts a rehear-
17 ing, while an appeal is pending to the court established
18 under subsection (b), or while a petition of certiorari is
19 pending in the Supreme Court of the United States, or
20 during the pendency of any review by that court.

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

1 **SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.**

2 Section 103(e) of the Foreign Intelligence Surveil-
3 lance Act of 1978 (50 U.S.C. 1803(e)) is amended—

4 (1) in paragraph (1), by striking “105B(h) or
5 501(f)(1)” and inserting “501(f)(1) or 703”; and

6 (2) in paragraph (2), by striking “105B(h) or
7 501(f)(1)” and inserting “501(f)(1) or 703”.

8 **TITLE II—PROTECTIONS FOR**
9 **ELECTRONIC COMMUNICA-**
10 **TION SERVICE PROVIDERS**

11 **SEC. 201. DEFINITIONS.**

12 In this title:

13 (1) **ASSISTANCE.**—The term “assistance”
14 means the provision of, or the provision of access to,
15 information (including communication contents,
16 communications records, or other information relat-
17 ing to a customer or communication), facilities, or
18 another form of assistance.

19 (2) **CONTENTS.**—The term “contents” has the
20 meaning given that term in section 101(n) of the
21 Foreign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1801(n)).

23 (3) **COVERED CIVIL ACTION.**—The term “cov-
24 ered civil action” means a civil action filed in a Fed-
25 eral or State court that—

1 (A) alleges that an electronic communica-
2 tion service provider furnished assistance to an
3 element of the intelligence community; and

4 (B) seeks monetary or other relief from the
5 electronic communication service provider re-
6 lated to the provision of such assistance.

7 (4) ELECTRONIC COMMUNICATION SERVICE
8 PROVIDER.—The term “electronic communication
9 service provider” means—

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

13 (B) a provider of an electronic communica-
14 tion service, as that term is defined in section
15 2510 of title 18, United States Code;

16 (C) a provider of a remote computing serv-
17 ice, as that term is defined in section 2711 of
18 title 18, United States Code;

19 (D) any other communication service pro-
20 vider who has access to wire or electronic com-
21 munications either as such communications are
22 transmitted or as such communications are
23 stored;

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

4 (F) an officer, employee, or agent of an en-
5 tity described in subparagraph (A), (B), (C),
6 (D), or (E).

7 (5) ELEMENT OF THE INTELLIGENCE COMMU-
8 NITY.—The term “element of the intelligence com-
9 munity” means an element of the intelligence com-
10 munity specified in or designated under section 3(4)
11 of the National Security Act of 1947 (50 U.S.C.
12 401a(4)).

13 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**
14 **TRONIC COMMUNICATION SERVICE PRO-**
15 **VIDERS.**

16 (a) LIMITATIONS.—

17 (1) IN GENERAL.—Notwithstanding any other
18 provision of law, a covered civil action shall not lie
19 or be maintained in a Federal or State court, and
20 shall be promptly dismissed, if the Attorney General
21 certifies to the court that—

22 (A) the assistance alleged to have been
23 provided by the electronic communication serv-
24 ice provider was—

1 (i) in connection with an intelligence
2 activity involving communications that
3 was—

4 (I) authorized by the President
5 during the period beginning on Sep-
6 tember 11, 2001, and ending on Jan-
7 uary 17, 2007; and

8 (II) designed to detect or prevent
9 a terrorist attack, or activities in
10 preparation for a terrorist attack,
11 against the United States; and

12 (ii) described in a written request or
13 directive from the Attorney General or the
14 head of an element of the intelligence com-
15 munity (or the deputy of such person) to
16 the electronic communication service pro-
17 vider indicating that the activity was—

18 (I) authorized by the President;

19 and

20 (II) determined to be lawful; or

21 (B) the electronic communication service
22 provider did not provide the alleged assistance.

23 (2) REVIEW.—A certification made pursuant to
24 paragraph (1) shall be subject to review by a court
25 for abuse of discretion.

1 (b) REVIEW OF CERTIFICATIONS.—If the Attorney
2 General files a declaration under section 1746 of title 28,
3 United States Code, that disclosure of a certification made
4 pursuant to subsection (a) would harm the national secu-
5 rity of the United States, the court shall—

6 (1) review such certification in camera and ex
7 parte; and

8 (2) limit any public disclosure concerning such
9 certification, including any public order following
10 such an ex parte review, to a statement that the con-
11 ditions of subsection (a) have been met, without dis-
12 closing the subparagraph of subsection (a)(1) that is
13 the basis for the certification.

14 (c) NONDELEGATION.—The authority and duties of
15 the Attorney General under this section shall be performed
16 by the Attorney General (or Acting Attorney General) or
17 a designee in a position not lower than the Deputy Attor-
18 ney General.

19 (d) CIVIL ACTIONS IN STATE COURT.—A covered
20 civil action that is brought in a State court shall be
21 deemed to arise under the Constitution and laws of the
22 United States and shall be removable under section 1441
23 of title 28, United States Code.

24 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion may be construed to limit any otherwise available im-

1 munity, privilege, or defense under any other provision of
2 law.

3 (f) EFFECTIVE DATE AND APPLICATION.—This sec-
4 tion shall apply to any covered civil action that is pending
5 on or filed after the date of enactment of this Act.

6 **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY**
7 **DEFENSES UNDER THE FOREIGN INTEL-**
8 **LIGENCE SURVEILLANCE ACT OF 1978.**

9 The Foreign Intelligence Surveillance Act of 1978
10 (50 U.S.C. 1801 et seq.), as amended by section 101, is
11 further amended by adding after title VII the following
12 new title:

13 **“TITLE VIII—PROTECTION OF**
14 **PERSONS ASSISTING THE**
15 **GOVERNMENT**

16 **“SEC. 801. DEFINITIONS.**

17 “In this title:

18 “(1) ASSISTANCE.—The term ‘assistance’
19 means the provision of, or the provision of access to,
20 information (including communication contents,
21 communications records, or other information relat-
22 ing to a customer or communication), facilities, or
23 another form of assistance.

1 “(2) ATTORNEY GENERAL.—The term ‘Attor-
2 ney General’ has the meaning give that term in sec-
3 tion 101(g).

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

6 “(4) ELECTRONIC COMMUNICATION SERVICE
7 PROVIDER.—The term ‘electronic communication
8 service provider’ means—

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

12 “(B) a provider of electronic communica-
13 tion service, as that term is defined in section
14 2510 of title 18, United States Code;

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

18 “(D) any other communication service pro-
19 vider who has access to wire or electronic com-
20 munications either as such communications are
21 transmitted or as such communications are
22 stored;

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

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

4 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
5 NITY.—The term ‘element of the intelligence com-
6 munity’ means an element of the intelligence com-
7 munity as specified or designated under section 3(4)
8 of the National Security Act of 1947 (50 U.S.C.
9 401a(4)).

10 “(6) PERSON.—The term ‘person’ means—

11 “(A) an electronic communication service
12 provider; or

13 “(B) a landlord, custodian, or other person
14 who may be authorized or required to furnish
15 assistance pursuant to—

16 “(i) an order of the court established
17 under section 103(a) directing such assist-
18 ance;

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

22 “(iii) a directive under section
23 102(a)(4), 105B(e), as in effect on the day
24 before the date of the enactment of the
25 FISA Amendments Act of 2008 or 703(h).

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

8 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
9 **DEFENSES.**

10 “(a) REQUIREMENT FOR CERTIFICATION.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of law, no civil action may lie or be main-
13 tained in a Federal or State court against any per-
14 son for providing assistance to an element of the in-
15 telligence community, and shall be promptly dis-
16 missed, if the Attorney General certifies to the court
17 that—

18 “(A) any assistance by that person was
19 provided pursuant to an order of the court es-
20 tablished under section 103(a) directing such
21 assistance;

22 “(B) any assistance by that person was
23 provided pursuant to a certification in writing
24 under section 2511(2)(a)(ii)(B) or 2709(b) of
25 title 18, United States Code;

1 “(C) any assistance by that person was
2 provided pursuant to a directive under sections
3 102(a)(4), 105B(e), as in effect on the day be-
4 fore the date of the enactment of the FISA
5 Amendments Act of 2008, or 703(h) directing
6 such assistance; or

7 “(D) the person did not provide the alleged
8 assistance.

9 “(2) REVIEW.—A certification made pursuant
10 to paragraph (1) shall be subject to review by a
11 court for abuse of discretion.

12 “(b) LIMITATIONS ON DISCLOSURE.—If the Attorney
13 General files a declaration under section 1746 of title 28,
14 United States Code, that disclosure of a certification made
15 pursuant to subsection (a) would harm the national secu-
16 rity of the United States, the court shall—

17 “(1) review such certification in camera and ex
18 parte; and

19 “(2) limit any public disclosure concerning such
20 certification, including any public order following
21 such an ex parte review, to a statement that the con-
22 ditions of subsection (a) have been met, without dis-
23 closing the subparagraph of subsection (a)(1) that is
24 the basis for the certification.

1 “(c) REMOVAL.—A civil action against a person for
2 providing assistance to an element of the intelligence com-
3 munity that is brought in a State court shall be deemed
4 to arise under the Constitution and laws of the United
5 States and shall be removable under section 1441 of title
6 28, United States Code.

7 “(d) RELATIONSHIP TO OTHER LAWS.—Nothing in
8 this section may be construed to limit any otherwise avail-
9 able immunity, privilege, or defense under any other provi-
10 sion of law.

11 “(e) APPLICABILITY.—This section shall apply to a
12 civil action pending on or filed after the date of enactment
13 of the FISA Amendments Act of 2008.”.

14 **SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.**

15 Title VIII of the Foreign Intelligence Surveillance
16 Act (50 U.S.C. 1801 et seq.), as added by section 203
17 of this Act, is amended by adding at the end the following
18 new section:

19 **“SEC. 803. PREEMPTION.**

20 “(a) IN GENERAL.—No State shall have authority
21 to—

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

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

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

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

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

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

20 “(d) APPLICATION.—This section shall apply to any
21 investigation, action, or proceeding that is pending on or
22 filed after the date of enactment of the FISA Amendments
23 Act of 2008.”.

1 **SEC. 205. TECHNICAL AMENDMENTS.**

2 The table of contents in the first section of the For-
3 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
4 1801 et seq.), as amended by section 101(b), is further
5 amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE
GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.

6 **TITLE III—OTHER PROVISIONS**

7 **SEC. 301. SEVERABILITY.**

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

14 **SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCE-**
15 **DURES.**

16 (a) **IN GENERAL.**—Except as provided in subsection
17 (c), the amendments made by this Act shall take effect
18 on the date of the enactment of this Act.

19 (b) **REPEAL.**—

20 (1) **IN GENERAL.**—Except as provided in sub-
21 section (c), sections 105A, 105B, and 105C of the
22 Foreign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1805a, 1805b, and 1805c) are repealed.

1 (ii) at the request of the applicant,
2 the court established under section 103(a)
3 of the Foreign Intelligence Surveillance Act
4 of 1978 (50 U.S.C. 1803(a)) shall reau-
5 thorize such order if the facts and cir-
6 cumstances continue to justify issuance of
7 such order under the provisions of such
8 Act, as in effect on the day before the date
9 of the enactment of the Protect America
10 Act of 2007, except as amended by sec-
11 tions 102, 103, 104, 105, 106, 107, 108,
12 and 109 of this Act.

13 (B) ORDERS IN EFFECT ON DECEMBER 31,
14 2013.—Any order issued under title VII of the
15 Foreign Intelligence Surveillance Act of 1978,
16 as amended by section 101 of this Act, in effect
17 on December 31, 2013, shall continue in effect
18 until the date of the expiration of such order.
19 Any such order shall be governed by the appli-
20 cable provisions of the Foreign Intelligence Sur-
21 veillance Act of 1978, as so amended.

22 (3) AUTHORIZATIONS AND DIRECTIVES IN EF-
23 FECT.—

24 (A) AUTHORIZATIONS AND DIRECTIVES IN
25 EFFECT ON DATE OF ENACTMENT.—Notwith-

1 standing any other provision of this Act or of
2 the Foreign Intelligence Surveillance Act of
3 1978, any authorization or directive in effect on
4 the date of the enactment of this Act issued
5 pursuant to the Protect America Act of 2007,
6 or any amendment made by that Act, shall re-
7 main in effect until the date of expiration of
8 such authorization or directive. Any such au-
9 thorization or directive shall be governed by the
10 applicable provisions of the Protect America Act
11 of 2007 (121 Stat. 552), and the amendment
12 made by that Act, and, except as provided in
13 paragraph (4) of this subsection, any acquisi-
14 tion pursuant to such authorization or directive
15 shall be deemed not to constitute electronic sur-
16 veillance (as that term is defined in section
17 101(f) of the Foreign Intelligence Surveillance
18 Act of 1978 (50 U.S.C. 1801(f)), as construed
19 in accordance with section 105A of the Foreign
20 Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1805a)).

22 (B) AUTHORIZATIONS AND DIRECTIVES IN
23 EFFECT ON DECEMBER 31, 2013.—Any author-
24 ization or directive issued under title VII of the
25 Foreign Intelligence Surveillance Act of 1978,

1 as amended by section 101 of this Act, in effect
2 on December 31, 2013, shall continue in effect
3 until the date of the expiration of such author-
4 ization or directive. Any such authorization or
5 directive shall be governed by the applicable
6 provisions of the Foreign Intelligence Surveil-
7 lance Act of 1978, as so amended, and, except
8 as provided in section 707 of the Foreign Intel-
9 ligence Surveillance Act of 1978, as so amend-
10 ed, any acquisition pursuant to such authoriza-
11 tion or directive shall be deemed not to con-
12 stitute electronic surveillance (as that term is
13 defined in section 101(f) of the Foreign Intel-
14 ligence Surveillance Act of 1978, to the extent
15 that such section 101(f) is limited by section
16 701 of the Foreign Intelligence Surveillance Act
17 of 1978, as so amended).

18 (4) USE OF INFORMATION ACQUIRED UNDER
19 PROTECT AMERICA ACT.—Information acquired from
20 an acquisition conducted under the Protect America
21 Act of 2007, and the amendments made by that Act,
22 shall be deemed to be information acquired from an
23 electronic surveillance pursuant to title I of the For-
24 eign Intelligence Surveillance Act of 1978 (50
25 U.S.C. 1801 et seq.) for purposes of section 106 of

1 that Act (50 U.S.C. 1806), except for purposes of
2 subsection (j) of such section.

3 (5) NEW ORDERS.—Notwithstanding any other
4 provision of this Act or of the Foreign Intelligence
5 Surveillance Act of 1978—

6 (A) the government may file an application
7 for an order under the Foreign Intelligence
8 Surveillance Act of 1978, as in effect on the
9 day before the date of the enactment of the
10 Protect America Act of 2007, except as amend-
11 ed by sections 102, 103, 104, 105, 106, 107,
12 108, and 109 of this Act; and

13 (B) the court established under section
14 103(a) of the Foreign Intelligence Surveillance
15 Act of 1978 shall enter an order granting such
16 an application if the application meets the re-
17 quirements of such Act, as in effect on the day
18 before the date of the enactment of the Protect
19 America Act of 2007, except as amended by
20 sections 102, 103, 104, 105, 106, 107, 108,
21 and 109 of this Act.

22 (6) EXTANT AUTHORIZATIONS.—At the request
23 of the applicant, the court established under section
24 103(a) of the Foreign Intelligence Surveillance Act
25 of 1978 shall extinguish any extant authorization to

1 conduct electronic surveillance or physical search en-
2 tered pursuant to such Act.

3 (7) APPLICABLE PROVISIONS.—Any surveillance
4 conducted pursuant to an order entered pursuant to
5 this subsection shall be subject to the provisions of
6 the Foreign Intelligence Surveillance Act of 1978, as
7 in effect on the day before the date of the enactment
8 of the Protect America Act of 2007, except as
9 amended by sections 102, 103, 104, 105, 106, 107,
10 108, and 109 of this Act.

11 (8) TRANSITION PROCEDURES CONCERNING
12 THE TARGETING OF UNITED STATES PERSONS OVER-
13 SEAS.—Any authorization in effect on the date of
14 enactment of this Act under section 2.5 of Executive
15 Order 12333 to intentionally target a United States
16 person reasonably believed to be located outside the
17 United States shall remain in effect, and shall con-
18 stitute a sufficient basis for conducting such an ac-
19 quisition targeting a United States person located
20 outside the United States until the earlier of—

21 (A) the date that authorization expires; or

22 (B) the date that is 90 days after the date

23 of the enactment of this Act.