

Red Line  
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1 "SEC. 7032. PROCEDURES FOR TARGETING CERTAIN  
2 PERSONS OUTSIDE THE UNITED STATES OTHER THAN  
3 UNITED STATES PERSONS.

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

10 "(b) Limitations.—An acquisition ~~authorized conducted~~ under subsection (a)—

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

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

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

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

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

23 "(c) Conduct of Acquisition.—

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

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

29 ~~"(2B) the targeting and minimization procedures submitted in accordance~~  
30 ~~with required by subsections (d) and (e).~~

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

34 "(d) Targeting Procedures.—

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

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

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

"(e) Minimization Procedures.—

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

"(2) JUDICIAL REVIEW.—The minimization procedures required by paragraph (1) shall be subject to judicial review pursuant to subsection (h).

~~"(f) Guidelines for Compliance With Limitations.—~~

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

~~"(A) compliance with the limitations in subsection (b); and~~

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

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

~~"(3) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the guidelines adopted pursuant to paragraph (1) to—~~

~~"(A) the congressional intelligence committees;~~

~~"(B) the Committee on the Judiciary of the Senate;~~

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

~~"(D) the Foreign Intelligence Surveillance Court.~~

"(g) Certification.—

"(1) IN GENERAL.—

"(A) REQUIREMENT.—Subject to paragraph (B), in order to conduct prior to the initiation of an acquisition under subsection (a), the Attorney General and the Director of National Intelligence shall provide to the Foreign Intelligence Surveillance Court, under oath, a written certification and any supporting affidavit, under seal, in accordance with this subsection.

"(B) TIMING OF SUBMISSION TO THE COURT EXCEPTION.—

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

"(ii) EXCEPTION.—If the Attorney General and the Director of National

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Intelligence determine that exigent circumstances exist because intelligence important to the national security may will be lost without there should be immediate implementation of the authorization and time does not permit the issuance of an order pursuant to subsection (h)(3) prior to the implementation of the authorization initiation of an acquisition, the Attorney General and the Director of National Intelligence may authorize the acquisition and, if no certification for such acquisition has been submitted to the Foreign Intelligence Surveillance Court, shall submit to the Foreign Intelligence Surveillance Court a certification, including the determination under this subsection, as soon as possible practicable but in no event more than 7 days after such determination is made.

(ii) TIMING.—The Attorney General and the Director of National Intelligence may make the determination in subparagraph (i) before the filing of the certification or at any time during which judicial review under subsection (h) is pending.

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

“(A) attest that—

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

“(I) is targeted at persons reasonably believed to be located outside the United States; and

“(II) does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

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

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

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

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

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

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

“(vi) the acquisition involves obtaining the foreign intelligence information

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1 from or with the assistance of an electronic communication service provider; and

2 ~~“(vii) the acquisition complies with the limitations in subsection (b); and the~~  
 3 ~~acquisition does not constitute electronic surveillance, as limited by section 701;~~  
 4 ~~and~~

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

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

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

9 “(C) include—

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

12 “(ii) if the acquisition has begun or the effective date is less than 30 days from  
 13 the submission of the written certification to the court—

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

15 ~~“(II) a description of why initiation of the acquisition is required in less~~  
 16 ~~than 30 days from the submission of the written certification to the court; and~~

17 ~~“(III) if the acquisition is authorized under paragraph (1)(B)(ii), a~~  
 18 ~~description of why there should be immediate implementation of the~~  
 19 ~~authorization and time does not permit the issuance of an order pursuant to~~  
 20 ~~subsection (i)(3) prior to the implementation of the authorization;~~

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

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

28 “(5) MAINTENANCE OF CERTIFICATION.—~~The Attorney General shall maintain a copy of~~  
 29 ~~a~~ certification made under this subsection shall be maintained under security measures  
 30 adopted by the Chief Justice of the United States and the Attorney General, in consultation  
 31 with the Director of National Intelligence.

32 “(6) REVIEW.—The certification required by this subsection shall be subject to judicial  
 33 review pursuant to subsection (h).

34 “(gh) Directives and Judicial Review of Directives.—

35 “(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the  
 36 Attorney General and the Director of National Intelligence may direct, in writing, an  
 37 electronic communication service provider to—

38 “(A) immediately provide the Government with all information, facilities, or  
 39 assistance necessary to accomplish the acquisition ~~authorized in accordance with this~~

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1 section in a manner that will protect the secrecy of the acquisition and produce a  
 2 minimum of interference with the services that such electronic communication service  
 3 provider is providing to the target of the acquisition; and

4 "(B) maintain under security procedures approved by the Attorney General and the  
 5 Director of National Intelligence any records concerning the acquisition or the aid  
 6 furnished that such electronic communication service provider wishes to maintain.

7 "(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an  
 8 electronic communication service provider for providing information, facilities, or  
 9 assistance pursuant to paragraph (1).

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

13 "(4) CHALLENGING OF DIRECTIVES.—

14 "(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider  
 15 receiving a directive issued pursuant to paragraph (1) may challenge the directive by  
 16 filing a petition with the Foreign Intelligence Surveillance Court, which shall have  
 17 jurisdiction to review such a petition.

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

21 "(C) STANDARDS FOR REVIEW.—~~A judge of the Foreign Intelligence Surveillance~~  
 22 ~~Court~~ considering a petition to modify or set aside a directive may grant such petition  
 23 only if the Court finds that the directive does not meet the requirements of this section,  
 24 or is otherwise unlawful.

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

36 "(E) PROCEDURES FOR PLENARY REVIEW.—If the ~~Foreign Intelligence Surveillance~~  
 37 ~~Court~~ ~~a judge~~ determines that a petition filed under subparagraph (A) requires plenary  
 38 review, the ~~Court~~ ~~judge~~ shall affirm, modify, or set aside the directive that is the  
 39 subject of that petition not later than 30 days after being assigned the petition. If the  
 40 Court does not set aside the directive, the ~~Court~~ ~~judge~~ shall immediately affirm the  
 41 directive or ~~order that the directive be modified~~ affirm with modifications to the directive.  
 42 and order the recipient to comply with the directive in its entirety or as modified. The  
 43 ~~Court~~ ~~judge~~ shall provide a written statement for the record of the reasons for a

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determination under this subparagraph.

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

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

“(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

“(6) APPEAL.—

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

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

“(h) Judicial Review of Certifications and Procedures.—

“(1) IN GENERAL.—

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1           “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
2 Intelligence Surveillance Court shall have jurisdiction to review any certification  
3 submitted in accordance with subsection (fg) and the targeting and minimization  
4 procedures submitted in accordance with subsections (d) and (e), and any amendments  
5 to such certification or procedures.

6           “(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted  
7 in accordance with subsection (fg) and the targeting and minimization procedures  
8 submitted in accordance with subsections (d) and (e) and shall approve or disapprove  
9 such certification and procedures deny an order under this subsection not later than 30  
10 days after the date on which such a certification and procedures are submitted.

11           “(C) AMENDMENTS.—The Attorney General and the Director of National  
12 Intelligence may amend a certification submitted in accordance with subsection (fg) or  
13 the targeting and minimization procedures submitted in accordance with subsections  
14 (d) and (e) as necessary after such certification or procedures have been submitted for  
15 review to the Foreign Intelligence Surveillance Court or after such certification or  
16 procedures have been approved by the Court. If an amendment is submitted subsequent  
17 to the issuance of an order under subsection (i)(3) that significantly modifies such  
18 certification or procedures, the Attorney General and Director of National Intelligence  
19 shall seek approval of such amendment by the Court. The Court shall review any such  
20 amendment under the procedures set forth in this subsection. The Attorney General  
21 and the Director of National Intelligence may authorize the use of an amended  
22 certification or amended procedures pending the Court’s review of such amended  
23 certification or amended procedures.

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

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

27           “(B) TARGETING PROCEDURES.—The targeting procedures submitted in accordance  
28 with subsection (d) to assess whether the procedures are reasonably designed to ensure  
29 that the acquisition authorized under subsection (a) is limited to the targeting of  
30 persons reasonably believed to be located outside the United States and does not result  
31 in the intentional acquisition of any communication as to which the sender and all  
32 intended recipients are known at the time of the acquisition to be located in the United  
33 States.

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

37           “(3) ORDERS.—

38           “(A) APPROVAL.—If the Court finds that a certification submitted in accordance  
39 with subsection (fg) contains all of the required elements and that the targeting and  
40 minimization procedures submitted in accordance with subsections (d) and (e) are  
41 consistent with the requirements of those subsections and with the fourth amendment  
42 to the Constitution of the United States, the Court shall enter an order approving the  
43 certification and the use, or continued use in the case of an acquisition under

1 | subsection (D)(1)(B) of the procedures for the acquisition.

2 |       “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required  
3 | submitted in accordance with subsection (g) does not contain all of the required  
4 | elements, or that the procedures submitted in accordance with subsections (d) and (e)  
5 | are not consistent with the requirements of those subsections or the fourth amendment  
6 | to the Constitution of the United States, the Court shall issue an order directing the  
7 | Government to, at the Government’s election and to the extent required by the Court’s  
8 | order—

9 |           “(i) correct any deficiency identified by the Court not later than 30 days after  
10 | the date the Court issues the order; or

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

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

15 |       “(4) APPEAL.

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

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

23 |           “(i) during the pendency of any rehearing of the order by the Court en banc;  
24 | and

25 |           “(ii) if the Government appeals an order under this section, subject to the entry  
26 | of an order under subparagraph (C).

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

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

37 |       “(5) SCHEDULE.—

38 |       “(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.— If the Attorney General and  
39 | the Director of National Intelligence replace ~~When replacing~~ an authorization issued  
40 | pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as  
41 | added by section 2 of the Protect America Act of 2007 (Public Law 110-55) with an



1 authorization under this section, the Attorney General and the Director of National  
2 Intelligence shall, to the extent practicable, submit to the Court the certification  
3 prepared in accordance with subsection (fg) and the procedures adopted in accordance  
4 with subsections (d) and (e) at least 30 days before the expiration of such  
5 authorization.

6 ~~“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.— If the Attorney General~~  
7 ~~and the Director of National Intelligence seek to reauthorize or replace~~ ~~When replacing~~  
8 an authorization issued pursuant to this section, the Attorney General and the Director  
9 of National Intelligence shall, to the extent practicable, submit to the Court the  
10 certification prepared in accordance with subsection (fg) and the procedures adopted in  
11 accordance with subsections (d) and (e) at least 30 days prior to the expiration of such  
12 authorization.

13 ~~“(C) CONSOLIDATED SUBMISSIONS.— The Attorney General and Director of National~~  
14 ~~Intelligence shall, to the extent practicable, annually submit to the Court a~~  
15 ~~consolidation of—~~

- 16 ~~“(i) certifications prepared in accordance with subsection (g) for~~  
17 ~~reauthorization of authorizations in effect;~~
- 18 ~~“(ii) the procedures adopted in accordance with subsections (d) and (e); and~~
- 19 ~~“(iii) the annual review required by subsection (h)(3) for the preceding year.~~

20 ~~“(D) TIMING OF REVIEWS.— The Attorney General and the Director of National~~  
21 ~~Intelligence shall schedule the completion of the annual review required by subsection~~  
22 ~~(h)(3) and a semiannual assessment required by subsection (i)(1) so that they may be~~  
23 ~~submitted to the Court at the time of the consolidated submission under subparagraph~~  
24 ~~(C).~~

25 ~~“(E) CONSTRUCTION.— Nothing in this Act shall be~~ ~~The requirements of~~  
26 ~~subparagraph (C) shall not be construed to preclude the Attorney General and the~~  
27 ~~Director of National Intelligence from submitting certifications for additional~~  
28 ~~authorizations, amended certifications, or amended procedures for existing~~  
29 ~~authorizations at other times during the year as necessary.~~

30 ~~“(G) COMPLIANCE.— At or before the end of the period of time for which an authorization~~  
31 ~~under subsection (a) expires, the Foreign Intelligence Surveillance Court may assess~~  
32 ~~compliance with the minimization procedures required under subsection (e) by reviewing~~  
33 ~~the circumstances under which information concerning United States persons was acquired,~~  
34 ~~retained, or disseminated.~~

35 ~~“(j) Judicial Proceedings.—~~

36 ~~“(1) EXPEDITED PROCEEDINGS.— Judicial proceedings under this section shall be~~  
37 ~~conducted as expeditiously as possible.~~

38 ~~“(2) TIME LIMITS.— A time limit for a judicial decision in this section shall apply unless~~  
39 ~~the Court, the Court of Review, or any judge of either the Court or the Court of Review, by~~  
40 ~~order for reasons stated, determines, taking into account the interests of national security,~~  
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1 ~~extends that time for good cause that consideration of the certification or the procedures~~  
2 ~~requires an extension of the period.~~

3 **“(j) Maintenance and Security of Records and Proceedings.—**

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

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

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

15 **“(k) Assessments and Reviews.—**

16 **“(1) SEMIANNUAL ASSESSMENT.—**Not less frequently than once every 6 months, the  
17 Attorney General and Director of National Intelligence shall assess compliance with the  
18 targeting and minimization procedures submitted in accordance with subsections (d) and (e)  
19 ~~and the guidelines adopted in accordance with subsection (f)~~ and shall submit each such  
20 assessment to—

21 **“(A) the Foreign Intelligence Surveillance Court; and**

22 **“(B) the congressional intelligence committees;**

23 ~~“(C) the Committee on the Judiciary of the Senate; and~~

24 ~~“(D) the Committee on the Judiciary of the House of Representatives.~~

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

29 **“(A) are authorized to review the compliance with the targeting and minimization**  
30 **procedures submitted in accordance with subsections (d) and (e)** ~~and the guidelines~~  
31 ~~submitted in accordance with subsection (f);~~

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

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

40 **“(D) shall provide each such review to—**

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- 1           “(i) the Attorney General;  
 2           “(ii) the Director of National Intelligence; and  
 3           “(iii) the congressional intelligence committees; and  
 4           ~~“(iv) the Committee on the Judiciary of the Senate; and~~  
 5           ~~“(v) the Committee on the Judiciary of the House of Representatives.~~

6           “(3) ANNUAL REVIEW.—

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

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

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

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

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

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

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

- 34           “(i) the Foreign Intelligence Surveillance Court;  
 35           “(ii) the Attorney General;  
 36           “(iii) the Director of National Intelligence; and  
 37           “(iv) the congressional intelligence committees; and  
 38           ~~“(v) the Committees on the Judiciary of the Senate; and~~  
 39           ~~“(vi) the Committee on the Judiciary of the House of Representatives.~~

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1 TITLE II—PROTECTIONS FOR ELECTRONIC  
 2 COMMUNICATION SERVICE PROVIDERS

3 SEC. 201. PROCEDURES FOR IMPLEMENTING  
 4 STATUTORY DEFENSES UNDER THE FOREIGN  
 5 INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

8 “TITLE VIII—PROTECTION OF PERSONS ASSISTING  
 9 THE GOVERNMENT

10 “SEC. 801. DEFINITIONS.

11 “In this title:

12 “(1) ASSISTANCE.—The term ‘assistance’ means the provision of, or the provision of  
 13 access to, information (including communication contents, communications records, or  
 14 other information relating to a customer or communication), facilities, or another form of  
 15 assistance.

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

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

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

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

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

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

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

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

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

33 “(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in  
 34 subparagraph (A), (B), (C), or (D); or

35 “(F) an officer, employee, or agent of an entity described in subparagraph (A), (B),

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1 (C), (D), or (E).

2 "(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence  
3 community' means an element of the intelligence community as specified or designated  
4 under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

5 "(6) PERSON.—The term 'person' means—

6 "(A) an electronic communication service provider; or

7 "(B) a landlord, custodian, or other person who may be authorized or required to  
8 furnish assistance pursuant to—

9 "(i) an order of the court established under section 103(a) directing such  
10 assistance;

11 "(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title  
12 18, United States Code; or

13 "(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before  
14 the date of the enactment of the FISA Amendments Act of 2008 or 703(h).

15 "(7) STATE.—The term 'State' means any State, political subdivision of a State, the  
16 Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of  
17 the United States, and includes any officer, public utility commission, or other body  
18 authorized to regulate an electronic communication service provider.

19 "SEC. 802. PROCEDURES FOR IMPLEMENTING  
20 STATUTORY DEFENSES.

21 "(a) General Requirement for Certification.—Notwithstanding any other provision of law, no  
22 civil action may lie or be maintained in a Federal or State court against any person for providing  
23 assistance to an element of the intelligence community, and shall be promptly dismissed, if the  
24 Attorney General certifies to the court that—

25 "(1) any assistance by that person was provided pursuant to an order of the court  
26 established under section 103(a) directing such assistance;

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

29 "(3) any assistance by that person was provided pursuant to a directive under sections  
30 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA  
31 Amendments Act of 2008, or 703(h) directing such assistance; or

32 "(4) the person did not provide the alleged assistance.

33 "(b) Additional Limitation.—

34 (1) General. Notwithstanding any other provision of law, no civil action may lie or be  
35 maintained in a Federal or State court against an electronic communication service provider for  
36 furnishing assistance to an element of the intelligence community, and shall be promptly  
37 dismissed, if the Attorney General certifies to the ~~court~~ Foreign Intelligence Surveillance Court,  
38 and the Court finds by a preponderance of the evidence, that—

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1 (A) the assistance alleged to have been provided by the electronic communication service  
2 provider was—

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

5 “(iA) authorized by the President authorized by the President during the period  
6 beginning on September 11, 2001, and ending on January 17, 2007; and and

7 “(B) “(ii) designed to detect or prevent a terrorist attack, or activities in preparation for a  
8 terrorist attack, against the United States; and

9 “(ii2) described in the subject of a written request or directive, or a series of such requests  
10 or directives, from the Attorney General or the head of an element of the intelligence  
11 community (or the deputy of such person) to the electronic communication service provider  
12 indicating that the activity was—

13 “(iA) authorized by the President; and

14 “(iiB) determined to be lawful.

15 (2) Jurisdiction.—Upon receiving the certification of the Attorney General for any covered  
16 civil action, the Foreign Intelligence Surveillance Court shall have exclusive jurisdiction to  
17 conduct the review authorized by paragraph (1) and to hear any challenge to the validity or  
18 application of this section. Other than the Foreign Intelligence Surveillance Court of Review and  
19 the Supreme Court of the United States in an appeal under paragraph (4), no other court shall  
20 have such jurisdiction.

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21 (3) Stay of Other Proceedings.— Within 10 days of the Attorney General's submission of a  
22 certification under paragraph (1), the United States shall notify the district court and any  
23 appellate court in which the covered civil action is pending, and such courts shall stay all  
24 proceedings before them in the covered action. Such stay shall remain in effect pending the final  
25 determination of the Foreign Intelligence Surveillance Court in any proceeding under this section  
26 for such covered civil action and pending any appeal taken in such action pursuant to paragraph  
27 (4).

28 (4) Appeal.—

29 (A) APPEAL TO THE COURT OF REVIEW.—The United States or any other party in a  
30 covered civil action may file a petition with the Foreign Intelligence Surveillance Court of  
31 Review for review of any final determination of the Foreign Intelligence Surveillance Court  
32 issued pursuant to this section. The Court of Review shall have exclusive jurisdiction to  
33 consider such a petition. Subsections (d) and (e) shall apply to any Court of Review  
34 proceedings.

35 (B) CERTIORARI TO THE SUPREME COURT.—The United States or any other party in a  
36 covered civil action may file a petition for a writ of certiorari for review of any decision of the  
37 Court of Review issued under paragraph (4)(A). The Supreme Court of the United States shall  
38 have jurisdiction to review such decision, and subsections (d) and (e) shall apply to any such  
39 proceedings.

40 (5) Further Proceedings.—If, after the Foreign Intelligence Surveillance Court renders a final  
41 determination and any appeals taken pursuant to paragraph (4) are exhausted, it is determined

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1 that the conditions for dismissal under paragraph (1) have been met, then the court in which the  
2 action was pending prior to the Attorney General's certification shall dismiss the case with  
3 prejudice and no other appeals in the action shall be permitted. If, after the Foreign Intelligence  
4 Surveillance Court renders a final determination and any appeals taken pursuant to paragraph (4)  
5 are exhausted, it is determined that the conditions for dismissal under paragraph (1) have not  
6 been met, the stay required by paragraph (3) shall be lifted and the court in which the action was  
7 pending prior to the Attorney General's certification shall proceed as it deems appropriate,  
8 without prejudice to any applicable immunity, privilege, or defense available to any party.

9  
10 "(c) Judicial Review.—

11 "(1) REVIEW OF CERTIFICATIONS.—A certification made pursuant to subsection (a) or ~~(b)~~  
12 shall be reviewed for abuse of discretion and a determination of whether the certification is  
13 unsupported by substantial evidence or otherwise ~~not in accordance with law~~ arbitrary and  
14 capricious.

15 "(2) SUPPLEMENTAL MATERIALS.—In its review of the certifications made pursuant to  
16 subsections (a) and (b) and ~~(b)~~, the court may examine the court order, certification, or  
17 directive described in subsection (a), or the written request or directives, or series of such  
18 requests or directives, described in subsection (b)(1)(B), any relevant court order,  
19 certification, written request or directive submitted pursuant to subsection (e), or any other  
20 material provided by the Attorney General at his or her discretion.

21 "(d) Limitations on Disclosure.—If the Attorney General files a declaration under section  
22 1746 of title 28, United States Code, that disclosure of a certification or the supplemental  
23 materials made pursuant to subsection (a) or (b) would harm the national security of the United  
24 States, the court shall—

25 "(1) review such certification and the supplemental materials in camera and ex parte; and

26 "(2) limit any public disclosure concerning such certification and the supplemental  
27 materials, including any public order following such in camera and an ex parte review, to a  
28 statement that the conditions for dismissal of section 802 have been met, or that the court  
29 has been unable to determine that they have been met, and a description of the legal  
30 standards that govern the order, without disclosing the subsection that is the basis for the  
31 order.

32 "(e) Role of the Parties.— Any plaintiff or defendant in a covered civil action may submit any  
33 relevant court order, certification, written request or directive to the court for review and shall be  
34 permitted to participate in the briefing or argument of any legal issue in a judicial proceeding  
35 conducted pursuant to this section, but only to the extent that such participation does not require  
36 the disclosure of, or otherwise tend to reveal, classified information to such party. To the extent  
37 that classified information is relevant to the proceeding or would be revealed in the  
38 determination of an issue, the court shall review such information, or make any part of the  
39 determination that would tend to reveal the classified information, in camera and ex parte. The  
40 court may ask any party to submit arguments on relevant issues of law, if deemed appropriate by  
41 the court.

42 "(f) Nondelegation.—The authority and duties of the Attorney General under this section shall  
43 be performed by the Attorney General (or Acting Attorney General) or a designee in a position

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1 not lower than the Deputy Attorney General.

2 "(g) Appeal.—The courts of appeals shall have jurisdiction of appeals from interlocutory  
3 orders of the district courts of the United States granting or denying a motion to dismiss or for  
4 summary judgment under this section.

5 "(h) Removal.—A civil action against a person for providing assistance to an element of the  
6 intelligence community that is brought in a State court shall be deemed to arise under the  
7 Constitution and laws of the United States and shall be removable under section 1441 of title 28,  
8 United States Code.

9 "(i) Relationship to Other Laws.—Nothing in this section may be construed to limit any  
10 otherwise available immunity, privilege, or defense under any other provision of law.

11 "(j) Applicability.—This section shall apply to a civil action pending on or filed after the date  
12 of enactment of the FISA Amendments Act of 2008.

### 13 "SEC. 803. PREEMPTION.

14 "(a) In General.—No State shall have authority to—

15 "(1) conduct an investigation into an electronic communication service provider's alleged  
16 assistance to an element of the intelligence community;

17 "(2) require through regulation or any other means the disclosure of information about an  
18 electronic communication service provider's alleged assistance to an element of the  
19 intelligence community;

20 "(3) impose any administrative sanction on an electronic communication service provider  
21 for assistance to an element of the intelligence community; or

22 "(4) commence or maintain a civil action or other proceeding to enforce a requirement  
23 that an electronic communication service provider disclose information concerning alleged  
24 assistance to an element of the intelligence community.

25 "(b) Suits by the United States.—The United States may bring suit to enforce the provisions of  
26 this section.

27 "(c) Jurisdiction.—The district courts of the United States shall have jurisdiction over any civil  
28 action brought by the United States to enforce the provisions of this section.

29 "(d) Application.—This section shall apply to any investigation, action, or proceeding that is  
30 pending on or filed after the date of enactment of the FISA Amendments Act of 2008.

### 31 "SEC. 804. REPORTING.

32 "(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General  
33 shall fully inform, in a manner consistent with national security, the congressional intelligence  
34 committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of  
35 the House of Representatives, concerning the implementation of this title.

36 "(b) Content.—Each report made under subparagraph (a) shall include—

37 "(1) any certifications made under section 802;

38 "(2) a description of the judicial review of the certifications made under section 802; and