

PROVIDING FOR THE CONSIDERATION OF THE SENATE AMENDMENT TO
THE BILL (H.R. 3773) TO AMEND THE FOREIGN INTELLIGENCE SURVEIL-
LANCE ACT OF 1978 TO ESTABLISH A PROCEDURE FOR AUTHORIZING
CERTAIN ACQUISITIONS OF FOREIGN INTELLIGENCE, AND FOR OTHER
PURPOSES

MARCH 12, 2008.—Referred to the House Calendar and ordered to be printed

Mr. ARCURI, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 1041]

The Committee on Rules, having had under consideration House
Resolution 1041, by a nonrecord vote, report the same to the House
with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of the Senate amend-
ment to the bill H.R. 3773, the “FISA Amendments Act of 2008.”
The resolution provides that it is in order for the chairman of the
Committee on the Judiciary to make a motion that the House con-
cur in the Senate amendment to H.R. 3773 with the amendment
printed in this report.

The resolution waives all points of order against the motion ex-
cept those arising under clause 10 of rule XXI. The resolution pro-
vides that the Senate amendment and the motion shall be consid-
ered as read. It further provides that the motion shall be debatable
for one hour, with 40 minutes equally divided and controlled by the
chairman and ranking minority member of the Committee on the
Judiciary and 20 minutes equally divided and controlled by the
chairman and ranking minority member of the Permanent Select
Committee on Intelligence. Finally, the resolution provides that,
notwithstanding the operation of the previous question, the Chair
may postpone further consideration of the motion to a time des-
ignated by the Speaker.

EXPLANATION OF WAIVERS

Although the rule waives all points of order against the motion
(except those arising under clause 10 of rule XXI), the Committee
is not aware of any points of order against the motion. The waiver

of all points of order against the motion (except those arising under clause 10 of rule XXI) is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 460

Date: March 12, 2008.

Measure: Senate amendment to H.R. 3773.

Motion by: Mr. Dreier.

Summary of motion: To make in order a separate motion to concur in the Senate amendment to the bill, H.R. 3773, the FISA Amendments Act of 2008.

Results: Defeated 3–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Hastings (WA)—Yea; Sessions—Yea.

SUMMARY OF THE HOUSE AMENDMENT TO THE SENATE AMENDMENT
TO H.R. 3773

The Amendment provides for flexible surveillance of terrorists and other targets overseas who may be communicating with Americans. Under the Amendment, surveillance programs can begin following court approval of procedures to ensure that Americans are not targeted and that intercepted communications are handled properly. It requires a court order based on probable cause in order to conduct surveillance against Americans at home and overseas. The Amendment provides for oversight by the Court, the Congress, and the independent Inspectors General, and confirms that the Foreign Intelligence Surveillance Act remains the exclusive means of conducting foreign intelligence surveillance.

The Amendment provides prospective liability protection for telecommunications companies that provide lawful assistance to the government. It addresses past activities under the President's Terrorist Surveillance Program by freeing telephone companies to argue existing defenses before the court in pending lawsuits, notwithstanding the Government's assertion of the state secrets doctrine.

Finally, the Amendment establishes a bipartisan commission—with subpoena power—to investigate and report to the American people on the Administration's warrantless surveillance activities.

TEXT OF THE HOUSE AMENDMENT TO THE SENATE AMENDMENT TO
H.R. 3773

In lieu of the matter proposed to be inserted by the Senate, insert the following:

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

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

Sec. 109. Foreign intelligence surveillance court.

Sec. 110. Review of previous actions.

Sec. 111. Weapons of mass destruction.

Sec. 112. Statute of limitations.

TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

Sec. 201. Statutory defenses.

Sec. 202. Technical amendments.

TITLE III—COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES

Sec. 301. Commission on Warrantless Electronic Surveillance Activities.

TITLE IV—OTHER PROVISIONS

Sec. 401. Severability.

Sec. 402. Effective date.

Sec. 403. Repeals.

Sec. 404. Transition procedures.

Sec. 405. No rights under the FISA Amendments Act of 2008 for undocumented aliens.

Sec. 406. Surveillance to protect the United States.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

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

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

“SEC. 701. DEFINITIONS.

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

“(b) ADDITIONAL DEFINITIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

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

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

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

“(2) may not intentionally target a person reasonably believed to be located outside the United States in order to target a particular, known person reasonably believed to be in the United States;

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

“(4) may not intentionally acquire 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; and

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

“(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

“(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (g) or a determination under paragraph (1)(B) of such subsection; and

“(2) the procedures and guidelines required pursuant to subsections (d), (e), and (f).

“(d) TARGETING PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States and 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.

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

“(e) MINIMIZATION PROCEDURES.—

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

“(A) in the case of electronic surveillance, meet the definition of minimization procedures under section 101(h); and

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

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

“(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 303, if required by this Act.

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

“(A) the department or agency of the Federal Government conducting the acquisition has made an inquiry to

another department or agency of the Federal Government to gather information on the specific United States person;

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

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

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

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

“(4) SUBMISSION TO CONGRESS AND FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Attorney General shall submit the guidelines adopted pursuant to paragraph (1) to—

“(A) the congressional intelligence committees;

“(B) the Committees on the Judiciary of the House of Representatives and the Senate; and

“(C) the Foreign Intelligence Surveillance Court.

“(g) CERTIFICATION.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Subject to subparagraph (B), if the Attorney General and the Director of National Intelligence seek to authorize an acquisition under this section, the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

“(B) EMERGENCY AUTHORIZATION.—If the Attorney General and the Director of National Intelligence determine that an emergency situation exists, immediate action by the Government is required, and time does not permit the completion of judicial review pursuant to subsection (i) prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence may authorize the acquisition and shall submit to the Foreign Intelligence Surveillance Court a certification under this subsection as soon as possible but in no event more than 7 days after such determination is made.

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

“(A) attest that—

“(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a)—

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

“(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) in accordance with subsection (e); and

“(II) have been submitted to the Foreign Intelligence Surveillance Court;

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

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

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

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

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

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

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

“(C) include—

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

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

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

“(II) a description of why implementation was required in less than 30 days from the submission of the written certification to the court; and

“(III) if the acquisition is authorized under paragraph (1)(B), the basis for the determination that an emergency situation exists, immediate action by the government is required, and time does not permit the completion of judicial review prior to the initiation of the acquisition.

“(3) LIMITATION.—A certification made under this subsection is not required to identify the specific facilities, places, prem-

ises, or property at which the acquisition authorized under subsection (a) will be directed or conducted.

“(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court before the initiation of an acquisition under this section, except in accordance with paragraph (1)(B). The Attorney General shall maintain such certification under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

“(5) REVIEW.—A certification submitted pursuant to this subsection shall be subject to judicial review pursuant to subsection (i).

“(h) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

“(1) AUTHORITY.—Pursuant to an order issued in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

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

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

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

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

“(4) CHALLENGING OF DIRECTIVES.—

“(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition 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 the 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) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such pe-

tion only if the judge finds that the directive does not meet the requirements of this section or is otherwise unlawful.

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

“(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition filed under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of that petition not later than 30 days after being assigned the petition. If the judge does not set aside the directive, the judge shall immediately affirm or modify the directive and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the records of the reasons for a 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.—A 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 judge finds that the directive meets the requirements of this section and is otherwise lawful. The

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.

“(i) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

“(1) IN GENERAL.—

“(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification submitted pursuant to subsection (g) and the targeting and minimization procedures required by subsections (d) and (e).

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

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

“(A) CERTIFICATIONS.—A certification submitted pursuant to subsection (g) to determine whether the certification contains all the required elements.

“(B) TARGETING PROCEDURES.—The targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States and 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.

“(C) MINIMIZATION PROCEDURES.—The minimization procedures required by subsection (e) to assess whether such

procedures meet the definition of minimization procedures under section 101(h) or section 301(4) in accordance with subsection (e).

“(3) ORDERS.—

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

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

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

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

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

“(II) cease the acquisition authorized under subsection (g)(1)(B).

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

“(4) APPEAL.—

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

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

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

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

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

“(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a 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.

“(5) SCHEDULE.—

“(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court a certification under subsection (g) and the procedures required by subsections (d), (e), and (f) at least 30 days before the expiration of such authorization.

“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to this section, the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court a certification under subsection (g) and the procedures required by subsections (d), (e), and (f) at least 30 days prior to the expiration of such authorization.

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

“(i) certifications under subsection (g) for reauthorization of authorizations in effect;

“(ii) the procedures required by subsections (d), (e), and (f); and

“(iii) the annual review required by subsection (1)(3) for the preceding year.

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

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

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

“(j) JUDICIAL PROCEEDINGS.—

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

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

“(k) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

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

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

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

“(l) ASSESSMENTS AND REVIEWS.—

“(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the procedures and guidelines required by subsections (d), (e), and (f) and shall submit each assessment to—

“(A) the congressional intelligence committees;

“(B) the Committees on the Judiciary of the House of Representatives and the Senate; and

“(C) the Foreign Intelligence Surveillance Court.

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

“(A) are authorized to review compliance with the procedures and guidelines required by subsections (d), (e), and (f);

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

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

“(D) shall provide each such review to—

“(i) the Attorney General;

“(ii) the Director of National Intelligence;

“(iii) the congressional intelligence committees;

“(iv) the Committees on the Judiciary of the House of Representatives and the Senate; and

“(v) the Foreign Intelligence Surveillance Court.

“(3) ANNUAL REVIEW.—

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

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

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

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

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

“(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures uti-

lized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

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

- “(i) the Foreign Intelligence Surveillance Court;
- “(ii) the Attorney General;
- “(iii) the Director of National Intelligence;
- “(iv) the congressional intelligence committees; and
- “(v) the Committees on the Judiciary of the House of Representatives and the Senate.

“(m) CONSTRUCTION.—Nothing in this Act shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

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

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

“(2) LIMITATION.—If a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease unless authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(b) APPLICATION.—

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

- “(A) the identity of the Federal officer making the application;
- “(B) the identity, if known, or a description of the United States person who is the target of the acquisition;
- “(C) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the United States person who is the target of the acquisition is—

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

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

“(D) a statement of proposed minimization procedures that—

“(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

“(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

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

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

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

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

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

“(iv) identifies the type of foreign intelligence information being sought according to the categories described in each subparagraph of section 101(e); and

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

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

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

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

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

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

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

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

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

“(c) ORDER.—

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

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

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

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

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

“(C) the proposed minimization procedures—

“(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

“(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

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

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

“(3) REVIEW.—

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

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

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures referred to in paragraph (1)(C) do not meet the definition of minimization procedures as required under such paragraph the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

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

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

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

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

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

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

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

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

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

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

“(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

“(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

“(6) DURATION.—An order approved under this subsection shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or exten-

sion under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

“(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists, the Attorney General may authorize such acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving an acquisition authorized under paragraph (1), such acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—If an application for approval submitted pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) RELEASE FROM LIABILITY.—Notwithstanding any other provision of law, no cause of action shall lie in any court against any electronic communication service provider for providing any infor-

mation, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

“(f) APPEAL.—

“(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review under paragraph (1). 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.

“(g) CONSTRUCTION.—Nothing in this Act shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

“(a) JURISDICTION AND SCOPE.—

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

“(2) SCOPE.—No department or agency of the Federal Government may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order with respect to such targeted United States person or the Attorney General has authorized an emergency acquisition pursuant to subsection (c) or (d) or any other provision of this Act.

“(3) LIMITATIONS.—

“(A) MOVING OR MISIDENTIFIED TARGETS.—If a targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), acquisitions relating to such targeted United States Person shall cease unless authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of such order.

“(B) APPLICABILITY.—If an acquisition is to be conducted inside the United States and could be authorized under section 703, the acquisition may only be conducted if authorized under section 703 or in accordance with another provision of this Act other than this section.

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

“(1) the identity of the Federal officer making the application;

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

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

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

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

“(4) a statement of proposed minimization procedures that—

“(A) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

“(B) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

“(5) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

“(A) the certifying official deems the information sought to be foreign intelligence information; and

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

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

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

“(c) ORDER.—

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

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

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

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

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

“(C) the proposed minimization procedures—

“(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

“(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

“(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(5) is not clearly erroneous on the basis of the information furnished under subsection (b).

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

“(3) REVIEW.—

“(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

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

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures referred to in paragraph (1)(C) do not meet the definition of minimization procedures as required under such paragraph, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that an application under subsection (b) does not contain all the required elements, or that the certification provided under subsection (b)(5) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this section, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained, and

“(B) the factual basis for the issuance of an order under this section exists,

the Attorney General may authorize such acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an emergency acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition authorized under paragraph (1) shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—If an application submitted pursuant to paragraph (1) is denied, or in any other case where an acquisition under this section is terminated and no order with respect to the target of the acquisition is issued under subsection (c), no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) APPEAL.—

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

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). 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.

“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

“(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 703 or section 704 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 703(b) and section 704(b), orders under section 703(c) and section 704(c), as appropriate.

“(b) CONCURRENT AUTHORIZATION.—

“(1) ELECTRONIC SURVEILLANCE.—If an order authorizing electronic surveillance has been obtained under section 105 and that order is still in effect, during the pendency of that order the Attorney General may authorize, without an order under section 703 or 704, electronic surveillance for the purpose of acquiring foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

“(2) PHYSICAL SEARCH.—If an order authorizing a physical search has been obtained under section 304 and that order is still in effect, during the pendency of that order the Attorney General may authorize, without an order under section 703 or 704, a physical search for the purpose of acquiring foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

“SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

“Information acquired pursuant to section 702 or 703 shall be considered information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

“SEC. 707. CONGRESSIONAL OVERSIGHT.

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

“(b) CONTENT.—Each report made under subsection (a) shall include—

“(1) with respect to section 702—

- “(A) any certifications made under section 702(g) during the reporting period;
 - “(B) with respect to each certification made under paragraph (1)(B) of such section, the reasons for exercising the authority under such paragraph;
 - “(C) any directives issued under section 702(h) during the reporting period;
 - “(D) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures adopted pursuant to subsections (d) and (e) of section 702 utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of section 702;
 - “(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5) of section 702(h);
 - “(F) any compliance reviews conducted by the Attorney General or the Director of National Intelligence of acquisitions authorized under subsection 702(a);
 - “(G) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 702(h), including—
 - “(i) incidents of noncompliance by an element of the intelligence community with procedures and guidelines adopted pursuant to subsections (d), (e), and (f) of section 702; and
 - “(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 702(h); and
 - “(H) any procedures implementing section 702;
- “(2) with respect to section 703—
- “(A) the total number of applications made for orders under section 703(b);
 - “(B) the total number of such orders—
 - “(i) granted;
 - “(ii) modified; or
 - “(iii) denied; and
 - “(C) the total number of emergency acquisitions authorized by the Attorney General under section 703(d) and the total number of subsequent orders approving or denying such acquisitions; and
- “(3) with respect to section 704—
- “(A) the total number of applications made for orders under 704(b);
 - “(B) the total number of such orders—
 - “(i) granted;
 - “(ii) modified; or
 - “(iii) denied; and
 - “(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 704(d) and the total number of subsequent orders approving or denying such applications.

“SEC. 708. SAVINGS PROVISION.

“Nothing in this title shall be construed to limit the authority of the Federal Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of this Act.”

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

- (1) by striking the item relating to title VII;
- (2) by striking the item relating to section 701; and
- (3) by adding at the end the following:

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

“Sec. 701. Definitions.

“Sec. 702. Procedures for targeting certain persons outside the United States other than United States persons.

“Sec. 703. Certain acquisitions inside the United States of United States persons outside the United States.

“Sec. 704. Other acquisitions targeting United States persons outside the United States.

“Sec. 705. Joint applications and concurrent authorizations.

“Sec. 706. Use of information acquired under title VII.

“Sec. 707. Congressional oversight.

“Sec. 708. Savings provision.”

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting “or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978” after “assistance”.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended—

(A) in subparagraph (C), by striking “and”; and

(B) by adding at the end the following new subparagraphs:

“(E) acquisitions under section 703; and

“(F) acquisitions under section 704;”.

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

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

“STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED

“SEC. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

“(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this Act or chapters 119, 121, or 206 of title 18, United States Code, shall con-

stitute an additional exclusive means for the purpose of subsection (a).”.

(b) OFFENSE.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 112.”; and

(c) CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a) of title 18, United States Code, is amended by adding at the end the following:

“(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision, and shall certify that the statutory requirements have been met.”; and

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after the item relating to section 111 the following new item:

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

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601 is further amended by adding at the end the following:

“(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

“(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

“(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).

“(d) PROTECTION OF NATIONAL SECURITY.—The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are

provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.”

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

“(e) DEFINITIONS.—In this section:

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

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

SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

(1) in subsection (a)—

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

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

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

(D) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking “statement of” and inserting “summary statement of”;

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

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

(2) by striking subsection (b);

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

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking “or the Director of National Intelligence” and inserting “the Director of National Intelligence, or the Director of the Central Intelligence Agency”.

SEC. 105. ISSUANCE OF AN ORDER.

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

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

(3) in subsection (c)(1)—

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

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

(C) by striking subparagraph (F);

(4) by striking subsection (d);

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

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

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

“(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

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

“(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

“(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

“(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

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

“(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(7) by adding at the end the following:

“(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involv-

ing communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 402(d)(2).”.

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking “radio communication” and inserting “communication”.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

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

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

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

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

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

“(A) reasonably determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

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

“(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

“(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

“(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures re-

quired by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

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

“(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

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

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

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

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

(1) in subsection (a)(2), by striking “48 hours” and inserting “7 days”; and

(2) in subsection (c)(1)(C), by striking “48 hours” and inserting “7 days”.

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

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

(b) EN BANC AUTHORITY.—

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

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

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

“(2)(A) The court established under this subsection, on its own initiative or upon the request of the Government in any proceeding

or a party under section 501(f) or paragraph (4) or (5) of section 703(h), may hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

“(i) en banc consideration is necessary to secure or maintain uniformity of the court’s decisions; or

“(ii) the proceeding involves a question of exceptional importance.

“(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

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

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

(A) in subsection (a) of section 103, as amended by this subsection, by inserting “(except when sitting en banc under paragraph (2))” after “no judge designated under this subsection”; and

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

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

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

“(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

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

(d) AUTHORITY OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is further amended by adding at the end the following:

“(i) Nothing in this Act shall be construed to reduce or contravene the inherent authority of the court established by subsection (a) to determine or enforce compliance with an order or a rule of such court or with a procedure approved by such court.”

SEC. 110. INSPECTOR GENERAL REVIEW OF PREVIOUS ACTIONS.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

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

(B) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence Surveillance Court” means the court established by section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(3) PRESIDENT’S SURVEILLANCE PROGRAM AND PROGRAM.—The terms “President’s Surveillance Program” and “Program” mean the intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, including the program referred to by the President in a radio address on December 17, 2005 (commonly known as the Terrorist Surveillance Program).

(b) REVIEWS.—

(1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, and any other element of the intelligence community that participated in the President’s Surveillance Program shall complete a comprehensive review of, with respect to the oversight authority and responsibility of each such Inspector General—

(A) all of the facts necessary to describe the establishment, implementation, product, and use of the product of the Program;

(B) the procedures and substance of, and access to, the legal reviews of the Program;

(C) communications with and participation of individuals and entities in the private sector related to the Program;

(D) interaction with the Foreign Intelligence Surveillance Court and transition to court orders related to the Program; and

(E) any other matters identified by any such Inspector General that would enable that Inspector General to complete a review of the Program, with respect to such Department or element.

(2) COOPERATION AND COORDINATION.—

(A) COOPERATION.—Each Inspector General required to conduct a review under paragraph (1) shall—

(i) work in conjunction, to the extent practicable, with any other Inspector General required to conduct such a review; and

(ii) utilize, to the extent practicable, and not unnecessarily duplicate or delay such reviews or audits that have been completed or are being undertaken by any such Inspector General or by any other office of the Executive Branch related to the Program.

(B) COORDINATION.—The Inspectors General shall designate one of the Inspectors General required to conduct a review under paragraph (1) that is appointed by the Presi-

dent, by and with the advice and consent of the Senate, to coordinate the conduct of the reviews and the preparation of the reports.

(c) **REPORTS.**—

(1) **PRELIMINARY REPORTS.**—Not later than 60 days after the date of the enactment of this Act, the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, and any other Inspector General required to conduct a review under subsection (b)(1) shall submit to the appropriate committees of Congress an interim report that describes the planned scope of such review.

(2) **FINAL REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, and any other Inspector General required to conduct a review under subsection (b)(1) shall submit to the appropriate committees of Congress and the Commission established under section 301(a) a comprehensive report on such reviews that includes any recommendations of any such Inspectors General within the oversight authority and responsibility of any such Inspector General.

(3) **FORM.**—A report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex. The unclassified report shall not disclose the name or identity of any individual or entity of the private sector that participated in the Program or with whom there was communication about the Program, to the extent that information is classified.

(d) **RESOURCES.**—

(1) **EXPEDITED SECURITY CLEARANCE.**—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by an Inspector General or any appropriate staff of an Inspector General for a security clearance necessary for the conduct of the review under subsection (b)(1) is carried out as expeditiously as possible.

(2) **ADDITIONAL PERSONNEL FOR THE INSPECTORS GENERAL.**—An Inspector General required to conduct a review under subsection (b)(1) and submit a report under subsection (c) is authorized to hire such additional personnel as may be necessary to carry out such review and prepare such report in a prompt and timely manner. Personnel authorized to be hired under this paragraph—

(A) shall perform such duties relating to such a review as the relevant Inspector General shall direct; and

(B) are in addition to any other personnel authorized by law.

SEC. 111. WEAPONS OF MASS DESTRUCTION.

(a) **DEFINITIONS.**—

(1) **FOREIGN POWER.**—Subsection (a) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)) is amended—

(A) in paragraph (5), by striking “persons; or” and inserting “persons;”;

(B) in paragraph (6), by striking the period and inserting “; or”; and

(C) by adding at the end the following new paragraph:
 “(7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.”

(2) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of such section 101 is amended—

(A) in subparagraph (B), by striking “or” at the end; and

(B) by adding at the end the following new subparagraph:

“(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or”.

(3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by adding at the end the following new subsection:
 “(p) ‘Weapon of mass destruction’ means—

“(1) any explosive, incendiary, or poison gas device that is intended or has the capability to cause a mass casualty incident;

“(2) any weapon that is designed or intended to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

“(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code) that is designed, intended, or has the capability of causing death, illness, or serious bodily injury to a significant number of persons; or

“(4) any weapon that is designed, intended, or has the capability of releasing radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.”.

(b) USE OF INFORMATION.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 301(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting “weapon of mass destruction ,” after “person,”.

SEC. 112. STATUTE OF LIMITATIONS.

(a) **IN GENERAL.**—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following new subsection:

“(e) **STATUTE OF LIMITATIONS.**—No person shall be prosecuted, tried, or punished for any offense under this section unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense.”

(b) **APPLICATION.**—The amendment made by subsection (a) shall apply to any offense committed before the date of the enactment of this Act if the statute of limitations applicable to that offense has not run as of such date.

TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

SEC. 201. STATUTORY DEFENSES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after title VII the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

“SEC. 801. DEFINITIONS.

“In this title:

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

“(2) **ATTORNEY GENERAL.**—The term ‘Attorney General’ has the meaning given that term in section 101(g).

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

“(4) **COVERED CIVIL ACTION.**—The term ‘covered civil action’ means a suit in Federal or State court against any person for providing assistance to an element of the intelligence community.

“(5) **ELECTRONIC COMMUNICATION SERVICE PROVIDER.**—The term ‘electronic communication service provider’ means—

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

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

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

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

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

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

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

“(7) PERSON.—The term ‘person’ means—

“(A) an electronic communication service provider; or

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

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

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

“(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 703(h).

“(8) STATE.—The term ‘State’ means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

“SEC. 802. PROCEDURES FOR COVERED CIVIL ACTIONS.

“(a) INTERVENTION BY GOVERNMENT.— In any covered civil action, the court shall permit the Government to intervene. Whether or not the Government intervenes in the civil action, the Attorney General may submit any information in any form the Attorney General determines is appropriate and the court shall consider all such submissions.

“(b) FACTUAL AND LEGAL DETERMINATIONS.—In any covered civil action, any party may submit to the court evidence, briefs, arguments, or other information on any matter with respect to which a privilege based on state secrets is asserted. The court shall review any such submission in accordance with the procedures set forth in section 106(f) and may, based on the review, make any appropriate determination of fact or law. The court may, on motion of the Attorney General, take any additional actions the court deems necessary to protect classified information. The court may, to the extent practicable and consistent with national security, request that any party present briefs and arguments on any legal question the court determines is raised by such a submission even if that party does not have full access to the submission. The court shall consider whether the employment of a special master or an expert witness, or both, would facilitate proceedings under this section.

“(c) LOCATION OF REVIEW.—The court may conduct the review in a location and facility specified by the Attorney General as necessary to ensure security.

“(d) REMOVAL.—A covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of

the United States and shall be removable under section 1441 of title 28, United States Code.

“(e) SPECIAL RULE FOR CERTAIN CASES.—For any covered civil action alleging that a person provided assistance to an element of the intelligence community pursuant to a request or directive during the period from September 11, 2001 through January 17, 2007, the Attorney General shall provide to the court any request or directive related to the allegations under the procedures set forth in subsection (b).

“(f) APPLICABILITY.—This section shall apply to a civil action pending on or filed after the date of the enactment of this Act.”.

SEC. 202. TECHNICAL AMENDMENTS.

The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following:

“TITLE VIII-PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

“Sec. 801. Definitions

“Sec. 802. Procedures for covered civil actions.”.

**TITLE III—COMMISSION ON
WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES**

SEC. 301. COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES.

(a) ESTABLISHMENT OF COMMISSION.—There is established in the legislative branch a commission to be known as the “Commission on Warrantless Electronic Surveillance Activities” (in this section referred to as the “Commission”).

(b) DUTIES OF COMMISSION.—

(1) IN GENERAL.—The Commission shall—

(A) ascertain, evaluate, and report upon the facts and circumstances relating to electronic surveillance activities conducted without a warrant between September 11, 2001 and January 17, 2007;

(B) evaluate the lawfulness of such activities;

(C) examine all programs and activities relating to intelligence collection inside the United States or regarding United States persons that were in effect or operation on September 11, 2001, and all such programs and activities undertaken since that date, including the legal framework or justification for those activities; and

(D) report to the President and Congress the findings and conclusions of the Commission and any recommendations the Commission considers appropriate.

(2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the duties of the Commission under this section in a manner consistent with the need to protect national security.

(c) COMPOSITION OF COMMISSION.—

(1) MEMBERS.—The Commission shall be composed of 9 members, of whom—

(A) 5 members shall be appointed jointly by the majority leader of the Senate and the Speaker of the House of Representatives; and

(B) 4 members shall be appointed jointly by the minority leader of the Senate and the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens with significant depth of experience in national security, Constitutional law, and civil liberties.

(3) CHAIR; VICE CHAIR.—

(A) CHAIR.—The Chair of the Commission shall be jointly appointed by the majority leader of the Senate and the Speaker of the House of Representatives from among the members appointed under paragraph (1)(A).

(B) VICE CHAIR.—The Vice Chair of the Commission shall be jointly appointed by the minority leader of the Senate and the minority leader of the House of Representatives from among the members appointed under paragraph (1)(B).

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than 90 days after the date of the enactment of this Act.

(5) INITIAL MEETING.—The Commission shall hold its first meeting and begin operations not later than 45 days after the date on which a majority of its members have been appointed.

(6) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet upon the call of the Chair.

(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(8) VACANCIES.—Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(d) POWERS OF COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Chair, any subcommittee or member thereof may, for the purpose of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the Commission, such designated subcommittee, or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—

(i) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter that the Commission is empowered to investigate under this section. The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(ii) SIGNATURE.—Subpoenas issued under this paragraph may be issued under the signature of the Chair of the Commission, the chair of any subcommittee cre-

ated by a majority of the Commission, or any member designated by a majority of the Commission and may be served by any person designated by such Chair, subcommittee chair, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—If a person refuses to obey a subpoena issued under subparagraph (A), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(ii) JURISDICTION.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(iii) ADDITIONAL ENFORCEMENT.—In the case of the failure of a witness to comply with any subpoena or to testify when summoned under authority of this paragraph, the Commission, by majority vote, may certify a statement of fact attesting to such failure to the appropriate United States attorney, who shall bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(3) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts to enable the Commission to discharge its duties under this section.

(4) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government documents, information, suggestions, estimates, and statistics for the purposes of this section. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall furnish such documents, information, suggestions, estimates, and statistics directly to the Commission upon request made by the Chair, the chair of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

- (B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff in a manner consistent with all applicable statutes, regulations, and Executive orders.
- (5) ASSISTANCE FROM FEDERAL AGENCIES.—
- (A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.
- (B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subparagraph (A), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.
- (6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.
- (7) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.
- (e) STAFF OF COMMISSION.—
- (1) IN GENERAL.—
- (A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with Vice Chair and in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of an executive director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.
- (B) PERSONNEL AS FEDERAL EMPLOYEES.—
- (i) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.
- (ii) MEMBERS OF COMMISSION.—Clause (i) shall not be construed to apply to members of the Commission.
- (2) DETAILEES.—A Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.
- (3) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at

level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(f) SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.—

(1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this section without the appropriate security clearances.

(2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission and commission staff, as authorized by the Chair or the designee of the Chair, who have obtained appropriate security clearances, shall have access to classified information related to the surveillance activities within the scope of the examination of the Commission and any other related classified information that the members of the Commission determine relevant to carrying out the duties of the Commission under this section.

(3) FACILITIES AND RESOURCES.—The Director of National Intelligence shall provide the Commission with appropriate space and technical facilities approved by the Commission.

(g) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(h) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—

(1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(2) PUBLIC MEETINGS.—The Commission shall hold public hearings and meetings to the extent appropriate.

(3) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

(i) REPORTS AND RECOMMENDATIONS OF COMMISSION.—

(1) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(2) **FINAL REPORT.**—Not later than one year after the date of its first meeting, the Commission, in consultation with appropriate representatives of the intelligence community, shall submit to the President and Congress a final report containing such information, analysis, findings, conclusions, and recommendations as have been agreed to by a majority of Commission members.

(3) **FORM.**—The reports submitted under paragraphs (1) and (2) shall be submitted in unclassified form, but may include a classified annex.

(4) **RECOMMENDATIONS FOR DECLASSIFICATION.**—The Commission may make recommendations to the appropriate department or agency of the Federal Government regarding the declassification of documents or portions of documents.

(j) **TERMINATION.**—

(1) **IN GENERAL.**—The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (i)(2).

(2) **ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.**—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its report and disseminating the final report.

(k) **DEFINITIONS.**—In this section:

(1) **INTELLIGENCE COMMUNITY.**—The term “intelligence community” has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) **UNITED STATES PERSON.**—The term “United States person” has the meaning given the term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

(l) **FUNDING.**—

(1) **IN GENERAL.**—There are authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission under this section.

(2) **DURATION OF AVAILABILITY.**—Amounts made available to the Commission under paragraph (1) shall remain available until the termination of the Commission.

TITLE IV—OTHER PROVISIONS

SEC. 401. SEVERABILITY.

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

SEC. 402. EFFECTIVE DATE.

Except as provided in section 404, the amendments made by this Act shall take effect on the date of the enactment of this Act.

SEC. 403. REPEALS.

(a) **REPEAL OF PROTECT AMERICA ACT OF 2007 PROVISIONS.**—

(1) **AMENDMENTS TO FISA.**—

(A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are repealed.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 nt) is amended by striking the items relating to sections 105A, 105B, and 105C.

(ii) CONFORMING AMENDMENTS.—Except as provided in section 404, section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(I) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 702(h)(4)”; and

(II) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 702(h)(4)”.

(2) REPORTING REQUIREMENTS.—Except as provided in section 404, section 4 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 555) is repealed.

(3) TRANSITION PROCEDURES.—Except as provided in section 404, subsection (b) of section 6 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) is repealed.

(b) FISA AMENDMENTS ACT OF 2008.—

(1) IN GENERAL.—Except as provided in section 404, effective December 31, 2009, title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2009—

(A) the table of contents in the first section of such Act (50 U.S.C. 1801 nt) is amended by striking the items related to title VII;

(B) except as provided in section 404, section 601(a)(1) of such Act (50 U.S.C. 1871(a)(1)) is amended to read as such section read on the day before the date of the enactment of this Act; and

(C) except as provided in section 404, section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by striking “or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978”.

SEC. 404. TRANSITION PROCEDURES.

(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—

(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of law, any order, authorization, or directive issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or directive.

(2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwith-

standing any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

(A) subject to paragraph (3), section 105A of such Act, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to apply to any acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1); and

(B) sections 105B and 105C of such Act (as so added) shall continue to apply with respect to an order, authorization, or directive referred to in paragraph (1) until the expiration of such order, authorization, or directive.

(3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of such Act (50 U.S.C. 1806).

(4) PROTECTION FROM LIABILITY.—Subsection (1) of section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, shall continue to apply with respect to any directives issued pursuant to such section 105B.

(5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 103(e), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, until the expiration of all orders, authorizations, and directives issued or made pursuant to such section.

(6) REPORTING REQUIREMENTS.—

(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act, the Protect America Act of 2007 (Public Law 110-55), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the Protect America Act of 2007 shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

- (i) made by the Attorney General;
- (ii) submitted as part of a semi-annual report required by section 4 of the Protect America Act of 2007;
- (iii) that states that there will be no further acquisitions carried out under section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, after the date of such certification; and
- (iv) that states that the information required to be included under such section 4 relating to any acquisition conducted under such section 105B has been in-

cluded in a semi-annual report required by such section 4.

(7) EFFECTIVE DATE.—Paragraphs (1) through (6) shall take effect as if enacted on August 5, 2007.

(b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.—

(1) ORDERS IN EFFECT ON DECEMBER 31, 2009.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

(2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), with respect to any order, authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by section 101(a), shall continue to apply until the expiration of such order, authorization, or directive.

(3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF INFORMATION.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

(A) section 103(e) of such Act, as amended by section 113, shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act, as added by section 101(a);

(B) section 702(h)(3) of such Act (as so added) shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act (as so added);

(C) section 703(e) of such Act (as so added) shall continue to apply with respect to an order or request for emergency assistance under that section;

(D) section 706 of such Act (as so added) shall continue to apply to an acquisition conducted under section 702 or 703 of such Act (as so added); and

(E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

(4) REPORTING REQUIREMENTS.—

(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

(i) made by the Attorney General;

(ii) submitted to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives;

(iii) that states that there will be no further acquisitions carried out under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), after the date of such certification; and

(iv) that states that the information required to be included in a review, assessment, or report under section 601 of such Act, as amended by section 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating to any acquisition conducted under title VII of such Act, as amended by section 101(a), has been included in a review, assessment, or report under such section 601, 702(l), or 707.

(5) **TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.**—Any authorization in effect on the date of enactment of this Act under section 2.5 of Executive Order 12333 to intentionally target a United States person reasonably believed to be located outside the United States shall continue in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

(A) the date that such authorization expires; or

(B) the date that is 90 days after the date of the enactment of this Act.

SEC. 405. NO RIGHTS UNDER THE FISA AMENDMENTS ACT OF 2008 FOR UNDOCUMENTED ALIENS.

This Act and the amendments made by this Act shall not be construed to prohibit surveillance of, or grant any rights to, an alien not permitted to be in or remain in the United States.

SEC. 406. SURVEILLANCE TO PROTECT THE UNITED STATES.

This Act and the amendments made by this Act shall not be construed to prohibit the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) from conducting lawful surveillance that is necessary to—

(1) prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist organization from attacking the United States, any United States person, or any ally of the United States;

(2) ensure the safety and security of members of the United States Armed Forces or any other officer or employee of the Federal Government involved in protecting the national security of the United States; or

(3) protect the United States, any United States person, or any ally of the United States from threats posed by weapons of mass destruction or other threats to national security.