

***In the Senate of the United States,***

*February 12, 2008.*

*Resolved*, That the bill from the House of Representatives (H.R. 3773) entitled “An Act to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

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

2       (a) *SHORT TITLE.*—*This Act may be cited as the “For-*  
3 *ign Intelligence Surveillance Act of 1978 Amendments Act*  
4 *of 2008” or the “FISA Amendments Act of 2008”.*

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

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

***TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE***

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

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

- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.*
- Sec. 104. Applications for court orders.*
- Sec. 105. Issuance of an order.*
- Sec. 106. Use of information.*
- Sec. 107. Amendments for physical searches.*
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.*
- Sec. 109. Foreign Intelligence Surveillance Court.*
- Sec. 110. Weapons of mass destruction.*
- Sec. 111. Technical and conforming amendments.*

**TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION  
SERVICE PROVIDERS**

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

**TITLE III—OTHER PROVISIONS**

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

- 1                   **TITLE I—FOREIGN**
- 2   **INTELLIGENCE SURVEILLANCE**
- 3   **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
- 4                   **PERSONS OUTSIDE THE UNITED STATES.**
- 5       (a) *IN GENERAL.*—*The Foreign Intelligence Surveil-*
- 6 *lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—*
- 7                   (1) *by striking title VII; and*
- 8                   (2) *by adding after title VI the following new*
- 9       *title:*

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

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

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

12 **“SEC. 702. DEFINITIONS.**

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

20 *“(b) ADDITIONAL DEFINITIONS.—*

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

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

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

3                   “(2) *FOREIGN INTELLIGENCE SURVEILLANCE*  
4                   *COURT; COURT.—The terms ‘Foreign Intelligence Sur-*  
5                   *veillance Court’ and ‘Court’ mean the court estab-*  
6                   *lished by section 103(a).*

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

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

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

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

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

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

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

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

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

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

15          “(a) *AUTHORIZATION.—Notwithstanding any other*  
16          *law, the Attorney General and the Director of National In-*  
17          *telligence may authorize jointly, for periods of up to 1 year,*  
18          *the targeting of persons reasonably believed to be located*  
19          *outside the United States to acquire foreign intelligence in-*  
20          *formation.*

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

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

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

7           “(3) may not intentionally target a United  
8           States person reasonably believed to be located outside  
9           the United States, except in accordance with sections  
10          704, 705, or 706;

11          “(4) shall not intentionally acquire any commu-  
12          nication as to which the sender and all intended re-  
13          cipients are known at the time of the acquisition to  
14          be located in the United States; and

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

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

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

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

1 “(d) *TARGETING PROCEDURES.*—

2 “(1) *REQUIREMENT TO ADOPT.*—*The Attorney*  
3 *General, in consultation with the Director of National*  
4 *Intelligence, shall adopt targeting procedures that are*  
5 *reasonably designed to ensure that any acquisition*  
6 *authorized under subsection (a) is limited to targeting*  
7 *persons reasonably believed to be located outside the*  
8 *United States and does not result in the intentional*  
9 *acquisition of any communication as to which the*  
10 *sender and all intended recipients are known at the*  
11 *time of the acquisition to be located in the United*  
12 *States.*

13 “(2) *JUDICIAL REVIEW.*—*The procedures referred*  
14 *to in paragraph (1) shall be subject to judicial review*  
15 *pursuant to subsection (h).*

16 “(e) *MINIMIZATION PROCEDURES.*—

17 “(1) *REQUIREMENT TO ADOPT.*—*The Attorney*  
18 *General, in consultation with the Director of National*  
19 *Intelligence, shall adopt minimization procedures that*  
20 *meet the definition of minimization procedures under*  
21 *section 101(h) or section 301(4) for acquisitions au-*  
22 *thorized under subsection (a).*

23 “(2) *JUDICIAL REVIEW.*—*The minimization pro-*  
24 *cedures required by this subsection shall be subject to*  
25 *judicial review pursuant to subsection (h).*

1       “(f) *CERTIFICATION.*—

2               “(1) *IN GENERAL.*—

3                       “(A) *REQUIREMENT.*—*Subject to subpara-*  
4                       *graph (B), prior to the initiation of an acquisi-*  
5                       *tion authorized under subsection (a), the Attor-*  
6                       *ney General and the Director of National Intel-*  
7                       *ligence shall provide, under oath, a written cer-*  
8                       *tification, as described in this subsection.*

9                       “(B) *EXCEPTION.*—*If the Attorney General*  
10                      *and the Director of National Intelligence deter-*  
11                      *mine that immediate action by the Government*  
12                      *is required and time does not permit the prepa-*  
13                      *ration of a certification under this subsection*  
14                      *prior to the initiation of an acquisition, the At-*  
15                      *torney General and the Director of National In-*  
16                      *telligence shall prepare such certification, includ-*  
17                      *ing such determination, as soon as possible but*  
18                      *in no event more than 7 days after such deter-*  
19                      *mination is made.*

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

22                               “(A) *attest that—*

23                                       “(i) *there are reasonable procedures in*  
24                                       *place for determining that the acquisition*  
25                                       *authorized under subsection (a) is targeted*

1           *at persons reasonably believed to be located*  
2           *outside the United States and that such*  
3           *procedures have been approved by, or will*  
4           *be submitted in not more than 5 days for*  
5           *approval by, the Foreign Intelligence Sur-*  
6           *veillance Court pursuant to subsection (h);*

7           “(ii) *there are reasonable procedures in*  
8           *place for determining that the acquisition*  
9           *authorized under subsection (a) does not re-*  
10          *sult in the intentional acquisition of any*  
11          *communication as to which the sender and*  
12          *all intended recipients are known at the*  
13          *time of the acquisition to be located in the*  
14          *United States, and that such procedures*  
15          *have been approved by, or will be submitted*  
16          *in not more than 5 days for approval by,*  
17          *the Foreign Intelligence Surveillance Court*  
18          *pursuant to subsection (h);*

19          “(iii) *the procedures referred to in*  
20          *clauses (i) and (ii) are consistent with the*  
21          *requirements of the fourth amendment to*  
22          *the Constitution of the United States and*  
23          *do not permit the intentional targeting of*  
24          *any person who is known at the time of ac-*  
25          *quisition to be located in the United States*

1            *or the intentional acquisition of any com-*  
2            *munication as to which the sender and all*  
3            *intended recipients are known at the time of*  
4            *acquisition to be located in the United*  
5            *States;*

6            *“(iv) a significant purpose of the ac-*  
7            *quisition is to obtain foreign intelligence in-*  
8            *formation;*

9            *“(v) the minimization procedures to be*  
10           *used with respect to such acquisition—*

11           *“(I) meet the definition of mini-*  
12           *mization procedures under section*  
13           *101(h) or section 301(4); and*

14           *“(II) have been approved by, or*  
15           *will be submitted in not more than 5*  
16           *days for approval by, the Foreign In-*  
17           *telligence Surveillance Court pursuant*  
18           *to subsection (h);*

19           *“(vi) the acquisition involves obtaining*  
20           *the foreign intelligence information from or*  
21           *with the assistance of an electronic commu-*  
22           *nication service provider; and*

23           *“(vii) the acquisition does not con-*  
24           *stitute electronic surveillance, as limited by*  
25           *section 701; and*

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

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

6                   “(ii) the head of any element of the in-  
7                   telligence community.

8           “(3) *LIMITATION.*—A certification made under  
9           this subsection is not required to identify the specific  
10          facilities, places, premises, or property at which the  
11          acquisition authorized under subsection (a) will be di-  
12          rected or conducted.

13          “(4) *SUBMISSION TO THE COURT.*—The Attorney  
14          General shall transmit a copy of a certification made  
15          under this subsection, and any supporting affidavit,  
16          under seal to the Foreign Intelligence Surveillance  
17          Court as soon as possible, but in no event more than  
18          5 days after such certification is made. Such certifi-  
19          cation shall be maintained under security measures  
20          adopted by the Chief Justice of the United States and  
21          the Attorney General, in consultation with the Direc-  
22          tor of National Intelligence.

23          “(5) *REVIEW.*—The certification required by this  
24          subsection shall be subject to judicial review pursuant  
25          to subsection (h).

1       “(g) *DIRECTIVES AND JUDICIAL REVIEW OF DIREC-*  
2 *TIVES.*—

3               “(1) *AUTHORITY.*—*With respect to an acquisi-*  
4 *tion authorized under subsection (a), the Attorney*  
5 *General and the Director of National Intelligence*  
6 *may direct, in writing, an electronic communication*  
7 *service provider to—*

8                       “(A) *immediately provide the Government*  
9 *with all information, facilities, or assistance nec-*  
10 *essary to accomplish the acquisition in a manner*  
11 *that will protect the secrecy of the acquisition*  
12 *and produce a minimum of interference with the*  
13 *services that such electronic communication serv-*  
14 *ice provider is providing to the target; and*

15                       “(B) *maintain under security procedures*  
16 *approved by the Attorney General and the Direc-*  
17 *tor of National Intelligence any records con-*  
18 *cerning the acquisition or the aid furnished that*  
19 *such electronic communication service provider*  
20 *wishes to maintain.*

21               “(2) *COMPENSATION.*—*The Government shall*  
22 *compensate, at the prevailing rate, an electronic com-*  
23 *munication service provider for providing informa-*  
24 *tion, facilities, or assistance pursuant to paragraph*  
25 *(1).*

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

7           “(4) *CHALLENGING OF DIRECTIVES.*—

8           “(A) *AUTHORITY TO CHALLENGE.*—*An elec-*  
9 *tronic communication service provider receiving*  
10 *a directive issued pursuant to paragraph (1)*  
11 *may challenge the directive by filing a petition*  
12 *with the Foreign Intelligence Surveillance Court,*  
13 *which shall have jurisdiction to review such a*  
14 *petition.*

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

20           “(C) *STANDARDS FOR REVIEW.*—*A judge*  
21 *considering a petition to modify or set aside a*  
22 *directive may grant such petition only if the*  
23 *judge finds that the directive does not meet the*  
24 *requirements of this section, or is otherwise un-*  
25 *lawful.*

1           “(D) PROCEDURES FOR INITIAL REVIEW.—

2           *A judge shall conduct an initial review not later*  
3           *than 5 days after being assigned a petition de-*  
4           *scribed in subparagraph (C). If the judge deter-*  
5           *mines that the petition consists of claims, de-*  
6           *fenses, or other legal contentions that are not*  
7           *warranted by existing law or by a nonfrivolous*  
8           *argument for extending, modifying, or reversing*  
9           *existing law or for establishing new law, the*  
10          *judge shall immediately deny the petition and*  
11          *affirm the directive or any part of the directive*  
12          *that is the subject of the petition and order the*  
13          *recipient to comply with the directive or any*  
14          *part of it. Upon making such a determination or*  
15          *promptly thereafter, the judge shall provide a*  
16          *written statement for the record of the reasons*  
17          *for a determination under this subparagraph.*

18           “(E) PROCEDURES FOR PLENARY RE-

19          *VIEW.—If a judge determines that a petition de-*  
20          *scribed in subparagraph (C) requires plenary re-*  
21          *view, the judge shall affirm, modify, or set aside*  
22          *the directive that is the subject of that petition*  
23          *not later than 30 days after being assigned the*  
24          *petition, unless the judge, by order for reasons*  
25          *stated, extends that time as necessary to comport*

1           *with the due process clause of the fifth amend-*  
2           *ment to the Constitution of the United States.*  
3           *Unless the judge sets aside the directive, the*  
4           *judge shall immediately affirm or affirm with*  
5           *modifications the directive, and order the recipi-*  
6           *ent to comply with the directive in its entirety*  
7           *or as modified. The judge shall provide a written*  
8           *statement for the records of the reasons for a de-*  
9           *termination under this subparagraph.*

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

13           “(G) *CONTEMPT OF COURT.*—*Failure to*  
14           *obey an order of the Court issued under this*  
15           *paragraph may be punished by the Court as con-*  
16           *tempt of court.*

17           “(5) *ENFORCEMENT OF DIRECTIVES.*—

18           “(A) *ORDER TO COMPEL.*—*In the case of a*  
19           *failure to comply with a directive issued pursu-*  
20           *ant to paragraph (1), the Attorney General may*  
21           *file a petition for an order to compel compliance*  
22           *with the directive with the Foreign Intelligence*  
23           *Surveillance Court, which shall have jurisdiction*  
24           *to review such a petition.*

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

6           “(C) *STANDARDS FOR REVIEW.*—*A judge*  
7           *considering a petition filed under subparagraph*  
8           *(A) shall issue an order requiring the electronic*  
9           *communication service provider to comply with*  
10          *the directive or any part of it, as issued or as*  
11          *modified, if the judge finds that the directive*  
12          *meets the requirements of this section, and is oth-*  
13          *erwise lawful.*

14          “(D) *PROCEDURES FOR REVIEW.*—*The*  
15          *judge shall render a determination not later than*  
16          *30 days after being assigned a petition filed*  
17          *under subparagraph (A), unless the judge, by*  
18          *order for reasons stated, extends that time if nec-*  
19          *essary to comport with the due process clause of*  
20          *the fifth amendment to the Constitution of the*  
21          *United States. The judge shall provide a written*  
22          *statement for the record of the reasons for a de-*  
23          *termination under this paragraph.*

24          “(E) *CONTEMPT OF COURT.*—*Failure to*  
25          *obey an order of the Court issued under this*

1           *paragraph may be punished by the Court as con-*  
2           *tempt of court.*

3           “(F) *PROCESS.*—*Any process under this*  
4           *paragraph may be served in any judicial district*  
5           *in which the electronic communication service*  
6           *provider may be found.*

7           “(6) *APPEAL.*—

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

19           “(B) *CERTIORARI TO THE SUPREME*  
20           *COURT.*—*The Government or an electronic com-*  
21           *munication service provider receiving a directive*  
22           *issued pursuant to paragraph (1) may file a pe-*  
23           *tition for a writ of certiorari for review of the*  
24           *decision of the Court of Review issued under sub-*  
25           *paragraph (A). The record for such review shall*

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

4           “(h) *JUDICIAL REVIEW OF CERTIFICATIONS AND PRO-*  
5           *CEDURES.—*

6           “(1) *IN GENERAL.—*

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

14                   “(B) *SUBMISSION TO THE COURT.—The At-*  
15                   *torney General shall submit to the Court any*  
16                   *such certification or procedure, or amendment*  
17                   *thereto, not later than 5 days after making or*  
18                   *amending the certification or adopting or*  
19                   *amending the procedures.*

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

24                   “(3) *TARGETING PROCEDURES.—The Court shall*  
25                   *review the targeting procedures required by subsection*

1     *(d) to assess whether the procedures are reasonably*  
2     *designed to ensure that the acquisition authorized*  
3     *under subsection (a) is limited to the targeting of per-*  
4     *sons reasonably believed to be located outside the*  
5     *United States and does not result in the intentional*  
6     *acquisition of any communication as to which the*  
7     *sender and all intended recipients are known at the*  
8     *time of the acquisition to be located in the United*  
9     *States.*

10           “(4) *MINIMIZATION PROCEDURES.*—*The Court*  
11     *shall review the minimization procedures required by*  
12     *subsection (e) to assess whether such procedures meet*  
13     *the definition of minimization procedures under sec-*  
14     *tion 101(h) or section 301(4).*

15           “(5) *ORDERS.*—

16           “(A) *APPROVAL.*—*If the Court finds that a*  
17     *certification required by subsection (f) contains*  
18     *all of the required elements and that the tar-*  
19     *geting and minimization procedures required by*  
20     *subsections (d) and (e) are consistent with the re-*  
21     *quirements of those subsections and with the*  
22     *fourth amendment to the Constitution of the*  
23     *United States, the Court shall enter an order ap-*  
24     *proving the continued use of the procedures for*  
25     *the acquisition authorized under subsection (a).*

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

11                   “(i) *correct any deficiency identified*  
12                   *by the Court’s order not later than 30 days*  
13                   *after the date the Court issues the order; or*

14                   “(ii) *cease the acquisition authorized*  
15                   *under subsection (a).*

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

21           “(6) *APPEAL.*—

22                   “(A) *APPEAL TO THE COURT OF REVIEW.*—  
23           *The Government may appeal any order under*  
24           *this section to the Foreign Intelligence Surveil-*  
25           *lance Court of Review, which shall have jurisdic-*

1            *tion to review such order. For any decision af-*  
2            *firming, reversing, or modifying an order of the*  
3            *Foreign Intelligence Surveillance Court, the*  
4            *Court of Review shall provide for the record a*  
5            *written statement of its reasons.*

6            *“(B) CONTINUATION OF ACQUISITION PEND-*  
7            *ING REHEARING OR APPEAL.—Any acquisitions*  
8            *affected by an order under paragraph (5)(B)*  
9            *may continue—*

10            *“(i) during the pendency of any re-*  
11            *hearing of the order by the Court en banc;*  
12            *and*

13            *“(ii) if the Government appeals an*  
14            *order under this section, until the Court of*  
15            *Review enters an order under subparagraph*  
16            *(C).*

17            *“(C) IMPLEMENTATION PENDING APPEAL.—*  
18            *Not later than 60 days after the filing of an ap-*  
19            *peal of an order under paragraph (5)(B) direct-*  
20            *ing the correction of a deficiency, the Court of*  
21            *Review shall determine, and enter a cor-*  
22            *responding order regarding, whether all or any*  
23            *part of the correction order, as issued or modi-*  
24            *fied, shall be implemented during the pendency*  
25            *of the appeal.*

1           “(D) *CERTIORARI TO THE SUPREME*  
2           *COURT.—The Government may file a petition for*  
3           *a writ of certiorari for review of a decision of the*  
4           *Court of Review issued under subparagraph (A).*  
5           *The record for such review shall be transmitted*  
6           *under seal to the Supreme Court of the United*  
7           *States, which shall have jurisdiction to review*  
8           *such decision.*

9           “(i) *EXPEDITED JUDICIAL PROCEEDINGS.—Judicial*  
10          *proceedings under this section shall be conducted as expedi-*  
11          *tiously as possible.*

12          “(j) *MAINTENANCE AND SECURITY OF RECORDS AND*  
13          *PROCEEDINGS.—*

14                 “(1) *STANDARDS.—A record of a proceeding*  
15                 *under this section, including petitions filed, orders*  
16                 *granted, and statements of reasons for decision, shall*  
17                 *be maintained under security measures adopted by*  
18                 *the Chief Justice of the United States, in consultation*  
19                 *with the Attorney General and the Director of Na-*  
20                 *tional Intelligence.*

21                 “(2) *FILING AND REVIEW.—All petitions under*  
22                 *this section shall be filed under seal. In any pro-*  
23                 *ceedings under this section, the court shall, upon re-*  
24                 *quest of the Government, review ex parte and in cam-*

1        *era any Government submission, or portions of a sub-*  
2        *mission, which may include classified information.*

3            “(3) *RETENTION OF RECORDS.*—*A directive*  
4        *made or an order granted under this section shall be*  
5        *retained for a period of not less than 10 years from*  
6        *the date on which such directive or such order is*  
7        *made.*

8            “(k) *ASSESSMENTS AND REVIEWS.*—

9            “(1) *SEMIANNUAL ASSESSMENT.*—*Not less fre-*  
10        *quently than once every 6 months, the Attorney Gen-*  
11        *eral and Director of National Intelligence shall assess*  
12        *compliance with the targeting and minimization pro-*  
13        *cedures required by subsections (e) and (f) and shall*  
14        *submit each such assessment to—*

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

17            “(B) *the congressional intelligence commit-*  
18        *tees.*

19            “(2) *AGENCY ASSESSMENT.*—*The Inspectors Gen-*  
20        *eral of the Department of Justice and of any element*  
21        *of the intelligence community authorized to acquire*  
22        *foreign intelligence information under subsection (a)*  
23        *with respect to their department, agency, or ele-*  
24        *ment—*

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

4           “(B) with respect to acquisitions authorized  
5           under subsection (a), shall review the number of  
6           disseminated intelligence reports containing a  
7           reference to a United States person identity and  
8           the number of United States person identities  
9           subsequently disseminated by the element con-  
10          cerned in response to requests for identities that  
11          were not referred to by name or title in the origi-  
12          nal reporting;

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

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

20                  “(i) the Attorney General;

21                  “(ii) the Director of National Intel-  
22                  ligence; and

23                  “(iii) the congressional intelligence  
24                  committees.

25          “(3) ANNUAL REVIEW.—

1           “(A) *REQUIREMENT TO CONDUCT.*—*The*  
2           *head of an element of the intelligence community*  
3           *conducting an acquisition authorized under sub-*  
4           *section (a) shall direct the element to conduct an*  
5           *annual review to determine whether there is rea-*  
6           *son to believe that foreign intelligence informa-*  
7           *tion has been or will be obtained from the acqui-*  
8           *sition. The annual review shall provide, with re-*  
9           *spect to such acquisitions authorized under sub-*  
10          *section (a)—*

11                 “(i) *an accounting of the number of*  
12                 *disseminated intelligence reports containing*  
13                 *a reference to a United States person iden-*  
14                 *tity;*

15                 “(ii) *an accounting of the number of*  
16                 *United States person identities subsequently*  
17                 *disseminated by that element in response to*  
18                 *requests for identities that were not referred*  
19                 *to by name or title in the original report-*  
20                 *ing;*

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

1           “(iv) a description of any procedures  
2           developed by the head of an element of the  
3           intelligence community and approved by  
4           the Director of National Intelligence to as-  
5           sess, in a manner consistent with national  
6           security, operational requirements and the  
7           privacy interests of United States persons,  
8           the extent to which the acquisitions author-  
9           ized under subsection (a) acquire the com-  
10          munications of United States persons, as  
11          well as the results of any such assessment.

12          “(B) *USE OF REVIEW.*—The head of each  
13          element of the intelligence community that con-  
14          ducts an annual review under subparagraph (A)  
15          shall use each such review to evaluate the ade-  
16          quacy of the minimization procedures utilized by  
17          such element or the application of the minimiza-  
18          tion procedures to a particular acquisition au-  
19          thorized under subsection (a).

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

24                  “(i) the Foreign Intelligence Surveil-  
25                  lance Court;

1                   “(ii) *the Attorney General;*

2                   “(iii) *the Director of National Intel-*  
3                   *ligence; and*

4                   “(iv) *the congressional intelligence*  
5                   *committees.*

6   **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED**  
7                   **STATES OF UNITED STATES PERSONS OUT-**  
8                   **SIDE THE UNITED STATES.**

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

11                   “(1) *IN GENERAL.—The Foreign Intelligence*  
12                   *Surveillance Court shall have jurisdiction to enter an*  
13                   *order approving the targeting of a United States per-*  
14                   *son reasonably believed to be located outside the*  
15                   *United States to acquire foreign intelligence informa-*  
16                   *tion, if such acquisition constitutes electronic surveil-*  
17                   *lance (as defined in section 101(f), regardless of the*  
18                   *limitation of section 701) or the acquisition of stored*  
19                   *electronic communications or stored electronic data*  
20                   *that requires an order under this Act, and such acqui-*  
21                   *sition is conducted within the United States.*

22                   “(2) *LIMITATION.—In the event that a United*  
23                   *States person targeted under this subsection is reason-*  
24                   *ably believed to be located in the United States during*  
25                   *the pendency of an order issued pursuant to sub-*

1 *section (c), such acquisition shall cease until author-*  
2 *ity, other than under this section, is obtained pursu-*  
3 *ant to this Act or the targeted United States person*  
4 *is again reasonably believed to be located outside the*  
5 *United States during the pendency of an order issued*  
6 *pursuant to subsection (c).*

7 *“(b) APPLICATION.—*

8 *“(1) IN GENERAL.—Each application for an*  
9 *order under this section shall be made by a Federal*  
10 *officer in writing upon oath or affirmation to a judge*  
11 *having jurisdiction under subsection (a)(1). Each ap-*  
12 *plication shall require the approval of the Attorney*  
13 *General based upon the Attorney General’s finding*  
14 *that it satisfies the criteria and requirements of such*  
15 *application, as set forth in this section, and shall in-*  
16 *clude—*

17 *“(A) the identity of the Federal officer mak-*  
18 *ing the application;*

19 *“(B) the identity, if known, or a description*  
20 *of the United States person who is the target of*  
21 *the acquisition;*

22 *“(C) a statement of the facts and cir-*  
23 *cumstances relied upon to justify the applicant’s*  
24 *belief that the United States person who is the*  
25 *target of the acquisition is—*

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

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

6           “(D) a statement of the proposed minimiza-  
7           tion procedures that meet the definition of mini-  
8           mization procedures under section 101(h) or sec-  
9           tion 301(4);

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

13          “(F) a certification made by the Attorney  
14          General or an official specified in section  
15          104(a)(6) that—

16               “(i) the certifying official deems the in-  
17               formation sought to be foreign intelligence  
18               information;

19               “(ii) a significant purpose of the ac-  
20               quisition is to obtain foreign intelligence in-  
21               formation;

22               “(iii) such information cannot reason-  
23               ably be obtained by normal investigative  
24               techniques;

1           “(iv) designates the type of foreign in-  
2           telligence information being sought accord-  
3           ing to the categories described in section  
4           101(e); and

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

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

10                   “(II) such information cannot  
11                   reasonably be obtained by normal in-  
12                   vestigative techniques;

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

17                   “(H) the identity of any electronic commu-  
18                   nication service provider necessary to effect the  
19                   acquisition, provided, however, that the applica-  
20                   tion is not required to identify the specific facili-  
21                   ties, places, premises, or property at which the  
22                   acquisition authorized under this section will be  
23                   directed or conducted;

24                   “(I) a statement of the facts concerning any  
25                   previous applications that have been made to

1           *any judge of the Foreign Intelligence Surveil-*  
2           *lance Court involving the United States person*  
3           *specified in the application and the action taken*  
4           *on each previous application; and*

5           “(J) *a statement of the period of time for*  
6           *which the acquisition is required to be main-*  
7           *tained, provided that such period of time shall*  
8           *not exceed 90 days per application.*

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

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

17          “(c) *ORDER.—*

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

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

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

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

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

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

13           “(D) the application which has been filed  
14           contains all statements and certifications re-  
15           quired by subsection (b) and the certification or  
16           certifications are not clearly erroneous on the  
17           basis of the statement made under subsection  
18           (b)(1)(F)(v) and any other information fur-  
19           nished under subsection (b)(3).

20           “(2) PROBABLE CAUSE.—In determining wheth-  
21           er or not probable cause exists for purposes of an  
22           order under paragraph (1), a judge having jurisdic-  
23           tion under subsection (a)(1) may consider past activi-  
24           ties of the target, as well as facts and circumstances  
25           relating to current or future activities of the target.

1     *However, no United States person may be considered*  
2     *a foreign power, agent of a foreign power, or officer*  
3     *or employee of a foreign power solely upon the basis*  
4     *of activities protected by the first amendment to the*  
5     *Constitution of the United States.*

6             “(3) *REVIEW.*—

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

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

20                   “(C) *REVIEW OF MINIMIZATION PROCE-*  
21                    *DURES.*—*If the judge determines that the pro-*  
22                    *posed minimization procedures required under*  
23                    *paragraph (1)(C) do not meet the definition of*  
24                    *minimization procedures under section 101(h) or*  
25                    *section 301(4), the judge shall enter an order so*

1        *stating and provide a written statement for the*  
2        *record of the reasons for such determination. The*  
3        *Government may appeal an order under this*  
4        *clause pursuant to subsection (f).*

5            *“(D) REVIEW OF CERTIFICATION.—If the*  
6        *judge determines that an application required by*  
7        *subsection (b) does not contain all of the required*  
8        *elements, or that the certification or certifi-*  
9        *cations are clearly erroneous on the basis of the*  
10       *statement made under subsection (b)(1)(F)(v)*  
11       *and any other information furnished under sub-*  
12       *section (b)(3), the judge shall enter an order so*  
13       *stating and provide a written statement for the*  
14       *record of the reasons for such determination. The*  
15       *Government may appeal an order under this*  
16       *clause pursuant to subsection (f).*

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

19            *“(A) the identity, if known, or a description*  
20        *of the United States person who is the target of*  
21        *the acquisition identified or described in the ap-*  
22        *plication pursuant to subsection (b)(1)(B);*

23            *“(B) if provided in the application pursu-*  
24        *ant to subsection (b)(1)(H), the nature and loca-*

1           *tion of each of the facilities or places at which*  
2           *the acquisition will be directed;*

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

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

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

11          “(5) *DIRECTIONS.—An order approving acquisi-*  
12          *tions under this subsection shall direct—*

13                 “(A) *that the minimization procedures be*  
14                 *followed;*

15                 “(B) *an electronic communication service*  
16                 *provider to provide to the Government forthwith*  
17                 *all information, facilities, or assistance necessary*  
18                 *to accomplish the acquisition authorized under*  
19                 *this subsection in a manner that will protect the*  
20                 *secrecy of the acquisition and produce a min-*  
21                 *imum of interference with the services that such*  
22                 *electronic communication service provider is pro-*  
23                 *viding to the target;*

24                 “(C) *an electronic communication service*  
25                 *provider to maintain under security procedures*

1           *approved by the Attorney General any records*  
2           *concerning the acquisition or the aid furnished*  
3           *that such electronic communication service pro-*  
4           *vider wishes to maintain; and*

5           “(D) *that the Government compensate, at*  
6           *the prevailing rate, such electronic communica-*  
7           *tion service provider for providing such informa-*  
8           *tion, facilities, or assistance.*

9           “(6) *DURATION.—An order approved under this*  
10          *paragraph shall be effective for a period not to exceed*  
11          *90 days and such order may be renewed for addi-*  
12          *tional 90-day periods upon submission of renewal ap-*  
13          *plications meeting the requirements of subsection (b).*

14          “(7) *COMPLIANCE.—At or prior to the end of the*  
15          *period of time for which an acquisition is approved*  
16          *by an order or extension under this section, the judge*  
17          *may assess compliance with the minimization proce-*  
18          *dures by reviewing the circumstances under which in-*  
19          *formation concerning United States persons was ac-*  
20          *quired, retained, or disseminated.*

21          “(d) *EMERGENCY AUTHORIZATION.—*

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

1           “(A) an emergency situation exists with re-  
2           spect to the acquisition of foreign intelligence in-  
3           formation for which an order may be obtained  
4           under subsection (c) before an order authorizing  
5           such acquisition can with due diligence be ob-  
6           tained, and

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

10          the Attorney General may authorize the emergency  
11          acquisition if a judge having jurisdiction under sub-  
12          section (a)(1) is informed by the Attorney General, or  
13          a designee of the Attorney General, at the time of such  
14          authorization that the decision has been made to con-  
15          duct such acquisition and if an application in ac-  
16          cordance with this subsection is made to a judge of  
17          the Foreign Intelligence Surveillance Court as soon as  
18          practicable, but not more than 7 days after the Attor-  
19          ney General authorizes such acquisition.

20          “(2) MINIMIZATION PROCEDURES.—If the Attor-  
21          ney General authorizes such emergency acquisition,  
22          the Attorney General shall require that the minimiza-  
23          tion procedures required by this section for the  
24          issuance of a judicial order be followed.

1           “(3) *TERMINATION OF EMERGENCY AUTHORIZA-*  
2           *TION.—In the absence of a judicial order approving*  
3           *such acquisition, the acquisition shall terminate when*  
4           *the information sought is obtained, when the applica-*  
5           *tion for the order is denied, or after the expiration of*  
6           *7 days from the time of authorization by the Attorney*  
7           *General, whichever is earliest.*

8           “(4) *USE OF INFORMATION.—In the event that*  
9           *such application for approval is denied, or in any*  
10           *other case where the acquisition is terminated and no*  
11           *order is issued approving the acquisition, no informa-*  
12           *tion obtained or evidence derived from such acquisi-*  
13           *tion, except under circumstances in which the target*  
14           *of the acquisition is determined not to be a United*  
15           *States person during the pendency of the 7-day emer-*  
16           *gency acquisition period, shall be received in evidence*  
17           *or otherwise disclosed in any trial, hearing, or other*  
18           *proceeding in or before any court, grand jury, depart-*  
19           *ment, office, agency, regulatory body, legislative com-*  
20           *mittee, or other authority of the United States, a*  
21           *State, or political subdivision thereof, and no infor-*  
22           *mation concerning any United States person acquired*  
23           *from such acquisition shall subsequently be used or*  
24           *disclosed in any other manner by Federal officers or*  
25           *employees without the consent of such person, except*

1       *with the approval of the Attorney General if the in-*  
2       *formation indicates a threat of death or serious bodily*  
3       *harm to any person.*

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

10       “(f) *APPEAL.*—

11               “(1) *APPEAL TO THE FOREIGN INTELLIGENCE*  
12       *SURVEILLANCE COURT OF REVIEW.*—*The Government*  
13       *may file an appeal with the Foreign Intelligence Sur-*  
14       *veillance Court of Review for review of an order*  
15       *issued pursuant to subsection (c). The Court of Re-*  
16       *view shall have jurisdiction to consider such appeal*  
17       *and shall provide a written statement for the record*  
18       *of the reasons for a decision under this paragraph.*

19               “(2) *CERTIORARI TO THE SUPREME COURT.*—  
20       *The Government may file a petition for a writ of cer-*  
21       *tiorari for review of the decision of the Court of Re-*  
22       *view issued under paragraph (1). The record for such*  
23       *review shall be transmitted under seal to the Supreme*  
24       *Court of the United States, which shall have jurisdic-*  
25       *tion to review such decision.*

1 **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**  
2 **STATES PERSONS OUTSIDE THE UNITED**  
3 **STATES.**

4 “(a) *JURISDICTION AND SCOPE.*—

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

8 “(2) *SCOPE.*—*No element of the intelligence com-*  
9 *munity may intentionally target, for the purpose of*  
10 *acquiring foreign intelligence information, a United*  
11 *States person reasonably believed to be located outside*  
12 *the United States under circumstances in which the*  
13 *targeted United States person has a reasonable expect-*  
14 *ation of privacy and a warrant would be required if*  
15 *the acquisition were conducted inside the United*  
16 *States for law enforcement purposes, unless a judge of*  
17 *the Foreign Intelligence Surveillance Court has en-*  
18 *tered an order or the Attorney General has authorized*  
19 *an emergency acquisition pursuant to subsections (c)*  
20 *or (d) or any other provision of this Act.*

21 “(3) *LIMITATIONS.*—

22 “(A) *MOVING OR MISIDENTIFIED TAR-*  
23 *GETS.*—*In the event that the targeted United*  
24 *States person is reasonably believed to be in the*  
25 *United States during the pendency of an order*  
26 *issued pursuant to subsection (c), such acquisi-*

1            *tion shall cease until authority is obtained pur-*  
2            *suant to this Act or the targeted United States*  
3            *person is again reasonably believed to be located*  
4            *outside the United States during the pendency of*  
5            *an order issued pursuant to subsection (c).*

6            *“(B) APPLICABILITY.—If the acquisition is*  
7            *to be conducted inside the United States and*  
8            *could be authorized under section 704, the proce-*  
9            *dures of section 704 shall apply, unless an order*  
10           *or emergency acquisition authority has been ob-*  
11           *tained under a provision of this Act other than*  
12           *under this section.*

13           *“(b) APPLICATION.—Each application for an order*  
14           *under this section shall be made by a Federal officer in*  
15           *writing upon oath or affirmation to a judge having juris-*  
16           *isdiction under subsection (a)(1). Each application shall re-*  
17           *quire the approval of the Attorney General based upon the*  
18           *Attorney General’s finding that it satisfies the criteria and*  
19           *requirements of such application as set forth in this section*  
20           *and shall include—*

21           *“(1) the identity, if known, or a description of*  
22           *the specific United States person who is the target of*  
23           *the acquisition;*

24           *“(2) a statement of the facts and circumstances*  
25           *relied upon to justify the applicant’s belief that the*

1 *United States person who is the target of the acquisi-*  
2 *tion is—*

3 *“(A) a person reasonably believed to be lo-*  
4 *cated outside the United States; and*

5 *“(B) a foreign power, an agent of a foreign*  
6 *power, or an officer or employee of a foreign*  
7 *power;*

8 *“(3) a statement of the proposed minimization*  
9 *procedures that meet the definition of minimization*  
10 *procedures under section 101(h) or section 301(4);*

11 *“(4) a certification made by the Attorney Gen-*  
12 *eral, an official specified in section 104(a)(6), or the*  
13 *head of an element of the intelligence community*  
14 *that—*

15 *“(A) the certifying official deems the infor-*  
16 *mation sought to be foreign intelligence informa-*  
17 *tion; and*

18 *“(B) a significant purpose of the acquisi-*  
19 *tion is to obtain foreign intelligence information;*

20 *“(5) a statement of the facts concerning any pre-*  
21 *vious applications that have been made to any judge*  
22 *of the Foreign Intelligence Surveillance Court involv-*  
23 *ing the United States person specified in the applica-*  
24 *tion and the action taken on each previous applica-*  
25 *tion; and*

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

5           “(c) ORDER.—

6           “(1) FINDINGS.—If, upon an application made  
7           pursuant to subsection (b), a judge having jurisdic-  
8           tion under subsection (a) finds that—

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

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

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

18                   “(B) the proposed minimization procedures,  
19                  with respect to their dissemination provisions,  
20                  meet the definition of minimization procedures  
21                  under section 101(h) or section 301(4); and

22                   “(C) the application which has been filed  
23                  contains all statements and certifications re-  
24                  quired by subsection (b) and the certification  
25                  provided under subsection (b)(4) is not clearly

1            *erroneous on the basis of the information fur-*  
2            *nished under subsection (b),*  
3            *the Court shall issue an ex parte order so stating.*

4            “(2) *PROBABLE CAUSE.*—*In determining wheth-*  
5            *er or not probable cause exists for purposes of an*  
6            *order under paragraph (1)(A), a judge having juris-*  
7            *isdiction under subsection (a)(1) may consider past ac-*  
8            *tivities of the target, as well as facts and cir-*  
9            *cumstances relating to current or future activities of*  
10           *the target. However, no United States person may be*  
11           *considered a foreign power, agent of a foreign power,*  
12           *or officer or employee of a foreign power solely upon*  
13           *the basis of activities protected by the first amend-*  
14           *ment to the Constitution of the United States.*

15           “(3) *REVIEW.*—

16           “(A) *LIMITATIONS ON REVIEW.*—*Review by*  
17           *a judge having jurisdiction under subsection*  
18           *(a)(1) shall be limited to that required to make*  
19           *the findings described in paragraph (1). The*  
20           *judge shall not have jurisdiction to review the*  
21           *means by which an acquisition under this sec-*  
22           *tion may be conducted.*

23           “(B) *REVIEW OF PROBABLE CAUSE.*—*If the*  
24           *judge determines that the facts submitted under*  
25           *subsection (b) are insufficient to establish prob-*

1            *able cause to issue an order under this sub-*  
2            *section, the judge shall enter an order so stating*  
3            *and provide a written statement for the record of*  
4            *the reasons for such determination. The Govern-*  
5            *ment may appeal an order under this clause*  
6            *pursuant to subsection (e).*

7            “(C) *REVIEW OF MINIMIZATION PROCEDURE-*  
8            *S.—If the judge determines that the mini-*  
9            *mization procedures applicable to dissemination*  
10           *of information obtained through an acquisition*  
11           *under this subsection do not meet the definition*  
12           *of minimization procedures under section 101(h)*  
13           *or section 301(4), the judge shall enter an order*  
14           *so stating and provide a written statement for*  
15           *the record of the reasons for such determination.*  
16           *The Government may appeal an order under this*  
17           *clause pursuant to subsection (e).*

18           “(D) *SCOPE OF REVIEW OF CERTIFI-*  
19           *CATION.—If the judge determines that the certifi-*  
20           *cation provided under subsection (b)(4) is clearly*  
21           *erroneous on the basis of the information fur-*  
22           *nished under subsection (b), the judge shall enter*  
23           *an order so stating and provide a written state-*  
24           *ment for the record of the reasons for such deter-*  
25           *mination. The Government may appeal an order*

1           *under this subparagraph pursuant to subsection*  
2           *(e).*

3           “(4) *DURATION.*—*An order under this para-*  
4           *graph shall be effective for a period not to exceed 90*  
5           *days and such order may be renewed for additional*  
6           *90-day periods upon submission of renewal applica-*  
7           *tions meeting the requirements of subsection (b).*

8           “(5) *COMPLIANCE.*—*At or prior to the end of the*  
9           *period of time for which an order or extension is*  
10          *granted under this section, the judge may assess com-*  
11          *pliance with the minimization procedures by review-*  
12          *ing the circumstances under which information con-*  
13          *cerning United States persons was disseminated, pro-*  
14          *vided that the judge may not inquire into the cir-*  
15          *cumstances relating to the conduct of the acquisition.*

16          “(d) *EMERGENCY AUTHORIZATION.*—

17                 “(1) *AUTHORITY FOR EMERGENCY AUTHORIZA-*  
18                 *TION.*—*Notwithstanding any other provision in this*  
19                 *subsection, if the Attorney General reasonably deter-*  
20                 *mines that—*

21                         “(A) *an emergency situation exists with re-*  
22                         *spect to the acquisition of foreign intelligence in-*  
23                         *formation for which an order may be obtained*  
24                         *under subsection (c) before an order under that*

1            *subsection may, with due diligence, be obtained,*  
2            *and*

3            *“(B) the factual basis for issuance of an*  
4            *order under this section exists,*  
5            *the Attorney General may authorize the emergency*  
6            *acquisition if a judge having jurisdiction under sub-*  
7            *section (a)(1) is informed by the Attorney General or*  
8            *a designee of the Attorney General at the time of such*  
9            *authorization that the decision has been made to con-*  
10           *duct such acquisition and if an application in ac-*  
11           *cordance with this subsection is made to a judge of*  
12           *the Foreign Intelligence Surveillance Court as soon as*  
13           *practicable, but not more than 7 days after the Attor-*  
14           *ney General authorizes such acquisition.*

15           *“(2) MINIMIZATION PROCEDURES.—If the Attor-*  
16           *ney General authorizes such emergency acquisition,*  
17           *the Attorney General shall require that the minimiza-*  
18           *tion procedures required by this section be followed.*

19           *“(3) TERMINATION OF EMERGENCY AUTHORIZA-*  
20           *TION.—In the absence of an order under subsection*  
21           *(c), the acquisition shall terminate when the informa-*  
22           *tion sought is obtained, if the application for the*  
23           *order is denied, or after the expiration of 7 days from*  
24           *the time of authorization by the Attorney General,*  
25           *whichever is earliest.*

1           “(4) *USE OF INFORMATION.*—*In the event that*  
2           *such application is denied, or in any other case where*  
3           *the acquisition is terminated and no order is issued*  
4           *approving the acquisition, no information obtained or*  
5           *evidence derived from such acquisition, except under*  
6           *circumstances in which the target of the acquisition*  
7           *is determined not to be a United States person during*  
8           *the pendency of the 7-day emergency acquisition pe-*  
9           *riod, shall be received in evidence or otherwise dis-*  
10           *closed in any trial, hearing, or other proceeding in or*  
11           *before any court, grand jury, department, office, agen-*  
12           *cy, regulatory body, legislative committee, or other*  
13           *authority of the United States, a State, or political*  
14           *subdivision thereof, and no information concerning*  
15           *any United States person acquired from such acquisi-*  
16           *tion shall subsequently be used or disclosed in any*  
17           *other manner by Federal officers or employees without*  
18           *the consent of such person, except with the approval*  
19           *of the Attorney General if the information indicates*  
20           *a threat of death or serious bodily harm to any per-*  
21           *son.*

22           “(e) *APPEAL.*—

23           “(1) *APPEAL TO THE COURT OF REVIEW.*—*The*  
24           *Government may file an appeal with the Foreign In-*  
25           *telligence Surveillance Court of Review for review of*



1 *obtained under section 105 or section 304 and that order*  
2 *is still in effect, the Attorney General may authorize, with-*  
3 *out an order under section 704 or section 705, an acquisi-*  
4 *tion of foreign intelligence information targeting that*  
5 *United States person while such person is reasonably be-*  
6 *lieved to be located outside the United States.*

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

8 **VII.**

9 *“(a) INFORMATION ACQUIRED UNDER SECTION 703.—*  
10 *Information acquired from an acquisition conducted under*  
11 *section 703 shall be deemed to be information acquired from*  
12 *an electronic surveillance pursuant to title I for purposes*  
13 *of section 106, except for the purposes of subsection (j) of*  
14 *such section.*

15 *“(b) INFORMATION ACQUIRED UNDER SECTION 704.—*  
16 *Information acquired from an acquisition conducted under*  
17 *section 704 shall be deemed to be information acquired from*  
18 *an electronic surveillance pursuant to title I for purposes*  
19 *of section 106.*

20 **“SEC. 708. CONGRESSIONAL OVERSIGHT.**

21 *“(a) SEMIANNUAL REPORT.—Not less frequently than*  
22 *once every 6 months, the Attorney General shall fully in-*  
23 *form, in a manner consistent with national security, the*  
24 *congressional intelligence committees, the Committee on the*  
25 *Judiciary of the Senate, and the Committee on the Judici-*

1 *ary of the House of Representatives, concerning the imple-*  
2 *mentation of this title.*

3 “(b) *CONTENT.—Each report made under subpara-*  
4 *graph (a) shall include—*

5 “(1) *with respect to section 703—*

6 “(A) *any certifications made under sub-*  
7 *section 703(f) during the reporting period;*

8 “(B) *any directives issued under subsection*  
9 *703(g) during the reporting period;*

10 “(C) *a description of the judicial review*  
11 *during the reporting period of any such certifi-*  
12 *cations and targeting and minimization proce-*  
13 *dures utilized with respect to such acquisition,*  
14 *including a copy of any order or pleading in*  
15 *connection with such review that contains a sig-*  
16 *nificant legal interpretation of the provisions of*  
17 *this section;*

18 “(D) *any actions taken to challenge or en-*  
19 *force a directive under paragraphs (4) or (5) of*  
20 *section 703(g);*

21 “(E) *any compliance reviews conducted by*  
22 *the Department of Justice or the Office of the Di-*  
23 *rector of National Intelligence of acquisitions au-*  
24 *thorized under subsection 703(a);*

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

5                   “(i) incidents of noncompliance by an  
6                   element of the intelligence community with  
7                   procedures adopted pursuant to subsections  
8                   (d) and (e) of section 703; and

9                   “(ii) incidents of noncompliance by a  
10                  specified person to whom the Attorney Gen-  
11                  eral and Director of National Intelligence  
12                  issued a directive under subsection 703(g);  
13                  and

14           “(G) any procedures implementing this sec-  
15           tion;

16           “(2) with respect to section 704—

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

19                   “(B) the total number of such orders either  
20                   granted, modified, or denied; and

21                   “(C) the total number of emergency acquisi-  
22                   tions authorized by the Attorney General under  
23                   section 704(d) and the total number of subse-  
24                   quent orders approving or denying such acquisi-  
25                   tions; and

1           “(3) with respect to section 705—

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

4                   “(B) the total number of such orders either  
5           granted, modified, or denied; and

6                   “(C) the total number of emergency acqui-  
7           sitions authorized by the Attorney General under  
8           subsection 705(d) and the total number of subse-  
9           quent orders approving or denying such applica-  
10          tions.”.

11          (b) *TABLE OF CONTENTS.*—*The table of contents in the*  
12 *first section of the Foreign Intelligence Surveillance Act of*  
13 *1978 (50 U.S.C. 1801 et. seq.) is amended—*

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

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

16          *and*

17                   (3) *by adding at the end the following:*

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

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

“*Sec. 702. Definitions.*”

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

“*Sec. 704. Certain acquisitions inside the United States of United States persons  
outside the United States.*”

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

“*Sec. 706. Joint applications and concurrent authorizations.*”

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

“*Sec. 708. Congressional oversight.*”.

18          (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—

19                   (1) *TITLE 18, UNITED STATES CODE.*—

1           (A) *SECTION 2232.*—*Section 2232(e) of title*  
2           *18, United States Code, is amended by inserting*  
3           *“(as defined in section 101(f) of the Foreign In-*  
4           *telligence Surveillance Act of 1978, regardless of*  
5           *the limitation of section 701 of that Act)” after*  
6           *“electronic surveillance”.*

7           (B)           *SECTION           2511.*—*Section*  
8           *2511(2)(a)(i)(A) of title 18, United States Code,*  
9           *is amended by inserting “or a court order pursu-*  
10           *ant to section 705 of the Foreign Intelligence*  
11           *Surveillance Act of 1978” after “assistance”.*

12           (2) *FOREIGN INTELLIGENCE SURVEILLANCE ACT*  
13           *OF 1978.*—

14           (A) *SECTION 109.*—*Section 109 of the For-*  
15           *oreign Intelligence Surveillance Act of 1978 (50*  
16           *U.S.C. 1809) is amended by adding at the end*  
17           *the following:*

18           “(e) *DEFINITION.*—*For the purpose of this section, the*  
19           *term ‘electronic surveillance’ means electronic surveillance*  
20           *as defined in section 101(f) of this Act regardless of the limi-*  
21           *tation of section 701 of this Act.”.*

22           (B) *SECTION 110.*—*Section 110 of the For-*  
23           *oreign Intelligence Surveillance Act of 1978 (50*  
24           *U.S.C. 1810) is amended by—*

1                   (i) adding an “(a)” before “CIVIL AC-  
2                   TION”;

3                   (ii) redesignating subsections (a)  
4                   through (c) as paragraphs (1) through (3),  
5                   respectively; and

6                   (iii) adding at the end the following:

7                   “(b) *DEFINITION.*—For the purpose of this section, the  
8                   term ‘electronic surveillance’ means electronic surveillance  
9                   as defined in section 101(f) of this Act regardless of the limi-  
10                  tation of section 701 of this Act.”.

11                  (C) *SECTION 601.*—Section 601(a)(1) of the  
12                  Foreign Intelligence Surveillance Act of 1978 (50  
13                  U.S.C. 1871(a)(1)) is amended by striking sub-  
14                  paragraphs (C) and (D) and inserting the fol-  
15                  lowing:

16                  “(C) pen registers under section 402;

17                  “(D) access to records under section 501;

18                  “(E) acquisitions under section 704; and

19                  “(F) acquisitions under section 705;”.

20                  (d) *TERMINATION OF AUTHORITY.*—

21                  (1) *IN GENERAL.*—Except as provided in para-  
22                  graph (2), the amendments made by subsections  
23                  (a)(2), (b), and (c) shall cease to have effect on De-  
24                  cember 31, 2013.

1           (2)     CONTINUING     APPLICABILITY.—Section  
2     703(g)(3) of the Foreign Intelligence Surveillance Act  
3     of 1978 (as amended by subsection (a)) shall remain  
4     in effect with respect to any directive issued pursuant  
5     to section 703(g) of that Act (as so amended) for in-  
6     formation, facilities, or assistance provided during  
7     the period such directive was or is in effect. Section  
8     704(e) of the Foreign Intelligence Surveillance Act of  
9     1978 (as amended by subsection (a)) shall remain in  
10    effect with respect to an order or request for emer-  
11    gency assistance under that section. The use of infor-  
12    mation acquired by an acquisition conducted under  
13    section 703 of that Act (as so amended) shall continue  
14    to be governed by the provisions of section 707 of that  
15    Act (as so amended).

16 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**  
17                   **ELECTRONIC SURVEILLANCE AND INTERCEP-**  
18                   **TION OF DOMESTIC COMMUNICATIONS MAY**  
19                   **BE CONDUCTED.**

20     (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of the  
21     Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
22     1801 et seq.) is amended by adding at the end the following  
23     new section:

1 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-  
2 TRONIC SURVEILLANCE AND INTERCEPTION OF DO-  
3 MESTIC COMMUNICATIONS MAY BE CONDUCTED

4 “SEC. 112. *The procedures of chapters 119, 121, and*  
5 *206 of title 18, United States Code, and this Act shall be*  
6 *the exclusive means by which electronic surveillance (as de-*  
7 *finied in section 101(f), regardless of the limitation of section*  
8 *701) and the interception of domestic wire, oral, or elec-*  
9 *tronic communications may be conducted.”.*

10 (b) *TABLE OF CONTENTS.—The table of contents in the*  
11 *first section of the Foreign Intelligence Surveillance Act of*  
12 *1978 (50 U.S.C. 1801 et seq.) is amended by adding after*  
13 *the item relating to section 111, the following:*

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

14 (c) *CONFORMING AMENDMENTS.—Section 2511(2) of*  
15 *title 18, United States Code, is amended in paragraph (f),*  
16 *by striking “, as defined in section 101 of such Act,” and*  
17 *inserting “(as defined in section 101(f) of such Act regard-*  
18 *less of the limitation of section 701 of such Act)”.*

19 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**  
20 **ORDERS UNDER THE FOREIGN INTEL-**  
21 **LIGENCE SURVEILLANCE ACT OF 1978.**

22 (a) *INCLUSION OF CERTAIN ORDERS IN SEMIANNUAL*  
23 *REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of*  
24 *section 601 of the Foreign Intelligence Surveillance Act of*

1 1978 (50 U.S.C. 1871) is amended by striking “(not includ-  
2 ing orders)” and inserting “, orders,”.

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

6 “(c) *SUBMISSIONS TO CONGRESS.*—The Attorney Gen-  
7 eral shall submit to the committees of Congress referred to  
8 in subsection (a)—

9 “(1) a copy of any decision, order, or opinion  
10 issued by the Foreign Intelligence Surveillance Court  
11 or the Foreign Intelligence Surveillance Court of Re-  
12 view that includes significant construction or inter-  
13 pretation of any provision of this Act, and any plead-  
14 ings, applications, or memoranda of law associated  
15 with such decision, order, or opinion, not later than  
16 45 days after such decision, order, or opinion is  
17 issued; and

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

1       “(d) *PROTECTION OF NATIONAL SECURITY.*—*The At-*  
2 *torney General, in consultation with the Director of Na-*  
3 *tional Intelligence, may authorize redactions of materials*  
4 *described in subsection (c) that are provided to the commit-*  
5 *tees of Congress referred to in subsection (a), if such*  
6 *redactions are necessary to protect the national security of*  
7 *the United States and are limited to sensitive sources and*  
8 *methods information or the identities of targets.”.*

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

12       “(e) *DEFINITIONS.*—*In this section:*

13               “(1) *FOREIGN INTELLIGENCE SURVEILLANCE*  
14 *COURT; COURT.*—*The term “‘Foreign Intelligence*  
15 *Surveillance Court’” means the court established by*  
16 *section 103(a).*

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

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

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

24               (1) *in subsection (a)—*

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

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

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

7           (D) in paragraph (6), as redesignated by  
8 subparagraph (B) of this paragraph, in the mat-  
9 ter preceding subparagraph (A)—

10           (i) by striking “Affairs or” and insert-  
11 ing “Affairs,”; and

12           (ii) by striking “Senate—” and insert-  
13 ing “Senate, or the Deputy Director of the  
14 Federal Bureau of Investigation, if des-  
15 ignated by the President as a certifying offi-  
16 cial—”;

17           (E) in paragraph (7), as redesignated by  
18 subparagraph (B) of this paragraph, by striking  
19 “statement of” and inserting “summary state-  
20 ment of”;

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

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

4           (2) by striking subsection (b);

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

7           (4) in paragraph (1)(A) of subsection (d), as re-  
8           designated by paragraph (3) of this subsection, by  
9           striking “or the Director of National Intelligence”  
10          and inserting “the Director of National Intelligence,  
11          or the Director of the Central Intelligence Agency”.

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

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

15           (1) in subsection (a)—

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

17                (B) by redesignating paragraphs (2)  
18                through (5) as paragraphs (1) through (4), re-  
19                spectively;

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

22           (3) in subsection (c)(1)—

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

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

3           (C) by striking subparagraph (F);

4           (4) by striking subsection (d);

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

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

9           “(e)(1) Notwithstanding any other provision of this  
10          title, the Attorney General may authorize the emergency  
11          employment of electronic surveillance if the Attorney Gen-  
12          eral—

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

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

21               “(C) informs, either personally or through a des-  
22          ignee, a judge having jurisdiction under section 103  
23          at the time of such authorization that the decision has  
24          been made to employ emergency electronic surveil-  
25          lance; and

1           “(D) makes an application in accordance with  
2           this title to a judge having jurisdiction under section  
3           103 as soon as practicable, but not later than 7 days  
4           after the Attorney General authorizes such surveil-  
5           lance.

6           “(2) If the Attorney General authorizes the emergency  
7           employment of electronic surveillance under paragraph (1),  
8           the Attorney General shall require that the minimization  
9           procedures required by this title for the issuance of a judi-  
10          cial order be followed.

11          “(3) In the absence of a judicial order approving such  
12          electronic surveillance, the surveillance shall terminate  
13          when the information sought is obtained, when the applica-  
14          tion for the order is denied, or after the expiration of 7  
15          days from the time of authorization by the Attorney Gen-  
16          eral, whichever is earliest.

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

19          “(5) In the event that such application for approval  
20          is denied, or in any other case where the electronic surveil-  
21          lance is terminated and no order is issued approving the  
22          surveillance, no information obtained or evidence derived  
23          from such surveillance shall be received in evidence or other-  
24          wise disclosed in any trial, hearing, or other proceeding in  
25          or before any court, grand jury, department, office, agency,

1 *regulatory body, legislative committee, or other authority*  
2 *of the United States, a State, or political subdivision there-*  
3 *of, and no information concerning any United States per-*  
4 *son acquired from such surveillance shall subsequently be*  
5 *used or disclosed in any other manner by Federal officers*  
6 *or employees without the consent of such person, except with*  
7 *the approval of the Attorney General if the information in-*  
8 *dicates a threat of death or serious bodily harm to any per-*  
9 *son.*

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

12               *(7) by adding at the end the following:*

13       “(i) *In any case in which the Government makes an*  
14 *application to a judge under this title to conduct electronic*  
15 *surveillance involving communications and the judge*  
16 *grants such application, upon the request of the applicant,*  
17 *the judge shall also authorize the installation and use of*  
18 *pen registers and trap and trace devices, and direct the dis-*  
19 *closure of the information set forth in section 402(d)(2).”.*

20 **SEC. 106. USE OF INFORMATION.**

21       *Subsection (i) of section 106 of the Foreign Intelligence*  
22 *Surveillance Act of 1978 (8 U.S.C. 1806) is amended by*  
23 *striking “radio communication” and inserting “commu-*  
24 *nication”.*

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

2 (a) *APPLICATIONS.*—Section 303 of the Foreign Intel-  
3 ligence Surveillance Act of 1978 (50 U.S.C. 1823) is amend-  
4 ed—

5 (1) in subsection (a)—

6 (A) by striking paragraph (2);

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

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

13 (D) in paragraph (3)(C), as redesignated by  
14 subparagraph (B) of this paragraph, by insert-  
15 ing “or is about to be” before “owned”; and

16 (E) in paragraph (6), as redesignated by  
17 subparagraph (B) of this paragraph, in the mat-  
18 ter preceding subparagraph (A)—

19 (i) by striking “Affairs or” and insert-  
20 ing “Affairs,”; and

21 (ii) by striking “Senate—” and insert-  
22 ing “Senate, or the Deputy Director of the  
23 Federal Bureau of Investigation, if des-  
24 ignated by the President as a certifying offi-  
25 cial—”; and

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

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

7           (1) in subsection (a)—

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

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

12                  (2) by amending subsection (e) to read as fol-  
13                  lows:

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

18                          “(A) determines that an emergency situation ex-  
19                          ists with respect to the employment of a physical  
20                          search to obtain foreign intelligence information be-  
21                          fore an order authorizing such physical search can  
22                          with due diligence be obtained;

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

1           “(C) informs, either personally or through a des-  
2           ignee, a judge of the Foreign Intelligence Surveillance  
3           Court at the time of such authorization that the deci-  
4           sion has been made to employ an emergency physical  
5           search; and

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

11          “(2) If the Attorney General authorizes the emergency  
12          employment of a physical search under paragraph (1), the  
13          Attorney General shall require that the minimization proce-  
14          dures required by this title for the issuance of a judicial  
15          order be followed.

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

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

24          “(5)(A) In the event that such application for approval  
25          is denied, or in any other case where the physical search

1 *is terminated and no order is issued approving the physical*  
2 *search, no information obtained or evidence derived from*  
3 *such physical search shall be received in evidence or other-*  
4 *wise disclosed in any trial, hearing, or other proceeding in*  
5 *or before any court, grand jury, department, office, agency,*  
6 *regulatory body, legislative committee, or other authority*  
7 *of the United States, a State, or political subdivision there-*  
8 *of, and no information concerning any United States per-*  
9 *son acquired from such physical search shall subsequently*  
10 *be used or disclosed in any other manner by Federal officers*  
11 *or employees without the consent of such person, except with*  
12 *the approval of the Attorney General if the information in-*  
13 *dicates a threat of death or serious bodily harm to any per-*  
14 *son.*

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

17       (c) *CONFORMING AMENDMENTS.—The Foreign Intel-*  
18 *ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)*  
19 *is amended—*

20               (1) *in section 304(a)(4), as redesignated by sub-*  
21 *section (b) of this section, by striking “303(a)(7)(E)”*  
22 *and inserting “303(a)(6)(E)”*; and

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

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

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

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

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

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

10 *(a) DESIGNATION OF JUDGES.—Subsection (a) of sec-*  
11 *tion 103 of the Foreign Intelligence Surveillance Act of 1978*  
12 *(50 U.S.C. 1803) is amended by inserting “at least” before*  
13 *“seven of the United States judicial circuits”.*

14 *(b) EN BANC AUTHORITY.—*

15 *(1) IN GENERAL.—Subsection (a) of section 103*  
16 *of the Foreign Intelligence Surveillance Act of 1978,*  
17 *as amended by subsection (a) of this section, is fur-*  
18 *ther amended—*

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

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

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

1 *judges that constitute such court upon a determination*  
2 *that—*

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

5           “(ii) the proceeding involves a question of excep-  
6           tional importance.

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

12          “(C) For purposes of this paragraph, the court *en banc*  
13          shall consist of all judges who constitute the court estab-  
14          lished under this subsection.”.

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

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

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

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

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

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

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

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

23       (d) *AUTHORITY OF FOREIGN INTELLIGENCE SURVEIL-*  
24       *LANCE COURT.*—Section 103 of the *Foreign Intelligence*

1 *Surveillance Act of 1978 (50 U.S.C. 1803), as amended by*  
2 *this Act, is amended by adding at the end the following:*

3       “(h)(1) *Nothing in this Act shall be considered to re-*  
4 *duce or contravene the inherent authority of the Foreign*  
5 *Intelligence Surveillance Court to determine, or enforce,*  
6 *compliance with an order or a rule of such Court or with*  
7 *a procedure approved by such Court.*

8       “(2) *In this subsection, the terms ‘Foreign Intelligence*  
9 *Surveillance Court’ and ‘Court’ mean the court established*  
10 *by subsection (a).”.*

11 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

12       (a) *DEFINITIONS.—*

13           (1) *FOREIGN POWER.—Subsection (a)(4) of sec-*  
14 *tion 101 of the Foreign Intelligence Surveillance Act*  
15 *of 1978 (50 U.S.C. 1801(a)(4)) is amended by insert-*  
16 *ing “, the international proliferation of weapons of*  
17 *mass destruction,” after “international terrorism”.*

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

20               (A) *in subparagraph (B), by striking “or”*  
21 *at the end*

22               (B) *in subparagraph (C), by striking “or”*  
23 *at the end; and*

24               (C) *by adding at the end the following new*  
25 *subparagraphs:*

1           “(D) engages in the international prolifera-  
2           tion of weapons of mass destruction, or activities  
3           in preparation therefor; or

4           “(E) engages in the international prolifera-  
5           tion of weapons of mass destruction, or activities  
6           in preparation therefor, for or on behalf of a for-  
7           eign power; or”.

8           (3) *FOREIGN INTELLIGENCE INFORMATION.*—  
9           Subsection (e)(1)(B) of such section 101 is amended  
10          by striking “sabotage or international terrorism” and  
11          inserting “sabotage, international terrorism, or the  
12          international proliferation of weapons of mass de-  
13          struction”.

14          (4) *WEAPON OF MASS DESTRUCTION.*—Such sec-  
15          tion 101 is amended by inserting after subsection (o)  
16          the following:

17          “(p) ‘Weapon of mass destruction’ means—

18                 “(1) any destructive device described in section  
19                 921(a)(4)(A) of title 18, United States Code, that is  
20                 intended or has the capability to cause death or seri-  
21                 ous bodily injury to a significant number of people;

22                 “(2) any weapon that is designed or intended to  
23                 cause death or serious bodily injury through the re-  
24                 lease, dissemination, or impact of toxic or poisonous  
25                 chemicals or their precursors;

1           “(3) any weapon involving a biological agent,  
2           toxin, or vector (as such terms are defined in section  
3           178 of title 18, United States Code); or

4           “(4) any weapon that is designed to release radi-  
5           ation or radioactivity at a level dangerous to human  
6           life.”.

7           **(b) USE OF INFORMATION.**—

8           **(1) IN GENERAL.**—Section 106(k)(1)(B) of the  
9           Foreign Intelligence Surveillance Act of 1978 (50  
10           U.S.C. 1806(k)(1)(B)) is amended by striking “sabo-  
11           tage or international terrorism” and inserting “sabo-  
12           tage, international terrorism, or the international  
13           proliferation of weapons of mass destruction”.

14           **(2) PHYSICAL SEARCHES.**—Section 305(k)(1)(B)  
15           of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by  
16           striking “sabotage or international terrorism” and  
17           inserting “sabotage, international terrorism, or the  
18           international proliferation of weapons of mass de-  
19           struction”.

20           **(c) TECHNICAL AND CONFORMING AMENDMENT.**—Sec-  
21           tion 301(1) of the Foreign Intelligence Surveillance Act of  
22           1978 (50 U.S.C. 1821(1)) is amended by inserting “‘weap-  
23           on of mass destruction’,” after “‘person’,”.

1 **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

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

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

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

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

11 **SEC. 201. DEFINITIONS.**

12 *In this title:*

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

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

23 *(3) COVERED CIVIL ACTION.—The term “covered*  
24 *civil action” means a civil action filed in a Federal*  
25 *or State court that—*

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

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

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

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

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

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

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

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

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

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

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

15           (a) *LIMITATIONS.—*

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

21                           (A) *the assistance alleged to have been pro-*  
22                           *vided by the electronic communication service*  
23                           *provider was—*

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

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

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

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

18                   (I) *authorized by the President;*

19                   *and*

20                   (II) *determined to be lawful; or*

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

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

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

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

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

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

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

1       (e) *RULE OF CONSTRUCTION.*—*Nothing in this section*  
2 *may be construed to limit any otherwise available immu-*  
3 *nity, privilege, or defense under any other provision of law.*

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

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

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

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

16 **“SEC. 801. DEFINITIONS.**

17       *“In this title:*

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

1           “(2) *ATTORNEY GENERAL*.—*The term ‘Attorney*  
2           *General’ has the meaning give that term in section*  
3           *101(g).*

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

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

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

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

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

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

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

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

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

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

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

12           “(B) a landlord, custodian, or other person  
13           who may be authorized or required to furnish as-  
14           sistance pursuant to—

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

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

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

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

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

10           “(a) *REQUIREMENT FOR CERTIFICATION*.—

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

17                                   “(A) *any assistance by that person was pro-*  
18           *vided pursuant to an order of the court estab-*  
19           *lished under section 103(a) directing such assist-*  
20           *ance;*

21                                   “(B) *any assistance by that person was pro-*  
22           *vided pursuant to a certification in writing*  
23           *under section 2511(2)(a)(i)(B) or 2709(b) of*  
24           *title 18, United States Code;*

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

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

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

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

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

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

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

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

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

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

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

19 **“SEC. 803. PREEMPTION.**

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

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

24               “(2) require through regulation or any other  
25 means the disclosure of information about an elec-

1 *tronic communication service provider’s alleged as-*  
2 *sistance to an element of the intelligence community;*

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

6 “(4) *commence or maintain a civil action or*  
7 *other proceeding to enforce a requirement that an*  
8 *electronic communication service provider disclose in-*  
9 *formation concerning alleged assistance to an element*  
10 *of the intelligence community.*

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

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

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

21 **SEC. 205. TECHNICAL AMENDMENTS.**

22 *The table of contents in the first section of the Foreign*  
23 *Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et*  
24 *seq.), as amended by section 101(b), is further amended by*  
25 *adding at the end the following:*

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE  
GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.

1     **TITLE III—OTHER PROVISIONS**

2     **SEC. 301. SEVERABILITY.**

3           *If any provision of this Act, any amendment made by*  
4 *this Act, or the application thereof to any person or cir-*  
5 *cumstances is held invalid, the validity of the remainder*  
6 *of the Act, any such amendments, and of the application*  
7 *of such provisions to other persons and circumstances shall*  
8 *not be affected thereby.*

9     **SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCE-**  
10           **DURES.**

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

14           *(b) REPEAL.—*

15                 *(1) IN GENERAL.—Except as provided in sub-*  
16 *section (c), sections 105A, 105B, and 105C of the For-*  
17 *oreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
18 *1805a, 1805b, and 1805c) are repealed.*

19                 *(2) TABLE OF CONTENTS.—The table of contents*  
20 *in the first section of the Foreign Intelligence Surveil-*  
21 *lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended*

1 *by striking the items relating to sections 105A, 105B,*  
2 *and 105C.*

3 *(c) TRANSITIONS PROCEDURES.—*

4 *(1) PROTECTION FROM LIABILITY.—Notwith-*  
5 *standing subsection (b)(1), subsection (l) of section*  
6 *105B of the Foreign Intelligence Surveillance Act of*  
7 *1978 shall remain in effect with respect to any direc-*  
8 *tives issued pursuant to such section 105B for infor-*  
9 *mation, facilities, or assistance provided during the*  
10 *period such directive was or is in effect.*

11 *(2) ORDERS IN EFFECT.—*

12 *(A) ORDERS IN EFFECT ON DATE OF ENACT-*  
13 *MENT.—Notwithstanding any other provision of*  
14 *this Act or of the Foreign Intelligence Surveil-*  
15 *lance Act of 1978—*

16 *(i) any order in effect on the date of*  
17 *enactment of this Act issued pursuant to the*  
18 *Foreign Intelligence Surveillance Act of*  
19 *1978 or section 6(b) of the Protect America*  
20 *Act of 2007 (Public Law 110–55; 121 Stat.*  
21 *556) shall remain in effect until the date of*  
22 *expiration of such order; and*

23 *(ii) at the request of the applicant, the*  
24 *court established under section 103(a) of the*  
25 *Foreign Intelligence Surveillance Act of*

1           1978 (50 U.S.C. 1803(a)) shall reauthorize  
2           such order if the facts and circumstances  
3           continue to justify issuance of such order  
4           under the provisions of such Act, as in effect  
5           on the day before the date of the enactment  
6           of the Protect America Act of 2007, except  
7           as amended by sections 102, 103, 104, 105,  
8           106, 107, 108, 109, and 110 of this Act.

9           (B) *ORDERS IN EFFECT ON DECEMBER 31,*  
10          *2013.—Any order issued under title VII of the*  
11          *Foreign Intelligence Surveillance Act of 1978, as*  
12          *amended by section 101 of this Act, in effect on*  
13          *December 31, 2013, shall continue in effect until*  
14          *the date of the expiration of such order. Any*  
15          *such order shall be governed by the applicable*  
16          *provisions of the Foreign Intelligence Surveil-*  
17          *lance Act of 1978, as so amended.*

18          (3) *AUTHORIZATIONS AND DIRECTIVES IN EF-*  
19          *FECT.—*

20                 (A) *AUTHORIZATIONS AND DIRECTIVES IN*  
21                 *EFFECT ON DATE OF ENACTMENT.—Notwith-*  
22                 *standing any other provision of this Act or of the*  
23                 *Foreign Intelligence Surveillance Act of 1978,*  
24                 *any authorization or directive in effect on the*  
25                 *date of the enactment of this Act issued pursuant*

1           to the Protect America Act of 2007, or any  
2           amendment made by that Act, shall remain in  
3           effect until the date of expiration of such author-  
4           ization or directive. Any such authorization or  
5           directive shall be governed by the applicable pro-  
6           visions of the Protect America Act of 2007 (121  
7           Stat. 552), and the amendment made by that  
8           Act, and, except as provided in paragraph (4) of  
9           this subsection, any acquisition pursuant to such  
10          authorization or directive shall be deemed not to  
11          constitute electronic surveillance (as that term is  
12          defined in section 101(f) of the Foreign Intel-  
13          ligence Surveillance Act of 1978 (50 U.S.C.  
14          1801(f)), as construed in accordance with section  
15          105A of the Foreign Intelligence Surveillance Act  
16          of 1978 (50 U.S.C. 1805a)).

17                   (B) *AUTHORIZATIONS AND DIRECTIVES IN*  
18                   *EFFECT ON DECEMBER 31, 2013.*—Any authoriza-  
19                   tion or directive issued under title VII of the  
20                   Foreign Intelligence Surveillance Act of 1978, as  
21                   amended by section 101 of this Act, in effect on  
22                   December 31, 2013, shall continue in effect until  
23                   the date of the expiration of such authorization  
24                   or directive. Any such authorization or directive  
25                   shall be governed by the applicable provisions of

1           *the Foreign Intelligence Surveillance Act of 1978,*  
2           *as so amended, and, except as provided in sec-*  
3           *tion 707 of the Foreign Intelligence Surveillance*  
4           *Act of 1978, as so amended, any acquisition pur-*  
5           *suant to such authorization or directive shall be*  
6           *deemed not to constitute electronic surveillance*  
7           *(as that term is defined in section 101(f) of the*  
8           *Foreign Intelligence Surveillance Act of 1978, to*  
9           *the extent that such section 101(f) is limited by*  
10           *section 701 of the Foreign Intelligence Surveil-*  
11           *lance Act of 1978, as so amended).*

12           (4) *USE OF INFORMATION ACQUIRED UNDER*  
13           *PROTECT AMERICA ACT.—Information acquired from*  
14           *an acquisition conducted under the Protect America*  
15           *Act of 2007, and the amendments made by that Act,*  
16           *shall be deemed to be information acquired from an*  
17           *electronic surveillance pursuant to title I of the For-*  
18           *ign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
19           *1801 et seq.) for purposes of section 106 of that Act*  
20           *(50 U.S.C. 1806), except for purposes of subsection (j)*  
21           *of such section.*

22           (5) *NEW ORDERS.—Notwithstanding any other*  
23           *provision of this Act or of the Foreign Intelligence*  
24           *Surveillance Act of 1978—*

1           (A) *the government may file an application*  
2           *for an order under the Foreign Intelligence Sur-*  
3           *veillance Act of 1978, as in effect on the day be-*  
4           *fore the date of the enactment of the Protect*  
5           *America Act of 2007, except as amended by sec-*  
6           *tions 102, 103, 104, 105, 106, 107, 108, 109, and*  
7           *110 of this Act; and*

8           (B) *the court established under section*  
9           *103(a) of the Foreign Intelligence Surveillance*  
10           *Act of 1978 shall enter an order granting such*  
11           *an application if the application meets the re-*  
12           *quirements of such Act, as in effect on the day*  
13           *before the date of the enactment of the Protect*  
14           *America Act of 2007, except as amended by sec-*  
15           *tions 102, 103, 104, 105, 106, 107, 108, 109, and*  
16           *110 of this Act.*

17           (6) *EXTANT AUTHORIZATIONS.—At the request of*  
18           *the applicant, the court established under section*  
19           *103(a) of the Foreign Intelligence Surveillance Act of*  
20           *1978 shall extinguish any extant authorization to*  
21           *conduct electronic surveillance or physical search en-*  
22           *tered pursuant to such Act.*

23           (7) *APPLICABLE PROVISIONS.—Any surveillance*  
24           *conducted pursuant to an order entered pursuant to*  
25           *this subsection shall be subject to the provisions of the*

1 *Foreign Intelligence Surveillance Act of 1978, as in*  
2 *effect on the day before the date of the enactment of*  
3 *the Protect America Act of 2007, except as amended*  
4 *by sections 102, 103, 104, 105, 106, 107, 108, 109,*  
5 *and 110 of this Act.*

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

16 (A) *the date that authorization expires; or*

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

Attest:

*Secretary.*

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H.R. 3773**

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**AMENDMENT**