

110TH CONGRESS  
1ST SESSION

# H. R. 3773

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

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2007

Mr. CONYERS (for himself, Mr. REYES, Mr. NADLER, Mr. SCOTT of Virginia, Ms. JACKSON-LEE of Texas, Ms. HOOLEY, Mrs. CHRISTENSEN, and Mr. RODRIGUEZ) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Responsible Electronic Surveillance That is Overseen,  
6 Reviewed, and Effective Act of 2007” or “RESTORE Act  
7 of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of electronic surveillance of non-United States persons outside the United States.
- Sec. 3. Procedure for authorizing acquisitions of communications of non-United States persons located outside the United States.
- Sec. 4. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States.
- Sec. 5. Oversight of acquisitions of communications of non-United States persons located outside of the United States.
- Sec. 6. Foreign Intelligence Surveillance Court en banc.
- Sec. 7. Audit of warrantless surveillance programs.
- Sec. 8. Record-keeping system on acquisition of communications of United States persons.
- Sec. 9. Authorization for increased resources relating to foreign intelligence surveillance.
- Sec. 10. Reiteration of FISA as the exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information.
- Sec. 11. Technical and conforming amendments.
- Sec. 12. Sunset; transition procedures.

3 **SEC. 2. CLARIFICATION OF ELECTRONIC SURVEILLANCE**  
 4 **OF NON-UNITED STATES PERSONS OUTSIDE**  
 5 **THE UNITED STATES.**

6 Section 105A of the Foreign Intelligence Surveillance  
 7 Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read  
 8 as follows:

9 “CLARIFICATION OF ELECTRONIC SURVEILLANCE OF  
 10 NON-UNITED STATES PERSONS OUTSIDE THE  
 11 UNITED STATES

12 “SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICA-  
 13 TIONS.—Notwithstanding any other provision of this Act,  
 14 a court order is not required for the acquisition of the  
 15 contents of any communication between persons that are  
 16 not United States persons and are not located within the

1 United States for the purpose of collecting foreign intel-  
2 ligence information, without respect to whether the com-  
3 munication passes through the United States or the sur-  
4 veillance device is located within the United States.

5 “(b) COMMUNICATIONS OF NON-UNITED STATES  
6 PERSONS OUTSIDE OF THE UNITED STATES.—Notwith-  
7 standing any other provision of this Act other than sub-  
8 section (a), electronic surveillance that is directed at the  
9 acquisition of the communications of a person that is rea-  
10 sonably believed to be located outside the United States  
11 and not a United States person for the purpose of col-  
12 lecting foreign intelligence information (as defined in  
13 paragraph (1) or (2)(A) of section 101(e)) by targeting  
14 that person shall be conducted pursuant to—

15 “(1) an order approved in accordance with sec-  
16 tion 105 or 105B; or

17 “(2) an emergency authorization in accordance  
18 with section 105 or 105C.”.

19 **SEC. 3. PROCEDURE FOR AUTHORIZING ACQUISITIONS OF**  
20 **COMMUNICATIONS OF NON-UNITED STATES**  
21 **PERSONS LOCATED OUTSIDE THE UNITED**  
22 **STATES.**

23 Section 105B of the Foreign Intelligence Surveillance  
24 Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read  
25 as follows:

1 “PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COM-  
2 MUNICATIONS OF NON-UNITED STATES PERSONS LO-  
3 CATED OUTSIDE THE UNITED STATES

4 “SEC. 105B. (a) IN GENERAL.—Notwithstanding  
5 any other provision of this Act, the Director of National  
6 Intelligence and the Attorney General may jointly apply  
7 to a judge of the court established under section 103(a)  
8 for an ex parte order, or the extension of an order, author-  
9 izing for a period of up to one year the acquisition of com-  
10 munications of persons that are reasonably believed to be  
11 located outside the United States and not United States  
12 persons for the purpose of collecting foreign intelligence  
13 information (as defined in paragraph (1) or (2)(A) of sec-  
14 tion 101(e)) by targeting those persons.

15 “(b) APPLICATION INCLUSIONS.—An application  
16 under subsection (a) shall include—

17 “(1) a certification by the Director of National  
18 Intelligence and the Attorney General that—

19 “(A) the targets of the acquisition of for-  
20 eign intelligence information under this section  
21 are persons reasonably believed to be located  
22 outside the United States;

23 “(B) the targets of the acquisition are rea-  
24 sonably believed to be persons that are not  
25 United States persons;

1           “(C) the acquisition involves obtaining the  
2 foreign intelligence information from, or with  
3 the assistance of, a communications service pro-  
4 vider or custodian, or an officer, employee, or  
5 agent of such service provider or custodian, who  
6 has authorized access to the communications to  
7 be acquired, either as they are transmitted or  
8 while they are stored, or equipment that is  
9 being or may be used to transmit or store such  
10 communications; and

11           “(D) a significant purpose of the acquisi-  
12 tion is to obtain foreign intelligence information  
13 (as defined in paragraph (1) or (2)(A) of sec-  
14 tion 101(e)); and

15           “(2) a description of—

16           “(A) the procedures that will be used by  
17 the Director of National Intelligence and the  
18 Attorney General during the duration of the  
19 order to determine that there is a reasonable  
20 belief that the targets of the acquisition are  
21 persons that are located outside the United  
22 States and not United States persons;

23           “(B) the nature of the information sought,  
24 including the identity of any foreign power  
25 against whom the acquisition will be directed;

1           “(C) minimization procedures that meet  
2           the definition of minimization procedures under  
3           section 101(h) to be used with respect to such  
4           acquisition; and

5           “(D) the guidelines that will be used to en-  
6           sure that an application is filed under section  
7           104, if otherwise required by this Act, when the  
8           Federal Government seeks to conduct electronic  
9           surveillance of a person reasonably believed to  
10          be located in the United States.

11          “(c) SPECIFIC PLACE NOT REQUIRED.—An applica-  
12          tion under subsection (a) is not required to identify the  
13          specific facilities, places, premises, or property at which  
14          the acquisition of foreign intelligence information will be  
15          directed.

16          “(d) REVIEW OF APPLICATION.—Not later than 15  
17          days after a judge receives an application under subsection  
18          (a), the judge shall review such application and shall ap-  
19          prove the application if the judge finds that—

20                 “(1) the proposed procedures referred to in sub-  
21                 section (b)(2)(A) are reasonably designed to deter-  
22                 mine whether the targets of the acquisition are lo-  
23                 cated outside the United States and not United  
24                 States persons;

1           “(2) the proposed minimization procedures re-  
2           ferred to in subsection (b)(2)(C) meet the definition  
3           of minimization procedures under section 101(h);  
4           and

5           “(3) the guidelines referred to in subsection  
6           (b)(2)(D) are reasonably designed to ensure that an  
7           application is filed under section 104, if otherwise  
8           required by this Act, when the Federal Government  
9           seeks to conduct electronic surveillance of a person  
10          reasonably believed to be located in the United  
11          States.

12          “(e) ORDER.—

13                 “(1) IN GENERAL.—A judge approving an ap-  
14                 plication under subsection (d) shall issue an order—

15                         “(A) authorizing the acquisition of the con-  
16                         tents of the communications as requested, or as  
17                         modified by the judge;

18                         “(B) requiring the communications service  
19                         provider or custodian, or officer, employee, or  
20                         agent of such service provider or custodian, who  
21                         has authorized access to the information, facili-  
22                         ties, or technical assistance necessary to accom-  
23                         plish the acquisition to provide such informa-  
24                         tion, facilities, or technical assistance necessary  
25                         to accomplish the acquisition and to produce a

1 minimum of interference with the services that  
2 provider, custodian, officer, employee, or agent  
3 is providing the target of the acquisition;

4 “(C) requiring such communications serv-  
5 ice provider, custodian, officer, employee, or  
6 agent, upon the request of the applicant, to  
7 maintain under security procedures approved by  
8 the Attorney General and the Director of Na-  
9 tional Intelligence any records concerning the  
10 acquisition or the aid furnished;

11 “(D) directing the Federal Government  
12 to—

13 “(i) compensate, at the prevailing  
14 rate, a person for providing information,  
15 facilities, or assistance pursuant to such  
16 order; and

17 “(ii) provide a copy of the portion of  
18 the order directing the person to comply  
19 with the order to such person; and

20 “(E) directing the applicant to follow—

21 “(i) the procedures referred to in sub-  
22 section (b)(2)(A) as proposed or as modi-  
23 fied by the judge;

1           “(ii) the minimization procedures re-  
2           ferred to in subsection (b)(2)(C) as pro-  
3           posed or as modified by the judge; and

4           “(iii) the guidelines referred to in sub-  
5           section (b)(2)(D) as proposed or as modi-  
6           fied by the judge.

7           “(2) FAILURE TO COMPLY.—If a person fails to  
8           comply with an order issued under paragraph (1),  
9           the Attorney General may invoke the aid of the  
10          court established under section 103(a) to compel  
11          compliance with the order. Failure to obey an order  
12          of the court may be punished by the court as con-  
13          tempt of court. Any process under this section may  
14          be served in any judicial district in which the person  
15          may be found.

16          “(3) LIABILITY OF ORDER.—Notwithstanding  
17          any other law, no cause of action shall lie in any  
18          court against any person for providing any informa-  
19          tion, facilities, or assistance in accordance with an  
20          order issued under this subsection.

21          “(4) RETENTION OF ORDER.—The Director of  
22          National Intelligence and the court established  
23          under subsection 103(a) shall retain an order issued  
24          under this section for a period of not less than 10  
25          years from the date on which such order is issued.

1           “(5) ASSESSMENT OF COMPLIANCE WITH MINI-  
 2           MIZATION PROCEDURES.—At or before the end of  
 3           the period of time for which an acquisition is ap-  
 4           proved by an order or an extension under this sec-  
 5           tion, the judge may assess compliance with the mini-  
 6           mization procedures referred to in paragraph  
 7           (1)(E)(ii) and the guidelines referred to in para-  
 8           graph (1)(E)(iii) by reviewing the circumstances  
 9           under which information concerning United States  
 10          persons was acquired, retained, or disseminated.”.

11 **SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF**  
 12                           **COMMUNICATIONS OF NON-UNITED STATES**  
 13                           **PERSONS LOCATED OUTSIDE THE UNITED**  
 14                           **STATES.**

15          Section 105C of the Foreign Intelligence Surveillance  
 16 Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read  
 17 as follows:

18 “EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COM-  
 19           MUNICATIONS OF NON-UNITED STATES PERSONS LO-  
 20           CATED OUTSIDE THE UNITED STATES

21          “SEC. 105C. (a) APPLICATION AFTER EMERGENCY  
 22 AUTHORIZATION.—As soon as is practicable, but not more  
 23 than 7 days after the Director of National Intelligence and  
 24 the Attorney General authorize an acquisition under this  
 25 section, an application for an order authorizing the acqui-  
 26 sition in accordance with section 105B shall be submitted

1 to the judge referred to in subsection (b)(2) of this section  
2 for approval of the acquisition in accordance with section  
3 105B.

4 “(b) EMERGENCY AUTHORIZATION.—Notwith-  
5 standing any other provision of this Act, the Director of  
6 National Intelligence and the Attorney General may joint-  
7 ly authorize the emergency acquisition of foreign intel-  
8 ligence information for a period of not more than 45 days  
9 if—

10 “(1) the Director of National Intelligence and  
11 the Attorney General jointly determine that—

12 “(A) an emergency situation exists with re-  
13 spect to an authorization for an acquisition  
14 under section 105B before an order approving  
15 the acquisition under such section can with due  
16 diligence be obtained;

17 “(B) the targets of the acquisition of for-  
18 eign intelligence information under this section  
19 are persons reasonably believed to be located  
20 outside the United States;

21 “(C) the targets of the acquisition are rea-  
22 sonably believed to be persons that are not  
23 United States persons;

24 “(D) there are reasonable procedures in  
25 place for determining that the acquisition of

1 foreign intelligence information under this sec-  
2 tion will be acquired by targeting only persons  
3 that are reasonably believed to be located out-  
4 side the United States and not United States  
5 persons;

6 “(E) the acquisition involves obtaining the  
7 foreign intelligence information from, or with  
8 the assistance of, a communications service pro-  
9 vider or custodian, or an officer, employee, or  
10 agent of such service provider or custodian, who  
11 has authorized access to the communications to  
12 be acquired, either as they are transmitted or  
13 while they are stored, or equipment that is  
14 being or may be used to transmit or store such  
15 communications;

16 “(F) a significant purpose of the acquisi-  
17 tion is to obtain foreign intelligence information  
18 (as defined in paragraph (1) or (2)(A) of sec-  
19 tion 101(e));

20 “(G) minimization procedures to be used  
21 with respect to such acquisition activity meet  
22 the definition of minimization procedures under  
23 section 101(h); and

24 “(H) there are guidelines that will be used  
25 to ensure that an application is filed under sec-

1           tion 104, if otherwise required by this Act,  
2           when the Federal Government seeks to conduct  
3           electronic surveillance of a person reasonably  
4           believed to be located in the United States; and  
5           “(2) the Director of National Intelligence and  
6           the Attorney General, or their designees, inform a  
7           judge having jurisdiction to approve an acquisition  
8           under section 105B at the time of the authorization  
9           under this section that the decision has been made  
10          to acquire foreign intelligence information.

11          “(c) INFORMATION, FACILITIES, AND TECHNICAL  
12 ASSISTANCE.—Pursuant to an authorization of an acquisi-  
13 tion under this section, the Attorney General may direct  
14 a communications service provider, custodian, or an offi-  
15 cer, employee, or agent of such service provider or custo-  
16 dian, who has the lawful authority to access the informa-  
17 tion, facilities, or technical assistance necessary to accom-  
18 plish such acquisition to—

19           “(1) furnish the Attorney General forthwith  
20           with such information, facilities, or technical assist-  
21           ance in a manner that will protect the secrecy of the  
22           acquisition and produce a minimum of interference  
23           with the services that provider, custodian, officer,  
24           employee, or agent is providing the target of the ac-  
25           quisition; and

1           “(2) maintain under security procedures ap-  
2           proved by the Attorney General and the Director of  
3           National Intelligence any records concerning the ac-  
4           quisition or the aid furnished.”.

5 **SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICA-**  
6                                   **TIONS OF NON-UNITED STATES PERSONS LO-**  
7                                   **CATED OUTSIDE OF THE UNITED STATES.**

8           The Foreign Intelligence Surveillance Act of 1978  
9 (50 U.S.C. 1801 et seq.) is amended by inserting after  
10 section 105C the following new section:

11 “OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF  
12           NON-UNITED STATES PERSONS LOCATED OUTSIDE  
13           OF THE UNITED STATES

14           “SEC. 105D. (a) APPLICATION; PROCEDURES; OR-  
15           DERS.—Not later than 7 days after an application is sub-  
16           mitted under section 105B(a) or an order is issued under  
17           section 105B(e), the Director of National Intelligence and  
18           the Attorney General shall submit to the appropriate com-  
19           mittees of Congress—

20                           “(1) in the case of an application, a copy of the  
21           application, including the certification made under  
22           section 105B(b)(1); and

23                           “(2) in the case of an order, a copy of the  
24           order, including the procedures and guidelines re-  
25           ferred to in section 105B(e)(1)(E).

26           “(b) QUARTERLY AUDITS.—

1           “(1) AUDIT.—Not later than 120 days after the  
2           date of the enactment of this section, and every 120  
3           days thereafter until the expiration of all orders  
4           issued under section 105B, the Inspector General of  
5           the Department of Justice shall complete an audit  
6           on the implementation of and compliance with the  
7           procedures and guidelines referred to in section  
8           105B(e)(1)(E) and shall submit to the appropriate  
9           committees of Congress, the Attorney General, the  
10          Director of National Intelligence, and the court es-  
11          tablished under section 103(a) the results of such  
12          audit, including, for each order authorizing the ac-  
13          quisition of foreign intelligence under section  
14          105B—

15                   “(A) the number of targets of an acquisi-  
16                   tion under such order that were later deter-  
17                   mined to be located in the United States;

18                   “(B) the number of persons located in the  
19                   United States whose communications have been  
20                   acquired under such order;

21                   “(C) the number and nature of reports dis-  
22                   seminated containing information on a United  
23                   States person that was collected under such  
24                   order; and

1           “(D) the number of applications submitted  
2           for approval of electronic surveillance under  
3           section 104 for targets whose communications  
4           were acquired under such order.

5           “(2) REPORT.—Not later than 30 days after  
6           the completion of an audit under paragraph (1), the  
7           Attorney General shall submit to the appropriate  
8           committees of Congress and the court established  
9           under section 103(a) a report containing the results  
10          of such audit.

11          “(c) COMPLIANCE REPORTS.—Not later than 60 days  
12         after the date of the enactment of this section, and every  
13         120 days thereafter until the expiration of all orders  
14         issued under section 105B, the Director of National Intel-  
15         ligence and the Attorney General shall submit to the ap-  
16         propriate committees of Congress and the court estab-  
17         lished under section 103(a) a report concerning acquisi-  
18         tions under section 105B during the previous 120-day pe-  
19         riod. Each report submitted under this section shall in-  
20         clude a description of any incidents of non-compliance  
21         with an order issued under section 105B(e), including inci-  
22         dents of non-compliance by—

23                 “(1) an element of the intelligence community  
24                 with minimization procedures referred to in section  
25                 105B(e)(1)(E)(i);

1           “(2) an element of the intelligence community  
2 with procedures referred to in section  
3 105B(e)(1)(E)(ii);

4           “(3) an element of the intelligence community  
5 with guidelines referred to in section  
6 105B(e)(1)(E)(iii); and

7           “(4) a person directed to provide information,  
8 facilities, or technical assistance under such order.

9           “(d) REPORT ON EMERGENCY AUTHORITY.—The Di-  
10 rector of National Intelligence and the Attorney General  
11 shall annually submit to the appropriate committees of  
12 Congress a report containing the number of emergency au-  
13 thorizations of acquisitions under section 105C and a de-  
14 scription of any incidents of non-compliance with an emer-  
15 gency authorization under such section.

16           “(e) APPROPRIATE COMMITTEES OF CONGRESS DE-  
17 FINED.—In this section, the term ‘appropriate committees  
18 of Congress’ means—

19           “(1) the Permanent Select Committee on Intel-  
20 ligence of the House of Representatives;

21           “(2) the Select Committee on Intelligence of the  
22 Senate; and

23           “(3) the Committees on the Judiciary of the  
24 House of Representatives and the Senate.”.

1 **SEC. 6. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN**  
2 **BANC.**

3 Section 103 of the Foreign Intelligence Surveillance  
4 Act of 1978 (50 U.S.C. 1803) is amended by adding at  
5 the end the following new subsection:

6 “(g) In any case where the court established under  
7 subsection (a) or a judge of such court is required to re-  
8 view a matter under this Act, the court may, at the discre-  
9 tion of the court, sit en banc to review such matter and  
10 issue any orders related to such matter.”.

11 **SEC. 7. AUDIT OF WARRANTLESS SURVEILLANCE PRO-**  
12 **GRAMS.**

13 (a) **AUDIT.**—Not later than 180 days after the date  
14 of the enactment of this Act, the Inspector General of the  
15 Department of Justice shall complete an audit of all pro-  
16 grams of the Federal Government involving the acquisition  
17 of communications conducted without a court order on or  
18 after September 11, 2001, including the Terrorist Surveil-  
19 lance Program referred to by the President in a radio ad-  
20 dress on December 17, 2005. Such audit shall include ac-  
21 quiring all documents relevant to such programs, includ-  
22 ing memoranda concerning the legal authority of a pro-  
23 gram, authorizations of a program, certifications to tele-  
24 communications carriers, and court orders.

25 (b) **REPORT.**—

1           (1) IN GENERAL.—Not later than 30 days after  
2           the completion of the audit under subsection (a), the  
3           Inspector General shall submit to the Permanent Se-  
4           lect Committee on Intelligence and the Committee  
5           on the Judiciary of the House of Representatives  
6           and the Select Committee on Intelligence and the  
7           Committee on the Judiciary of the Senate a report  
8           containing the results of such audit, including all  
9           documents acquired pursuant to conducting such  
10          audit.

11          (2) FORM.—The report under paragraph (1)  
12          shall be submitted in unclassified form, but may in-  
13          clude a classified annex.

14          (c) EXPEDITED SECURITY CLEARANCE.—The Direc-  
15          tor of National Intelligence shall ensure that the process  
16          for the investigation and adjudication of an application by  
17          the Inspector General or the appropriate staff of the Of-  
18          fice of the Inspector General of the Department of Justice  
19          for a security clearance necessary for the conduct of the  
20          audit under subsection (a) is conducted as expeditiously  
21          as possible.

1 **SEC. 8. RECORD-KEEPING SYSTEM ON ACQUISITION OF**  
2 **COMMUNICATIONS OF UNITED STATES PER-**  
3 **SONS.**

4 (a) RECORD-KEEPING SYSTEM.—The Director of  
5 National Intelligence and the Attorney General shall joint-  
6 ly develop and maintain a record-keeping system that will  
7 keep track of—

8 (1) the instances where the identity of a United  
9 States person whose communications were acquired  
10 was disclosed by an element of the intelligence com-  
11 munity (as defined in section 3(4) of the National  
12 Security Act of 1947 (50 U.S.C. 401a(4)) that col-  
13 lected the communications to other departments or  
14 agencies of the United States; and

15 (2) the departments and agencies of the Fed-  
16 eral Government and persons to whom such identity  
17 information was disclosed.

18 (b) REPORT.—The Director of National Intelligence  
19 and the Attorney General shall annually submit to the  
20 Permanent Select Committee on Intelligence and the Com-  
21 mittee on the Judiciary of the House of Representatives  
22 and the Select Committee on Intelligence and the Com-  
23 mittee on the Judiciary of the Senate a report on the  
24 record-keeping system created under subsection (a), in-  
25 cluding the number of instances referred to in paragraph  
26 (1).

1 **SEC. 9. AUTHORIZATION FOR INCREASED RESOURCES RE-**  
2 **LATING TO FOREIGN INTELLIGENCE SUR-**  
3 **VEILLANCE.**

4 There are authorized to be appropriated the Depart-  
5 ment of Justice, for the activities of the Office of the In-  
6 spector General, the Office of Intelligence Policy and Re-  
7 view, and other appropriate elements of the National Secu-  
8 rity Division, and the National Security Agency such sums  
9 as may be necessary to meet the personnel and informa-  
10 tion technology demands to ensure the timely and efficient  
11 processing of—

12 (1) applications and other submissions to the  
13 court established under section 103(a) of the For-  
14 eign Intelligence Surveillance Act of 1978 (50  
15 U.S.C. 1803(a));

16 (2) the audit and reporting requirements  
17 under—

18 (A) section 105D of such Act; and

19 (B) section 7; and

20 (3) the record-keeping system and reporting re-  
21 quirements under section 8.

1 **SEC. 10. REITERATION OF FISA AS THE EXCLUSIVE MEANS**  
2 **BY WHICH ELECTRONIC SURVEILLANCE MAY**  
3 **BE CONDUCTED FOR GATHERING FOREIGN**  
4 **INTELLIGENCE INFORMATION.**

5 (a) **EXCLUSIVE MEANS.**—Notwithstanding any other  
6 provision of law, the Foreign Intelligence Surveillance Act  
7 of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive  
8 means by which electronic surveillance may be conducted  
9 for the purpose of gathering foreign intelligence informa-  
10 tion.

11 (b) **SPECIFIC AUTHORIZATION REQUIRED FOR EX-**  
12 **CEPTION.**—Subsection (a) shall apply until specific statu-  
13 tory authorization for electronic surveillance, other than  
14 as an amendment to the Foreign Intelligence Surveillance  
15 Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such  
16 specific statutory authorization shall be the only exception  
17 to subsection (a).

18 **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

19 (a) **TABLE OF CONTENTS.**—The table of contents in  
20 the first section of the Foreign Intelligence Surveillance  
21 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by strik-  
22 ing the items relating to sections 105A, 105B, and 105C  
23 and inserting the following new items:

“Sec. 105A. Clarification of electronic surveillance of non-United States persons  
outside the United States.

“Sec. 105B. Procedure for authorizing acquisitions of communications of non-  
United States persons located outside the United States.

“Sec. 105C. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States.

“Sec. 105D. Oversight of acquisitions of communications of persons located outside of the United States.”.

1 (b) SECTION 103(e) OF FISA.—Section 103(e) of the  
2 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
3 1803(e)) is amended—

4 (1) in paragraph (1), by striking “105B(h) or”;

5 and

6 (2) in paragraph (2), by striking “105B(h) or”.

7 (c) REPEAL OF CERTAIN PROVISIONS OF THE PRO-  
8 TECT AMERICA ACT.—Sections 4 and 6 of the Protect  
9 America Act (Public Law 110–55) are hereby repealed.

10 **SEC. 12. SUNSET; TRANSITION PROCEDURES.**

11 (a) SUNSET OF NEW PROVISIONS.—

12 (1) IN GENERAL.—Except as provided in para-  
13 graph (2), effective on December 31, 2009—

14 (A) sections 105A, 105B, 105C, and 105D  
15 of the Foreign Intelligence Surveillance Act of  
16 1978 (50 U.S.C. 1801 et seq.) are hereby re-  
17 pealed; and

18 (B) the table of contents in the first sec-  
19 tion of such Act is amended by striking the  
20 items relating to sections 105A, 105B, 105C,  
21 and 105D.

22 (2) ACQUISITIONS AUTHORIZED PRIOR TO SUN-  
23 SET.—Any authorization or order issued under sec-

1 tion 105B of the Foreign Intelligence Surveillance  
2 Act of 1978, as amended by this Act, in effect on  
3 December 31, 2009, shall continue in effect until the  
4 date of the expiration of such authorization or order.

5 (b) ACQUISITIONS AUTHORIZED PRIOR TO ENACT-  
6 MENT.—

7 (1) EFFECT.—Notwithstanding the amend-  
8 ments made by this Act, an authorization of the ac-  
9 quisition of foreign intelligence information under  
10 section 105B of the Foreign Intelligence Surveillance  
11 Act of 1978 (50 U.S.C. 1801 et seq.) made before  
12 the date of the enactment of this Act shall remain  
13 in effect until the date of the expiration of such au-  
14 thorization or the date that is 180 days after such  
15 date of enactment, whichever is earlier.

16 (2) REPORT.—Not later than 30 days after the  
17 date of the expiration of all authorizations of acqui-  
18 sition of foreign intelligence information under sec-  
19 tion 105B of the Foreign Intelligence Surveillance  
20 Act of 1978 (as added by Public Law 110–55) made  
21 before the date of the enactment of this Act in ac-  
22 cordance with paragraph (1), the Director of Na-  
23 tional Intelligence and the Attorney General shall  
24 submit to the Permanent Select Committee on Intel-  
25 ligence and the Committee on the Judiciary of the

1 House of Representatives and the Select Committee  
2 on Intelligence and the Committee on the Judiciary  
3 of the Senate a report on such authorizations, in-  
4 cluding—

5 (A) the number of targets of an acquisition  
6 under section 105B of such Act (as in effect on  
7 the day before the date of the enactment of this  
8 Act) that were later determined to be located in  
9 the United States;

10 (B) the number of persons located in the  
11 United States whose communications have been  
12 acquired under such section;

13 (C) the number of reports disseminated  
14 containing information on a United States per-  
15 son that was collected under such section;

16 (D) the number of applications submitted  
17 for approval of electronic surveillance under  
18 section 104 of such Act based upon information  
19 collected pursuant to an acquisition authorized  
20 under section 105B of such Act (as in effect on  
21 the day before the date of the enactment of this  
22 Act); and

23 (E) a description of any incidents of non-  
24 compliance with an authorization under such

1 section, including incidents of non-compliance  
2 by—

3 (i) an element of the intelligence com-  
4 munity with procedures referred to in sub-  
5 section (a)(1) of such section;

6 (ii) an element of the intelligence com-  
7 munity with minimization procedures re-  
8 ferred to in subsection (a)(5) of such sec-  
9 tion; and

10 (iii) a person directed to provide infor-  
11 mation, facilities, or technical assistance  
12 under subsection (e) of such section.

13 (3) INTELLIGENCE COMMUNITY DEFINED.—In  
14 this subsection, the term “intelligence community”  
15 has the meaning given the term in section 3(4) of  
16 the National Security Act of 1947 (50 U.S.C.  
17 401a(4)).

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