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110TH CONGRESS
1ST SESSION**H. R. 3773**

IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2007

Received; read twice and placed on the calendar

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.

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”.

8 (b) TABLE OF CONTENTS.—The table of contents for
9 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. Additional authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.
- Sec. 4. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.
- Sec. 5. Oversight of acquisitions of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.
- Sec. 6. Dissemination of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.
- Sec. 7. Foreign Intelligence Surveillance Court en banc.
- Sec. 8. Foreign Intelligence Surveillance Court matters.
- Sec. 9. Reiteration of FISA as the exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information.
- Sec. 10. Enhancement of electronic surveillance authority in wartime and other collection.
- Sec. 11. Audit of warrantless surveillance programs.
- Sec. 12. Record-keeping system on acquisition of communications of United States persons.
- Sec. 13. Authorization for increased resources relating to foreign intelligence surveillance.
- Sec. 14. Document management system for applications for orders approving electronic surveillance.
- Sec. 15. Training of intelligence community personnel in foreign intelligence collection matters.
- Sec. 16. Information for Congress on the terrorist surveillance program and similar programs.
- Sec. 17. Technical and conforming amendments.
- Sec. 18. Sunset; transition procedures.
- Sec. 19. Certification to communications service providers that acquisitions are authorized under FISA.
- Sec. 20. Statute of limitations.
- Sec. 21. No rights under the RESTORE Act for undocumented aliens.
- Sec. 22. Surveillance to protect the United States.

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

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

1 “CLARIFICATION OF ELECTRONIC SURVEILLANCE OF
2 NON-UNITED STATES PERSONS OUTSIDE THE
3 UNITED STATES

4 “SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICA-
5 TIONS.—

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of this Act, a court order is not required
8 for electronic surveillance directed at the acquisition
9 of the contents of any communication between per-
10 sons that are not known to be United States persons
11 and are reasonably believed to be located outside the
12 United States for the purpose of collecting foreign
13 intelligence information, without respect to whether
14 the communication passes through the United States
15 or the surveillance device is located within the
16 United States.

17 “(2) TREATMENT OF INADVERTENT INTERCEP-
18 TIONS.—If electronic surveillance referred to in
19 paragraph (1) inadvertently collects a communica-
20 tion in which at least one party to the communica-
21 tion is located inside the United States or is a
22 United States person, the contents of such commu-
23 nication shall be handled in accordance with mini-
24 mization procedures adopted by the Attorney Gen-
25 eral that require that no contents of any commu-

1 nication to which a United States person is a party
2 shall be disclosed, disseminated, or used for any pur-
3 pose or retained for longer than 7 days unless a
4 court order under section 105 is obtained or unless
5 the Attorney General determines that the informa-
6 tion indicates a threat of death or serious bodily
7 harm to any person.

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

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

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

1 **SEC. 3. ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF**
2 **COMMUNICATIONS OF NON-UNITED STATES**
3 **PERSONS LOCATED OUTSIDE THE UNITED**
4 **STATES WHO MAY BE COMMUNICATING WITH**
5 **PERSONS INSIDE THE UNITED STATES.**

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

9 “ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF COM-
10 MUNICATIONS OF NON-UNITED STATES PERSONS LO-
11 CATED OUTSIDE THE UNITED STATES WHO MAY BE
12 COMMUNICATING WITH PERSONS INSIDE THE
13 UNITED STATES

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

25 “(b) APPLICATION INCLUSIONS.—An application
26 under subsection (a) shall include—

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

3 “(A) the targets of the acquisition of for-
4 eign intelligence information under this section
5 are persons reasonably believed to be located
6 outside the United States who may be commu-
7 nicating with persons inside the United States;

8 “(B) the targets of the acquisition are rea-
9 sonably believed to be persons that are not
10 United States persons;

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

21 “(D) a significant purpose of the acquisi-
22 tion is to obtain foreign intelligence information
23 (as defined in paragraph (1) or (2)(A) of sec-
24 tion 101(e)); and

25 “(2) a description of—

1 “(A) the procedures that will be used by
2 the Director of National Intelligence and the
3 Attorney General during the duration of the
4 order to determine that there is a reasonable
5 belief that the persons that are the targets of
6 the acquisition are located outside the United
7 States and not United States persons;

8 “(B) the nature of the information sought,
9 including the identity of any foreign power
10 against whom the acquisition will be directed;

11 “(C) minimization procedures that meet
12 the definition of minimization procedures under
13 section 101(h) to be used with respect to such
14 acquisition; and

15 “(D)(i) the guidelines that will be used to
16 ensure that an application is filed under section
17 104, if otherwise required by this Act, when a
18 significant purpose of an acquisition is to ac-
19 quire the communications of a specific United
20 States person reasonably believed to be located
21 in the United States; and

22 “(ii) the criteria for determining if
23 such a significant purpose exists, which
24 shall require consideration of whether—

1 “(I) the department or agency of
2 the Federal Government conducting
3 the acquisition has made an inquiry to
4 another department or agency of the
5 Federal Government to gather infor-
6 mation on the specific United States
7 person;

8 “(II) the department or agency
9 of the Federal Government conducting
10 the acquisition has provided informa-
11 tion that identifies the specific United
12 States person to another department
13 or agency of the Federal Government;

14 “(III) the department or agency
15 of the Federal Government conducting
16 the acquisition determines that the
17 specific United States person has been
18 the subject of ongoing interest or re-
19 peated investigation by a department
20 or agency of the Federal Government;
21 and

22 “(IV) the specific United States
23 person is a natural person.

24 “(c) SPECIFIC PLACE NOT REQUIRED.—An applica-
25 tion under subsection (a) is not required to identify the

1 specific facilities, places, premises, or property at which
2 the acquisition of foreign intelligence information will be
3 directed.

4 “(d) REVIEW OF APPLICATION; APPEALS.—

5 “(1) REVIEW OF APPLICATION.—Not later than
6 15 days after a judge receives an application under
7 subsection (a), the judge shall review such applica-
8 tion and shall approve the application if the judge
9 finds that—

10 “(A) the proposed procedures referred to
11 in subsection (b)(2)(A) are reasonably designed
12 to determine whether the targets of the acquisi-
13 tion are located outside the United States and
14 not United States persons;

15 “(B) the proposed minimization procedures
16 referred to in subsection (b)(2)(C) meet the def-
17 inition of minimization procedures under sec-
18 tion 101(h); and

19 “(C)(i) the guidelines referred to in sub-
20 section (b)(2)(D) are reasonably designed to en-
21 sure that an application is filed under section
22 104, if otherwise required by this Act, when a
23 significant purpose of an acquisition is to ac-
24 quire the communications of a specific United

1 States person reasonably believed to be located
2 in the United States; and

3 “(ii) the criteria for determining if
4 such a significant purpose exists require
5 consideration of whether—

6 “(I) the department or agency of
7 the Federal Government conducting
8 the acquisition has made an inquiry to
9 another department or agency of the
10 Federal Government to gather infor-
11 mation on the specific United States
12 person;

13 “(II) the department or agency
14 of the Federal Government conducting
15 the acquisition has provided informa-
16 tion that identifies the specific United
17 States person to another department
18 or agency of the Federal Government;

19 “(III) the department or agency
20 of the Federal Government conducting
21 the acquisition determines that the
22 specific United States person has been
23 the subject of ongoing interest or re-
24 peated investigation by a department

1 or agency of the Federal Government;
2 and

3 “(IV) the specific United States
4 person is a natural person.

5 “(2) TEMPORARY ORDER; APPEALS.—

6 “(A) TEMPORARY ORDER.—A judge deny-
7 ing an application under paragraph (1) may, at
8 the application of the United States, issue a
9 temporary order to authorize an acquisition
10 under section 105B in accordance with the ap-
11 plication submitted under subsection (a) during
12 the pendency of any appeal of the denial of
13 such application.

14 “(B) APPEALS.—The United States may
15 appeal the denial of an application for an order
16 under paragraph (1) or a temporary order
17 under subparagraph (A) in accordance with sec-
18 tion 103.

19 “(e) ORDER.—

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

22 “(A) authorizing the acquisition of the con-
23 tents of the communications as requested, or as
24 modified by the judge;

1 “(B) requiring the communications service
2 provider or custodian, or officer, employee, or
3 agent of such service provider or custodian, who
4 has authorized access to the information, facili-
5 ties, or technical assistance necessary to accom-
6 plish the acquisition to provide such informa-
7 tion, facilities, or technical assistance necessary
8 to accomplish the acquisition and to produce a
9 minimum of interference with the services that
10 provider, custodian, officer, employee, or agent
11 is providing the target of the acquisition;

12 “(C) requiring such communications serv-
13 ice provider, custodian, officer, employee, or
14 agent, upon the request of the applicant, to
15 maintain under security procedures approved by
16 the Attorney General and the Director of Na-
17 tional Intelligence any records concerning the
18 acquisition or the aid furnished;

19 “(D) directing the Federal Government
20 to—

21 “(i) compensate, at the prevailing
22 rate, a person for providing information,
23 facilities, or assistance pursuant to such
24 order;

1 “(ii) provide a copy of the portion of
2 the order directing the person to comply
3 with the order to such person; and

4 “(iii) provide a certification stating
5 that the acquisition is authorized under
6 this section and that all requirements of
7 this section have been met; and

8 “(E) directing the applicant to follow—

9 “(i) the procedures referred to in sub-
10 section (b)(2)(A) as proposed or as modi-
11 fied by the judge;

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

15 “(iii) the guidelines referred to in sub-
16 section (b)(2)(D) as proposed or as modi-
17 fied by the judge.

18 “(2) FAILURE TO COMPLY.—If a person fails to
19 comply with an order issued under paragraph (1),
20 the Attorney General may invoke the aid of the
21 court established under section 103(a) to compel
22 compliance with the order. Failure to obey an order
23 of the court may be punished by the court as con-
24 tempt of court. Any process under this section may

1 be served in any judicial district in which the person
2 may be found.

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

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

13 “(5) ASSESSMENT OF COMPLIANCE WITH
14 COURT ORDER.—At or before the end of the period
15 of time for which an acquisition is approved by an
16 order or an extension under this section, the court
17 established under section 103(a) shall, not less fre-
18 quently than once each quarter, assess compliance
19 with the procedures and guidelines referred to in
20 paragraph (1)(E) and review the circumstances
21 under which information concerning United States
22 persons was acquired, retained, or disseminated.”.

1 **SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF**
2 **COMMUNICATIONS OF NON-UNITED STATES**
3 **PERSONS LOCATED OUTSIDE THE UNITED**
4 **STATES WHO MAY BE COMMUNICATING WITH**
5 **PERSONS INSIDE THE UNITED STATES.**

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

9 “EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COM-
10 MUNICATIONS OF NON-UNITED STATES PERSONS LO-
11 CATED OUTSIDE THE UNITED STATES WHO MAY BE
12 COMMUNICATING WITH PERSONS INSIDE THE
13 UNITED STATES

14 “SEC. 105C. (a) APPLICATION AFTER EMERGENCY
15 AUTHORIZATION.—As soon as is practicable, but not more
16 than 7 days after the Director of National Intelligence and
17 the Attorney General authorize an acquisition under this
18 section, an application for an order authorizing the acqui-
19 sition in accordance with section 105B shall be submitted
20 to the judge referred to in subsection (b)(2) of this section
21 for approval of the acquisition in accordance with section
22 105B.

23 “(b) EMERGENCY AUTHORIZATION.—Notwith-
24 standing any other provision of this Act, the Director of
25 National Intelligence and the Attorney General may joint-
26 ly authorize the emergency acquisition of foreign intel-

1 ligence information (as defined in paragraph (1) or (2)(A)
2 of section 101(e)) for a period of not more than 45 days
3 if—

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

6 “(A) an emergency situation exists with re-
7 spect to an authorization for an acquisition
8 under section 105B before an order approving
9 the acquisition under such section can with due
10 diligence be obtained;

11 “(B) the targets of the acquisition of for-
12 eign intelligence information under this section
13 are persons reasonably believed to be located
14 outside the United States who may be commu-
15 nicating with persons inside the United States;

16 “(C) the targets of the acquisition are rea-
17 sonably believed to be persons that are not
18 United States persons;

19 “(D) there are procedures in place that
20 will be used by the Director of National Intel-
21 ligence and the Attorney General during the du-
22 ration of the authorization to determine if there
23 is a reasonable belief that the persons that are
24 the targets of the acquisition are located out-

1 side the United States and not United States
2 persons;

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

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

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

21 “(H)(i) there are guidelines that will be
22 used to ensure that an application is filed under
23 section 104, if otherwise required by this Act,
24 when a significant purpose of an acquisition is
25 to acquire the communications of a specific

1 United States person reasonably believed to be
2 located in the United States; and

3 “(ii) the criteria for determining if
4 such a significant purpose exists require
5 consideration of whether—

6 “(I) the department or agency of
7 the Federal Government conducting
8 the acquisition has made an inquiry to
9 another department or agency of the
10 Federal Government to gather infor-
11 mation on the specific United States
12 person;

13 “(II) the department or agency
14 of the Federal Government conducting
15 the acquisition has provided informa-
16 tion that identifies the specific United
17 States person to another department
18 or agency of the Federal Government;

19 “(III) the department or agency
20 of the Federal Government conducting
21 the acquisition determines that the
22 specific United States person has been
23 the subject of ongoing interest or re-
24 peated investigation by a department

1 or agency of the Federal Government;
2 and

3 “(IV) the specific United States
4 person is a natural person.

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.—

13 “(1) DIRECTIVE.—Pursuant to an authoriza-
14 tion of an acquisition under this section, the Attor-
15 ney General may direct a communications service
16 provider, custodian, or an officer, employee, or agent
17 of such service provider or custodian, who has the
18 lawful authority to access the information, facilities,
19 or technical assistance necessary to accomplish such
20 acquisition to—

21 “(A) furnish the Attorney General forth-
22 with with such information, facilities, or tech-
23 nical assistance in a manner that will protect
24 the secrecy of the acquisition and produce a
25 minimum of interference with the services that

1 provider, custodian, officer, employee, or agent
2 is providing the target of the acquisition; and

3 “(B) maintain under security procedures
4 approved by the Attorney General and the Di-
5 rector of National Intelligence any records con-
6 cerning the acquisition or the aid furnished.

7 “(2) PARAMETERS; CERTIFICATIONS.—The At-
8 torney General shall provide to any person directed
9 to provide assistance under paragraph (1) with—

10 “(A) a document setting forth the param-
11 eters of the directive;

12 “(B) a certification stating that—

13 “(i) the emergency authorization has
14 been issued pursuant to this section;

15 “(ii) all requirements of this section
16 been met;

17 “(iii) a judge has been informed of
18 the emergency authorization in accordance
19 with subsection (b)(2); and

20 “(iv) an application will be submitted
21 in accordance with subsection (a); and

22 “(C) a certification that the recipient of
23 the directive shall be compensated, at the pre-
24 vailing rate, for providing information, facilities,
25 or assistance pursuant to such directive.”.

1 **SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICA-**
2 **TIONS OF NON-UNITED STATES PERSONS LO-**
3 **CATED OUTSIDE OF THE UNITED STATES**
4 **WHO MAY BE COMMUNICATING WITH PER-**
5 **SONS INSIDE THE UNITED STATES.**

6 The Foreign Intelligence Surveillance Act of 1978
7 (50 U.S.C. 1801 et seq.) is amended by inserting after
8 section 105C the following new section:

9 “OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF
10 NON-UNITED STATES PERSONS LOCATED OUTSIDE
11 OF THE UNITED STATES WHO MAY BE COMMU-
12 NICATING WITH PERSONS INSIDE THE UNITED
13 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—

21 “(A) a copy of the application, including
22 the certification made under section
23 105B(b)(1); and

24 “(B) a description of the primary purpose
25 of the acquisition for which the application is
26 submitted; and

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

4 “(b) REGULAR AUDITS.—

5 “(1) AUDIT.—Not later than 120 days after the
6 date of the enactment of this section, and every 120
7 days thereafter until the expiration of all orders
8 issued under section 105B, the Inspector General of
9 the Department of Justice shall complete an audit
10 on the implementation of and compliance with the
11 procedures and guidelines referred to in section
12 105B(e)(1)(E) and shall submit to the appropriate
13 committees of Congress, the Attorney General, the
14 Director of National Intelligence, and the court es-
15 tablished under section 103(a) the results of such
16 audit, including, for each order authorizing the ac-
17 quisition of foreign intelligence under section
18 105B—

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

22 “(B) the number of persons located in the
23 United States whose communications have been
24 acquired under such order;

1 “(C) the number and nature of reports dis-
2 seminated containing information on a United
3 States person that was collected under such
4 order; and

5 “(D) the number of applications submitted
6 for approval of electronic surveillance under
7 section 104 for targets whose communications
8 were acquired under such order.

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

15 “(c) COMPLIANCE REPORTS.—Not later than 60 days
16 after the date of the enactment of this section, and every
17 120 days thereafter until the expiration of all orders
18 issued under section 105B, the Director of National Intel-
19 ligence and the Attorney General shall submit to the ap-
20 propriate committees of Congress and the court estab-
21 lished under section 103(a) a report concerning acquisi-
22 tions under section 105B during the previous period. Each
23 report submitted under this section shall include a descrip-
24 tion of any incidents of non-compliance with an order

1 issued under section 105B(e), including incidents of non-
2 compliance by—

3 “(1) an element of the intelligence community
4 with procedures referred to in section
5 105B(e)(1)(E)(i);

6 “(2) an element of the intelligence community
7 with minimization procedures referred to in section
8 105B(e)(1)(E)(ii);

9 “(3) an element of the intelligence community
10 with guidelines referred to in section
11 105B(e)(1)(E)(iii); and

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

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

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

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

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

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

5 **SEC. 6. DISSEMINATION OF COMMUNICATIONS OF NON-**
6 **UNITED STATES PERSONS LOCATED OUTSIDE**
7 **OF THE UNITED STATES WHO MAY BE COM-**
8 **MUNICATING WITH PERSONS INSIDE THE**
9 **UNITED STATES.**

10 The Foreign Intelligence Surveillance Act of 1978
11 (50 U.S.C. 1801 et seq.) is amended by inserting after
12 section 105D (as added by section 5) the following new
13 section:

14 “DISSEMINATION OF COMMUNICATIONS OF NON-UNITED
15 STATES PERSONS LOCATED OUTSIDE OF THE
16 UNITED STATES WHO MAY BE COMMUNICATING
17 WITH PERSONS INSIDE THE UNITED STATES

18 “SEC. 105E. The contents of communications col-
19 lected under section 105B or section 105C, and intel-
20 ligence reports based on such contents, shall not be dis-
21 closed or disseminated with information that identifies a
22 United States person unless an officer or employee of the
23 Federal Government whose rate of basic pay is not less
24 than the minimum rate payable under section 5382 of title
25 5, United States Code (relating to rates of pay for the

1 Senior Executive Service) determines that the identity of
2 the United States person is necessary to—

3 “(1) understand the foreign intelligence col-
4 lected under section 105B or 105C or assess the im-
5 portance of such intelligence; and

6 “(2) protect the national security of the United
7 States, the citizens, employees, or officers of the
8 United States, or the members of the United States
9 Armed Forces.”.

10 **SEC. 7. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN**
11 **BANC.**

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

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

20 **SEC. 8. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
21 **MATTERS.**

22 (a) **AUTHORITY FOR ADDITIONAL JUDGES.**—Section
23 103(a) of the Foreign Intelligence Surveillance Act of
24 1978 (50 U.S.C. 1803(a)) is amended—

25 (1) by inserting “(1)” after “(a)”;

1 (2) in paragraph (1) (as so designated)—

2 (A) by striking “11” and inserting “15”;

3 and

4 (B) by inserting “at least” before “seven
5 of the United States judicial circuits”; and

6 (3) by designating the second sentence as para-
7 graph (3) and indenting such paragraph, as so des-
8 ignated, two ems from the left margin.

9 (b) CONSIDERATION OF EMERGENCY APPLICA-
10 TIONS.—Such section is further amended by inserting
11 after paragraph (1) (as designated by subsection (a)(1))
12 the following new paragraph:

13 “(2) A judge of the court shall make a determination
14 to approve, deny, or modify an application submitted pur-
15 suant to section 105(f), section 304(e), or section 403 not
16 later than 24 hours after the receipt of such application
17 by the court.”.

18 **SEC. 9. REITERATION OF FISA AS THE EXCLUSIVE MEANS**
19 **BY WHICH ELECTRONIC SURVEILLANCE MAY**
20 **BE CONDUCTED FOR GATHERING FOREIGN**
21 **INTELLIGENCE INFORMATION.**

22 (a) EXCLUSIVE MEANS.—Notwithstanding any other
23 provision of law, the Foreign Intelligence Surveillance Act
24 of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive
25 means by which electronic surveillance may be conducted

1 for the purpose of gathering foreign intelligence informa-
2 tion.

3 (b) SPECIFIC AUTHORIZATION REQUIRED FOR EX-
4 CEPTION.—Subsection (a) shall apply until specific statu-
5 tory authorization for electronic surveillance, other than
6 as an amendment to the Foreign Intelligence Surveillance
7 Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such
8 specific statutory authorization shall be the only exception
9 to subsection (a).

10 **SEC. 10. ENHANCEMENT OF ELECTRONIC SURVEILLANCE**
11 **AUTHORITY IN WARTIME AND OTHER COL-**
12 **LECTION.**

13 Sections 111, 309, and 404 of the Foreign Intel-
14 ligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829,
15 and 1844) are amended by striking “Congress” and in-
16 serting “Congress or an authorization for the use of mili-
17 tary force described in section 2(c)(2) of the War Powers
18 Resolution (50 U.S.C. 1541(c)(2)) if such authorization
19 contains a specific authorization for foreign intelligence
20 collection under this section, or if the Congress is unable
21 to convene because of an attack upon the United States.”.

22 **SEC. 11. AUDIT OF WARRANTLESS SURVEILLANCE PRO-**
23 **GRAMS.**

24 (a) AUDIT.—Not later than 180 days after the date
25 of the enactment of this Act, the Inspector General of the

1 Department of Justice shall complete an audit of all pro-
2 grams of the Federal Government involving the acquisition
3 of communications conducted without a court order on or
4 after September 11, 2001, including the Terrorist Surveil-
5 lance Program referred to by the President in a radio ad-
6 dress on December 17, 2005. Such audit shall include ac-
7 quiring all documents relevant to such programs, includ-
8 ing memoranda concerning the legal authority of a pro-
9 gram, authorizations of a program, certifications to tele-
10 communications carriers, and court orders.

11 (b) REPORT.—

12 (1) IN GENERAL.—Not later than 30 days after
13 the completion of the audit under subsection (a), the
14 Inspector General shall submit to the Permanent Se-
15 lect Committee on Intelligence and the Committee
16 on the Judiciary of the House of Representatives
17 and the Select Committee on Intelligence and the
18 Committee on the Judiciary of the Senate a report
19 containing the results of such audit, including all
20 documents acquired pursuant to conducting such
21 audit.

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

1 (c) EXPEDITED SECURITY CLEARANCE.—The Direc-
2 tor of National Intelligence shall ensure that the process
3 for the investigation and adjudication of an application by
4 the Inspector General or the appropriate staff of the Of-
5 fice of the Inspector General of the Department of Justice
6 for a security clearance necessary for the conduct of the
7 audit under subsection (a) is conducted as expeditiously
8 as possible.

9 **SEC. 12. RECORD-KEEPING SYSTEM ON ACQUISITION OF**
10 **COMMUNICATIONS OF UNITED STATES PER-**
11 **SONS.**

12 (a) RECORD-KEEPING SYSTEM.—The Director of
13 National Intelligence and the Attorney General shall joint-
14 ly develop and maintain a record-keeping system that will
15 keep track of—

16 (1) the instances where the identity of a United
17 States person whose communications were acquired
18 was disclosed by an element of the intelligence com-
19 munity (as defined in section 3(4) of the National
20 Security Act of 1947 (50 U.S.C. 401a(4)) that col-
21 lected the communications to other departments or
22 agencies of the United States; and

23 (2) the departments and agencies of the Fed-
24 eral Government and persons to whom such identity
25 information was disclosed.

1 (b) REPORT.—The Director of National Intelligence
2 and the Attorney General shall annually submit to the
3 Permanent Select Committee on Intelligence and the Com-
4 mittee on the Judiciary of the House of Representatives
5 and the Select Committee on Intelligence and the Com-
6 mittee on the Judiciary of the Senate a report on the
7 record-keeping system created under subsection (a), in-
8 cluding the number of instances referred to in paragraph
9 (1).

10 **SEC. 13. AUTHORIZATION FOR INCREASED RESOURCES RE-**
11 **LATING TO FOREIGN INTELLIGENCE SUR-**
12 **VEILLANCE.**

13 (a) IN GENERAL.—There are authorized to be appro-
14 priated to the Department of Justice, for the activities of
15 the Office of the Inspector General and the appropriate
16 elements of the National Security Division, and to the Na-
17 tional Security Agency such sums as may be necessary to
18 meet the personnel and information technology demands
19 to ensure the timely and efficient processing of—

20 (1) applications and other submissions to the
21 court established under section 103(a) of the For-
22 eign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1803(a));

24 (2) the audit and reporting requirements
25 under—

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

2 (B) section 10; and

3 (3) the record-keeping system and reporting re-
4 quirements under section 11.

5 (b) ADDITIONAL PERSONNEL FOR PREPARATION
6 AND CONSIDERATION OF APPLICATIONS FOR ORDERS AP-
7 PROVING ELECTRONIC SURVEILLANCE AND PHYSICAL
8 SEARCH.—

9 (1) NATIONAL SECURITY DIVISION OF THE DE-
10 PARTMENT OF JUSTICE.—

11 (A) ADDITIONAL PERSONNEL.—The Na-
12 tional Security Division of the Department of
13 Justice is hereby authorized such additional
14 personnel as may be necessary to carry out the
15 prompt and timely preparation, modification,
16 and review of applications under Foreign Intel-
17 ligence Surveillance Act of 1978 for orders
18 under that Act for foreign intelligence purposes.

19 (B) ASSIGNMENT.—The Attorney General
20 shall assign personnel authorized by paragraph
21 (1) to and among appropriate offices of the in-
22 telligence community (as defined in section 3(4)
23 of the National Security Act of 1947 (50
24 U.S.C. 401a(4))) in order that such personnel
25 may directly assist personnel of the Intelligence

1 Community in preparing applications described
2 in that paragraph and conduct prompt and ef-
3 fective oversight of the activities of such agen-
4 cies under Foreign Intelligence Surveillance
5 Court orders.

6 (2) DIRECTOR OF NATIONAL INTELLIGENCE.—

7 (A) ADDITIONAL LEGAL AND OTHER PER-
8 SONNEL.—The Director of National Intelligence
9 is hereby authorized such additional legal and
10 other personnel as may be necessary to carry
11 out the prompt and timely preparation of appli-
12 cations under the Foreign Intelligence Surveil-
13 lance Act of 1978 for orders under that Act ap-
14 proving electronic surveillance for foreign intel-
15 ligence purposes.

16 (B) ASSIGNMENT.—The Director of Na-
17 tional Intelligence shall assign personnel au-
18 thorized by paragraph (1) to and among the in-
19 telligence community (as defined in section 3(4)
20 of the National Security Act of 1947 (50
21 U.S.C. 401a(4))), including the field offices of
22 the Federal Bureau of Investigation, in order
23 that such personnel may directly assist per-
24 sonnel of the intelligence community in pre-
25 paring applications described in that paragraph.

1 (3) ADDITIONAL LEGAL AND OTHER PER-
2 SONNEL FOR FOREIGN INTELLIGENCE SURVEIL-
3 LANCE COURT.—There is hereby authorized for the
4 court established under section 103(a) of the For-
5 eign Intelligence Surveillance Act of 1978 (50
6 U.S.C. 1803(a)) such additional staff personnel as
7 may be necessary to facilitate the prompt and timely
8 consideration by that court of applications under
9 such Act for orders under such Act approving elec-
10 tronic surveillance for foreign intelligence purposes.
11 Personnel authorized by this paragraph shall per-
12 form such duties relating to the consideration of
13 such applications as that court shall direct.

14 (4) SUPPLEMENT NOT SUPPLANT.—The per-
15 sonnel authorized by this section are in addition to
16 any other personnel authorized by law.

17 **SEC. 14. DOCUMENT MANAGEMENT SYSTEM FOR APPLICA-**
18 **TIONS FOR ORDERS APPROVING ELEC-**
19 **TRONIC SURVEILLANCE.**

20 (a) SYSTEM REQUIRED.—The Attorney General
21 shall, in consultation with the Director of National Intel-
22 ligence and the Foreign Intelligence Surveillance Court,
23 develop and implement a secure, classified document man-
24 agement system that permits the prompt preparation,
25 modification, and review by appropriate personnel of the

1 Department of Justice, the Federal Bureau of Investiga-
2 tion, the National Security Agency, and other applicable
3 elements of the United States Government of applications
4 under the Foreign Intelligence Surveillance Act of 1978
5 (50 U.S.C. 1804) before their submission to the Foreign
6 Intelligence Surveillance Court.

7 (b) SCOPE OF SYSTEM.—The document management
8 system required by subsection (a) shall—

9 (1) permit and facilitate the prompt submittal
10 of applications to the Foreign Intelligence Surveil-
11 lance Court under the Foreign Intelligence Surveil-
12 lance Act of 1978; and

13 (2) permit and facilitate the prompt transmittal
14 of rulings of the Foreign Intelligence Surveillance
15 Court to personnel submitting applications described
16 in paragraph (1), and provide for the secure elec-
17 tronic storage and retrieval of all such applications
18 and related matters with the court and for their se-
19 cure transmission to the National Archives and
20 Records Administration.

21 **SEC. 15. TRAINING OF INTELLIGENCE COMMUNITY PER-**
22 **SONNEL IN FOREIGN INTELLIGENCE COL-**
23 **LECTION MATTERS.**

24 The Director of National Intelligence shall, in con-
25 sultation with the Attorney General—

1 (1) develop regulations to establish procedures
2 for conducting and seeking approval of electronic
3 surveillance, physical search, and the installation
4 and use of pen registers and trap and trace devices
5 on an emergency basis, and for preparing and prop-
6 erly submitting and receiving applications and orders
7 under the Foreign Intelligence Surveillance Act of
8 1978; and

9 (2) prescribe related training on the Foreign
10 Intelligence Surveillance Act of 1978 and related
11 legal matters for the personnel of the applicable
12 agencies of the intelligence community (as defined in
13 section 3(4) of the National Security Act of 1947
14 (50 U.S.C. 401a(4))).

15 **SEC. 16. INFORMATION FOR CONGRESS ON THE TERRORIST**
16 **SURVEILLANCE PROGRAM AND SIMILAR PRO-**
17 **GRAMS.**

18 As soon as practicable after the date of the enactment
19 of this Act, but not later than seven days after such date,
20 the President shall fully inform each member of the Per-
21 manent Select Committee on Intelligence of the House of
22 Representatives and the Select Committee on Intelligence
23 of the Senate on the following:

24 (1) The Terrorist Surveillance Program of the
25 National Security Agency.

1 (2) Any program in existence from September
2 11, 2001, until the effective date of this Act that in-
3 volves, whether in part or in whole, the electronic
4 surveillance of United States persons in the United
5 States for foreign intelligence or other purposes, and
6 which is conducted by any department, agency, or
7 other element of the United States Government, or
8 by any entity at the direction of a department, agen-
9 cy, or other element of the United States Govern-
10 ment, without fully complying with the procedures
11 set forth in the Foreign Intelligence Surveillance Act
12 of 1978 (50 U.S.C. 1801 et seq.) or chapter 119,
13 121, or 206 of title 18, United States Code.

14 **SEC. 17. TECHNICAL AND CONFORMING AMENDMENTS.**

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

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

“Sec. 105B. Additional authorization of acquisitions of communications of non-
United States persons located outside the United States who
may be communicating with persons inside the United States.

“Sec. 105C. Emergency authorization of acquisitions of communications of non-
United States persons located outside the United States who
may be communicating with persons inside the United States.

“Sec. 105D. Oversight of acquisitions of communications of non-United States
persons located outside of the United States who may be com-
municating with persons inside the United States.

“Sec. 105E. Dissemination of communications of non-United States persons lo-
cated outside of the United States who may be communicating
with persons inside 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 OF 2007.—Sections 4 and 6 of the
9 Protect America Act of 2007 (Public Law 110–55) are
10 hereby repealed.

11 **SEC. 18. SUNSET; TRANSITION PROCEDURES.**

12 (a) SUNSET OF NEW PROVISIONS.—

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

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

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

23 (2) ACQUISITIONS AUTHORIZED PRIOR TO SUN-
24 SET.—Any authorization or order issued under sec-
25 tion 105B of the Foreign Intelligence Surveillance

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

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

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

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

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

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

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

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

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

22 (E) a description of any incidents of non-
23 compliance with an authorization under such
24 section, including incidents of non-compliance
25 by—

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

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

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

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

16 **SEC. 19. CERTIFICATION TO COMMUNICATIONS SERVICE**
17 **PROVIDERS THAT ACQUISITIONS ARE AU-**
18 **THORIZED UNDER FISA.**

19 (a) AUTHORIZATION UNDER SECTION 102.—Section
20 102(a) of the Foreign Intelligence Surveillance Act of
21 1978 (50 U.S.C. 1802(a)) is amended by striking “fur-
22 nishing such aid” and inserting “furnishing such aid and
23 shall provide such carrier with a certification stating that
24 the electronic surveillance is authorized under this section
25 and that all requirements of this section have been met”.

1 (b) AUTHORIZATION UNDER SECTION 105.—Section
2 105(c)(2) of such Act (50 U.S.C. 1805(c)(2)) is amend-
3 ed—

4 (1) in subparagraph (C), by striking “; and”
5 and inserting “;”;

6 (2) in subparagraph (D), by striking “aid.” and
7 inserting “aid; and”; and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(E) that the applicant provide such car-
11 rier, landlord, custodian, or other person with a
12 certification stating that the electronic surveil-
13 lance is authorized under this section and that
14 all requirements of this section have been
15 met.”.

16 **SEC. 20. STATUTE OF LIMITATIONS.**

17 (a) IN GENERAL.—Section 109 of the Foreign Intel-
18 ligence Surveillance Act of 1978 (50 U.S.C. 1809) is
19 amended by adding at the end the following new sub-
20 section:

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

1 (b) APPLICATION.—The amendment made by sub-
2 section (a) shall apply to any offense committed before the
3 date of the enactment of this Act if the statute of limita-
4 tions applicable to that offense has not run as of such
5 date.

6 **SEC. 21. NO RIGHTS UNDER THE RESTORE ACT FOR UN-**
7 **DOCUMENTED ALIENS.**

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

12 **SEC. 22. SURVEILLANCE TO PROTECT THE UNITED STATES.**

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

18 (1) prevent Osama Bin Laden, al Qaeda, or any
19 other terrorist or terrorist organization from attack-
20 ing the United States, any United States person, or
21 any ally of the United States;

22 (2) ensure the safety and security of members
23 of the United States Armed Forces or any other of-
24 ficer or employee of the Federal Government in-

110TH CONGRESS
1ST SESSION

H. R. 3773

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.

DECEMBER 3, 2007

Received; read twice and placed on the calendar