

110TH CONGRESS
2D SESSION

H. R. 6304

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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Foreign Intelligence Surveillance Act of 1978 Amend-
 4 ments Act of 2008” or the “FISA Amendments Act of
 5 2008”.

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

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

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

Sec. 109. Foreign Intelligence Surveillance Court.

Sec. 110. Weapons of mass destruction.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

Sec. 201. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.

Sec. 202. Technical amendments.

TITLE III—REVIEW OF PREVIOUS ACTIONS

Sec. 301. Review of previous actions.

TITLE IV—OTHER PROVISIONS

Sec. 401. Severability.

Sec. 402. Effective date.

Sec. 403. Repeals.

Sec. 404. 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 at the end the following:

9 **“TITLE VII—ADDITIONAL PROCE-**
10 **DURES REGARDING CERTAIN**
11 **PERSONS OUTSIDE THE**
12 **UNITED STATES**

13 **“SEC. 701. DEFINITIONS.**

14 “(a) IN GENERAL.—The terms ‘agent of a foreign
15 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
16 lance’, ‘foreign intelligence information’, ‘foreign power’,
17 ‘person’, ‘United States’, and ‘United States person’ have
18 the meanings given such terms in section 101, except as
19 specifically provided in this 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
25 of 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
5 Surveillance Court’ and ‘Court’ mean the court es-
6 tablished under 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
11 under section 103(b).

12 “(4) ELECTRONIC COMMUNICATION SERVICE
13 PROVIDER.—The term ‘electronic communication
14 service 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
22 service, as that term is defined in section 2711
23 of title 18, United States Code;

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

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

4 “(2) may not intentionally target a person rea-
5 sonably believed to be located outside the United
6 States if the purpose of such acquisition is to target
7 a particular, known person reasonably believed to be
8 in the United States;

9 “(3) may not intentionally target a United
10 States person reasonably believed to be located out-
11 side the United States;

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

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

19 “(c) CONDUCT OF ACQUISITION.—

20 “(1) IN GENERAL.—An acquisition authorized
21 under subsection (a) shall be conducted only in ac-
22 cordance with—

23 “(A) the targeting and minimization proce-
24 dures adopted in accordance with subsections
25 (d) and (e); and

1 “(B) upon submission of a certification in
2 accordance with subsection (g), such certifi-
3 cation.

4 “(2) DETERMINATION.—A determination under
5 this paragraph and for purposes of subsection (a) is
6 a determination by the Attorney General and the Di-
7 rector of National Intelligence that exigent cir-
8 cumstances exist because, without immediate imple-
9 mentation of an authorization under subsection (a),
10 intelligence important to the national security of the
11 United States may be lost or not timely acquired
12 and time does not permit the issuance of an order
13 pursuant to subsection (i)(3) prior to the implemen-
14 tation of such authorization.

15 “(3) TIMING OF DETERMINATION.—The Attor-
16 ney General and the Director of National Intel-
17 ligence may make the determination under para-
18 graph (2)—

19 “(A) before the submission of a certifi-
20 cation in accordance with subsection (g); or

21 “(B) by amending a certification pursuant
22 to subsection (i)(1)(C) at any time during
23 which judicial review under subsection (i) of
24 such certification is pending.

1 “(4) CONSTRUCTION.—Nothing in title I shall
2 be construed to require an application for a court
3 order under such title for an acquisition that is tar-
4 geted in accordance with this section at a person
5 reasonably believed to be located outside the United
6 States.

7 “(d) TARGETING PROCEDURES.—

8 “(1) REQUIREMENT TO ADOPT.—The Attorney
9 General, in consultation with the Director of Na-
10 tional Intelligence, shall adopt targeting procedures
11 that are reasonably designed to—

12 “(A) ensure that any acquisition author-
13 ized under subsection (a) is limited to targeting
14 persons reasonably believed to be located out-
15 side the United States; and

16 “(B) prevent the intentional acquisition of
17 any communication as to which the sender and
18 all intended recipients are known at the time of
19 the acquisition to be located in the United
20 States.

21 “(2) JUDICIAL REVIEW.—The procedures
22 adopted in accordance with paragraph (1) shall be
23 subject to judicial review pursuant to subsection (i).

24 “(e) MINIMIZATION PROCEDURES.—

1 “(1) REQUIREMENT TO ADOPT.—The Attorney
2 General, in consultation with the Director of Na-
3 tional Intelligence, shall adopt minimization proce-
4 dures that meet the definition of minimization proce-
5 dures under section 101(h) or 301(4), as appro-
6 priate, for acquisitions authorized under subsection
7 (a).

8 “(2) JUDICIAL REVIEW.—The minimization
9 procedures adopted in accordance with paragraph
10 (1) shall be subject to judicial review pursuant to
11 subsection (i).

12 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
13 TIONS.—

14 “(1) REQUIREMENT TO ADOPT.—The Attorney
15 General, in consultation with the Director of Na-
16 tional Intelligence, shall adopt guidelines to ensure—

17 “(A) compliance with the limitations in
18 subsection (b); and

19 “(B) that an application for a court order
20 is filed as required by this Act.

21 “(2) SUBMISSION OF GUIDELINES.—The Attor-
22 ney General shall provide the guidelines adopted in
23 accordance with paragraph (1) to—

24 “(A) the congressional intelligence commit-
25 tees;

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

4 “(C) the Foreign Intelligence Surveillance
5 Court.

6 “(g) CERTIFICATION.—

7 “(1) IN GENERAL.—

8 “(A) REQUIREMENT.—Subject to subpara-
9 graph (B), prior to the implementation of an
10 authorization under subsection (a), the Attor-
11 ney General and the Director of National Intel-
12 ligence shall provide to the Foreign Intelligence
13 Surveillance Court a written certification and
14 any supporting affidavit, under oath and under
15 seal, in accordance with this subsection.

16 “(B) EXCEPTION.—If the Attorney Gen-
17 eral and the Director of National Intelligence
18 make a determination under subsection (c)(2)
19 and time does not permit the submission of a
20 certification under this subsection prior to the
21 implementation of an authorization under sub-
22 section (a), the Attorney General and the Direc-
23 tor of National Intelligence shall submit to the
24 Court a certification for such authorization as

1 soon as practicable but in no event later than
2 7 days after such determination is made.

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

5 “(A) attest that—

6 “(i) there are procedures in place that
7 have been approved, have been submitted
8 for approval, or will be submitted with the
9 certification for approval by the Foreign
10 Intelligence Surveillance Court that are
11 reasonably designed to—

12 “(I) ensure that an acquisition
13 authorized under subsection (a) is
14 limited to targeting persons reason-
15 ably believed to be located outside the
16 United States; and

17 “(II) prevent the intentional ac-
18 quisition of any communication as to
19 which the sender and all intended re-
20 cipients are known at the time of the
21 acquisition to be located in the United
22 States;

23 “(ii) the minimization procedures to
24 be used with respect to such acquisition—

1 “(I) meet the definition of mini-
2 mization procedures under section
3 101(h) or 301(4), as appropriate; and

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

9 “(iii) guidelines have been adopted in
10 accordance with subsection (f) to ensure
11 compliance with the limitations in sub-
12 section (b) and to ensure that an applica-
13 tion for a court order is filed as required
14 by this Act;

15 “(iv) the procedures and guidelines re-
16 ferred to in clauses (i), (ii), and (iii) are
17 consistent with the requirements of the
18 fourth amendment to the Constitution of
19 the United States;

20 “(v) a significant purpose of the ac-
21 quisition is to obtain foreign intelligence
22 information;

23 “(vi) the acquisition involves obtaining
24 foreign intelligence information from or

1 with the assistance of an electronic com-
2 munication service provider; and

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

5 “(B) include the procedures adopted in ac-
6 cordance with subsections (d) and (e);

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

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

13 “(ii) the head of an element of the in-
14 telligence community;

15 “(D) include—

16 “(i) an effective date for the author-
17 ization that is at least 30 days after the
18 submission of the written certification to
19 the court; or

20 “(ii) if the acquisition has begun or
21 the effective date is less than 30 days after
22 the submission of the written certification
23 to the court, the date the acquisition began
24 or the effective date for the acquisition;
25 and

1 “(E) if the Attorney General and the Di-
2 rector of National Intelligence make a deter-
3 mination under subsection (c)(2), include a
4 statement that such determination has been
5 made.

6 “(3) CHANGE IN EFFECTIVE DATE.—The At-
7 torney General and the Director of National Intel-
8 ligence may advance or delay the effective date re-
9 ferred to in paragraph (2)(D) by submitting an
10 amended certification in accordance with subsection
11 (i)(1)(C) to the Foreign Intelligence Surveillance
12 Court for review pursuant to subsection (i).

13 “(4) LIMITATION.—A certification made under
14 this subsection is not required to identify the specific
15 facilities, places, premises, or property at which an
16 acquisition authorized under subsection (a) will be
17 directed or conducted.

18 “(5) MAINTENANCE OF CERTIFICATION.—The
19 Attorney General or a designee of the Attorney Gen-
20 eral shall maintain a copy of a certification made
21 under this subsection.

22 “(6) REVIEW.—A certification submitted in ac-
23 cordance with this subsection shall be subject to ju-
24 dicial review pursuant to subsection (i).

1 “(h) 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
10 necessary to accomplish the acquisition in a
11 manner that will protect the secrecy of the ac-
12 quisition and produce a minimum of inter-
13 ference with the services that such electronic
14 communication service provider is providing to
15 the target of the acquisition; and

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

22 “(2) COMPENSATION.—The Government shall
23 compensate, at the prevailing rate, an electronic
24 communication service provider for providing infor-

1 mation, facilities, or assistance in accordance with a
2 directive issued pursuant to paragraph (1).

3 “(3) RELEASE FROM LIABILITY.—No cause of
4 action shall lie in any court against any electronic
5 communication service provider for providing any in-
6 formation, facilities, or assistance in accordance with
7 a directive issued pursuant to paragraph (1).

8 “(4) CHALLENGING OF DIRECTIVES.—

9 “(A) AUTHORITY TO CHALLENGE.—An
10 electronic communication service provider re-
11 ceiving a directive issued pursuant to paragraph
12 (1) may file a petition to modify or set aside
13 such directive with the Foreign Intelligence
14 Surveillance Court, which shall have jurisdiction
15 to review such petition.

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

22 “(C) STANDARDS FOR REVIEW.—A judge
23 considering a petition filed under subparagraph
24 (A) may grant such petition only if the judge
25 finds that the directive does not meet the re-

1 requirements of this section, or is otherwise un-
2 lawful.

3 “(D) PROCEDURES FOR INITIAL RE-
4 VIEW.—A judge shall conduct an initial review
5 of a petition filed under subparagraph (A) not
6 later than 5 days after being assigned such pe-
7 tition. If the judge determines that such peti-
8 tion does not consist of claims, defenses, or
9 other legal contentions that are warranted by
10 existing law or by a nonfrivolous argument for
11 extending, modifying, or reversing existing law
12 or for establishing new law, the judge shall im-
13 mediately deny such petition and affirm the di-
14 rective or any part of the directive that is the
15 subject of such petition and order the recipient
16 to comply with the directive or any part of it.
17 Upon making a determination under this sub-
18 paragraph or promptly thereafter, the judge
19 shall provide a written statement for the record
20 of the reasons for such determination.

21 “(E) PROCEDURES FOR PLENARY RE-
22 VIEW.—If a judge determines that a petition
23 filed under subparagraph (A) requires plenary
24 review, the judge shall affirm, modify, or set
25 aside the directive that is the subject of such

1 petition not later than 30 days after being as-
2 signed such petition. If the judge does not set
3 aside the directive, the judge shall immediately
4 affirm or affirm with modifications the direc-
5 tive, and order the recipient to comply with the
6 directive in its entirety or as modified. The
7 judge shall provide a written statement for the
8 record of the reasons for a determination under
9 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 issued under this paragraph may
15 be punished by the Court as contempt of court.

16 “(5) ENFORCEMENT OF DIRECTIVES.—

17 “(A) ORDER TO COMPEL.—If an electronic
18 communication service provider fails to comply
19 with a directive issued pursuant to paragraph
20 (1), the Attorney General may file a petition for
21 an order to compel the electronic communica-
22 tion service provider to comply with the direc-
23 tive with the Foreign Intelligence Surveillance
24 Court, which shall have jurisdiction to review
25 such petition.

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

7 “(C) PROCEDURES FOR REVIEW.—A judge
8 considering a petition filed under subparagraph
9 (A) shall, not later than 30 days after being as-
10 signed such petition, issue an order requiring
11 the electronic communication service provider to
12 comply with the directive or any part of it, as
13 issued or as modified, if the judge finds that
14 the directive meets the requirements of this sec-
15 tion and is otherwise lawful. The judge shall
16 provide a written statement for the record of
17 the reasons for a determination under this
18 paragraph.

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

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

1 “(6) APPEAL.—

2 “(A) APPEAL TO THE COURT OF RE-
3 VIEW.—The Government or an electronic com-
4 munication service provider receiving a directive
5 issued pursuant to paragraph (1) may file a pe-
6 tition with the Foreign Intelligence Surveillance
7 Court of Review for review of a decision issued
8 pursuant to paragraph (4) or (5). The Court of
9 Review shall have jurisdiction to consider such
10 petition and shall provide a written statement
11 for the record of the reasons for a decision
12 under this subparagraph.

13 “(B) CERTIORARI TO THE SUPREME
14 COURT.—The Government or an electronic com-
15 munication service provider receiving a directive
16 issued pursuant to paragraph (1) may file a pe-
17 tition for a writ of certiorari for review of a de-
18 cision of the Court of Review issued under sub-
19 paragraph (A). The record for such review shall
20 be transmitted under seal to the Supreme Court
21 of the United States, which shall have jurisdic-
22 tion to review such decision.

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

25 “(1) IN GENERAL.—

1 “(A) REVIEW BY THE FOREIGN INTEL-
2 LIGENCE SURVEILLANCE COURT.—The Foreign
3 Intelligence Surveillance Court shall have juris-
4 diction to review a certification submitted in ac-
5 cordance with subsection (g) and the targeting
6 and minimization procedures adopted in accord-
7 ance with subsections (d) and (e), and amend-
8 ments to such certification or such procedures.

9 “(B) TIME PERIOD FOR REVIEW.—The
10 Court shall review a certification submitted in
11 accordance with subsection (g) and the tar-
12 geting and minimization procedures adopted in
13 accordance with subsections (d) and (e) and
14 shall complete such review and issue an order
15 under paragraph (3) not later than 30 days
16 after the date on which such certification and
17 such procedures are submitted.

18 “(C) AMENDMENTS.—The Attorney Gen-
19 eral and the Director of National Intelligence
20 may amend a certification submitted in accord-
21 ance with subsection (g) or the targeting and
22 minimization procedures adopted in accordance
23 with subsections (d) and (e) as necessary at any
24 time, including if the Court is conducting or
25 has completed review of such certification or

1 such procedures, and shall submit the amended
2 certification or amended procedures to the
3 Court not later than 7 days after amending
4 such certification or such procedures. The
5 Court shall review any amendment under this
6 subparagraph under the procedures set forth in
7 this subsection. The Attorney General and the
8 Director of National Intelligence may authorize
9 the use of an amended certification or amended
10 procedures pending the Court’s review of such
11 amended certification or amended procedures.

12 “(2) REVIEW.—The Court shall review the fol-
13 lowing:

14 “(A) CERTIFICATION.—A certification sub-
15 mitted in accordance with subsection (g) to de-
16 termine whether the certification contains all
17 the required elements.

18 “(B) TARGETING PROCEDURES.—The tar-
19 geting procedures adopted in accordance with
20 subsection (d) to assess whether the procedures
21 are reasonably designed to—

22 “(i) ensure that an acquisition author-
23 ized under subsection (a) is limited to tar-
24 geting persons reasonably believed to be lo-
25 cated outside the United States; and

1 “(ii) prevent the intentional acquisi-
2 tion of any communication as to which the
3 sender and all intended recipients are
4 known at the time of the acquisition to be
5 located in the United States.

6 “(C) MINIMIZATION PROCEDURES.—The
7 minimization procedures adopted in accordance
8 with subsection (e) to assess whether such pro-
9 cedures meet the definition of minimization pro-
10 cedures under section 101(h) or section 301(4),
11 as appropriate.

12 “(3) ORDERS.—

13 “(A) APPROVAL.—If the Court finds that
14 a certification submitted in accordance with
15 subsection (g) contains all the required ele-
16 ments and that the targeting and minimization
17 procedures adopted in accordance with sub-
18 sections (d) and (e) are consistent with the re-
19 quirements of those subsections and with the
20 fourth amendment to the Constitution of the
21 United States, the Court shall enter an order
22 approving the certification and the use, or con-
23 tinued use in the case of an acquisition author-
24 ized pursuant to a determination under sub-

1 section (c)(2), of the procedures for the acqui-
2 sion.

3 “(B) CORRECTION OF DEFICIENCIES.—If
4 the Court finds that a certification submitted in
5 accordance with subsection (g) does not contain
6 all the required elements, or that the proce-
7 dures adopted in accordance with subsections
8 (d) and (e) are not consistent with the require-
9 ments of those subsections or the fourth
10 amendment to the Constitution of the United
11 States, the Court shall issue an order directing
12 the Government to, at the Government’s elec-
13 tion and to the extent required by the Court’s
14 order—

15 “(i) correct any deficiency identified
16 by the Court’s order not later than 30 days
17 after the date on which the Court issues
18 the order; or

19 “(ii) cease, or not begin, the imple-
20 mentation of the authorization for which
21 such certification was submitted.

22 “(C) REQUIREMENT FOR WRITTEN STATE-
23 MENT.—In support of an order under this sub-
24 section, the Court shall provide, simultaneously

1 with the order, for the record a written state-
2 ment of the reasons for the order.

3 “(4) APPEAL.—

4 “(A) APPEAL TO THE COURT OF RE-
5 VIEW.—The Government may file a petition
6 with the Foreign Intelligence Surveillance Court
7 of Review for review of an order under this sub-
8 section. The Court of Review shall have juris-
9 diction to consider such petition. For any deci-
10 sion under this subparagraph affirming, revers-
11 ing, or modifying an order of the Foreign Intel-
12 ligence Surveillance Court, the Court of Review
13 shall provide for the record a written statement
14 of the reasons for the decision.

15 “(B) CONTINUATION OF ACQUISITION
16 PENDING REHEARING OR APPEAL.—Any acqui-
17 sition affected by an order under paragraph
18 (3)(B) may continue—

19 “(i) during the pendency of any re-
20 hearing of the order by the Court en banc;
21 and

22 “(ii) if the Government files a petition
23 for review of an order under this section,
24 until the Court of Review enters an order
25 under subparagraph (C).

1 “(C) IMPLEMENTATION PENDING AP-
2 PEAL.—Not later than 60 days after the filing
3 of a petition for review of an order under para-
4 graph (3)(B) directing the correction of a defi-
5 ciency, the Court of Review shall determine,
6 and enter a corresponding order regarding,
7 whether all or any part of the correction order,
8 as issued or modified, shall be implemented
9 during the pendency of the review.

10 “(D) CERTIORARI TO THE SUPREME
11 COURT.—The Government may file a petition
12 for a writ of certiorari for review of a decision
13 of the Court of Review issued under subpara-
14 graph (A). The record for such review shall be
15 transmitted under seal to the Supreme Court of
16 the United States, which shall have jurisdiction
17 to review such decision.

18 “(5) SCHEDULE.—

19 “(A) REAUTHORIZATION OF AUTHORIZA-
20 TIONS IN EFFECT.—If the Attorney General
21 and the Director of National Intelligence seek
22 to reauthorize or replace an authorization
23 issued under subsection (a), the Attorney Gen-
24 eral and the Director of National Intelligence
25 shall, to the extent practicable, submit to the

1 Court the certification prepared in accordance
2 with subsection (g) and the procedures adopted
3 in accordance with subsections (d) and (e) at
4 least 30 days prior to the expiration of such au-
5 thorization.

6 “(B) REAUTHORIZATION OF ORDERS, AU-
7 THORIZATIONS, AND DIRECTIVES.—If the At-
8 torney General and the Director of National In-
9 telligence seek to reauthorize or replace an au-
10 thorization issued under subsection (a) by filing
11 a certification pursuant to subparagraph (A),
12 that authorization, and any directives issued
13 thereunder and any order related thereto, shall
14 remain in effect, notwithstanding the expiration
15 provided for in subsection (a), until the Court
16 issues an order with respect to such certifi-
17 cation under paragraph (3) at which time the
18 provisions of that paragraph and paragraph (4)
19 shall apply with respect to such certification.

20 “(j) JUDICIAL PROCEEDINGS.—

21 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Ju-
22 dicial proceedings under this section shall be con-
23 ducted as expeditiously as possible.

24 “(2) TIME LIMITS.—A time limit for a judicial
25 decision in this section shall apply unless the Court,

1 the Court of Review, or any judge of either the
2 Court or the Court of Review, by order for reasons
3 stated, extends that time as necessary for good
4 cause in a manner consistent with national security.

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

7 “(1) STANDARDS.—The Foreign Intelligence
8 Surveillance Court shall maintain a record of a pro-
9 ceeding under this section, including petitions, ap-
10 peals, orders, and statements of reasons for a deci-
11 sion, under security measures adopted by the Chief
12 Justice of the United States, in consultation with
13 the Attorney General and the Director of National
14 Intelligence.

15 “(2) FILING AND REVIEW.—All petitions under
16 this section shall be filed under seal. In any pro-
17 ceedings under this section, the Court shall, upon re-
18 quest of the Government, review ex parte and in
19 camera any Government submission, or portions of
20 a submission, which may include classified informa-
21 tion.

22 “(3) RETENTION OF RECORDS.—The Attorney
23 General and the Director of National Intelligence
24 shall retain a directive or an order issued under this
25 section for a period of not less than 10 years from

1 the date on which such directive or such order is
2 issued.

3 “(1) ASSESSMENTS AND REVIEWS.—

4 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
5 quently than once every 6 months, the Attorney
6 General and Director of National Intelligence shall
7 assess compliance with the targeting and minimiza-
8 tion procedures adopted in accordance with sub-
9 sections (d) and (e) and the guidelines adopted in
10 accordance with subsection (f) and shall submit each
11 assessment to—

12 “(A) the Foreign Intelligence Surveillance
13 Court; and

14 “(B) consistent with the Rules of the
15 House of Representatives, the Standing Rules
16 of the Senate, and Senate Resolution 400 of the
17 94th Congress or any successor Senate resolu-
18 tion—

19 “(i) the congressional intelligence
20 committees; and

21 “(ii) the Committees on the Judiciary
22 of the House of Representatives and the
23 Senate.

24 “(2) AGENCY ASSESSMENT.—The Inspector
25 General of the Department of Justice and the In-

1 spector General of each element of the intelligence
2 community authorized to acquire foreign intelligence
3 information under subsection (a), with respect to the
4 department or element of such Inspector General—

5 “(A) are authorized to review compliance
6 with the targeting and minimization procedures
7 adopted in accordance with subsections (d) and
8 (e) and the guidelines adopted in accordance
9 with subsection (f);

10 “(B) with respect to acquisitions author-
11 ized under subsection (a), shall review the num-
12 ber of disseminated intelligence reports con-
13 taining a reference to a United States-person
14 identity and the number of United States-per-
15 son identities subsequently disseminated by the
16 element concerned in response to requests for
17 identities that were not referred to by name or
18 title in the original reporting;

19 “(C) with respect to acquisitions author-
20 ized under subsection (a), shall review the num-
21 ber of targets that were later determined to be
22 located in the United States and, to the extent
23 possible, whether communications of such tar-
24 gets were reviewed; and

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

1 “(i) the Attorney General;

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

4 “(iii) consistent with the Rules of the
5 House of Representatives, the Standing
6 Rules of the Senate, and Senate Resolution
7 400 of the 94th Congress or any successor
8 Senate resolution—

9 “(I) the congressional intelligence
10 committees; and

11 “(II) the Committees on the Ju-
12 diciary of the House of Representa-
13 tives and the Senate.

14 “(3) ANNUAL REVIEW.—

15 “(A) REQUIREMENT TO CONDUCT.—The
16 head of each element of the intelligence commu-
17 nity conducting an acquisition authorized under
18 subsection (a) shall conduct an annual review to
19 determine whether there is reason to believe
20 that foreign intelligence information has been
21 or will be obtained from the acquisition. The
22 annual review shall provide, with respect to ac-
23 quisitions authorized under subsection (a)—

24 “(i) an accounting of the number of
25 disseminated intelligence reports con-

1 taining a reference to a United States-per-
2 son identity;

3 “(ii) an accounting of the number of
4 United States-person identities subse-
5 quently disseminated by that element in re-
6 sponse to requests for identities that were
7 not referred to by name or title in the
8 original reporting;

9 “(iii) the number of targets that were
10 later determined to be located in the
11 United States and, to the extent possible,
12 whether communications of such targets
13 were reviewed; and

14 “(iv) a description of any procedures
15 developed by the head of such element of
16 the intelligence community and approved
17 by the Director of National Intelligence to
18 assess, in a manner consistent with na-
19 tional security, operational requirements
20 and the privacy interests of United States
21 persons, the extent to which the acquisi-
22 tions authorized under subsection (a) ac-
23 quire the communications of United States
24 persons, and the results of any such as-
25 sessment.

1 “(B) USE OF REVIEW.—The head of each
2 element of the intelligence community that con-
3 ducts an annual review under subparagraph (A)
4 shall use each such review to evaluate the ade-
5 quacy of the minimization procedures utilized
6 by such element and, as appropriate, the appli-
7 cation of the minimization procedures to a par-
8 ticular acquisition authorized under subsection
9 (a).

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

14 “(i) the Foreign Intelligence Surveil-
15 lance Court;

16 “(ii) the Attorney General;

17 “(iii) the Director of National Intel-
18 ligence; and

19 “(iv) consistent with the Rules of the
20 House of Representatives, the Standing
21 Rules of the Senate, and Senate Resolution
22 400 of the 94th Congress or any successor
23 Senate resolution—

24 “(I) the congressional intelligence
25 committees; and

1 “(II) the Committees on the Ju-
2 diciary of the House of Representa-
3 tives and the Senate.

4 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**
5 **STATES TARGETING UNITED STATES PER-**
6 **SONS OUTSIDE THE UNITED STATES.**

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

9 “(1) IN GENERAL.—The Foreign Intelligence
10 Surveillance Court shall have jurisdiction to review
11 an application and to enter an order approving the
12 targeting of a United States person reasonably be-
13 lieved to be located outside the United States to ac-
14 quire foreign intelligence information, if the acquisi-
15 tion constitutes electronic surveillance or the acquisi-
16 tion of stored electronic communications or stored
17 electronic data that requires an order under this
18 Act, and such acquisition is conducted within the
19 United States.

20 “(2) LIMITATION.—If a United States person
21 targeted under this subsection is reasonably believed
22 to be located in the United States during the effec-
23 tive period of an order issued pursuant to subsection
24 (c), an acquisition targeting such United States per-
25 son under this section shall cease unless the targeted

1 United States person is again reasonably believed to
2 be located outside the United States while an order
3 issued pursuant to subsection (c) is in effect. Noth-
4 ing in this section shall be construed to limit the au-
5 thority of the Government to seek an order or au-
6 thorization under, or otherwise engage in any activ-
7 ity that is authorized under, any other title of this
8 Act.

9 “(b) APPLICATION.—

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

19 “(A) the identity of the Federal officer
20 making the application;

21 “(B) the identity, if known, or a descrip-
22 tion of the United States person who is the tar-
23 get of the acquisition;

24 “(C) a statement of the facts and cir-
25 cumstances relied upon to justify the appli-

1 cant’s belief that the United States person who
2 is the target of the acquisition is—

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

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

8 “(D) a statement of proposed minimization
9 procedures that meet the definition of mini-
10 mization procedures under section 101(h) or
11 301(4), as appropriate;

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

15 “(F) a certification made by the Attorney
16 General or an official specified in section
17 104(a)(6) that—

18 “(i) the certifying official deems the
19 information sought to be foreign intel-
20 ligence information;

21 “(ii) a significant purpose of the ac-
22 quisition is to obtain foreign intelligence
23 information;

1 “(iii) such information cannot reason-
2 ably be obtained by normal investigative
3 techniques;

4 “(iv) designates the type of foreign in-
5 telligence information being sought accord-
6 ing to the categories described in section
7 101(e); and

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

10 “(I) the information sought is
11 the type of foreign intelligence infor-
12 mation designated; and

13 “(II) such information cannot
14 reasonably be obtained by normal in-
15 vestigative techniques;

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

20 “(H) the identity of any electronic commu-
21 nication service provider necessary to effect the
22 acquisition, provided that the application is not
23 required to identify the specific facilities, places,
24 premises, or property at which the acquisition

1 authorized under this section will be directed or
2 conducted;

3 “(I) a statement of the facts concerning
4 any previous applications that have been made
5 to any judge of the Foreign Intelligence Surveil-
6 lance Court involving the United States person
7 specified in the application and the action taken
8 on each previous application; and

9 “(J) a statement of the period of time for
10 which the acquisition is required to be main-
11 tained, provided that such period of time shall
12 not exceed 90 days per application.

13 “(2) OTHER REQUIREMENTS OF THE ATTOR-
14 NEY GENERAL.—The Attorney General may require
15 any other affidavit or certification from any other
16 officer in connection with the application.

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

21 “(c) ORDER.—

22 “(1) FINDINGS.—Upon an application made
23 pursuant to subsection (b), the Foreign Intelligence
24 Surveillance Court shall enter an ex parte order as

1 requested or as modified by the Court approving the
2 acquisition if the Court finds that—

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

6 “(B) on the basis of the facts submitted by
7 the applicant, for the United States person who
8 is the target of the acquisition, there is prob-
9 able cause to believe that the target is—

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

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

15 “(C) the proposed minimization procedures
16 meet the definition of minimization procedures
17 under section 101(h) or 301(4), as appropriate;
18 and

19 “(D) the application that has been filed
20 contains all statements and certifications re-
21 quired by subsection (b) and the certification or
22 certifications are not clearly erroneous on the
23 basis of the statement made under subsection
24 (b)(1)(F)(v) and any other information fur-
25 nished under subsection (b)(3).

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

12 “(3) REVIEW.—

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

17 “(B) REVIEW OF PROBABLE CAUSE.—If
18 the judge determines that the facts submitted
19 under subsection (b) are insufficient to estab-
20 lish probable cause under paragraph (1)(B), the
21 judge shall enter an order so stating and pro-
22 vide a written statement for the record of the
23 reasons for the determination. The Government
24 may appeal an order under this subparagraph
25 pursuant to subsection (f).

1 “(C) REVIEW OF MINIMIZATION PROCE-
2 DURES.—If the judge determines that the pro-
3 posed minimization procedures referred to in
4 paragraph (1)(C) do not meet the definition of
5 minimization procedures under section 101(h)
6 or 301(4), as appropriate, the judge shall enter
7 an order so stating and provide a written state-
8 ment for the record of the reasons for the de-
9 termination. The Government may appeal an
10 order under this subparagraph pursuant to sub-
11 section (f).

12 “(D) REVIEW OF CERTIFICATION.—If the
13 judge determines that an application pursuant
14 to subsection (b) does not contain all of the re-
15 quired elements, or that the certification or cer-
16 tifications are clearly erroneous on the basis of
17 the statement made under subsection
18 (b)(1)(F)(v) and any other information fur-
19 nished under subsection (b)(3), the judge shall
20 enter an order so stating and provide a written
21 statement for the record of the reasons for the
22 determination. The Government may appeal an
23 order under this subparagraph pursuant to sub-
24 section (f).

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

3 “(A) the identity, if known, or a descrip-
4 tion of the United States person who is the tar-
5 get of the acquisition identified or described in
6 the application pursuant to subsection
7 (b)(1)(B);

8 “(B) if provided in the application pursu-
9 ant to subsection (b)(1)(H), the nature and lo-
10 cation of each of the facilities or places at
11 which the acquisition will be directed;

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

15 “(D) a summary of the means by which
16 the acquisition will be conducted and whether
17 physical entry is required to effect the acquisi-
18 tion; and

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

21 “(5) DIRECTIVES.—An order approving an ac-
22 quisition under this subsection shall direct—

23 “(A) that the minimization procedures re-
24 ferred to in paragraph (1)(C), as approved or
25 modified by the Court, be followed;

1 “(B) if applicable, an electronic commu-
2 nication service provider to provide to the Gov-
3 ernment forthwith all information, facilities, or
4 assistance necessary to accomplish the acquisi-
5 tion authorized under such order in a manner
6 that will protect the secrecy of the acquisition
7 and produce a minimum of interference with
8 the services that such electronic communication
9 service provider is providing to the target of the
10 acquisition;

11 “(C) if applicable, an electronic commu-
12 nication service provider to maintain under se-
13 curity procedures approved by the Attorney
14 General any records concerning the acquisition
15 or the aid furnished that such electronic com-
16 munication service provider wishes to maintain;
17 and

18 “(D) if applicable, that the Government
19 compensate, at the prevailing rate, such elec-
20 tronic communication service provider for pro-
21 viding such information, facilities, or assistance.

22 “(6) DURATION.—An order approved under this
23 subsection shall be effective for a period not to ex-
24 ceed 90 days and such order may be renewed for ad-
25 ditional 90-day periods upon submission of renewal

1 applications meeting the requirements of subsection
2 (b).

3 “(7) COMPLIANCE.—At or prior to the end of
4 the period of time for which an acquisition is ap-
5 proved by an order or extension under this section,
6 the judge may assess compliance with the minimiza-
7 tion procedures referred to in paragraph (1)(C) by
8 reviewing the circumstances under which informa-
9 tion concerning United States persons was acquired,
10 retained, or disseminated.

11 “(d) EMERGENCY AUTHORIZATION.—

12 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
13 TION.—Notwithstanding any other provision of this
14 Act, if the Attorney General reasonably determines
15 that—

16 “(A) an emergency situation exists with re-
17 spect to the acquisition of foreign intelligence
18 information for which an order may be obtained
19 under subsection (c) before an order author-
20 izing such acquisition can with due diligence be
21 obtained, and

22 “(B) the factual basis for issuance of an
23 order under this subsection to approve such ac-
24 quisition exists,

1 the Attorney General may authorize such acquisition
2 if a judge having jurisdiction under subsection (a)(1)
3 is informed by the Attorney General, or a designee
4 of the Attorney General, at the time of such author-
5 ization that the decision has been made to conduct
6 such acquisition and if an application in accordance
7 with this section is made to a judge of the Foreign
8 Intelligence Surveillance Court as soon as prac-
9 ticable, but not more than 7 days after the Attorney
10 General authorizes such acquisition.

11 “(2) MINIMIZATION PROCEDURES.—If the At-
12 torney General authorizes an acquisition under para-
13 graph (1), the Attorney General shall require that
14 the minimization procedures referred to in sub-
15 section (c)(1)(C) for the issuance of a judicial order
16 be followed.

17 “(3) TERMINATION OF EMERGENCY AUTHOR-
18 IZATION.—In the absence of a judicial order approv-
19 ing an acquisition under paragraph (1), such acqui-
20 sition shall terminate when the information sought is
21 obtained, when the application for the order is de-
22 nied, or after the expiration of 7 days from the time
23 of authorization by the Attorney General, whichever
24 is earliest.

1 “(4) USE OF INFORMATION.—If an application
2 for approval submitted pursuant to paragraph (1) is
3 denied, or in any other case where the acquisition is
4 terminated and no order is issued approving the ac-
5 quisition, no information obtained or evidence de-
6 rived from such acquisition, except under cir-
7 cumstances in which the target of the acquisition is
8 determined not to be a United States person, shall
9 be received in evidence or otherwise disclosed in any
10 trial, hearing, or other proceeding in or before any
11 court, grand jury, department, office, agency, regu-
12 latory body, legislative committee, or other authority
13 of the United States, a State, or political subdivision
14 thereof, and no information concerning any United
15 States person acquired from such acquisition shall
16 subsequently be used or disclosed in any other man-
17 ner by Federal officers or employees without the
18 consent of such person, except with the approval of
19 the Attorney General if the information indicates a
20 threat of death or serious bodily harm to any per-
21 son.

22 “(e) RELEASE FROM LIABILITY.—No cause of action
23 shall lie in any court against any electronic communication
24 service provider for providing any information, facilities,
25 or assistance in accordance with an order or request for

1 emergency assistance issued pursuant to subsection (c) or
2 (d), respectively.

3 “(f) APPEAL.—

4 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
5 SURVEILLANCE COURT OF REVIEW.—The Govern-
6 ment may file a petition with the Foreign Intel-
7 ligence Surveillance Court of Review for review of an
8 order issued pursuant to subsection (c). The Court
9 of Review shall have jurisdiction to consider such pe-
10 tition and shall provide a written statement for the
11 record of the reasons for a decision under this para-
12 graph.

13 “(2) CERTIORARI TO THE SUPREME COURT.—

14 The Government may file a petition for a writ of
15 certiorari for review of a decision of the Court of Re-
16 view issued under paragraph (1). The record for
17 such review shall be transmitted under seal to the
18 Supreme Court of the United States, which shall
19 have jurisdiction to review such decision.

20 “(g) CONSTRUCTION.—Except as provided in this
21 section, nothing in this Act shall be construed to require
22 an application for a court order for an acquisition that
23 is targeted in accordance with this section at a United
24 States person reasonably believed to be located outside the
25 United States.

1 **“SEC. 704. 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
9 community may intentionally target, for the purpose
10 of acquiring foreign intelligence information, a
11 United States person reasonably believed to be lo-
12 cated outside the United States under circumstances
13 in which the targeted United States person has a
14 reasonable expectation of privacy and a warrant
15 would be required if the acquisition were conducted
16 inside the United States for law enforcement pur-
17 poses, unless a judge of the Foreign Intelligence
18 Surveillance Court has entered an order with respect
19 to such targeted United States person or the Attor-
20 ney General has authorized an emergency acquisition
21 pursuant to subsection (c) or (d), respectively, or
22 any other provision of this Act.

23 “(3) LIMITATIONS.—

24 “(A) MOVING OR MISIDENTIFIED TAR-
25 GETS.—If a United States person targeted
26 under this subsection is reasonably believed to

1 be located in the United States during the ef-
2 fective period of an order issued pursuant to
3 subsection (c), an acquisition targeting such
4 United States person under this section shall
5 cease unless the targeted United States person
6 is again reasonably believed to be located out-
7 side the United States during the effective pe-
8 riod of such order.

9 “(B) APPLICABILITY.—If an acquisition
10 for foreign intelligence purposes is to be con-
11 ducted inside the United States and could be
12 authorized under section 703, the acquisition
13 may only be conducted if authorized under sec-
14 tion 703 or in accordance with another provi-
15 sion of this Act other than this section.

16 “(C) CONSTRUCTION.—Nothing in this
17 paragraph shall be construed to limit the au-
18 thority of the Government to seek an order or
19 authorization under, or otherwise engage in any
20 activity that is authorized under, any other title
21 of this Act.

22 “(b) APPLICATION.—Each application for an order
23 under this section shall be made by a Federal officer in
24 writing upon oath or affirmation to a judge having juris-
25 diction under subsection (a)(1). Each application shall re-

1 require the approval of the Attorney General based upon the
2 Attorney General’s finding that it satisfies the criteria and
3 requirements of such application as set forth in this sec-
4 tion and shall include—

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

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

10 “(3) a statement of the facts and circumstances
11 relied upon to justify the applicant’s belief that the
12 United States person who is the target of the acqui-
13 sition is—

14 “(A) a person reasonably believed to be lo-
15 cated outside the United States; and

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

19 “(4) a statement of proposed minimization pro-
20 cedures that meet the definition of minimization pro-
21 cedures under section 101(h) or 301(4), as appro-
22 priate;

23 “(5) a certification made by the Attorney Gen-
24 eral, an official specified in section 104(a)(6), or the

1 head of an element of the intelligence community
2 that—

3 “(A) the certifying official deems the infor-
4 mation sought to be foreign intelligence infor-
5 mation; and

6 “(B) a significant purpose of the acquisi-
7 tion is to obtain foreign intelligence informa-
8 tion;

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

15 “(7) a statement of the period of time for which
16 the acquisition is required to be maintained, pro-
17 vided that such period of time shall not exceed 90
18 days per application.

19 “(c) ORDER.—

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

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

4 “(B) on the basis of the facts submitted by
5 the applicant, for the United States person who
6 is the target of the acquisition, there is prob-
7 able cause to believe that the target is—

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

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

13 “(C) the proposed minimization proce-
14 dures, with respect to their dissemination provi-
15 sions, meet the definition of minimization pro-
16 cedures under section 101(h) or 301(4), as ap-
17 propriate; and

18 “(D) the application that has been filed
19 contains all statements and certifications re-
20 quired by subsection (b) and the certification
21 provided under subsection (b)(5) is not clearly
22 erroneous on the basis of the information fur-
23 nished under subsection (b).

24 “(2) PROBABLE CAUSE.—In determining
25 whether or not probable cause exists for purposes of

1 paragraph (1)(B), a judge having jurisdiction under
2 subsection (a)(1) may consider past activities of the
3 target and facts and circumstances relating to cur-
4 rent or future activities of the target. No United
5 States person may be considered a foreign power,
6 agent of a foreign power, or officer or employee of
7 a foreign power solely upon the basis of activities
8 protected by the first amendment to the Constitution
9 of the United States.

10 “(3) REVIEW.—

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

18 “(B) REVIEW OF PROBABLE CAUSE.—If
19 the judge determines that the facts submitted
20 under subsection (b) are insufficient to estab-
21 lish probable cause to issue an order under this
22 subsection, the judge shall enter an order so
23 stating and provide a written statement for the
24 record of the reasons for such determination.

1 The Government may appeal an order under
2 this subparagraph pursuant to subsection (e).

3 “(C) REVIEW OF MINIMIZATION PROCE-
4 DURES.—If the judge determines that the mini-
5 mization procedures applicable to dissemination
6 of information obtained through an acquisition
7 under this subsection do not meet the definition
8 of minimization procedures under section
9 101(h) or 301(4), as appropriate, the judge
10 shall enter an order so stating and provide a
11 written statement for the record of the reasons
12 for such determination. The Government may
13 appeal an order under this subparagraph pursu-
14 ant to subsection (e).

15 “(D) SCOPE OF REVIEW OF CERTIFI-
16 CATION.—If the judge determines that an appli-
17 cation under subsection (b) does not contain all
18 the required elements, or that the certification
19 provided under subsection (b)(5) is clearly erro-
20 neous on the basis of the information furnished
21 under subsection (b), the judge shall enter an
22 order so stating and provide a written state-
23 ment for the record of the reasons for such de-
24 termination. The Government may appeal an

1 order under this subparagraph pursuant to sub-
2 section (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
9 the period of time for which an order or extension
10 is granted under this section, the judge may assess
11 compliance with the minimization procedures re-
12 ferred to in paragraph (1)(C) by reviewing the cir-
13 cumstances under which information concerning
14 United States persons was disseminated, provided
15 that the judge may not inquire into the cir-
16 cumstances relating to the conduct of the acquisi-
17 tion.

18 “(d) EMERGENCY AUTHORIZATION.—

19 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
20 TION.—Notwithstanding any other provision of this
21 section, if the Attorney General reasonably deter-
22 mines that—

23 “(A) an emergency situation exists with re-
24 spect to the acquisition of foreign intelligence
25 information for which an order may be obtained

1 under subsection (c) before an order under that
2 subsection can, with due diligence, be obtained,
3 and

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

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

16 “(2) MINIMIZATION PROCEDURES.—If the At-
17 torney General authorizes an emergency acquisition
18 under paragraph (1), the Attorney General shall re-
19 quire that the minimization procedures referred to in
20 subsection (c)(1)(C) be followed.

21 “(3) TERMINATION OF EMERGENCY AUTHOR-
22 IZATION.—In the absence of an order under sub-
23 section (c), an emergency acquisition under para-
24 graph (1) shall terminate when the information
25 sought is obtained, if the application for the order

1 is denied, or after the expiration of 7 days from the
2 time of authorization by the Attorney General,
3 whichever is earliest.

4 “(4) USE OF INFORMATION.—If an application
5 submitted to the Court pursuant to paragraph (1) is
6 denied, or in any other case where the acquisition is
7 terminated and no order with respect to the target
8 of the acquisition is issued under subsection (e), no
9 information obtained or evidence derived from such
10 acquisition, except under circumstances in which the
11 target of the acquisition is determined not to be a
12 United States person, shall be received in evidence
13 or otherwise disclosed in any trial, hearing, or other
14 proceeding in or before any court, grand jury, de-
15 partment, office, agency, regulatory body, legislative
16 committee, or other authority of the United States,
17 a State, or political subdivision thereof, and no in-
18 formation concerning any United States person ac-
19 quired from such acquisition shall subsequently be
20 used or disclosed in any other manner by Federal of-
21 ficers or employees without the consent of such per-
22 son, except with the approval of the Attorney Gen-
23 eral if the information indicates a threat of death or
24 serious bodily harm to any person.

25 “(e) APPEAL.—

1 “(1) APPEAL TO THE COURT OF REVIEW.—The
2 Government may file a petition with the Foreign In-
3 telligence Surveillance Court of Review for review of
4 an order issued pursuant to subsection (c). The
5 Court of Review shall have jurisdiction to consider
6 such petition and shall provide a written statement
7 for the record of the reasons for a decision under
8 this paragraph.

9 “(2) CERTIORARI TO THE SUPREME COURT.—
10 The Government may file a petition for a writ of
11 certiorari for review of a decision of the Court of Re-
12 view issued under paragraph (1). The record for
13 such review shall be transmitted under seal to the
14 Supreme Court of the United States, which shall
15 have jurisdiction to review such decision.”

16 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-**
17 **THORIZATIONS.**

18 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
19 quisition targeting a United States person under section
20 703 or 704 is proposed to be conducted both inside and
21 outside the United States, a judge having jurisdiction
22 under section 703(a)(1) or 704(a)(1) may issue simulta-
23 neously, upon the request of the Government in a joint
24 application complying with the requirements of sections

1 703(b) and 704(b), orders under sections 703(c) and
2 704(e), as appropriate.

3 “(b) CONCURRENT AUTHORIZATION.—If an order
4 authorizing electronic surveillance or physical search has
5 been obtained under section 105 or 304, the Attorney
6 General may authorize, for the effective period of that
7 order, without an order under section 703 or 704, the tar-
8 geting of that United States person for the purpose of ac-
9 quiring foreign intelligence information while such person
10 is reasonably believed to be located outside the United
11 States.

12 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE**

13 **VII.**

14 “(a) INFORMATION ACQUIRED UNDER SECTION
15 702.—Information acquired from an acquisition con-
16 ducted under section 702 shall be deemed to be informa-
17 tion acquired from an electronic surveillance pursuant to
18 title I for purposes of section 106, except for the purposes
19 of subsection (j) of such section.

20 “(b) INFORMATION ACQUIRED UNDER SECTION
21 703.—Information acquired from an acquisition con-
22 ducted under section 703 shall be deemed to be informa-
23 tion acquired from an electronic surveillance pursuant to
24 title I for purposes of section 106.

1 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

2 “(a) SEMIANNUAL REPORT.—Not less frequently
3 than once every 6 months, the Attorney General shall fully
4 inform, in a manner consistent with national security, the
5 congressional intelligence committees and the Committees
6 on the Judiciary of the Senate and the House of Rep-
7 resentatives, consistent with the Rules of the House of
8 Representatives, the Standing Rules of the Senate, and
9 Senate Resolution 400 of the 94th Congress or any suc-
10 cessor Senate resolution, concerning the implementation
11 of this title.

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

14 “(1) with respect to section 702—

15 “(A) any certifications submitted in ac-
16 cordance with section 702(g) during the report-
17 ing period;

18 “(B) with respect to each determination
19 under section 702(e)(2), the reasons for exer-
20 cising the authority under such section;

21 “(C) any directives issued under section
22 702(h) during the reporting period;

23 “(D) a description of the judicial review
24 during the reporting period of such certifi-
25 cations and targeting and minimization proce-
26 dures adopted in accordance with subsections

1 (d) and (e) of section 702 and utilized with re-
2 spect to an acquisition under such section, in-
3 cluding a copy of an order or pleading in con-
4 nection with such review that contains a signifi-
5 cant legal interpretation of the provisions of
6 section 702;

7 “(E) any actions taken to challenge or en-
8 force a directive under paragraph (4) or (5) of
9 section 702(h);

10 “(F) any compliance reviews conducted by
11 the Attorney General or the Director of Na-
12 tional Intelligence of acquisitions authorized
13 under section 702(a);

14 “(G) a description of any incidents of non-
15 compliance—

16 “(i) with a directive issued by the At-
17 torney General and the Director of Na-
18 tional Intelligence under section 702(h),
19 including incidents of noncompliance by a
20 specified person to whom the Attorney
21 General and Director of National Intel-
22 ligence issued a directive under section
23 702(h); and

24 “(ii) by an element of the intelligence
25 community with procedures and guidelines

1 adopted in accordance with subsections
2 (d), (e), and (f) of section 702; and

3 “(H) any procedures implementing section
4 702;

5 “(2) with respect to section 703—

6 “(A) the total number of applications made
7 for orders under section 703(b);

8 “(B) the total number of such orders—

9 “(i) granted;

10 “(ii) modified; and

11 “(iii) denied; and

12 “(C) the total number of emergency acqui-
13 sitions authorized by the Attorney General
14 under section 703(d) and the total number of
15 subsequent orders approving or denying such
16 acquisitions; and

17 “(3) with respect to section 704—

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

20 “(B) the total number of such orders—

21 “(i) granted;

22 “(ii) modified; and

23 “(iii) denied; and

24 “(C) the total number of emergency acqui-
25 sitions authorized by the Attorney General

1 under section 704(d) and the total number of
2 subsequent orders approving or denying such
3 applications.

4 **“SEC. 708. SAVINGS PROVISION.**

5 “Nothing in this title shall be construed to limit the
6 authority of the Government to seek an order or author-
7 ization under, or otherwise engage in any activity that is
8 authorized under, any other title of this Act.”.

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

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

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

“Sec. 701. Definitions.

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

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

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

“Sec. 705. Joint applications and concurrent authorizations.

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

“Sec. 707. Congressional oversight.

“Sec. 708. Savings provision.”.

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

- 17 (1) **TITLE 18, UNITED STATES CODE.**—Section
18 2511(2)(a)(ii)(A) of title 18, United States Code, is
19 amended by inserting “or a court order pursuant to

1 section 704 of the Foreign Intelligence Surveillance
2 Act of 1978” after “assistance”.

3 (2) FOREIGN INTELLIGENCE SURVEILLANCE
4 ACT OF 1978.—Section 601(a)(1) of the Foreign In-
5 telligence Surveillance Act of 1978 (50 U.S.C.
6 1871(a)(1)) is amended—

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

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

11 “(E) acquisitions under section 703; and

12 “(F) acquisitions under section 704;”.

13 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
14 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
15 **TION OF CERTAIN COMMUNICATIONS MAY BE**
16 **CONDUCTED.**

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

21 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
22 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
23 TAIN COMMUNICATIONS MAY BE CONDUCTED

24 “SEC. 112. (a) Except as provided in subsection (b),
25 the procedures of chapters 119, 121, and 206 of title 18,
26 United States Code, and this Act shall be the exclusive

1 means by which electronic surveillance and the intercep-
2 tion of domestic wire, oral, or electronic communications
3 may be conducted.

4 “(b) Only an express statutory authorization for elec-
5 tronic surveillance or the interception of domestic wire,
6 oral, or electronic communications, other than as an
7 amendment to this Act or chapters 119, 121, or 206 of
8 title 18, United States Code, shall constitute an additional
9 exclusive means for the purpose of subsection (a).”.

10 (b) OFFENSE.—Section 109(a) of the Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
12 amended by striking “authorized by statute” each place
13 it appears and inserting “authorized by this Act, chapter
14 119, 121, or 206 of title 18, United States Code, or any
15 express statutory authorization that is an additional exclu-
16 sive means for conducting electronic surveillance under
17 section 112.”; and

18 (c) CONFORMING AMENDMENTS.—

19 (1) TITLE 18, UNITED STATES CODE.—Section
20 2511(2)(a) of title 18, United States Code, is
21 amended by adding at the end the following:

22 “(iii) If a certification under subpara-
23 graph (ii)(B) for assistance to obtain for-
24 eign intelligence information is based on
25 statutory authority, the certification shall

1 identify the specific statutory provision and
 2 shall certify that the statutory require-
 3 ments have been met.”; and

4 (2) TABLE OF CONTENTS.—The table of con-
 5 tents in the first section of the Foreign Intelligence
 6 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
 7 is amended by inserting after the item relating to
 8 section 111, the following new item:

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

9 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
 10 **ORDERS UNDER THE FOREIGN INTEL-**
 11 **LIGENCE SURVEILLANCE ACT OF 1978.**

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

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

20 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
 21 General shall submit to the committees of Congress re-
 22 ferred to in subsection (a)—

23 “(1) a copy of any decision, order, or opinion
 24 issued by the Foreign Intelligence Surveillance Court

1 or the Foreign Intelligence Surveillance Court of Re-
2 view that includes significant construction or inter-
3 pretation of any provision of this Act, and any
4 pleadings, applications, or memoranda of law associ-
5 ated with such decision, order, or opinion, not later
6 than 45 days after such decision, order, or opinion
7 is issued; and

8 “(2) a copy of each such decision, order, or
9 opinion, and any pleadings, applications, or memo-
10 randa of law associated with such decision, order, or
11 opinion, that was issued during the 5-year period
12 ending on the date of the enactment of the FISA
13 Amendments Act of 2008 and not previously sub-
14 mitted in a report under subsection (a).

15 “(d) PROTECTION OF NATIONAL SECURITY.—The
16 Attorney General, in consultation with the Director of Na-
17 tional Intelligence, may authorize redactions of materials
18 described in subsection (c) that are provided to the com-
19 mittees of Congress referred to in subsection (a), if such
20 redactions are necessary to protect the national security
21 of the United States and are limited to sensitive sources
22 and methods information or the identities of targets.”.

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

1 “(e) DEFINITIONS.—In this section:

2 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
3 COURT.—The term ‘Foreign Intelligence Surveillance
4 Court’ means the court established under section
5 103(a).

6 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
7 COURT OF REVIEW.—The term ‘Foreign Intelligence
8 Surveillance Court of Review’ means the court estab-
9 lished under section 103(b).”.

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

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

13 (1) in subsection (a)—

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

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

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

21 (D) in paragraph (6), as redesignated by
22 subparagraph (B) of this paragraph, in the
23 matter preceding subparagraph (A)—

24 (i) by striking “Affairs or” and insert-
25 ing “Affairs,”; and

1 (ii) by striking “Senate—” and insert-
2 ing “Senate, or the Deputy Director of the
3 Federal Bureau of Investigation, if des-
4 ignated by the President as a certifying of-
5 ficial—”;

6 (E) in paragraph (7), as redesignated by
7 subparagraph (B) of this paragraph, by striking
8 “statement of” and inserting “summary state-
9 ment of”;

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

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

16 (2) by striking subsection (b);

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

19 (4) in paragraph (1)(A) of subsection (d), as re-
20 designating by paragraph (3) of this subsection, by
21 striking “or the Director of National Intelligence”
22 and inserting “the Director of National Intelligence,
23 or the Director of the Central Intelligence Agency”.

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

2 (a) IN GENERAL.—Section 105 of the Foreign Intel-
3 ligence Surveillance Act of 1978 (50 U.S.C. 1805) is
4 amended—

5 (1) in subsection (a)—

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

7 (B) by redesignating paragraphs (2)
8 through (5) as paragraphs (1) through (4), re-
9 spectively;

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

12 (3) in subsection (c)(1)—

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

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

17 (C) by striking subparagraph (F);

18 (4) by striking subsection (d);

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

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

23 “(e)(1) Notwithstanding any other provision of this
24 title, the Attorney General may authorize the emergency
25 employment of electronic surveillance if the Attorney Gen-
26 eral—

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

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

9 “(C) informs, either personally or through a
10 designee, a judge having jurisdiction under section
11 103 at the time of such authorization that the deci-
12 sion has been made to employ emergency electronic
13 surveillance; and

14 “(D) makes an application in accordance with
15 this title to a judge having jurisdiction under section
16 103 as soon as practicable, but not later than 7 days
17 after the Attorney General authorizes such surveil-
18 lance.

19 “(2) If the Attorney General authorizes the emer-
20 gency employment of electronic surveillance under para-
21 graph (1), the Attorney General shall require that the
22 minimization procedures required by this title for the
23 issuance of a judicial order be followed.

24 “(3) In the absence of a judicial order approving such
25 electronic surveillance, the surveillance shall terminate

1 when the information sought is obtained, when the appli-
2 cation for the order is denied, or after the expiration of
3 7 days from the time of authorization by the Attorney
4 General, whichever is earliest.

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

7 “(5) In the event that such application for approval
8 is denied, or in any other case where the electronic surveil-
9 lance is terminated and no order is issued approving the
10 surveillance, no information obtained or evidence derived
11 from such surveillance shall be received in evidence or oth-
12 erwise disclosed in any trial, hearing, or other proceeding
13 in or before any court, grand jury, department, office,
14 agency, regulatory body, legislative committee, or other
15 authority of the United States, a State, or political sub-
16 division thereof, and no information concerning any
17 United States person acquired from such surveillance shall
18 subsequently be used or disclosed in any other manner by
19 Federal officers or employees without the consent of such
20 person, except with the approval of the Attorney General
21 if the information indicates a threat of death or serious
22 bodily harm to any person.

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

25 (7) by adding at the end the following:

1 “(i) In any case in which the Government makes an
2 application to a judge under this title to conduct electronic
3 surveillance involving communications and the judge
4 grants such application, upon the request of the applicant,
5 the judge shall also authorize the installation and use of
6 pen registers and trap and trace devices, and direct the
7 disclosure of the information set forth in section
8 402(d)(2).”.

9 (b) CONFORMING AMENDMENT.—Section
10 108(a)(2)(C) of the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1808(a)(2)(C)) is amended by striking
12 “105(f)” and inserting “105(e)”;

13 **SEC. 106. USE OF INFORMATION.**

14 Subsection (i) of section 106 of the Foreign Intel-
15 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is
16 amended by striking “radio communication” and inserting
17 “communication”.

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

19 (a) APPLICATIONS.—Section 303 of the Foreign In-
20 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
21 amended—

22 (1) in subsection (a)—

23 (A) by striking paragraph (2);

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

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

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

10 (E) in paragraph (6), as redesignated by
11 subparagraph (B) of this paragraph, in the
12 matter preceding subparagraph (A)—

13 (i) by striking “Affairs or” and insert-
14 ing “Affairs,”; and

15 (ii) by striking “Senate—” and insert-
16 ing “Senate, or the Deputy Director of the
17 Federal Bureau of Investigation, if des-
18 ignated by the President as a certifying of-
19 ficial—”; and

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

1 (b) ORDERS.—Section 304 of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
3 amended—

4 (1) in subsection (a)—

5 (A) by striking paragraph (1);

6 (B) by redesignating paragraphs (2)
7 through (5) as paragraphs (1) through (4), re-
8 spectively; and

9 (C) in paragraph (2)(B), as redesignated
10 by subparagraph (B) of this paragraph, by in-
11 serting “or is about to be” before “owned”; 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 “(A) reasonably determines that an emergency
18 situation exists with respect to the employment of a
19 physical search to obtain foreign intelligence infor-
20 mation before an order authorizing such physical
21 search can with due diligence be obtained;

22 “(B) reasonably determines that the factual
23 basis for issuance of an order under this title to ap-
24 prove such physical search exists;

1 “(C) informs, either personally or through a
2 designee, a judge of the Foreign Intelligence Surveil-
3 lance Court at the time of such authorization that
4 the decision has been made to employ an emergency
5 physical 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 emer-
12 gency employment of a physical search under paragraph
13 (1), the Attorney General shall require that the minimiza-
14 tion procedures required by this title for the issuance of
15 a judicial 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) 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 phys-
2 ical search, no information obtained or evidence derived
3 from such physical search shall be received in evidence or
4 otherwise disclosed in any trial, hearing, or other pro-
5 ceeding in or before any court, grand jury, department,
6 office, agency, regulatory body, legislative committee, or
7 other authority of the United States, a State, or political
8 subdivision thereof, and no information concerning any
9 United States person acquired from such physical search
10 shall subsequently be used or disclosed in any other man-
11 ner by Federal officers or employees without the consent
12 of such person, except with the approval of the Attorney
13 General if the information indicates a threat of death or
14 serious bodily harm to any person.

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

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
21 subsection (b) of this section, by striking
22 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

23 (2) in section 305(k)(2), by striking
24 “303(a)(7)” 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
11 section 103 of the Foreign Intelligence Surveillance Act
12 of 1978 (50 U.S.C. 1803) is amended by inserting “at
13 least” before “seven of the United States judicial cir-
14 cuits”.

15 (b) EN BANC AUTHORITY.—

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

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

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

23 “(2)(A) The court established under this subsection
24 may, on its own initiative, or upon the request of the Gov-
25 ernment in any proceeding or a party under section 501(f)
26 or paragraph (4) or (5) of section 702(h), hold a hearing

1 or rehearing, en banc, when ordered by a majority of the
2 judges that constitute such court upon a determination
3 that—

4 “(i) en banc consideration is necessary to se-
5 cure or maintain uniformity of the court’s decisions;
6 or

7 “(ii) the proceeding involves a question of ex-
8 ceptional importance.

9 “(B) Any authority granted by this Act to a judge
10 of the court established under this subsection may be exer-
11 cised by the court en banc. When exercising such author-
12 ity, the court en banc shall comply with any requirements
13 of this Act on the exercise of such authority.

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

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

20 (A) in subsection (a) of section 103, as
21 amended by this subsection, by inserting “(ex-
22 cept when sitting en banc under paragraph
23 (2))” after “no judge designated under this
24 subsection”; and

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

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

7 (1) by redesignating subsection (f) as sub-
8 section (g); and

9 (2) by inserting after subsection (e) the fol-
10 lowing new subsection:

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

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

4 (d) AUTHORITY OF FOREIGN INTELLIGENCE SUR-
5 VEILLANCE COURT.—Section 103 of the Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1803), as
7 amended by this Act, is amended by adding at the end
8 the following:

9 “(i) Nothing in this Act shall be construed to reduce
10 or contravene the inherent authority of the court estab-
11 lished under subsection (a) to determine or enforce compli-
12 ance with an order or a rule of such court or with a proce-
13 dure approved by such court.”.

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

15 (a) DEFINITIONS.—

16 (1) FOREIGN POWER.—Subsection (a) of sec-
17 tion 101 of the Foreign Intelligence Surveillance Act
18 of 1978 (50 U.S.C. 1801(a)) is amended—

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

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

23 (C) by adding at the end the following new
24 paragraph:

1 “(7) an entity not substantially composed of
2 United States persons that is engaged in the inter-
3 national proliferation of weapons of mass destruc-
4 tion.”.

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

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

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

11 (C) by adding at the end the following new
12 subparagraphs:

13 “(D) engages in the international prolifera-
14 tion of weapons of mass destruction, or activi-
15 ties in preparation therefor; or

16 “(E) engages in the international prolifera-
17 tion of weapons of mass destruction, or activi-
18 ties in preparation therefor for or on behalf of
19 a foreign power; or”.

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

1 (4) WEAPON OF MASS DESTRUCTION.—Such
2 section 101 is amended by adding at the end the fol-
3 lowing new subsection:

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

5 “(1) any explosive, incendiary, or poison gas de-
6 vice that is designed, intended, or has the capability
7 to cause a mass casualty incident;

8 “(2) any weapon that is designed, intended, or
9 has the capability to cause death or serious bodily
10 injury to a significant number of persons through
11 the release, dissemination, or impact of toxic or poi-
12 sonous chemicals or their precursors;

13 “(3) any weapon involving a biological agent,
14 toxin, or vector (as such terms are defined in section
15 178 of title 18, United States Code) that is de-
16 signed, intended, or has the capability to cause
17 death, illness, or serious bodily injury to a signifi-
18 cant number of persons; or

19 “(4) any weapon that is designed, intended, or
20 has the capability to release radiation or radioac-
21 tivity causing death, illness, or serious bodily injury
22 to a significant number of persons.”.

23 (b) USE OF INFORMATION.—

24 (1) IN GENERAL.—Section 106(k)(1)(B) of the
25 Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
2 otage or international terrorism” and inserting “sab-
3 otage, international terrorism, or the international
4 proliferation of weapons of mass destruction”.

5 (2) PHYSICAL SEARCHES.—Section
6 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
7 is amended by striking “sabotage or international
8 terrorism” and inserting “sabotage, international
9 terrorism, or the international proliferation of weap-
10 ons of mass destruction”.

11 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
12 The Foreign Intelligence Surveillance Act of 1978 is fur-
13 ther amended—

14 (1) in paragraph (2) of section 105(d) (50
15 U.S.C. 1805(d)), as redesignated by section
16 105(a)(5) of this Act, by striking “section 101(a)
17 (5) or (6)” and inserting “paragraph (5), (6), or (7)
18 of section 101(a)”;

19 (2) in section 301(1) (50 U.S.C. 1821(1)), by
20 inserting “weapon of mass destruction,” after “per-
21 son,”; and

22 (3) in section 304(d)(2) (50 U.S.C.
23 1824(d)(2)), by striking “section 101(a) (5) or (6)”
24 and inserting “paragraph (5), (6), or (7) of section
25 101(a)”.

1 **TITLE II—PROTECTIONS FOR**
2 **ELECTRONIC COMMUNICA-**
3 **TION SERVICE PROVIDERS**

4 **SEC. 201. PROCEDURES FOR IMPLEMENTING STATUTORY**
5 **DEFENSES UNDER THE FOREIGN INTEL-**
6 **LIGENCE SURVEILLANCE ACT OF 1978.**

7 The Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1801 et seq.), as amended by section 101, is
9 further amended by adding at the end the following new
10 title:

11 **“TITLE VIII—PROTECTION OF**
12 **PERSONS ASSISTING THE**
13 **GOVERNMENT**

14 **“SEC. 801. DEFINITIONS.**

15 “In this title:

16 “(1) ASSISTANCE.—The term ‘assistance’
17 means the provision of, or the provision of access to,
18 information (including communication contents,
19 communications records, or other information relat-
20 ing to a customer or communication), facilities, or
21 another form of assistance.

22 “(2) CIVIL ACTION.—The term ‘civil action’ in-
23 cludes a covered civil action.

1 “(3) CONGRESSIONAL INTELLIGENCE COMMIT-
2 TEES.—The term ‘congressional intelligence commit-
3 tees’ means—

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

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

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

10 “(5) COVERED CIVIL ACTION.—The term ‘cov-
11 ered civil action’ means a civil action filed in a Fed-
12 eral or State court that—

13 “(A) alleges that an electronic communica-
14 tion service provider furnished assistance to an
15 element of the intelligence community; and

16 “(B) seeks monetary or other relief from
17 the electronic communication service provider
18 related to the provision of such assistance.

19 “(6) ELECTRONIC COMMUNICATION SERVICE
20 PROVIDER.—The term ‘electronic communication
21 service provider’ means—

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

1 “(B) a provider of electronic communica-
2 tion service, as that term is defined in section
3 2510 of title 18, United States Code;

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

7 “(D) any other communication service pro-
8 vider who has access to wire or electronic com-
9 munications either as such communications are
10 transmitted or as such communications are
11 stored;

12 “(E) a parent, subsidiary, affiliate, suc-
13 cessor, or assignee of an entity described in
14 subparagraph (A), (B), (C), or (D); or

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

18 “(7) INTELLIGENCE COMMUNITY.—The term
19 ‘intelligence community’ has the meaning given the
20 term in section 3(4) of the National Security Act of
21 1947 (50 U.S.C. 401a(4)).

22 “(8) PERSON.—The term ‘person’ means—

23 “(A) an electronic communication service
24 provider; or

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

4 “(i) an order of the court established
5 under section 103(a) directing such assist-
6 ance;

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

10 “(iii) a directive under section
11 102(a)(4), 105B(e), as added by section 2
12 of the Protect America Act of 2007 (Public
13 Law 110–55), or 702(h).

14 “(9) STATE.—The term ‘State’ means any
15 State, political subdivision of a State, the Common-
16 wealth of Puerto Rico, the District of Columbia, and
17 any territory or possession of the United States, and
18 includes any officer, public utility commission, or
19 other body authorized to regulate an electronic com-
20 munication service provider.

21 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
22 **DEFENSES.**

23 “(a) REQUIREMENT FOR CERTIFICATION.—Notwith-
24 standing any other provision of law, a civil action may not
25 lie or be maintained in a Federal or State court against

1 any person for providing assistance to an element of the
2 intelligence community, and shall be promptly dismissed,
3 if the Attorney General certifies to the district court of
4 the United States in which such action is pending that—

5 “(1) any assistance by that person was provided
6 pursuant to an order of the court established under
7 section 103(a) directing such assistance;

8 “(2) any assistance by that person was provided
9 pursuant to a certification in writing under section
10 2511(2)(a)(ii)(B) or 2709(b) of title 18, United
11 States Code;

12 “(3) any assistance by that person was provided
13 pursuant to a directive under section 102(a)(4),
14 105B(e), as added by section 2 of the Protect Amer-
15 ica Act of 2007 (Public Law 110–55), or 702(h) di-
16 recting such assistance;

17 “(4) in the case of a covered civil action, the as-
18 sistance alleged to have been provided by the elec-
19 tronic communication service provider was—

20 “(A) in connection with an intelligence ac-
21 tivity involving communications that was—

22 “(i) authorized by the President dur-
23 ing the period beginning on September 11,
24 2001, and ending on January 17, 2007;
25 and

1 “(ii) designed to detect or prevent a
2 terrorist attack, or activities in preparation
3 for a terrorist attack, against the United
4 States; and

5 “(B) the subject of a written request or di-
6 rective, or a series of written requests or direc-
7 tives, from the Attorney General or the head of
8 an element of the intelligence community (or
9 the deputy of such person) to the electronic
10 communication service provider indicating that
11 the activity was—

12 “(i) authorized by the President; and

13 “(ii) determined to be lawful; or

14 “(5) the person did not provide the alleged as-
15 sistance.

16 “(b) JUDICIAL REVIEW.—

17 “(1) REVIEW OF CERTIFICATIONS.—A certifi-
18 cation under subsection (a) shall be given effect un-
19 less the court finds that such certification is not
20 supported by substantial evidence provided to the
21 court pursuant to this section.

22 “(2) SUPPLEMENTAL MATERIALS.—In its re-
23 view of a certification under subsection (a), the
24 court may examine the court order, certification,
25 written request, or directive described in subsection

1 (a) and any relevant court order, certification, writ-
2 ten request, or directive submitted pursuant to sub-
3 section (d).

4 “(c) LIMITATIONS ON DISCLOSURE.—If the Attorney
5 General files a declaration under section 1746 of title 28,
6 United States Code, that disclosure of a certification made
7 pursuant to subsection (a) or the supplemental materials
8 provided pursuant to subsection (b) or (d) would harm the
9 national security of the United States, the court shall—

10 “(1) review such certification and the supple-
11 mental materials in camera and ex parte; and

12 “(2) limit any public disclosure concerning such
13 certification and the supplemental materials, includ-
14 ing any public order following such in camera and
15 ex parte review, to a statement as to whether the
16 case is dismissed and a description of the legal
17 standards that govern the order, without disclosing
18 the paragraph of subsection (a) that is the basis for
19 the certification.

20 “(d) ROLE OF THE PARTIES.—Any plaintiff or de-
21 fendant in a civil action may submit any relevant court
22 order, certification, written request, or directive to the dis-
23 trict court referred to in subsection (a) for review and
24 shall be permitted to participate in the briefing or argu-
25 ment of any legal issue in a judicial proceeding conducted

1 pursuant to this section, but only to the extent that such
2 participation does not require the disclosure of classified
3 information to such party. To the extent that classified
4 information is relevant to the proceeding or would be re-
5 vealed in the determination of an issue, the court shall
6 review such information in camera and ex parte, and shall
7 issue any part of the court’s written order that would re-
8 veal classified information in camera and ex parte and
9 maintain such part under seal.

10 “(e) NONDELEGATION.—The authority and duties of
11 the Attorney General under this section shall be performed
12 by the Attorney General (or Acting Attorney General) or
13 the Deputy Attorney General.

14 “(f) APPEAL.—The courts of appeals shall have juris-
15 diction of appeals from interlocutory orders of the district
16 courts of the United States granting or denying a motion
17 to dismiss or for summary judgment under this section.

18 “(g) REMOVAL.—A civil action against a person for
19 providing assistance to an element of the intelligence com-
20 munity that is brought in a State court shall be deemed
21 to arise under the Constitution and laws of the United
22 States and shall be removable under section 1441 of title
23 28, United States Code.

24 “(h) RELATIONSHIP TO OTHER LAWS.—Nothing in
25 this section shall be construed to limit any otherwise avail-

1 able immunity, privilege, or defense under any other provi-
2 sion of law.

3 “(i) **APPLICABILITY.**—This section shall apply to a
4 civil action pending on or filed after the date of the enact-
5 ment of the FISA Amendments Act of 2008.

6 **“SEC. 803. PREEMPTION.**

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

9 “(1) conduct an investigation into an electronic
10 communication service provider’s alleged assistance
11 to an element of the intelligence community;

12 “(2) require through regulation or any other
13 means the disclosure of information about an elec-
14 tronic communication service provider’s alleged as-
15 sistance to an element of the intelligence community;

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

19 “(4) commence or maintain a civil action or
20 other proceeding to enforce a requirement that an
21 electronic communication service provider disclose
22 information concerning alleged assistance to an ele-
23 ment of the intelligence community.

1 “(b) SUITS BY THE UNITED STATES.—The United
2 States may bring suit to enforce the provisions of this sec-
3 tion.

4 “(c) JURISDICTION.—The district courts of the
5 United States shall have jurisdiction over any civil action
6 brought by the United States to enforce the provisions of
7 this section.

8 “(d) APPLICATION.—This section shall apply to any
9 investigation, action, or proceeding that is pending on or
10 commenced after the date of the enactment of the FISA
11 Amendments Act of 2008.

12 **“SEC. 804. REPORTING.**

13 “(a) SEMIANNUAL REPORT.—Not less frequently
14 than once every 6 months, the Attorney General shall, in
15 a manner consistent with national security, the Rules of
16 the House of Representatives, the Standing Rules of the
17 Senate, and Senate Resolution 400 of the 94th Congress
18 or any successor Senate resolution, fully inform the con-
19 gressional intelligence committees, the Committee on the
20 Judiciary of the Senate, and the Committee on the Judici-
21 ary of the House of Representatives concerning the imple-
22 mentation of this title.

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

25 “(1) any certifications made under section 802;

1 (2) FOREIGN INTELLIGENCE SURVEILLANCE
2 COURT.—The term “Foreign Intelligence Surveil-
3 lance Court” means the court established under sec-
4 tion 103(a) of the Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1803(a)).

6 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND
7 PROGRAM.—The terms “President’s Surveillance
8 Program” and “Program” mean the intelligence ac-
9 tivity involving communications that was authorized
10 by the President during the period beginning on
11 September 11, 2001, and ending on January 17,
12 2007, including the program referred to by the
13 President in a radio address on December 17, 2005
14 (commonly known as the Terrorist Surveillance Pro-
15 gram).

16 (b) REVIEWS.—

17 (1) REQUIREMENT TO CONDUCT.—The Inspec-
18 tors General of the Department of Justice, the Of-
19 fice of the Director of National Intelligence, the Na-
20 tional Security Agency, the Department of Defense,
21 and any other element of the intelligence community
22 that participated in the President’s Surveillance Pro-
23 gram, shall complete a comprehensive review of, with
24 respect to the oversight authority and responsibility
25 of each such Inspector General—

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

4 (B) access to legal reviews of the Program
5 and access to information about the Program;

6 (C) communications with, and participa-
7 tion of, individuals and entities in the private
8 sector related to the Program;

9 (D) interaction with the Foreign Intel-
10 ligence Surveillance Court and transition to
11 court orders related to the Program; and

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

17 (2) COOPERATION AND COORDINATION.—

18 (A) COOPERATION.—Each Inspector Gen-
19 eral required to conduct a review under para-
20 graph (1) shall—

21 (i) work in conjunction, to the extent
22 practicable, with any other Inspector Gen-
23 eral required to conduct such a review; and

24 (ii) utilize, to the extent practicable,
25 and not unnecessarily duplicate or delay,

1 such reviews or audits that have been com-
2 pleted or are being undertaken by any such
3 Inspector General or by any other office of
4 the Executive Branch related to the Pro-
5 gram.

6 (B) INTEGRATION OF OTHER REVIEWS.—
7 The Counsel of the Office of Professional Re-
8 sponsibility of the Department of Justice shall
9 provide the report of any investigation con-
10 ducted by such Office on matters relating to the
11 Program, including any investigation of the
12 process through which legal reviews of the Pro-
13 gram were conducted and the substance of such
14 reviews, to the Inspector General of the Depart-
15 ment of Justice, who shall integrate the factual
16 findings and conclusions of such investigation
17 into its review.

18 (C) COORDINATION.—The Inspectors Gen-
19 eral shall designate one of the Inspectors Gen-
20 eral required to conduct a review under para-
21 graph (1) that is appointed by the President, by
22 and with the advice and consent of the Senate,
23 to coordinate the conduct of the reviews and the
24 preparation of the reports.

25 (c) REPORTS.—

1 (1) PRELIMINARY REPORTS.—Not later than 60
2 days after the date of the enactment of this Act, the
3 Inspectors General of the Department of Justice, the
4 Office of the Director of National Intelligence, the
5 National Security Agency, the Department of De-
6 fense, and any other Inspector General required to
7 conduct a review under subsection (b)(1), shall sub-
8 mit to the appropriate committees of Congress an
9 interim report that describes the planned scope of
10 such review.

11 (2) FINAL REPORT.—Not later than 1 year
12 after the date of the enactment of this Act, the In-
13 spectors General of the Department of Justice, the
14 Office of the Director of National Intelligence, the
15 National Security Agency, the Department of De-
16 fense, and any other Inspector General required to
17 conduct a review under subsection (b)(1), shall sub-
18 mit to the appropriate committees of Congress, in a
19 manner consistent with national security, a com-
20 prehensive report on such reviews that includes any
21 recommendations of any such Inspectors General
22 within the oversight authority and responsibility of
23 any such Inspector General with respect to the re-
24 views.

1 (3) FORM.—A report under this subsection
2 shall be submitted in unclassified form, but may in-
3 clude a classified annex. The unclassified report
4 shall not disclose the name or identity of any indi-
5 vidual or entity of the private sector that partici-
6 pated in the Program or with whom there was com-
7 munication about the Program, to the extent that
8 information is classified.

9 (d) RESOURCES.—

10 (1) EXPEDITED SECURITY CLEARANCE.—The
11 Director of National Intelligence shall ensure that
12 the process for the investigation and adjudication of
13 an application by an Inspector General or any ap-
14 propriate staff of an Inspector General for a security
15 clearance necessary for the conduct of the review
16 under subsection (b)(1) is carried out as expedi-
17 tiously as possible.

18 (2) ADDITIONAL PERSONNEL FOR THE INSPEC-
19 TORS GENERAL.—An Inspector General required to
20 conduct a review under subsection (b)(1) and submit
21 a report under subsection (c) is authorized to hire
22 such additional personnel as may be necessary to
23 carry out such review and prepare such report in a
24 prompt and timely manner. Personnel authorized to
25 be hired under this paragraph—

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

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

6 (3) TRANSFER OF PERSONNEL.—The Attorney
7 General, the Secretary of Defense, the Director of
8 National Intelligence, the Director of the National
9 Security Agency, or the head of any other element
10 of the intelligence community may transfer per-
11 sonnel to the relevant Office of the Inspector Gen-
12 eral required to conduct a review under subsection
13 (b)(1) and submit a report under subsection (c) and,
14 in addition to any other personnel authorized by law,
15 are authorized to fill any vacancy caused by such a
16 transfer. Personnel transferred under this paragraph
17 shall perform such duties relating to such review as
18 the relevant Inspector General shall direct.

19 **TITLE IV—OTHER PROVISIONS**

20 **SEC. 401. SEVERABILITY.**

21 If any provision of this Act, any amendment made
22 by this Act, or the application thereof to any person or
23 circumstances is held invalid, the validity of the remainder
24 of the Act, of any such amendments, and of the applica-

1 tion of such provisions to other persons and circumstances
2 shall not be affected thereby.

3 **SEC. 402. EFFECTIVE DATE.**

4 Except as provided in section 404, the amendments
5 made by this Act shall take effect on the date of the enact-
6 ment of this Act.

7 **SEC. 403. REPEALS.**

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

10 (1) AMENDMENTS TO FISA.—

11 (A) IN GENERAL.—Except as provided in
12 section 404, sections 105A, 105B, and 105C of
13 the Foreign Intelligence Surveillance Act of
14 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are
15 repealed.

16 (B) TECHNICAL AND CONFORMING AMEND-
17 MENTS.—

18 (i) TABLE OF CONTENTS.—The table
19 of contents in the first section of the For-
20 eign Intelligence Surveillance Act of 1978
21 (50 U.S.C. 1801 et seq.) is amended by
22 striking the items relating to sections
23 105A, 105B, and 105C.

24 (ii) CONFORMING AMENDMENTS.—Ex-
25 cept as provided in section 404, section

1 103(e) of the Foreign Intelligence Surveil-
2 lance Act of 1978 (50 U.S.C. 1803(e)) is
3 amended—

4 (I) in paragraph (1), by striking
5 “105B(h) or 501(f)(1)” and inserting
6 “501(f)(1) or 702(h)(4)”; and

7 (II) in paragraph (2), by striking
8 “105B(h) or 501(f)(1)” and inserting
9 “501(f)(1) or 702(h)(4)”.

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

14 (3) TRANSITION PROCEDURES.—Except as pro-
15 vided in section 404, subsection (b) of section 6 of
16 the Protect America Act of 2007 (Public Law 110–
17 55; 121 Stat. 556) is repealed.

18 (b) FISA AMENDMENTS ACT OF 2008.—

19 (1) IN GENERAL.—Except as provided in sec-
20 tion 404, effective December 31, 2012, title VII of
21 the Foreign Intelligence Surveillance Act of 1978, as
22 amended by section 101(a), is repealed.

23 (2) TECHNICAL AND CONFORMING AMEND-
24 MENTS.—Effective December 31, 2012—

1 (A) the table of contents in the first sec-
2 tion of such Act (50 U.S.C. 1801 et seq.) is
3 amended by striking the items related to title
4 VII;

5 (B) except as provided in section 404, sec-
6 tion 601(a)(1) of such Act (50 U.S.C.
7 1871(a)(1)) is amended to read as such section
8 read on the day before the date of the enact-
9 ment of this Act; and

10 (C) except as provided in section 404, sec-
11 tion 2511(2)(a)(ii)(A) of title 18, United States
12 Code, is amended by striking “or a court order
13 pursuant to section 704 of the Foreign Intel-
14 ligence Surveillance Act of 1978”.

15 **SEC. 404. TRANSITION PROCEDURES.**

16 (a) **TRANSITION PROCEDURES FOR PROTECT AMER-**
17 **ICA ACT OF 2007 PROVISIONS.—**

18 (1) **CONTINUED EFFECT OF ORDERS, AUTHOR-**
19 **IZATIONS, DIRECTIVES.—**Except as provided in para-
20 graph (7), notwithstanding any other provision of
21 law, any order, authorization, or directive issued or
22 made pursuant to section 105B of the Foreign Intel-
23 ligence Surveillance Act of 1978, as added by section
24 2 of the Protect America Act of 2007 (Public Law
25 110–55; 121 Stat. 552), shall continue in effect

1 until the expiration of such order, authorization, or
2 directive.

3 (2) APPLICABILITY OF PROTECT AMERICA ACT
4 OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS,
5 DIRECTIVES.—Notwithstanding any other provision
6 of this Act, any amendment made by this Act, or the
7 Foreign Intelligence Surveillance Act of 1978 (50
8 U.S.C. 1801 et seq.)—

9 (A) subject to paragraph (3), section 105A
10 of such Act, as added by section 2 of the Pro-
11 tect America Act of 2007 (Public Law 110–55;
12 121 Stat. 552), shall continue to apply to any
13 acquisition conducted pursuant to an order, au-
14 thorization, or directive referred to in para-
15 graph (1); and

16 (B) sections 105B and 105C of the For-
17 eign Intelligence Surveillance Act of 1978, as
18 added by sections 2 and 3, respectively, of the
19 Protect America Act of 2007, shall continue to
20 apply with respect to an order, authorization, or
21 directive referred to in paragraph (1) until the
22 later of—

23 (i) the expiration of such order, au-
24 thorization, or directive; or

1 (ii) the date on which final judgment
2 is entered for any petition or other litiga-
3 tion relating to such order, authorization,
4 or directive.

5 (3) USE OF INFORMATION.—Information ac-
6 quired from an acquisition conducted pursuant to an
7 order, authorization, or directive referred to in para-
8 graph (1) shall be deemed to be information ac-
9 quired from an electronic surveillance pursuant to
10 title I of the Foreign Intelligence Surveillance Act of
11 1978 (50 U.S.C. 1801 et seq.) for purposes of sec-
12 tion 106 of such Act (50 U.S.C. 1806), except for
13 purposes of subsection (j) of such section.

14 (4) PROTECTION FROM LIABILITY.—Subsection
15 (l) of section 105B of the Foreign Intelligence Sur-
16 veillance Act of 1978, as added by section 2 of the
17 Protect America Act of 2007, shall continue to apply
18 with respect to any directives issued pursuant to
19 such section 105B.

20 (5) JURISDICTION OF FOREIGN INTELLIGENCE
21 SURVEILLANCE COURT.—Notwithstanding any other
22 provision of this Act or of the Foreign Intelligence
23 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
24 section 103(e) of the Foreign Intelligence Surveil-
25 lance Act (50 U.S.C. 1803(e)), as amended by sec-

1 tion 5(a) of the Protect America Act of 2007 (Public
2 Law 110–55; 121 Stat. 556), shall continue to apply
3 with respect to a directive issued pursuant to section
4 105B of the Foreign Intelligence Surveillance Act of
5 1978, as added by section 2 of the Protect America
6 Act of 2007, until the later of—

7 (A) the expiration of all orders, authoriza-
8 tions, or directives referred to in paragraph (1);
9 or

10 (B) the date on which final judgment is
11 entered for any petition or other litigation relat-
12 ing to such order, authorization, or directive.

13 (6) REPORTING REQUIREMENTS.—

14 (A) CONTINUED APPLICABILITY.—Not-
15 withstanding any other provision of this Act,
16 any amendment made by this Act, the Protect
17 America Act of 2007 (Public Law 110–55), or
18 the Foreign Intelligence Surveillance Act of
19 1978 (50 U.S.C. 1801 et seq.), section 4 of the
20 Protect America Act of 2007 shall continue to
21 apply until the date that the certification de-
22 scribed in subparagraph (B) is submitted.

23 (B) CERTIFICATION.—The certification de-
24 scribed in this subparagraph is a certification—

25 (i) made by the Attorney General;

1 (ii) submitted as part of a semi-an-
2 nual report required by section 4 of the
3 Protect America Act of 2007;

4 (iii) that states that there will be no
5 further acquisitions carried out under sec-
6 tion 105B of the Foreign Intelligence Sur-
7 veillance Act of 1978, as added by section
8 2 of the Protect America Act of 2007,
9 after the date of such certification; and

10 (iv) that states that the information
11 required to be included under such section
12 4 relating to any acquisition conducted
13 under such section 105B has been included
14 in a semi-annual report required by such
15 section 4.

16 (7) REPLACEMENT OF ORDERS, AUTHORIZA-
17 TIONS, AND DIRECTIVES.—

18 (A) IN GENERAL.—If the Attorney General
19 and the Director of National Intelligence seek
20 to replace an authorization issued pursuant to
21 section 105B of the Foreign Intelligence Sur-
22 veillance Act of 1978, as added by section 2 of
23 the Protect America Act of 2007 (Public Law
24 110–55), with an authorization under section
25 702 of the Foreign Intelligence Surveillance Act

1 of 1978 (as added by section 101(a) of this
2 Act), the Attorney General and the Director of
3 National Intelligence shall, to the extent prac-
4 ticable, submit to the Foreign Intelligence Sur-
5 veillance Court (as such term is defined in sec-
6 tion 701(b)(2) of such Act (as so added)) a cer-
7 tification prepared in accordance with sub-
8 section (g) of such section 702 and the proce-
9 dures adopted in accordance with subsections
10 (d) and (e) of such section 702 at least 30 days
11 before the expiration of such authorization.

12 (B) CONTINUATION OF EXISTING OR-
13 DERS.—If the Attorney General and the Direc-
14 tor of National Intelligence seek to replace an
15 authorization made pursuant to section 105B of
16 the Foreign Intelligence Surveillance Act of
17 1978, as added by section 2 of the Protect
18 America Act of 2007 (Public Law 110–55; 121
19 Stat. 522), by filing a certification in accord-
20 ance with subparagraph (A), that authorization,
21 and any directives issued thereunder and any
22 order related thereto, shall remain in effect,
23 notwithstanding the expiration provided for in
24 subsection (a) of such section 105B, until the
25 Foreign Intelligence Surveillance Court (as such

1 term is defined in section 701(b)(2) of the For-
2 eign Intelligence Surveillance Act of 1978 (as
3 so added)) issues an order with respect to that
4 certification under section 702(i)(3) of such Act
5 (as so added) at which time the provisions of
6 that section and of section 702(i)(4) of such
7 Act (as so added) shall apply.

8 (8) EFFECTIVE DATE.—Paragraphs (1)
9 through (7) shall take effect as if enacted on August
10 5, 2007.

11 (b) TRANSITION PROCEDURES FOR FISA AMEND-
12 MENTS ACT OF 2008 PROVISIONS.—

13 (1) ORDERS IN EFFECT ON DECEMBER 31,
14 2012.—Notwithstanding any other provision of this
15 Act, any amendment made by this Act, or the For-
16 eign Intelligence Surveillance Act of 1978 (50
17 U.S.C. 1801 et seq.), any order, authorization, or di-
18 rective issued or made under title VII of the Foreign
19 Intelligence Surveillance Act of 1978, as amended by
20 section 101(a), shall continue in effect until the date
21 of the expiration of such order, authorization, or di-
22 rective.

23 (2) APPLICABILITY OF TITLE VII OF FISA TO
24 CONTINUED ORDERS, AUTHORIZATIONS, DIREC-
25 TIVES.—Notwithstanding any other provision of this

1 Act, any amendment made by this Act, or the For-
2 eign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1801 et seq.), with respect to any order, au-
4 thorization, or directive referred to in paragraph (1),
5 title VII of such Act, as amended by section 101(a),
6 shall continue to apply until the later of—

7 (A) the expiration of such order, authoriza-
8 tion, or directive; or

9 (B) the date on which final judgment is
10 entered for any petition or other litigation relat-
11 ing to such order, authorization, or directive.

12 (3) CHALLENGE OF DIRECTIVES; PROTECTION
13 FROM LIABILITY; USE OF INFORMATION.—Notwith-
14 standing any other provision of this Act or of the
15 Foreign Intelligence Surveillance Act of 1978 (50
16 U.S.C. 1801 et seq.)—

17 (A) section 103(e) of such Act, as amended
18 by section 403(a)(1)(B)(ii), shall continue to
19 apply with respect to any directive issued pur-
20 suant to section 702(h) of such Act, as added
21 by section 101(a);

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

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

5 (D) section 706 of such Act (as so added)
6 shall continue to apply to an acquisition con-
7 ducted under section 702 or 703 of such Act
8 (as so added); and

9 (E) section 2511(2)(a)(ii)(A) of title 18,
10 United States Code, as amended by section
11 101(c)(1), shall continue to apply to an order
12 issued pursuant to section 704 of the Foreign
13 Intelligence Surveillance Act of 1978, as added
14 by section 101(a).

15 (4) REPORTING REQUIREMENTS.—

16 (A) CONTINUED APPLICABILITY.—Not-
17 withstanding any other provision of this Act or
18 of the Foreign Intelligence Surveillance Act of
19 1978 (50 U.S.C. 1801 et seq.), section 601(a)
20 of such Act (50 U.S.C. 1871(a)), as amended
21 by section 101(c)(2), and sections 702(l) and
22 707 of such Act, as added by section 101(a),
23 shall continue to apply until the date that the
24 certification described in subparagraph (B) is
25 submitted.

1 (B) CERTIFICATION.—The certification de-
2 scribed in this subparagraph is a certification—

3 (i) made by the Attorney General;

4 (ii) submitted to the Select Committee
5 on Intelligence of the Senate, the Perma-
6 nent Select Committee on Intelligence of
7 the House of Representatives, and the
8 Committees on the Judiciary of the Senate
9 and the House of Representatives;

10 (iii) that states that there will be no
11 further acquisitions carried out under title
12 VII of the Foreign Intelligence Surveil-
13 lance Act of 1978, as amended by section
14 101(a), after the date of such certification;
15 and

16 (iv) that states that the information
17 required to be included in a review, assess-
18 ment, or report under section 601 of such
19 Act, as amended by section 101(c), or sec-
20 tion 702(l) or 707 of such Act, as added
21 by section 101(a), relating to any acquisi-
22 tion conducted under title VII of such Act,
23 as amended by section 101(a), has been in-
24 cluded in a review, assessment, or report
25 under such section 601, 702(l), or 707.

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

11 (A) the date that authorization expires; or

12 (B) the date that is 90 days after the date

13 of the enactment of this Act.

Passed the House of Representatives June 20, 2008.

Attest:

Clerk.

110TH CONGRESS
2^D SESSION

H. R. 6304

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.