

***In the House of Representatives, U. S.,***

*March 14, 2008.*

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

**HOUSE AMENDMENT TO SENATE AMENDMENT:**

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

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

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

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

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

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

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

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

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

*Sec. 104. Applications for court orders.*

*Sec. 105. Issuance of an order.*

*Sec. 106. Use of information.*

*Sec. 107. Amendments for physical searches.*

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

*Sec. 109. Foreign intelligence surveillance court.*

*Sec. 110. Review of previous actions.*

Sec. 111. Weapons of mass destruction.

Sec. 112. Statute of limitations.

**TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT**

Sec. 201. Statutory defenses.

Sec. 202. Technical amendments.

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

Sec. 301. Commission on Warrantless Electronic Surveillance Activities.

**TITLE IV—OTHER PROVISIONS**

Sec. 401. Severability.

Sec. 402. Effective date.

Sec. 403. Repeals.

Sec. 404. Transition procedures.

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

Sec. 406. Surveillance to protect the United States.

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 Surveillance Act of 1978 (50 U.S.C. 1801 *et seq.*) is amended—

6                   (1) by striking title VII; and

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

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

13                   **“SEC. 701. DEFINITIONS.**

14                   “(a) *IN GENERAL.*—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-

1 *lance*', 'foreign intelligence information', 'foreign power',  
2 'minimization procedures', 'person', 'United States', and  
3 'United States person' have the meanings given such terms  
4 in section 101, except as specifically provided in this title.

5       “(b) ADDITIONAL DEFINITIONS.—

6           “(1) CONGRESSIONAL INTELLIGENCE COMMIT-  
7           TEES.—The term 'congressional intelligence commit-  
8           tees' means—

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

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

13           “(2) FOREIGN INTELLIGENCE SURVEILLANCE  
14           COURT; COURT.—The terms 'Foreign Intelligence Sur-  
15           veillance Court' and 'Court' mean the court estab-  
16           lished by section 103(a).

17           “(3) FOREIGN INTELLIGENCE SURVEILLANCE  
18           COURT OF REVIEW; COURT OF REVIEW.—The terms  
19           'Foreign Intelligence Surveillance Court of Review'  
20           and 'Court of Review' mean the court established by  
21           section 103(b).

22           “(4) ELECTRONIC COMMUNICATION SERVICE PRO-  
23           VIDER.—The term 'electronic communication service  
24           provider' means—

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

4                   “(B) a provider of electronic communica-  
5                   tion service, as that term is defined in section  
6                   2510 of title 18, United States Code;

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

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

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

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

4       “(a) *AUTHORIZATION.*—Notwithstanding any other  
5 provision of law, pursuant to an order issued in accordance  
6 with subsection (i)(3) or a determination under subsection  
7 (g)(1)(B), the Attorney General and the Director of Na-  
8 tional Intelligence may authorize jointly, for a period of  
9 up to 1 year from the effective date of the authorization,  
10 the targeting of persons reasonably believed to be located  
11 outside the United States to acquire foreign intelligence in-  
12 formation.

13        "(b) *LIMITATIONS.*—An acquisition authorized under  
14 subsection (a)—

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

18                   “(2) may not intentionally target a person rea-  
19                   sonably believed to be located outside the United  
20                   States in order to target a particular, known person  
21                   reasonably believed to be in the United States;

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

25                   “(4) may not intentionally acquire any commu-  
26                   nication as to which the sender and all intended re-

1       *cipients are known at the time of the acquisition to*  
2       *be located in the United States; and*

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

6           *“(c) CONDUCT OF ACQUISITION.—An acquisition au-*  
7       *thorized under subsection (a) may be conducted only in ac-*  
8       *cordance with—*

9           *“(1) a certification made by the Attorney Gen-*  
10       *eral and the Director of National Intelligence pursu-*  
11       *ant to subsection (g) or a determination under para-*  
12       *graph (1)(B) of such subsection; and*

13           *“(2) the procedures and guidelines required pur-*  
14       *suant to subsections (d), (e), and (f).*

15           *“(d) TARGETING PROCEDURES.—*

16           *“(1) REQUIREMENT TO ADOPT.—The Attorney*  
17       *General, in consultation with the Director of National*  
18       *Intelligence, shall adopt targeting procedures that are*  
19       *reasonably designed to ensure that any acquisition*  
20       *authorized under subsection (a) is limited to targeting*  
21       *persons reasonably believed to be located outside the*  
22       *United States and does not result in the intentional*  
23       *acquisition of any communication as to which the*  
24       *sender and all intended recipients are known at the*

1       *time of the acquisition to be located in the United*  
2       *States.*

3       “(2) *JUDICIAL REVIEW.*—*The procedures re-*  
4       *quired by paragraph (1) shall be subject to judicial*  
5       *review pursuant to subsection (i).*

6       “(e) *MINIMIZATION PROCEDURES.*—

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

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

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

17       “(2) *JUDICIAL REVIEW.*—*The minimization pro-*  
18       *cedures required by paragraph (1) shall be subject to*  
19       *judicial review pursuant to subsection (i).*

20       “(f) *GUIDELINES FOR COMPLIANCE WITH LIMITA-*  
21       *TIONS.*—

22       “(1) *REQUIREMENT TO ADOPT.*—*The Attorney*  
23       *General, in consultation with the Director of National*  
24       *Intelligence, shall adopt guidelines to ensure—*

1                   “(A) compliance with the limitations in  
2 subsection (b); and

3                   “(B) that an application is filed under sec-  
4 tion 104 or 303, if required by this Act.

5                   “(2) CRITERIA.—With respect to subsection  
6 (b)(2), the guidelines adopted pursuant to paragraph  
7 (1) shall contain specific criteria for determining  
8 whether a significant purpose of an acquisition is to  
9 acquire the communications of a specific United  
10 States person reasonably believed to be located in the  
11 United States. Such criteria shall include consider-  
12 ation of whether—

13                   “(A) the department or agency of the Fed-  
14 eral Government conducting the acquisition has  
15 made an inquiry to another department or agen-  
16 cy of the Federal Government to gather informa-  
17 tion on the specific United States person;

18                   “(B) the department or agency of the Fed-  
19 eral Government conducting the acquisition has  
20 provided information that identifies the specific  
21 United States person to another department or  
22 agency of the Federal Government;

23                   “(C) the department or agency of the Fed-  
24 eral Government conducting the acquisition de-  
25 termines that the specific United States person

1       *has been the subject of ongoing interest or re-*  
2       *peated investigation by a department or agency*  
3       *of the Federal Government; and*

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

6           “(3) *TRAINING.—The Director of National Intel-*  
7       *ligence shall establish a training program for appro-*  
8       *priate personnel of the intelligence community to en-*  
9       *sure that the guidelines adopted pursuant to para-*  
10       *graph (1) are properly implemented.*

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

15           “(A) *the congressional intelligence commit-*  
16       *tees;*

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

19           “(C) *the Foreign Intelligence Surveillance*  
20       *Court.*

21           “(g) *CERTIFICATION.—*

22           “(1) *IN GENERAL.—*

23           “(A) *REQUIREMENT.—Subject to subparagraph (B), if the Attorney General and the Di-*  
24       *rector of National Intelligence seek to authorize*

1           *an acquisition under this section, the Attorney*  
2           *General and the Director of National Intelligence*  
3           *shall provide, under oath, a written certification,*  
4           *as described in this subsection.*

5           “*(B) EMERGENCY AUTHORIZATION.*—*If the*  
6           *Attorney General and the Director of National*  
7           *Intelligence determine that an emergency situa-*  
8           *tion exists, immediate action by the Government*  
9           *is required, and time does not permit the com-*  
10           *pletion of judicial review pursuant to subsection*  
11           *(i) prior to the initiation of an acquisition, the*  
12           *Attorney General and the Director of National*  
13           *Intelligence may authorize the acquisition and*  
14           *shall submit to the Foreign Intelligence Surveil-*  
15           *lance Court a certification under this subsection*  
16           *as soon as possible but in no event more than 7*  
17           *days after such determination is made.*

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

20           “*(A) attest that—*

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

24           “*(I) is targeted at persons reason-*  
25           *ably believed to be located outside the*

1                   *United States and such procedures*  
2                   *have been submitted to the Foreign In-*  
3                   *telligence Surveillance Court; and*

4                   *“(II) does not result in the inten-*  
5                   *tional acquisition of any communica-*  
6                   *tion as to which the sender and all in-*  
7                   *tended recipients are known at the*  
8                   *time of the acquisition to be located in*  
9                   *the United States, and such procedures*  
10                   *have been submitted to the Foreign In-*  
11                   *telligence Surveillance Court;*

12                   *“(ii) guidelines have been adopted in*  
13                   *accordance with subsection (f) to ensure*  
14                   *compliance with the limitations in sub-*  
15                   *section (b) and to ensure that applications*  
16                   *are filed under section 104 or section 303,*  
17                   *if required by this Act;*

18                   *“(iii) the minimization procedures to*  
19                   *be used with respect to such acquisition—*

20                   *“(I) meet the definition of mini-*  
21                   *mization procedures under section*  
22                   *101(h) or section 301(4) in accordance*  
23                   *with subsection (e); and*

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

4                             “(iv) the procedures and guidelines re-  
5                             ferred to in clauses (i), (ii), and (iii) are  
6                             consistent with the requirements of the  
7                             fourth amendment to the Constitution of the  
8                             United States;

9                             “(v) a significant purpose of the acqui-  
10                             sition is to obtain foreign intelligence infor-  
11                             mation;

12                             “(vi) the acquisition involves obtaining  
13                             the foreign intelligence information from or  
14                             with the assistance of an electronic commu-  
15                             nication service provider; and

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

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

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

23                             “(ii) the head of an element of the in-  
24                             telligence community; and

25                             “(C) include—

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

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

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

11                   “(II) a description of why imple-  
12                   mentation was required in less than 30  
13                   days from the submission of the writ-  
14                   ten certification to the court; and

15                   “(III) if the acquisition is author-  
16                   ized under paragraph (1)(B), the basis  
17                   for the determination that an emer-  
18                   gency situation exists, immediate ac-  
19                   tion by the government is required,  
20                   and time does not permit the comple-  
21                   tion of judicial review prior to the ini-  
22                   tiation of the acquisition.

23                   “(3) LIMITATION.—A certification made under  
24                   this subsection is not required to identify the specific  
25                   facilities, places, premises, or property at which the

1        *acquisition authorized under subsection (a) will be di-*  
2        *rected or conducted.*

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

14            *“(5) REVIEW.—A certification submitted pursuant*  
15        *to this subsection shall be subject to judicial re-*  
16        *view pursuant to subsection (i).*

17            **“(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-**  
18        **TIVES.—**

19            *“(1) AUTHORITY.—Pursuant to an order issued*  
20        *in accordance with subsection (i)(3) or a determina-*  
21        *tion under subsection (g)(1)(B), the Attorney General*  
22        *and the Director of National Intelligence may direct,*  
23        *in writing, an electronic communication service pro-*  
24        *vider to—*

1                   “(A) immediately provide the Government  
2                   with all information, facilities, or assistance nec-  
3                   essary to accomplish the acquisition authorized  
4                   in accordance with this section in a manner that  
5                   will protect the secrecy of the acquisition and  
6                   produce a minimum of interference with the  
7                   services that such electronic communication serv-  
8                   ice provider is providing to the target of the ac-  
9                   quisition; and

10                  “(B) maintain under security procedures  
11                  approved by the Attorney General and the Direc-  
12                  tor of National Intelligence any records con-  
13                  cerning the acquisition or the aid furnished that  
14                  such electronic communication service provider  
15                  wishes to maintain.

16                  “(2) COMPENSATION.—The Government shall  
17                  compensate, at the prevailing rate, an electronic com-  
18                  munication service provider for providing informa-  
19                  tion, facilities, or assistance pursuant to paragraph  
20                  (1).

21                  “(3) RELEASE FROM LIABILITY.—Notwith-  
22                  standing any other provision of law, no cause of ac-  
23                  tion shall lie in any court against any electronic com-  
24                  munication service provider for providing any infor-

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

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

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

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

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

22 **“(D) PROCEDURES FOR INITIAL REVIEW.—**  
23 *A judge shall conduct an initial review of a peti-*  
24 *tion filed under subparagraph (A) not later than*  
25 *5 days after being assigned such petition. If the*

1       *judge determines that the petition does not con-*  
2       *sist of claims, defenses, or other legal contentions*  
3       *that are warranted by existing law, a nonfrivo-*  
4       *lous argument for extending, modifying, or re-*  
5       *versing existing law, or establishing new law, the*  
6       *judge shall immediately deny the petition and*  
7       *affirm the directive or any part of the directive*  
8       *that is the subject of the petition and order the*  
9       *recipient to comply with the directive or any*  
10       *part of it. Upon making such a determination or*  
11       *promptly thereafter, the judge shall provide a*  
12       *written statement for the record of the reasons*  
13       *for a determination under this subparagraph.*

14       “*(E) PROCEDURES FOR PLENARY RE-*  
15       *VIEW.—If a judge determines that a petition*  
16       *filed under subparagraph (A) requires plenary*  
17       *review, the judge shall affirm, modify, or set*  
18       *aside the directive that is the subject of that peti-*  
19       *tion not later than 30 days after being assigned*  
20       *the petition. If the judge does not set aside the*  
21       *directive, the judge shall immediately affirm or*  
22       *modify the directive and order the recipient to*  
23       *comply with the directive in its entirety or as*  
24       *modified. The judge shall provide a written*

1       *statement for the records of the reasons for a de-*  
2       *termination under this subparagraph.*

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

6           “(G) CONTEMPT OF COURT.—Failure to  
7       *obey an order of the Court issued under this*  
8       *paragraph may be punished by the Court as con-*  
9       *tempt of court.*

10       “(5) ENFORCEMENT OF DIRECTIVES.—

11           “(A) ORDER TO COMPEL.—If an electronic  
12       *communication service provider fails to comply*  
13       *with a directive issued pursuant to paragraph*  
14       *(1), the Attorney General may file a petition for*  
15       *an order to compel the electronic communication*  
16       *service provider to comply with the directive*  
17       *with the Foreign Intelligence Surveillance Court,*  
18       *which shall have jurisdiction to review such a*  
19       *petition.*

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

1                   “(C) *PROCEDURES FOR REVIEW.*—A judge  
2                   considering a petition filed under subparagraph  
3                   (A) shall issue an order requiring the electronic  
4                   communication service provider to comply with  
5                   the directive or any part of it, as issued or as  
6                   modified not later than 30 days after being as-  
7                   signed the petition if the judge finds that the di-  
8                   rective meets the requirements of this section and  
9                   is otherwise lawful. The judge shall provide a  
10                   written statement for the record of the reasons  
11                   for a determination under this paragraph.

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

16                   “(E) *PROCESS.*—Any process under this  
17                   paragraph may be served in any judicial district  
18                   in which the electronic communication service  
19                   provider may be found.

20                   “(6) *APPEAL.*—

21                   “(A) *APPEAL TO THE COURT OF REVIEW.*—  
22                   The Government or an electronic communication  
23                   service provider receiving a directive issued pur-  
24                   suant to paragraph (1) may file a petition with  
25                   the Foreign Intelligence Surveillance Court of

1       *Review for review of a decision issued pursuant*  
2       *to paragraph (4) or (5). The Court of Review*  
3       *shall have jurisdiction to consider such a peti-*  
4       *tion and shall provide a written statement for*  
5       *the record of the reasons for a decision under this*  
6       *paragraph.*

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

17       “(i) *JUDICIAL REVIEW OF CERTIFICATIONS AND PRO-*  
18       *CEDURES.—*

19               “(1) *IN GENERAL.—*

20               “(A) *REVIEW BY THE FOREIGN INTEL-*  
21       *LIGENCE SURVEILLANCE COURT.—The Foreign*  
22       *Intelligence Surveillance Court shall have juris-*  
23       *diction to review any certification submitted*  
24       *pursuant to subsection (g) and the targeting and*

1           *minimization procedures required by subsections*  
2           *(d) and (e).*

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

10          “*(2) REVIEW.*—*The Court shall review the fol-*  
11          *lowing:*

12          “*(A) CERTIFICATIONS.*—*A certification sub-*  
13          *mitted pursuant to subsection (g) to determine*  
14          *whether the certification contains all the required*  
15          *elements.*

16          “*(B) TARGETING PROCEDURES.*—*The tar-*  
17          *geting procedures required by subsection (d) to*  
18          *assess whether the procedures are reasonably de-*  
19          *signed to ensure that the acquisition authorized*  
20          *under subsection (a) is limited to the targeting*  
21          *of persons reasonably believed to be located out-*  
22          *side the United States and does not result in the*  
23          *intentional acquisition of any communication as*  
24          *to which the sender and all intended recipients*

1       *are known at the time of the acquisition to be lo-*  
2       *cated in the United States.*

3           “(C) *MINIMIZATION PROCEDURES.*—*The*  
4       *minimization procedures required by subsection*  
5       *(e) to assess whether such procedures meet the*  
6       *definition of minimization procedures under sec-*  
7       *tion 101(h) or section 301(4) in accordance with*  
8       *subsection (e).*

9           “(3) *ORDERS.*—

10           “(A) *APPROVAL.*—*If the Court finds that a*  
11       *certification submitted pursuant to subsection (g)*  
12       *contains all of the required elements and that the*  
13       *procedures required by subsections (d) and (e)*  
14       *are consistent with the requirements of those sub-*  
15       *sections and with the fourth amendment to the*  
16       *Constitution of the United States, the Court shall*  
17       *enter an order approving the certification and*  
18       *the use of the procedures for the acquisition.*

19           “(B) *CORRECTION OF DEFICIENCIES.*—*If*  
20       *the Court finds that a certification submitted*  
21       *pursuant to subsection (g) does not contain all of*  
22       *the required elements or that the procedures re-*  
23       *quired by subsections (d) and (e) are not con-*  
24       *sistent with the requirements of those subsections*

1           *or the fourth amendment to the Constitution of*  
2           *the United States—*

3                   “(i) *in the case of a certification sub-*  
4                   *mitted in accordance with subsection*  
5                   *(g)(1)(A), the Court shall deny the order,*  
6                   *identify any deficiency in the certification*  
7                   *or procedures, and provide the Government*  
8                   *with an opportunity to correct such defi-*  
9                   *ciency; and*

10                  “(ii) *in the case of a certification sub-*  
11                  *mitted in accordance with subsection*  
12                  *(g)(1)(B), the Court shall issue an order di-*  
13                  *recting the Government to, at the Govern-*  
14                  *ment’s election and to the extent required by*  
15                  *the Court’s order—*

16                   “(I) *correct any deficiency identi-*  
17                  *fied by the Court not later than 30*  
18                  *days after the date the Court issues the*  
19                  *order; or*

20                   “(II) *cease the acquisition author-*  
21                  *ized under subsection (g)(1)(B).*

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

1       *with the orders, for the record a written state-*  
2       *ment of its reasons.*

3       “(4) *APPEAL.*—

4           “(A) *APPEAL TO THE COURT OF REVIEW.*—

5       *The Government may appeal any order under*  
6       *this section to the Foreign Intelligence Surveil-*  
7       *lance Court of Review, which shall have jurisdic-*  
8       *tion to review such order. For any decision af-*  
9       *firming, reversing, or modifying an order of the*  
10       *Foreign Intelligence Surveillance Court, the*  
11       *Court of Review shall provide for the record a*  
12       *written statement of its reasons.*

13           “(B) *CONTINUATION OF ACQUISITION PEND-*  
14       *ING REHEARING OR APPEAL.*—*Any acquisition*  
15       *affected by an order under paragraph (3)(B)(ii)*  
16       *may continue—*

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

20           “(ii) *if the Government appeals an*  
21       *order under this section, subject to subpara-*  
22       *graph (C), until the Court of Review enters*  
23       *an order under subparagraph (A).*

24           “(C) *IMPLEMENTATION OF EMERGENCY AU-*  
25       *THORITY PENDING APPEAL.*—*Not later than 60*

1       *days after the filing of an appeal of an order*  
2       *issued under paragraph (3)(B)(ii) directing the*  
3       *correction of a deficiency, the Court of Review*  
4       *shall determine, and enter a corresponding order*  
5       *regarding whether all or any part of the correc-*  
6       *tion order, as issued or modified, shall be imple-*  
7       *mented during the pendency of the appeal. The*  
8       *Government shall conduct an acquisition affected*  
9       *by such order issued under paragraph (3)(B)(ii)*  
10       *in accordance with an order issued under this*  
11       *subparagraph or shall cease such acquisition.*

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

20       “*(5) SCHEDULE.—*

21       “*(A) REPLACEMENT OF AUTHORIZATIONS IN*  
22       *EFFECT.—If the Attorney General and the Direc-*  
23       *tor of National Intelligence seek to replace an*  
24       *authorization issued pursuant to section 105B of*  
25       *the Foreign Intelligence Surveillance Act of 1978,*

1           *as added by section 2 of the Protect America Act*  
2           *of 2007 (Public Law 110-55), the Attorney Gen-*  
3           *eral and the Director of National Intelligence*  
4           *shall, to the extent practicable, submit to the*  
5           *Court a certification under subsection (g) and*  
6           *the procedures required by subsections (d), (e),*  
7           *and (f) at least 30 days before the expiration of*  
8           *such authorization.*

9           “*(B) REAUTHORIZATION OF AUTHORIZA-*  
10           *TIONS IN EFFECT.—If the Attorney General and*  
11           *the Director of National Intelligence seek to re-*  
12           *place an authorization issued pursuant to this*  
13           *section, the Attorney General and the Director of*  
14           *National Intelligence shall, to the extent prac-*  
15           *ticable, submit to the Court a certification under*  
16           *subsection (g) and the procedures required by*  
17           *subsections (d), (e), and (f) at least 30 days*  
18           *prior to the expiration of such authorization.*

19           “*(C) CONSOLIDATED SUBMISSIONS.—The*  
20           *Attorney General and Director of National Intel-*  
21           *ligence shall, to the extent practicable, annually*  
22           *submit to the Court a consolidation of—*

23           “*(i) certifications under subsection (g)*  
24           *for reauthorization of authorizations in ef-*  
25           *fect;*

1                   “(ii) the procedures required by sub-  
2                   sections (d), (e), and (f); and

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

5                   “(D) *TIMING OF REVIEWS*.—*The Attorney*  
6                   *General and the Director of National Intelligence*  
7                   *shall, to the extent practicable, schedule the com-*  
8                   *pletion of the annual review under subsection*  
9                   *(l)(3) and a semiannual assessment under sub-*  
10                   *section (l)(1) so that they may be submitted to*  
11                   *the Court at the time of the consolidated submis-*  
12                   *sion under subparagraph (C).*

13                   “(E) *CONSTRUCTION*.—*The requirements of*  
14                   *subparagraph (C) shall not be construed to pre-*  
15                   *clude the Attorney General and the Director of*  
16                   *National Intelligence from submitting certifi-*  
17                   *cations for additional authorizations at other*  
18                   *times during the year as necessary.*

19                   “(6) *COMPLIANCE*.—*At or before the end of the*  
20                   *period of time for which a certification submitted*  
21                   *pursuant to subsection (g) and procedures required by*  
22                   *subsection (d) and (e) are approved by an order*  
23                   *under this section, the Foreign Intelligence Surveil-*  
24                   *lance Court may assess compliance with the mini-*  
25                   *mization procedures required by subsection (e) by re-*

1       *viewing the circumstances under which information*  
2       *concerning United States persons was acquired, re-*  
3       *tained, or disseminated.*

4       “(j) *JUDICIAL PROCEEDINGS.*—

5       “(1) *EXPEDITED PROCEEDINGS.*—*Judicial pro-*  
6       *ceedings under this section shall be conducted as expe-*  
7       *ditiously as possible.*

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

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

15       “(1) *STANDARDS.*—*The Foreign Intelligence Sur-*  
16       *veillance Court shall maintain a record of a pro-*  
17       *ceeding under this section, including petitions filed,*  
18       *orders granted, and statements of reasons for decision,*  
19       *under security measures adopted by the Chief Justice*  
20       *of the United States, in consultation with the Attor-*  
21       *ney General and the Director of National Intelligence.*

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

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

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

9       “*(l) ASSESSMENTS AND REVIEWS.—*

10       “*(1) SEMIANNUAL ASSESSMENT.—Not less fre-*  
11       *quently than once every 6 months, the Attorney Gen-*  
12       *eral and Director of National Intelligence shall assess*  
13       *compliance with the procedures and guidelines re-*  
14       *quired by subsections (d), (e), and (f) and shall sub-*  
15       *mit each assessment to—*

16       “*(A) the congressional intelligence commit-*  
17       *tees;*

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

20       “*(C) the Foreign Intelligence Surveillance*  
21       *Court.*

22       “*(2) AGENCY ASSESSMENT.—The Inspectors Gen-*  
23       *eral of the Department of Justice and of each element*  
24       *of the intelligence community authorized to acquire*

1       *foreign intelligence information under subsection (a),*  
2       *with respect to such Department or such element—*

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

6               *“(B) with respect to acquisitions authorized*  
7               *under subsection (a), shall review the dissemi-*  
8               *nated intelligence reports containing a reference*  
9               *to a United States person identity and the num-*  
10               *ber of United States person identities subse-*  
11               *quently disseminated by the element concerned in*  
12               *response to requests for identities that were not*  
13               *referred to by name or title in the original re-*  
14               *porting;*

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

20               *“(D) shall provide each such review to—*

21               *“(i) the Attorney General;*

22               *“(ii) the Director of National Intel-*  
23               *ligence;*

24               *“(iii) the congressional intelligence*  
25               *committees;*

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

4                     “(v) the Foreign Intelligence Surveillance Court.

6                     “(3) ANNUAL REVIEW.—

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

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

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

24                     “(iii) the number of targets that were later determined to be located in the United

1           *States and, to the extent possible, whether*  
2           *their communications were reviewed; and*

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

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

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

1                             “(i) the Foreign Intelligence Surveillance Court;

2                             “(ii) the Attorney General;

3                             “(iii) the Director of National Intelligence;

4                             “(iv) the congressional intelligence

5                             committees; and

6                             “(v) the Committees on the Judiciary

7                             of the House of Representatives and the

8                             Senate.

11                     “(m) CONSTRUCTION.—Nothing in this Act shall be

12                     construed to require an application under section 104 for

13                     an acquisition that is targeted in accordance with this sec-

14                     tion at a person reasonably believed to be located outside

15                     the United States.

16                     **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**

17                     **STATES OF UNITED STATES PERSONS OUT-**

18                     **SIDE THE UNITED STATES.**

19                     “(a) JURISDICTION OF THE FOREIGN INTELLIGENCE

20                     SURVEILLANCE COURT.—

21                     “(1) IN GENERAL.—The Foreign Intelligence

22                     Surveillance Court shall have jurisdiction to review

23                     an application and enter an order approving the tar-

24                     geting of a United States person reasonably believed

25                     to be located outside the United States to acquire for-

1       *esign intelligence information if the acquisition con-*  
2       *stitutes electronic surveillance or the acquisition of*  
3       *stored electronic communications or stored electronic*  
4       *data that requires an order under this Act and such*  
5       *acquisition is conducted within the United States.*

6       “*(2) LIMITATION.—If a United States person*  
7       *targeted under this subsection is reasonably believed*  
8       *to be located in the United States during the pend-*  
9       *ency of an order issued pursuant to subsection (c),*  
10       *such acquisition shall cease unless authority, other*  
11       *than under this section, is obtained pursuant to this*  
12       *Act or the targeted United States person is again rea-*  
13       *sonably believed to be located outside the United*  
14       *States during the pendency of an order issued pursu-*  
15       *ant to subsection (c).*

16       “*(b) APPLICATION.—*

17       “*(1) IN GENERAL.—Each application for an*  
18       *order under this section shall be made by a Federal*  
19       *officer in writing upon oath or affirmation to a judge*  
20       *having jurisdiction under subsection (a)(1). Each ap-*  
21       *plication shall require the approval of the Attorney*  
22       *General based upon the Attorney General’s finding*  
23       *that it satisfies the criteria and requirements of such*  
24       *application, as set forth in this section, and shall in-*  
25       *clude—*

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

3                   “(B) the identity, if known, or a description  
4                   of the United States person who is the target of  
5                   the acquisition;

6                   “(C) a statement of the facts and circumstances relied upon to justify the applicant’s  
7                   belief that the United States person who is the  
8                   target of the acquisition 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                  “(D) a statement of proposed minimization  
16                  procedures that—

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

20                  “(ii) in the case of a physical search,  
21                  meet the definition of minimization proce-  
22                  dures in section 301(4);

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

1                   “(F) a certification made by the Attorney  
2                   General or an official specified in section  
3                   104(a)(6) that—

4                   “(i) the certifying official deems the in-  
5                   formation sought to be foreign intelligence  
6                   information;

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

10                   “(iii) such information cannot reason-  
11                   ably be obtained by normal investigative  
12                   techniques;

13                   “(iv) identifies the type of foreign in-  
14                   telligence information being sought accord-  
15                   ing to the categories described in each sub-  
16                   paragraph of section 101(e); and

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

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

22                   “(II) such information cannot  
23                   reasonably be obtained by normal in-  
24                   vestigative techniques;

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

5                   “(H) the identity of any electronic commu-  
6                   nication service provider necessary to effect the  
7                   acquisition, provided, however, that the applica-  
8                   tion is not required to identify the specific facili-  
9                   ties, places, premises, or property at which the  
10                   acquisition authorized under this section will be  
11                   directed or conducted;

12                   “(I) a statement of the facts concerning any  
13                   previous applications that have been made to  
14                   any judge of the Foreign Intelligence Surveil-  
15                   lance Court involving the United States person  
16                   specified in the application and the action taken  
17                   on each previous application; and

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

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

1           “(3) OTHER REQUIREMENTS OF THE JUDGE.—

2           *The judge may require the applicant to furnish such*  
3           *other information as may be necessary to make the*  
4           *findings required by subsection (c)(1).*

5           “(c) ORDER.—

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

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

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

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

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

23           “(C) the proposed minimization proce-  
24           dures—

1                   “(i) in the case of electronic surveil-  
2                   lance, meet the definition of minimization  
3                   procedures in section 101(h); and

4                   “(ii) in the case of a physical search,  
5                   meet the definition of minimization proce-  
6                   dures in section 301(4);

7                   “(D) the application that has been filed  
8                   contains all statements and certifications re-  
9                   quired by subsection (b) and the certification or  
10                   certifications are not clearly erroneous on the  
11                   basis of the statement made under subsection  
12                   (b)(1)(F)(v) and any other information fur-  
13                   nished under subsection (b)(3).

14                   “(2) PROBABLE CAUSE.—In determining whether  
15                   or not probable cause exists for purposes of para-  
16                   graph (1)(B), a judge having jurisdiction under sub-  
17                   section (a)(1) may consider past activities of the tar-  
18                   get and facts and circumstances relating to current or  
19                   future activities of the target. No United States per-  
20                   son may be considered a foreign power, agent of a for-  
21                   eign power, or officer or employee of a foreign power  
22                   solely upon the basis of activities protected by the first  
23                   amendment to the Constitution of the United States.

24                   “(3) REVIEW.—

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

5                   “(B) *REVIEW OF PROBABLE CAUSE*.—*If the*  
6                   *judge determines that the facts submitted under*  
7                   *subsection (b) are insufficient to establish prob-*  
8                   *able cause under paragraph (1)(B), the judge*  
9                   *shall enter an order so stating and provide a*  
10                   *written statement for the record of the reasons*  
11                   *for such determination. The Government may*  
12                   *appeal an order under this subparagraph pursu-*  
13                   *ant to subsection (f).*

14                   “(C) *REVIEW OF MINIMIZATION PROCE-*  
15                   *DURES*.—*If the judge determines that the pro-*  
16                   *posed minimization procedures referred to in*  
17                   *paragraph (1)(C) do not meet the definition of*  
18                   *minimization procedures as required under such*  
19                   *paragraph the judge shall enter an order so stat-*  
20                   *ing and provide a written statement for the*  
21                   *record of the reasons for such determination. The*  
22                   *Government may appeal an order under this*  
23                   *subparagraph pursuant to subsection (f).*

24                   “(D) *REVIEW OF CERTIFICATION*.—*If the*  
25                   *judge determines that an application under sub-*

1           *section (b) does not contain all of the required*  
2           *elements, or that the certification or certifi-*  
3           *cations are clearly erroneous on the basis of the*  
4           *statement made under subsection (b)(1)(F)(v)*  
5           *and any other information furnished under sub-*  
6           *section (b)(3), the judge shall enter an order so*  
7           *stating and provide a written statement for the*  
8           *record of the reasons for such determination. The*  
9           *Government may appeal an order under this*  
10           *subparagraph pursuant to subsection (f).*

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

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

17           “*(B) if provided in the application pursuant*  
18           *to subsection (b)(1)(H), the nature and loca-*  
19           *tion of each of the facilities or places at which*  
20           *the acquisition will be directed;*

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

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

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

6                   “(5) DIRECTIONS.—An order approving an ac-  
7                   quisition under this subsection shall direct—

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

11                   “(B) an electronic communication service  
12                   provider to provide to the Government forthwith  
13                   all information, facilities, or assistance necessary  
14                   to accomplish the acquisition authorized under  
15                   such order in a manner that will protect the se-  
16                   crecy of the acquisition and produce a minimum  
17                   of interference with the services that such elec-  
18                   tronic communication service provider is pro-  
19                   viding to the target of the acquisition;

20                   “(C) an electronic communication service  
21                   provider to maintain under security procedures  
22                   approved by the Attorney General any records  
23                   concerning the acquisition or the aid furnished  
24                   that such electronic communication service pro-  
25                   vider wishes to maintain; and

1                   “(D) that the Government compensate, at  
2                   the prevailing rate, such electronic communica-  
3                   tion service provider for providing such informa-  
4                   tion, facilities, or assistance.

5                   “(6) DURATION.—An order approved under this  
6                   subsection shall be effective for a period not to exceed  
7                   90 days and such order may be renewed for addi-  
8                   tional 90-day periods upon submission of renewal ap-  
9                   plications meeting the requirements of subsection (b).

10                  “(7) COMPLIANCE.—At or prior to the end of the  
11                  period of time for which an acquisition is approved  
12                  by an order or extension under this section, the judge  
13                  may assess compliance with the minimization proce-  
14                  dures referred to in paragraph (1)(C) by reviewing  
15                  the circumstances under which information con-  
16                  cerning United States persons was acquired, retained,  
17                  or disseminated.

18                  “(d) EMERGENCY AUTHORIZATION.—

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

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

1           *under subsection (c) before an order authorizing*  
2           *such acquisition can with due diligence be ob-*  
3           *tained, and*

4           *“(B) the factual basis for issuance of an*  
5           *order under this subsection to approve such ac-*  
6           *quisition exists,*

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

17           *“(2) MINIMIZATION PROCEDURES.—If the Attor-*  
18           *ney General authorizes an acquisition under para-*  
19           *graph (1), the Attorney General shall require that the*  
20           *minimization procedures referred to in subsection*  
21           *(c)(1)(C) for the issuance of a judicial order be fol-*  
22           *lowed.*

23           *“(3) TERMINATION OF EMERGENCY AUTHORIZA-*  
24           *TION.—In the absence of a judicial order approving*  
25           *an acquisition authorized under paragraph (1), such*

1       *acquisition shall terminate when the information*  
2       *sought is obtained, when the application for the order*  
3       *is denied, or after the expiration of 7 days from the*  
4       *time of authorization by the Attorney General, which-*  
5       *ever is earliest.*

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

1       “(e) *RELEASE FROM LIABILITY.*—Notwithstanding  
2   any other provision of law, no cause of action shall lie in  
3   any court against any electronic communication service  
4   provider for providing any information, facilities, or assist-  
5   ance in accordance with an order or request for emergency  
6   assistance issued pursuant to subsection (c) or (d).

7       “(f) *APPEAL.*—

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

16       “(2) *CERTIORARI TO THE SUPREME COURT.*—  
17   The Government may file a petition for a writ of cer-  
18   tiorari for review of a decision of the Court of Review  
19   under paragraph (1). The record for such review shall  
20   be transmitted under seal to the Supreme Court of the  
21   United States, which shall have jurisdiction to review  
22   such decision.

23       “(g) *CONSTRUCTION.*—Nothing in this Act shall be  
24   construed to require an application under section 104 for  
25   an acquisition that is targeted in accordance with this sec-

1 *tion at a person reasonably believed to be located outside*  
2 *the United States.*

3 **“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED**  
4 **STATES PERSONS OUTSIDE THE UNITED**  
5 **STATES.**

6 *“(a) JURISDICTION AND SCOPE.—*

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

10 *“(2) SCOPE.—No department or agency of the*  
11 *Federal Government may intentionally target, for the*  
12 *purpose of acquiring foreign intelligence information,*  
13 *a United States person reasonably believed to be lo-*  
14 *cated outside the United States under circumstances*  
15 *in which the targeted United States person has a rea-*  
16 *sonable expectation of privacy and a warrant would*  
17 *be required if the acquisition were conducted inside*  
18 *the United States for law enforcement purposes, un-*  
19 *less a judge of the Foreign Intelligence Surveillance*  
20 *Court has entered an order with respect to such tar-*  
21 *getted United States person or the Attorney General*  
22 *has authorized an emergency acquisition pursuant to*  
23 *subsection (c) or (d) or any other provision of this*  
24 *Act.*

25 *“(3) LIMITATIONS.—*

1                   “(A) *MOVING OR MISIDENTIFIED TAR-*  
2                   *GETS.*—*If a targeted United States person is*  
3                   *reasonably believed to be in the United States*  
4                   *during the pendency of an order issued pursuant*  
5                   *to subsection (c), acquisitions relating to such*  
6                   *targeted United States Person shall cease unless*  
7                   *authority is obtained pursuant to this Act or the*  
8                   *targeted United States person is again reason-*  
9                   *ably believed to be located outside the United*  
10                   *States during the pendency of such order.*

11                   “(B) *APPLICABILITY.*—*If an acquisition is*  
12                   *to be conducted inside the United States and*  
13                   *could be authorized under section 703, the acqui-*  
14                   *sition may only be conducted if authorized under*  
15                   *section 703 or in accordance with another provi-*  
16                   *sion of this Act other than this section.*

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

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

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

6           “(3) a statement of the facts and circumstances  
7           relied upon to justify the applicant’s belief that the  
8           United States person who is the target of the acquisi-  
9           tion is—

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

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

15           “(4) a statement of proposed minimization pro-  
16           cedures that—

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

20           “(B) in the case of a physical search, meet  
21           the definition of minimization procedures in sec-  
22           tion 301(4);

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 informa-*  
5               *tion; and*

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

8               *“(6) a statement of the facts concerning any pre-*  
9               *vious applications that have been made to any judge*  
10               *of the Foreign Intelligence Surveillance Court involv-*  
11               *ing the United States person specified in the applica-*  
12               *tion and the action taken on each previous applica-*  
13               *tion; and*

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

18       *“(c) ORDER.—*

19               *“(1) FINDINGS.—Upon an application made*  
20               *pursuant to subsection (b), the Foreign Intelligence*  
21               *Surveillance Court shall enter an *ex parte* order as*  
22               *requested or as modified by the Court if the Court*  
23               *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 probable  
7                   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—

15                   “(i) in the case of electronic surveil-  
16                   lance, meet the definition of minimization  
17                   procedures in section 101(h); and

18                   “(ii) in the case of a physical search,  
19                   meet the definition of minimization proce-  
20                   dures in section 301(4);

21                   “(D) the application that has been filed  
22                   contains all statements and certifications re-  
23                   quired by subsection (b) and the certification  
24                   provided under subsection (b)(5) is not clearly

1           *erroneous on the basis of the information fur-*  
2           *nished under subsection (b).*

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

14           “(3) *REVIEW.*—

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

22           “(B) *REVIEW OF PROBABLE CAUSE.*—*If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause under paragraph (1)(B), the judge*

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

6           “(C) *REVIEW OF MINIMIZATION PROCES-*  
7       *DURES.*—*If the judge determines that the pro-*  
8       *posed minimization procedures referred to in*  
9       *paragraph (1)(C) do not meet the definition of*  
10       *minimization procedures as required under such*  
11       *paragraph, the judge shall enter an order so stat-*  
12       *ing and provide a written statement for the*  
13       *record of the reasons for such determination. The*  
14       *Government may appeal an order under this*  
15       *clause pursuant to subsection (e).*

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

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

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

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

17           “(d) EMERGENCY AUTHORIZATION.—

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

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

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

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

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

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

20           *“(3) TERMINATION OF EMERGENCY AUTHORIZA-*  
21           *TION.—In the absence of an order under subsection*  
22           *(c), the acquisition authorized under paragraph (1)*  
23           *shall terminate when the information sought is ob-*  
24           *tained, if the application for the order is denied, or*

1       *after the expiration of 7 days from the time of author-*  
2       *ization by the Attorney General, whichever is earliest.*

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

24       *“(e) APPEAL.—*

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

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

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

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

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

3 “(b) CONCURRENT AUTHORIZATION.—

4 “(1) ELECTRONIC SURVEILLANCE.—If an order  
5 authorizing electronic surveillance has been obtained  
6 under section 105 and that order is still in effect,  
7 during the pendency of that order the Attorney Gen-  
8 eral may authorize, without an order under section  
9 703 or 704, electronic surveillance for the purpose of  
10 acquiring foreign intelligence information targeting  
11 that United States person while such person is rea-  
12 sonably believed to be located outside the United  
13 States.

14 “(2) PHYSICAL SEARCH.—If an order author-  
15 izing a physical search has been obtained under sec-  
16 tion 304 and that order is still in effect, during the  
17 pendency of that order the Attorney General may au-  
18 thorize, without an order under section 703 or 704,  
19 a physical search for the purpose of acquiring foreign  
20 intelligence information targeting that United States  
21 person while such person is reasonably believed to be  
22 located outside the United States.

1   **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE**2                   **VII.**

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

6   **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

7           “(a) *SEMIANNUAL REPORT.*—Not less frequently than  
8   *once every 6 months, the Attorney General shall fully in-*  
9   *form, in a manner consistent with national security, the*  
10   *congressional intelligence committees and the Committees*  
11   *on the Judiciary of the Senate and the House of Representa-*  
12   *tives, concerning the implementation of this title.*

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

15           “(1) *with respect to section 702—*

16            “(A) *any certifications made under section*  
17   *702(g) during the reporting period;*

18            “(B) *with respect to each certification made*  
19   *under paragraph (1)(B) of such section, the rea-*  
20   *sons for exercising the authority under such*  
21   *paragraph;*

22            “(C) *any directives issued under section*  
23   *702(h) during the reporting period;*

24            “(D) *a description of the judicial review*  
25   *during the reporting period of any such certifi-*  
26   *cations and targeting and minimization proce-*

1           *dures adopted pursuant to subsections (d) and*  
2           *(e) of section 702 utilized with respect to such*  
3           *acquisition, including a copy of any order or*  
4           *pleading in connection with such review that*  
5           *contains a significant legal interpretation of the*  
6           *provisions of 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 National*  
12           *Intelligence of acquisitions authorized under sub-*  
13           *section 702(a);*

14           “*(G) a description of any incidents of non-*  
15           *compliance with a directive issued by the Attor-*  
16           *ney General and the Director of National Intel-*  
17           *ligence under subsection 702(h), including—*

18           “*(i) incidents of noncompliance by an*  
19           *element of the intelligence community with*  
20           *procedures and guidelines adopted pursuant*  
21           *to subsections (d), (e), and (f) of section*  
22           *702; and*

23           “*(ii) incidents of noncompliance by a*  
24           *specified person to whom the Attorney Gen-*  
25           *eral and Director of National Intelligence*

1                   *issued a directive under subsection 702(h);*

2                   *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; or*

11                   *“(iii) denied; and*

12                   *“(C) the total number of emergency acquisitions*

13                   *authorized by the Attorney General under*

14                   *section 703(d) and the total number of subse-*

15                   *quent orders approving or denying such acqui-*

16                   *sitions; and*

17                   *“(3) with respect to section 704—*

18                   *“(A) the total number of applications made*

19                   *for orders under 704(b);*

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

21                   *“(i) granted;*

22                   *“(ii) modified; or*

23                   *“(iii) denied; and*

24                   *“(C) the total number of emergency acquisitions*

25                   *authorized by the Attorney General under*

1           *subsection 704(d) and the total number of subse-*  
 2           *quent orders approving or denying such applica-*  
 3           *tions.*

4   **“SEC. 708. SAVINGS PROVISION.**

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

9           *(b) TABLE OF CONTENTS.—The table of contents in the*  
 10           *first section of the Foreign Intelligence Surveillance Act of*  
 11           *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 of United States persons  
 outside the United States.

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

“Sec. 705. Joint applications and concurrent authorizations.

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

“Sec. 707. Congressional oversight.

“Sec. 708. Savings provision.”.

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 ACT*  
4       *OF 1978.—Section 601(a)(1) of the Foreign Intel-*  
5       *ligence 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 the*  
18       *Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
19       *1801 et seq.) is amended by adding at the end the following*  
20       *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 interception  
2 of domestic wire, oral, or electronic communications may  
3 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 title  
8 18, United States Code, shall constitute an additional exclu-  
9 sive 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 it  
13 appears in such section and inserting “authorized by this  
14 Act, chapter 119, 121, or 206 of title 18, United States  
15 Code, or any express statutory authorization that is an ad-  
16 ditional exclusive means for conducting electronic surveil-  
17 lance under 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 amended  
21 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,*  
2                   *and shall certify that the statutory require-*  
3                   *ments have been met.”; and*

4                   *(2) TABLE OF CONTENTS.—The table of contents*  
5                   *in the first section of the Foreign Intelligence Surveil-*  
6                   *lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended*  
7                   *by inserting after the item relating to section 111 the*  
8                   *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 of*  
15                   *1978 (50 U.S.C. 1871) is amended by striking “(not includ-*  
16                   *ing orders)” and inserting “, orders.”.*

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

20                   *“(c) SUBMISSIONS TO CONGRESS.—The Attorney Gen-*  
21                   *eral shall submit to the committees of Congress referred to*  
22                   *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 plead-*  
4       *ings, applications, or memoranda of law associated*  
5       *with such decision, order, or opinion, not later than*  
6       *45 days after such decision, order, or opinion is*  
7       *issued; and*

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

15       *“(d) PROTECTION OF NATIONAL SECURITY.—The At-*  
16       *torney 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 commit-*  
19       *tees of Congress referred to in subsection (a), if such*  
20       *redactions are necessary to protect the national security of*  
21       *the United States and are limited to sensitive sources and*  
22       *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 by section 103(a).

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

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

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

12           (1) in subsection (a)—

13              (A) by striking paragraphs (2) and (11);  
14              (B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), re-  
15       spectively;

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

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

## 15 SEC. 105. ISSUANCE OF AN ORDER.

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

18 (1) in subsection (a)—

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

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

23 (2) in subsection (b), by striking "(a)(3)" and  
24 inserting "(a)(2)";

25 (3) in subsection (c)(1)—

5 (C) by striking subparagraph (F);

6 (4) by striking subsection (d);

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

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

15                   “(A) reasonably determines that an emer-  
16                   gency situation exists with respect to the employ-  
17                   ment of electronic surveillance to obtain foreign  
18                   intelligence information before an order author-  
19                   izing such surveillance can with due diligence be  
20                   obtained;

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

24                             “(C) informs, either personally or through a  
25                             designee, a judge having jurisdiction under sec-

1           *tion 103 at the time of such authorization that*  
2           *the decision has been made to employ emergency*  
3           *electronic surveillance; and*

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

9           *“(2) If the Attorney General authorizes the emer-*  
10          *gency employment of electronic surveillance under*  
11          *paragraph (1), the Attorney General shall require*  
12          *that the minimization procedures required by this*  
13          *title for the issuance of a judicial order be followed.*

14          *“(3) In the absence of a judicial order approving*  
15          *such electronic surveillance, the surveillance shall ter-*  
16          *minate when the information sought is obtained,*  
17          *when the application for the order is denied, or after*  
18          *the expiration of 7 days from the time of authoriza-*  
19          *tion by the Attorney General, whichever is earliest.*

20          *“(4) A denial of the application made under this*  
21          *subsection may be reviewed as provided in section*  
22          *103.*

23          *“(5) In the event that such application for ap-*  
24          *proval is denied, or in any other case where the elec-*  
25          *tronic surveillance is terminated and no order is*

1       *issued approving the surveillance, no information ob-*  
2       *tained or evidence derived from such surveillance*  
3       *shall be received in evidence or otherwise disclosed in*  
4       *any trial, hearing, or other proceeding in or before*  
5       *any court, grand jury, department, office, agency,*  
6       *regulatory body, legislative committee, or other au-*  
7       *thority of the United States, a State, or political sub-*  
8       *division thereof, and no information concerning any*  
9       *United States person acquired from such surveillance*  
10       *shall subsequently be used or disclosed in any other*  
11       *manner by Federal officers or employees without the*  
12       *consent of such person, except with the approval of the*  
13       *Attorney General if the information indicates a threat*  
14       *of death or serious bodily harm to any person.*

15       “(6) *The Attorney General shall assess compli-*  
16       *ance with the requirements of paragraph (5).;* and

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

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

1 **SEC. 106. USE OF INFORMATION.**

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

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

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

10                   (1) in subsection (a)—

11                   (A) by striking paragraph (2);

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

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

17                   (D) in paragraph (3)(C), as redesignated by  
18 subparagraph (B) of this paragraph, by insert-  
19 ing “or is about to be” before “owned”; 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”.

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

1 (1) in subsection (a)—

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

6 (2) by amending subsection (e) to read as fol-  
7 lows:

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

11                   “(A) reasonably determines that an emer-  
12                   gency situation exists with respect to the employ-  
13                   ment of a physical search to obtain foreign intel-  
14                   ligence information before an order authorizing  
15                   such physical search can with due diligence be  
16                   obtained;

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

20                   “(C) informs, either personally or through a  
21                   designee, a judge of the Foreign Intelligence Sur-  
22                   veillance Court at the time of such authorization  
23                   that the decision has been made to employ an  
24                   emergency physical search; and

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

6                   “(2) If the Attorney General authorizes the emer-  
7                   gency employment of a physical search under para-  
8                   graph (1), the Attorney General shall require that the  
9                   minimization procedures required by this title for the  
10                  issuance of a judicial order be followed.

11                  “(3) In the absence of a judicial order approving  
12                  such physical search, the physical search shall termi-  
13                  nate when the information sought is obtained, when  
14                  the application for the order is denied, or after the ex-  
15                  piration of 7 days from the time of authorization by  
16                  the Attorney General, whichever is earliest.

17                  “(4) A denial of the application made under this  
18                  subsection may be reviewed as provided in section  
19                  103.

20                  “(5)(A) In the event that such application for  
21                  approval is denied, or in any other case where the  
22                  physical search is terminated and no order is issued  
23                  approving the physical search, no information ob-  
24                  tained or evidence derived from such physical search  
25                  shall be received in evidence or otherwise disclosed in

1       *any trial, hearing, or other proceeding in or before*  
2       *any court, grand jury, department, office, agency,*  
3       *regulatory body, legislative committee, or other au-*  
4       *thority of the United States, a State, or political sub-*  
5       *division thereof, and no information concerning any*  
6       *United States person acquired from such physical*  
7       *search shall subsequently be used or disclosed in any*  
8       *other manner by Federal officers or employees without*  
9       *the consent of such person, except with the approval*  
10      *of the Attorney General if the information indicates*  
11      *a threat of death or serious bodily harm to any per-*  
12      *son.*

13      “(B) *The Attorney General shall assess compli-*  
14      *ance with the requirements of subparagraph (A).*”.

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

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

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

1 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**2 **AND TRAP AND TRACE DEVICES.**3 *Section 403 of the Foreign Intelligence Surveillance*4 *Act of 1978 (50 U.S.C. 1843) is amended—*5 *(1) in subsection (a)(2), by striking “48 hours”*6 *and inserting “7 days”; and*7 *(2) in subsection (c)(1)(C), by striking “48*8 *hours” and inserting “7 days”.*9 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**10 *(a) DESIGNATION OF JUDGES.—Subsection (a) of sec-*11 *tion 103 of the Foreign Intelligence Surveillance Act of 1978*12 *(50 U.S.C. 1803) is amended by inserting “at least” before*13 *“seven of the United States judicial circuits”.*14 *(b) EN BANC AUTHORITY.—*15 *(1) IN GENERAL.—Subsection (a) of section 103*16 *of the Foreign Intelligence Surveillance Act of 1978,*17 *as amended by subsection (a) of this section, is fur-*18 *ther amended—*19 *(A) by inserting “(1)” after “(a)”; and*20 *(B) by adding at the end the following new*21 *paragraph:*22 *“(2)(A) The court established under this subsection, on*23 *its own initiative or upon the request of the Government*24 *in any proceeding or a party under section 501(f) or para-*25 *graph (4) or (5) of section 703(h), may hold a hearing or*26 *rehearing, en banc, when ordered by a majority of the*

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

3 “(i) *en banc* consideration is necessary to secure  
4 or maintain uniformity of the court’s decisions; or  
5 “(ii) the proceeding involves a question of excep-  
6 tional importance.

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

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

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

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

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

1           (c) *STAY OR MODIFICATION DURING AN APPEAL.*—

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

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

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

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

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

23           (d) *AUTHORITY OF FOREIGN INTELLIGENCE SURVEIL-  
24 LANCE COURT.*—Section 103 of the Foreign Intelligence  
25 Surveillance Act of 1978 (50 U.S.C. 1803), as amended by

1 this Act, is further amended by adding at the end the fol-  
2 lowing:

3       “(i) Nothing in this Act shall be construed to reduce  
4 or contravene the inherent authority of the court established  
5 by subsection (a) to determine or enforce compliance with  
6 an order or a rule of such court or with a procedure ap-  
7 proved by such court.”.

8 **SEC. 110. INSPECTOR GENERAL REVIEW OF PREVIOUS AC-  
9 TIONS.**

10       (a) **DEFINITIONS.**—In this section:

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

14           (A) the Select Committee on Intelligence  
15       and the Committee on the Judiciary of the Sen-  
16       ate; and

17           (B) the Permanent Select Committee on In-  
18       telligence and the Committee on the Judiciary of  
19       the House of Representatives.

20           (2) **FOREIGN INTELLIGENCE SURVEILLANCE  
21 COURT.**—The term “Foreign Intelligence Surveillance  
22 Court” means the court established by section 103(a)  
23       of the Foreign Intelligence Surveillance Act of 1978  
24       (50 U.S.C. 1803(a)).

10 (b) *REVIEWS.*—

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

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

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

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

(2) *COOPERATION AND COORDINATION.*—

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

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

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

8 (c) *REPORTS.*—

1       301(a) a comprehensive report on such reviews that  
2       includes any recommendations of any such Inspectors  
3       General within the oversight authority and responsi-  
4       bility of any such Inspector General.

5           (3) *FORM.*—A report submitted under this sub-  
6       section shall be submitted in unclassified form, but  
7       may include a classified annex. The unclassified re-  
8       port shall not disclose the name or identity of any in-  
9       dividual or entity of the private sector that partici-  
10       pated in the Program or with whom there was com-  
11       munication about the Program, to the extent that in-  
12       formation is classified.

13       (d) *RESOURCES.*—

14           (1) *EXPEDITED SECURITY CLEARANCE.*—The Di-  
15       rector of National Intelligence shall ensure that the  
16       process for the investigation and adjudication of an  
17       application by an Inspector General or any appro-  
18       priate staff of an Inspector General for a security  
19       clearance necessary for the conduct of the review  
20       under subsection (b)(1) is carried out as expeditiously  
21       as possible.

22           (2) *ADDITIONAL PERSONNEL FOR THE INSPEC-  
23       TORS GENERAL.*—An Inspector General required to  
24       conduct a review under subsection (b)(1) and submit  
25       a report under subsection (c) is authorized to hire

1       such additional personnel as may be necessary to  
2       carry out such review and prepare such report in a  
3       prompt and timely manner. Personnel authorized to  
4       be hired under this paragraph—

5               (A) shall perform such duties relating to  
6       such a review as the relevant Inspector General  
7       shall direct; and  
8               (B) are in addition to any other personnel  
9       authorized by law.

10 **SEC. 111. WEAPONS OF MASS DESTRUCTION.**

11 (a) **DEFINITIONS.**—

12               (1) **FOREIGN POWER.**—Subsection (a) of section  
13       101 of the Foreign Intelligence Surveillance Act of  
14       1978 (50 U.S.C. 1801(a)) is amended—

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

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

19               (C) by adding at the end the following new  
20       paragraph:

21               “(7) an entity not substantially composed of  
22       United States persons that is engaged in the inter-  
23       national proliferation of weapons of mass destruc-  
24       tion.”.

1 (2) *AGENT OF A FOREIGN POWER*.—Subsection

2 (b)(1) of such section 101 is amended—

3 (A) in subparagraph (B), by striking "or"

4 *at the end; and*

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

7                   “(D) engages in the international prolifera-  
8                   tion of weapons of mass destruction, or activities  
9                   in preparation therefor; or”.

10 (3) FOREIGN INTELLIGENCE INFORMATION.—

11       Subsection (e)(1)(B) of such section 101 is amended  
12       by striking “sabotage or international terrorism” and  
13       inserting “sabotage, international terrorism, or the  
14       international proliferation of weapons of mass de-  
15       struction”.

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

20           “(1) any explosive, incendiary, or poison gas de-  
21           vice that is intended or has the capability to cause a  
22           mass casualty incident;

23           “(2) any weapon that is designed or intended to  
24           cause death or serious bodily injury to a significant  
25           number of persons through the release, dissemination,

1       *or impact of toxic or poisonous chemicals or their*  
2       *precursors;*

3       “*(3) any weapon involving a biological agent,*  
4       *toxin, or vector (as such terms are defined in section*  
5       *178 of title 18, United States Code) that is designed,*  
6       *intended, or has the capability of causing death, ill-*  
7       *ness, or serious bodily injury to a significant number*  
8       *of persons; or*

9       “*(4) any weapon that is designed, intended, or*  
10      *has the capability of releasing radiation or radioac-*  
11      *tivity causing death, illness, or serious bodily injury*  
12      *to a significant number of persons.”.*

13      *(b) USE OF INFORMATION.—*

14      *(1) IN GENERAL.—Section 106(k)(1)(B) of the*  
15      *Foreign Intelligence Surveillance Act of 1978 (50*  
16      *U.S.C. 1806(k)(1)(B)) is amended by striking “sabot-*  
17      *age or international terrorism” and inserting “sabot-*  
18      *age, international terrorism, or the international*  
19      *proliferation of weapons of mass destruction”.*

20      *(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B)*  
21      *of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by*  
22      *striking “sabotage or international terrorism” and*  
23      *inserting “sabotage, international terrorism, or the*  
24      *international proliferation of weapons of mass de-*  
25      *struction”.*

## **5 SEC. 112. STATUTE OF LIMITATIONS.**

6       (a) *IN GENERAL.*—Section 109 of the Foreign Intel-  
7 ligence Surveillance Act of 1978 (50 U.S.C. 1809) is amend-  
8 ed by adding at the end the following new subsection:

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

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

18 **TITLE II—PROTECTION OF PER-**  
19 **SONS ASSISTING THE GOV-**  
20 **ERNMENT**

## 21 SEC. 201. STATUTORY DEFENSES.

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

1   **“TITLE   VIII—PROTECTION   OF**  
2   **PERSONS   ASSISTING   THE**  
3   **GOVERNMENT**

4   **“SEC. 801. DEFINITIONS.**

5       “*In this title:*

6           “(1) *ASSISTANCE.*—The term ‘assistance’ means  
7       *the provision of, or the provision of access to, infor-*  
8       *mation (including communication contents, commu-*  
9       *nications records, or other information relating to a*  
10      *customer or communication), facilities, or another*  
11      *form of assistance.*

12       “(2) *ATTORNEY GENERAL.*—The term ‘Attorney

13       *General’ has the meaning given that term in section*  
14      *101(g).*

15       “(3) *CONTENTS.*—The term ‘contents’ has the

16       *meaning given that term in section 101(n).*

17       “(4) *COVERED CIVIL ACTION.*—The term ‘covered

18       *civil action’ means a suit in Federal or State court*  
19       *against any person for providing assistance to an ele-*  
20       *ment of the intelligence community.*

21       “(5) *ELECTRONIC COMMUNICATION SERVICE PRO-*  
22       *VIDER.*—The term ‘electronic communication service

23       *provider’ means—*

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

4                   “(B) a provider of electronic communication service, as that term is defined in section  
5 2510 of title 18, United States Code;

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

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

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

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

14                   “(6) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the meaning given that term in section 3(4) of the National Security Act of  
15 1947 (50 U.S.C. 401a(4)).

16                   “(7) PERSON.—The term ‘person’ means—

1                   “(A) an electronic communication service  
2                   provider; or

3                   “(B) a landlord, custodian, or other person  
4                   who may be authorized or required to furnish as-  
5                   sistance pursuant to—

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

9                   “(ii) a certification in writing under  
10                   section 2511(2)(a)(ii)(B) or 2709(b) of title  
11                   18, United States Code; or

12                   “(iii) a directive under section  
13                   102(a)(4), 105B(e), as added by section 2 of  
14                   the Protect America Act of 2007 (Public  
15                   Law 110-55), or 703(h).

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

23                   **“SEC. 802. PROCEDURES FOR COVERED CIVIL ACTIONS.**

24                   “(a) INTERVENTION BY GOVERNMENT.— In any cov-  
25                   ered civil action, the court shall permit the Government to

1 *intervene. Whether or not the Government intervenes in the*  
2 *civil action, the Attorney General may submit any informa-*  
3 *tion in any form the Attorney General determines is appro-*  
4 *priate and the court shall consider all such submissions.*

5       “(b) *FACTUAL AND LEGAL DETERMINATIONS.*—*In any*  
6 *covered civil action, any party may submit to the court*  
7 *evidence, briefs, arguments, or other information on any*  
8 *matter with respect to which a privilege based on state se-*  
9 *crets is asserted. The court shall review any such submission*  
10 *in accordance with the procedures set forth in section 106(f)*  
11 *and may, based on the review, make any appropriate deter-*  
12 *mination of fact or law. The court may, on motion of the*  
13 *Attorney General, take any additional actions the court*  
14 *deems necessary to protect classified information. The court*  
15 *may, to the extent practicable and consistent with national*  
16 *security, request that any party present briefs and argu-*  
17 *ments on any legal question the court determines is raised*  
18 *by such a submission even if that party does not have full*  
19 *access to the submission. The court shall consider whether*  
20 *the employment of a special master or an expert witness,*  
21 *or both, would facilitate proceedings under this section.*

22       “(c) *LOCATION OF REVIEW.*—*The court may conduct*  
23 *the review in a location and facility specified by the Attor-*  
24 *ney General as necessary to ensure security.*

1       “(d) *REMOVAL*.—A covered civil action that is brought  
2 in a State court shall be deemed to arise under the Constitu-  
3 tion and laws of the United States and shall be removable  
4 under section 1441 of title 28, United States Code.

5       “(e) *SPECIAL RULE FOR CERTAIN CASES*.—For any  
6 covered civil action alleging that a person provided assist-  
7 ance to an element of the intelligence community pursuant  
8 to a request or directive during the period from September  
9 11, 2001 through January 17, 2007, the Attorney General  
10 shall provide to the court any request or directive related  
11 to the allegations under the procedures set forth in sub-  
12 section (b).

13       “(f) *APPLICABILITY*.—This section shall apply to a  
14 civil action pending on or filed after the date of the enact-  
15 ment of this Act.”.

16 **SEC. 202. TECHNICAL AMENDMENTS.**

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

“TITLE VIII-PROTECTION OF PERSONS ASSISTING THE  
GOVERNMENT

“Sec. 801. Definitions

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

1   **TITLE    III—COMMISSION    ON**  
2   **WARRANTLESS    ELECTRONIC**  
3   **SURVEILLANCE ACTIVITIES**

4   **SEC. 301. COMMISSION ON WARRANTLESS ELECTRONIC**  
5   **SURVEILLANCE ACTIVITIES.**

6       (a) *ESTABLISHMENT OF COMMISSION.*—*There is estab-*  
7   *lished in the legislative branch a commission to be known*  
8   *as the “Commission on Warrantless Electronic Surveillance*  
9   *Activities” (in this section referred to as the “Commis-*  
10   *sion”)).*

11       (b) *DUTIES OF COMMISSION.*—

12           (1) *IN GENERAL.*—*The Commission shall—*

13               (A) *ascertain, evaluate, and report upon the*  
14   *facts and circumstances relating to electronic*  
15   *surveillance activities conducted without a war-*  
16   *rant between September 11, 2001 and January*  
17   *17, 2007;*

18               (B) *evaluate the lawfulness of such activi-*  
19   *ties;*

20               (C) *examine all programs and activities re-*  
21   *lating to intelligence collection inside the United*  
22   *States or regarding United States persons that*  
23   *were in effect or operation on September 11,*  
24   *2001, and all such programs and activities un-*  
25   *dertaken since that date, including the legal*

1           *framework or justification for those activities;*

2           *and*

3           *(D) report to the President and Congress*  
4           *the findings and conclusions of the Commission*  
5           *and any recommendations the Commission con-*  
6           *siders appropriate.*

7           *(2) PROTECTION OF NATIONAL SECURITY.—The*  
8           *Commission shall carry out the duties of the Commis-*  
9           *sion under this section in a manner consistent with*  
10           *the need to protect national security.*

11           *(c) COMPOSITION OF COMMISSION.—*

12           *(1) MEMBERS.—The Commission shall be com-*  
13           *posed of 9 members, of whom—*

14           *(A) 5 members shall be appointed jointly by*  
15           *the majority leader of the Senate and the Speak-*  
16           *er of the House of Representatives; and*

17           *(B) 4 members shall be appointed jointly by*  
18           *the minority leader of the Senate and the minor-*  
19           *ity leader of the House of Representatives.*

20           *(2) QUALIFICATIONS.—It is the sense of Congress*  
21           *that individuals appointed to the Commission should*  
22           *be prominent United States citizens with significant*  
23           *depth of experience in national security, Constitu-*  
24           *tional law, and civil liberties.*

25           *(3) CHAIR; VICE CHAIR.—*

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

#### 5 (d) POWERS OF COMMISSION.—

14 (2) *SUBPOENAS*—

15 (A) ISSUANCE.—

## 10 (B) ENFORCEMENT.—

1           *under subparagraph (A), the United States*  
2           *district court for the judicial district in*  
3           *which the subpoenaed person resides, is*  
4           *served, or may be found, or where the sub-*  
5           *poena is returnable, may issue an order re-*  
6           *quiring such person to appear at any des-*  
7           *gnated place to testify or to produce docu-*  
8           *mentary or other evidence. Any failure to*  
9           *obey the order of the court may be punished*  
10           *by the court as a contempt of that court.*

11           (iii) *ADDITIONAL ENFORCEMENT.*—*In*  
12           *the case of the failure of a witness to comply*  
13           *with any subpoena or to testify when sum-*  
14           *moned under authority of this paragraph,*  
15           *the Commission, by majority vote, may cer-*  
16           *tify a statement of fact attesting to such*  
17           *failure to the appropriate United States at-*  
18           *torney, who shall bring the matter before the*  
19           *grand jury for its action, under the same*  
20           *statutory authority and procedures as if the*  
21           *United States attorney had received a cer-*  
22           *tification under sections 102 through 104 of*  
23           *the Revised Statutes of the United States (2*  
24           *U.S.C. 192 through 194).*

5 (4) INFORMATION FROM FEDERAL AGENCIES.—

1           *manner consistent with all applicable statutes,*  
2           *regulations, and Executive orders.*

3           *(5) ASSISTANCE FROM FEDERAL AGENCIES.—*

4           *(A) GENERAL SERVICES ADMINISTRA-*  
5           *TION.—The Administrator of General Services*  
6           *shall provide to the Commission on a reimburs-*  
7           *able basis administrative support and other serv-*  
8           *ices for the performance of the Commission's*  
9           *functions.*

10           *(B) OTHER DEPARTMENTS AND AGEN-*  
11           *CIES.—In addition to the assistance prescribed*  
12           *in subparagraph (A), departments and agencies*  
13           *of the United States may provide to the Commis-*  
14           *sion such services, funds, facilities, staff, and*  
15           *other support services as they may determine ad-*  
16           *visable and as may be authorized by law.*

17           *(6) GIFTS.—The Commission may accept, use,*  
18           *and dispose of gifts or donations of services or prop-*  
19           *erty.*

20           *(7) POSTAL SERVICES.—The Commission may*  
21           *use the United States mails in the same manner and*  
22           *under the same conditions as departments and agen-*  
23           *cies of the United States.*

24           *(e) STAFF OF COMMISSION.—*

25           *(1) IN GENERAL.—*

18 (B) PERSONNEL AS FEDERAL EMPLOY-  
19 EES.—

1 (ii) MEMBERS OF COMMISSION.—

2                   *Clause (i) shall not be construed to apply to*  
3                   *members of the Commission.*

16 (f) SECURITY CLEARANCES FOR COMMISSION MEM-  
17 BERS AND STAFF.—

1       *classified information under this section without the*  
2       *appropriate security clearances.*

3               *(2) ACCESS TO CLASSIFIED INFORMATION.—All*  
4       *members of the Commission and commission staff, as*  
5       *authorized by the Chair or the designee of the Chair,*  
6       *who have obtained appropriate security clearances,*  
7       *shall have access to classified information related to*  
8       *the surveillance activities within the scope of the ex-*  
9       *amination of the Commission and any other related*  
10      *classified information that the members of the Com-*  
11      *mission determine relevant to carrying out the duties*  
12      *of the Commission under this section.*

13               *(3) FACILITIES AND RESOURCES.—The Director*  
14      *of National Intelligence shall provide the Commission*  
15      *with appropriate space and technical facilities ap-*  
16      *proved by the Commission.*

17               *(g) COMPENSATION AND TRAVEL EXPENSES.—*

18               *(1) COMPENSATION.—Each member of the Com-*  
19      *mission may be compensated at a rate not to exceed*  
20      *the daily equivalent of the annual rate of basic pay*  
21      *in effect for a position at level IV of the Executive*  
22      *Schedule under section 5315 of title 5, United States*  
23      *Code, for each day during which that member is en-*  
24      *gaged in the actual performance of the duties of the*  
25      *Commission.*

9 (h) NONAPPLICABILITY OF FEDERAL ADVISORY COM-

10 *MITTEE ACT.*—

22 (i) REPORTS AND RECOMMENDATIONS OF COMMISSION.—

1       containing such findings, conclusions, and rec-  
2       ommendations for corrective measures as have been  
3       agreed to by a majority of Commission members.

4               (2) *FINAL REPORT*.—Not later than one year  
5       after the date of its first meeting, the Commission, in  
6       consultation with appropriate representatives of the  
7       intelligence community, shall submit to the President  
8       and Congress a final report containing such informa-  
9       tion, analysis, findings, conclusions, and rec-  
10       ommendations as have been agreed to by a majority  
11       of Commission members.

12               (3) *FORM*.—The reports submitted under para-  
13       graphs (1) and (2) shall be submitted in unclassified  
14       form, but may include a classified annex.

15               (4) *RECOMMENDATIONS FOR DECLASSIFICA-*  
16       TION.—The Commission may make recommendations  
17       to the appropriate department or agency of the Fed-  
18       eral Government regarding the declassification of doc-  
19       uments or portions of documents.

20               (j) *TERMINATION*.—

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

7 (k) *DEFINITIONS.*—In this section:

## 16 (l) FUNDING.—

## 1     **TITLE IV—OTHER PROVISIONS**

### 2     **SEC. 401. SEVERABILITY.**

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

### 9     **SEC. 402. EFFECTIVE DATE.**

10         *Except as provided in section 404, the amendments  
11     made by this Act shall take effect on the date of the enact-  
12     ment of this Act.*

### 13     **SEC. 403. REPEALS.**

14         (a) *REPEAL OF PROTECT AMERICA ACT OF 2007 PRO-  
15     VISIONS.—*

16             (1) *AMENDMENTS TO FISA.—*

17                 (A) *IN GENERAL.—Except as provided in  
18     section 404, sections 105A, 105B, and 105C of  
19     the Foreign Intelligence Surveillance Act of 1978  
20     (50 U.S.C. 1805a, 1805b, and 1805c) are re-  
21     pealed.*

22                 (B) *TECHNICAL AND CONFORMING AMEND-  
23     MENTS.—*

24                 (i) *TABLE OF CONTENTS.—The table of  
25     contents in the first section of the Foreign*

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

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

24 (b) *FISA AMENDMENTS ACT OF 2008.*—

## 20 SEC. 404. TRANSITION PROCEDURES.

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

1       *tive issued or made pursuant to section 105B of the*  
2       *Foreign Intelligence Surveillance Act of 1978, as*  
3       *added by section 2 of the Protect America Act of 2007*  
4       *(Public Law 110-55; 121 Stat. 552), shall continue in*  
5       *effect until the expiration of such order, authoriza-*  
6       *tion, or directive.*

7                   (2) *APPLICABILITY OF PROTECT AMERICA ACT OF*  
8       *2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DI-*  
9       *RECTIVES.*—*Notwithstanding any other provision of*  
10      *this Act or of the Foreign Intelligence Surveillance*  
11      *Act of 1978 (50 U.S.C. 1801 et seq.)—*

12                   (A) *subject to paragraph (3), section 105A*  
13      *of such Act, as added by section 2 of the Protect*  
14      *America Act of 2007 (Public Law 110-55; 121*  
15      *Stat. 552), shall continue to apply to any acqui-*  
16      *sition conducted pursuant to an order, author-*  
17      *ization, or directive referred to in paragraph (1);*  
18      *and*

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

24                   (3) *USE OF INFORMATION.*—*Information ac-*  
25      *quired from an acquisition conducted pursuant to an*

1       *order, authorization, or directive referred to in para-*  
2       *graph (1) shall be deemed to be information acquired*  
3       *from an electronic surveillance pursuant to title I of*  
4       *the Foreign Intelligence Surveillance Act of 1978 (50*  
5       *U.S.C. 1801 et seq.) for purposes of section 106 of*  
6       *such Act (50 U.S.C. 1806).*

7           (4) *PROTECTION FROM LIABILITY.*—Subsection  
8       *(l) of section 105B of the Foreign Intelligence Surveil-*  
9       *lance Act of 1978, as added by section 2 of the Protect*  
10      *America Act of 2007, shall continue to apply with re-*  
11      *spect to any directives issued pursuant to such section*  
12      *105B.*

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

25           (6) *REPORTING REQUIREMENTS.*—



1                   *semi-annual report required by such section*  
2                   *4.*

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

5                   *(b) TRANSITION PROCEDURES FOR FISA AMEND-*  
6                   *MENTS ACT OF 2008 PROVISIONS.—*

7                   *(1) ORDERS IN EFFECT ON DECEMBER 31,*  
8                   *2009.—Notwithstanding any other provision of this*  
9                   *Act or of the Foreign Intelligence Surveillance Act of*  
10                   *1978 (50 U.S.C. 1801 et seq.), any order, authoriza-*  
11                   *tion, or directive issued or made under title VII of the*  
12                   *Foreign Intelligence Surveillance Act of 1978, as*  
13                   *amended by section 101(a), shall continue in effect*  
14                   *until the date of the expiration of such order, author-*  
15                   *ization, or directive.*

16                   *(2) APPLICABILITY OF TITLE VII OF FISA TO*  
17                   *CONTINUED ORDERS, AUTHORIZATIONS, DIREC-*  
18                   *TIVES.—Notwithstanding any other provision of this*  
19                   *Act or of the Foreign Intelligence Surveillance Act of*  
20                   *1978 (50 U.S.C. 1801 et seq.), with respect to any*  
21                   *order, authorization, or directive referred to in para-*  
22                   *graph (1), title VII of such Act, as amended by sec-*  
23                   *tion 101(a), shall continue to apply until the expira-*  
24                   *tion of such order, authorization, or directive.*

22 (E) section 2511(2)(a)(ii)(A) of title 18,  
23 United States Code, as amended by section  
24 101(c)(1), shall continue to apply to an order  
25 issued pursuant to section 704 of the Foreign In-

1           *telligence Surveillance Act of 1978, as added by*  
2           *section 101(a).*

3           *(4) REPORTING REQUIREMENTS.—*

4           *(A) CONTINUED APPLICABILITY.—Notwith-*  
5           *standing any other provision of this Act or of the*  
6           *Foreign Intelligence Surveillance Act of 1978 (50*  
7           *U.S.C. 1801 et seq.), section 601(a) of such Act*  
8           *(50 U.S.C. 1871(a)), as amended by section*  
9           *101(c)(2), and sections 702(l) and 707 of such*  
10           *Act, as added by section 101(a), shall continue*  
11           *to apply until the date that the certification de-*  
12           *scribed in subparagraph (B) is submitted.*

13           *(B) CERTIFICATION.—The certification de-*  
14           *scribed in this subparagraph is a certification—*

15           *(i) made by the Attorney General;*  
16           *(ii) submitted to the Select Committee*  
17           *on Intelligence of the Senate, the Permanent*  
18           *Select Committee on Intelligence of the*  
19           *House of Representatives, and the Commit-*  
20           *tees on the Judiciary of the Senate and the*  
21           *House of Representatives;*

22           *(iii) that states that there will be no*  
23           *further acquisitions carried out under title*  
24           *VII of the Foreign Intelligence Surveillance*

1                   *Act of 1978, as amended by section 101(a),*  
2                   *after the date of such certification; and*

3                   *(iv) that states that the information re-*  
4                   *quired to be included in a review, assess-*  
5                   *ment, or report under section 601 of such*  
6                   *Act, as amended by section 101(c), or sec-*  
7                   *tion 702(l) or 707 of such Act, as added by*  
8                   *section 101(a), relating to any acquisition*  
9                   *conducted under title VII of such Act, as*  
10                   *amended by section 101(a), has been in-*  
11                   *cluded in a review, assessment, or report*  
12                   *under such section 601, 702(l), or 707.*

13                   *(5) TRANSITION PROCEDURES CONCERNING THE*  
14                   *TARGETING OF UNITED STATES PERSONS OVER-*  
15                   *SEAS.—Any authorization in effect on the date of en-*  
16                   *actment of this Act under section 2.5 of Executive*  
17                   *Order 12333 to intentionally target a United States*  
18                   *person reasonably believed to be located outside the*  
19                   *United States shall continue in effect, and shall con-*  
20                   *stitute a sufficient basis for conducting such an ac-*  
21                   *quisition targeting a United States person located*  
22                   *outside the United States until the earlier of—*  
23                   *(A) the date that such authorization expires;*  
24                   *or*

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

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

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

9 SEC. 406. SURVEILLANCE TO PROTECT THE UNITED  
10 STATES.

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

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

Attest:

*Clerk.*



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

**H.R. 3773**

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**HOUSE AMENDMENT**  
**TO SENATE**  
**AMENDMENT**

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