

# Calendar No. 512

110TH CONGRESS  
1ST SESSION

# S. 2248

[Report No. 110-209]

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2007

Mr. ROCKEFELLER, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

NOVEMBER 1, 2007

Referred to the Committee on the Judiciary pursuant to section 3(b) of S. Res. 400, 94th Congress, as amended by S. Res. 445, 108th Congress, for a period not to exceed 10 days of session

NOVEMBER 16, 2007

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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## A BILL

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “Foreign Intelligence Surveillance Act of 1978 Amend-  
 4 ments Act of 2007” or the “FISA Amendments Act of  
 5 2007”.

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

Sec. 1. Short title; table of contents.

**TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

Sec. 101. Targeting the communications of certain persons outside the United States.

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

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

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

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

Sec. 109. Foreign Intelligence Surveillance Court.

Sec. 110. Technical and conforming amendments.

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

Sec. 201. Definitions.

Sec. 202. Limitations on civil actions for electronic communication service providers.

Sec. 203. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.

Sec. 204. Preemption of State investigations.

Sec. 205. Technical amendments.

**TITLE III—OTHER PROVISIONS**

Sec. 301. Severability.

Sec. 302. Effective date; repeal; transition procedures.

1                   **TITLE I—FOREIGN**  
 2                   **INTELLIGENCE SURVEILLANCE**

3                   **SEC. 101. TARGETING THE COMMUNICATIONS OF CERTAIN**  
 4                   **PERSONS OUTSIDE THE UNITED STATES.**

5                   (a) **IN GENERAL.**—The Foreign Intelligence Surveil-  
 6 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

7                   (1) by striking title VII; and

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

10                   **“TITLE VII—ADDITIONAL PROCE-**  
 11                   **DURES FOR TARGETING COM-**  
 12                   **MUNICATIONS OF CERTAIN**  
 13                   **PERSONS OUTSIDE THE**  
 14                   **UNITED STATES**

15                   **“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC**  
 16                   **SURVEILLANCE.**

17                   “Nothing in the definition of electronic surveillance  
 18 under section 101(f) shall be construed to encompass sur-  
 19 veillance that is targeted in accordance with this title at  
 20 a person reasonably believed to be located outside the  
 21 United States.

22                   **“SEC. 702. DEFINITIONS.**

23                   “(a) **IN GENERAL.**—The terms ‘agent of a foreign  
 24 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-  
 25 lance’, ‘foreign intelligence information’, ‘foreign power’,

1 ‘minimization procedures’, ‘person’, ‘United States’, and  
2 ‘United States person’ shall have the meanings given such  
3 terms in section 101, except as specifically provided in this  
4 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  
10 of 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  
15 Surveillance Court’ and ‘Court’ mean the court es-  
16 tablished 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  
23 PROVIDER.—The term ‘electronic communication  
24 service 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 tions service, as that term is defined in section  
6 2510 of title 18, United States Code;

7           “(C) a provider of a remote computing  
8 service, as that term is defined in section 2711  
9 of 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  
16 entity described in subparagraph (A), (B), (C),  
17 or (D).

18           “~~(5) ELEMENT OF THE INTELLIGENCE COMMU-~~  
19           NITY.—The term ‘element of the intelligence com-  
20 munity’ means an element of the intelligence com-  
21 munity specified in or designated under section 3(4)  
22 of the National Security Act of 1947 (50 U.S.C.  
23 401a(4)).

1 **“SEC. 703. PROCEDURES FOR ACQUIRING THE COMMU-**  
2 **NICATIONS OF CERTAIN PERSONS OUTSIDE**  
3 **THE UNITED STATES.**

4 **“(a) AUTHORIZATION.**—Notwithstanding any other  
5 law, the Attorney General and the Director of National  
6 Intelligence may authorize jointly, for periods of up to 1  
7 year, the targeting of persons reasonably believed to be  
8 located outside the United States to acquire foreign intel-  
9 ligence information.

10 **“(b) LIMITATIONS.**—An acquisition authorized under  
11 subsection (a)—

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

15 **“(2)** may not intentionally target a person rea-  
16 sonably believed to be outside the United States if  
17 the purpose of such acquisition is to target for sur-  
18 veillance a particular, known person reasonably be-  
19 lieved to be in the United States, except in accord-  
20 ance with title I; and

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

24 **“(c) UNITED STATES PERSONS LOCATED OUTSIDE**  
25 **THE UNITED STATES.**—

1           “(1) ACQUISITION INSIDE THE UNITED STATES  
2           OF UNITED STATES PERSONS OUTSIDE THE UNITED  
3           STATES.—An acquisition authorized by subsection  
4           (a) that occurs inside the United States may not  
5           target a United States person except in accordance  
6           with the provisions of title I.

7           “(2) ACQUISITION OUTSIDE THE UNITED  
8           STATES OF UNITED STATES PERSONS OUTSIDE THE  
9           UNITED STATES.—An acquisition by an electronic,  
10          mechanical, or other surveillance device outside the  
11          United States may not intentionally target a United  
12          States person reasonably believed to be outside the  
13          United States to acquire the contents of a wire or  
14          radio communication sent by or intended to be re-  
15          ceived by that United States person under cir-  
16          cumstances in which a person has a reasonable ex-  
17          pectation of privacy and a warrant would be re-  
18          quired for law enforcement purposes if the technique  
19          were used inside the United States unless—

20                 “(A) the Attorney General or the Attorney  
21                 General’s designee submits an application to  
22                 the Foreign Intelligence Surveillance Court that  
23                 includes a statement of the facts and cir-  
24                 cumstances relied upon by the applicant to jus-  
25                 tify the Attorney General’s belief that the tar-

1 get of the acquisition is a foreign power or an  
2 agent of a foreign power; and

3 “(B) the Foreign Intelligence Surveillance  
4 Court—

5 “(i) finds on the basis of the facts  
6 submitted by the applicant there is prob-  
7 able cause to believe that the target of the  
8 electronic surveillance is a foreign power or  
9 an agent of a foreign power; and

10 “(ii) issues an ex parte order as re-  
11 quested or as modified approving the tar-  
12 geting of that United States person.

13 “(3) PROCEDURES.—

14 “(A) SUBMITTAL TO FOREIGN INTEL-  
15 LIGENCE SURVEILLANCE COURT.—Not later  
16 than 30 days after the date of the enactment of  
17 this title, the Attorney General shall submit to  
18 the Foreign Intelligence Surveillance Court the  
19 procedures to be utilized in determining wheth-  
20 er a target reasonably believed to be outside the  
21 United States is a United States person.

22 “(B) APPROVAL BY FOREIGN INTEL-  
23 LIGENCE SURVEILLANCE COURT.—The proce-  
24 dures submitted under subparagraph (A) shall  
25 be utilized as described in that subparagraph



1           only upon the approval of the Foreign Intel-  
2           ligence Surveillance Court.

3           “(C) UTILIZATION IN TARGETING.—Any  
4           targeting of persons authorized by subsection  
5           (a) shall utilize the procedures submitted under  
6           subparagraph (A) as approved by the Foreign  
7           Intelligence Surveillance Court under subpara-  
8           graph (B).

9           “(d) CONDUCT OF ACQUISITION.—An acquisition au-  
10          thorized under subsection (a) may be conducted only in  
11          accordance with—

12           “(1) a certification made by the Attorney Gen-  
13          eral and the Director of National Intelligence pursu-  
14          ant to subsection (g); and

15           “(2) the targeting and minimization procedures  
16          required pursuant to subsections (e) and (f).

17          “(e) TARGETING PROCEDURES.—

18           “(1) REQUIREMENT TO ADOPT.—The Attorney  
19          General, in consultation with the Director of Na-  
20          tional Intelligence, shall adopt targeting procedures  
21          that are reasonably designed to ensure that any ac-  
22          quisition authorized under subsection (a) is limited  
23          to targeting persons reasonably believed to be lo-  
24          cated outside the United States.

1           “(2) JUDICIAL REVIEW.—The procedures re-  
2           ferred to in paragraph (1) shall be subject to judicial  
3           review pursuant to subsection (i).

4           “(f) MINIMIZATION PROCEDURES.—

5           “(1) REQUIREMENT TO ADOPT.—The Attorney  
6           General, in consultation with the Director of Na-  
7           tional Intelligence, shall adopt, consistent with the  
8           requirements of section 101(h), minimization proce-  
9           dures for acquisitions authorized under subsection  
10          (a).

11          “(2) JUDICIAL REVIEW.—The minimization  
12          procedures required by this subsection shall be sub-  
13          ject to judicial review pursuant to subsection (i).

14          “(g) CERTIFICATION.—

15                 “(1) IN GENERAL.—

16                         “(A) REQUIREMENT.—Subject to subpara-  
17                         graph (B), prior to the initiation of an acquisi-  
18                         tion authorized under subsection (a), the Attor-  
19                         ney General and the Director of National Intel-  
20                         ligence shall provide, under oath, a written cer-  
21                         tification, as described in this subsection.

22                         “(B) EXCEPTION.—If the Attorney Gen-  
23                         eral and the Director of National Intelligence  
24                         determine that immediate action by the Govern-  
25                         ment is required and time does not permit the

1 preparation of a certification under this sub-  
2 section prior to the initiation of an acquisition;  
3 the Attorney General and the Director of Na-  
4 tional Intelligence shall prepare such certifi-  
5 cation, including such determination, as soon as  
6 possible but in no event more than 168 hours  
7 after such determination is made.

8 “(2) REQUIREMENTS.—A certification made  
9 under this subsection shall—

10 “(A) attest that—

11 “(i) there are reasonable procedures  
12 in place for determining that the acquisi-  
13 tion authorized under subsection (a) is tar-  
14 geted at persons reasonably believed to be  
15 located outside the United States and that  
16 such procedures have been approved by, or  
17 will promptly be submitted for approval by,  
18 the Foreign Intelligence Surveillance Court  
19 pursuant to subsection (i);

20 “(ii) the procedures referred to in  
21 clause (i) are consistent with the require-  
22 ments of the fourth amendment to the  
23 Constitution of the United States and do  
24 not permit the intentional targeting of any

1 person who is known at the time of acqui-  
2 sition to be located in the United States;

3 “(iii) a significant purpose of the ae-  
4 quisition is to obtain foreign intelligence  
5 information;

6 “(iv) the minimization procedures to  
7 be used with respect to such acquisition—

8 “(I) meet the definition of mini-  
9 mization procedures under section  
10 101(h); and

11 “(II) have been approved by, or  
12 will promptly be submitted for ap-  
13 proval by, the Foreign Intelligence  
14 Surveillance Court pursuant to sub-  
15 section (i);

16 “(v) the acquisition involves obtaining  
17 the foreign intelligence information from or  
18 with the assistance of an electronic com-  
19 munication service provider; and

20 “(vi) the acquisition does not con-  
21 stitute electronic surveillance, as limited by  
22 section 701; and

23 “(B) be supported, as appropriate, by the  
24 affidavit of any appropriate official in the area  
25 of national security who is—

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

3                   “(ii) the head of any element of the  
4                   intelligence community.

5                   “(3) LIMITATION.—A certification made under  
6                   this subsection is not required to identify the specific  
7                   facilities, places, premises, or property at which the  
8                   acquisition authorized under subsection (a) will be  
9                   directed or conducted.

10                  “(4) SUBMISSION TO THE COURT.—The Attor-  
11                  ney General shall transmit a copy of a certification  
12                  made under this subsection, and any supporting affi-  
13                  davit, under seal to the Foreign Intelligence Surveil-  
14                  lance Court as soon as possible, but in no event  
15                  more than 5 days after such certification is made.  
16                  Such certification shall be maintained under security  
17                  measures adopted by the Chief Justice of the United  
18                  States and the Attorney General, in consultation  
19                  with the Director of National Intelligence.

20                  “(5) REVIEW.—The certification required by  
21                  this subsection shall be subject to judicial review  
22                  pursuant to subsection (i).

23                  “(h) DIRECTIVES.—

24                  “(1) AUTHORITY.—With respect to an acquisi-  
25                  tion authorized under subsection (a), the Attorney

1 General and the Director of National Intelligence  
2 may direct, in writing, an electronic communication  
3 service provider to—

4 “(A) immediately provide the Government  
5 with all information, facilities, or assistance  
6 necessary to accomplish the acquisition in a  
7 manner that will protect the secrecy of the ac-  
8 quisition and produce a minimum of inter-  
9 ference with the services that such electronic  
10 communication service provider is providing to  
11 the target; and

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

18 “(2) COMPENSATION.—The Government shall  
19 compensate, at the prevailing rate, an electronic  
20 communication service provider for providing infor-  
21 mation, facilities, or assistance pursuant to para-  
22 graph (1).

23 “(3) RELEASE FROM LIABILITY.—Notwith-  
24 standing any other law, no cause of action shall lie  
25 in any court against any electronic communication

1 service provider for providing any information, facili-  
2 ties, or assistance in accordance with a directive  
3 issued pursuant to paragraph (1).

4 “(4) CHALLENGING OF DIRECTIVES.—

5 “(A) AUTHORITY TO CHALLENGE.—An  
6 electronic communication service provider re-  
7 ceiving a directive issued pursuant to paragraph  
8 (1) may challenge the directive by filing a peti-  
9 tion with the Foreign Intelligence Surveillance  
10 Court.

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

17 “(C) STANDARDS FOR REVIEW.—A judge  
18 considering a petition to modify or set aside a  
19 directive may grant such petition only if the  
20 judge finds that the directive does not meet the  
21 requirements of this section or is otherwise un-  
22 lawful. If the judge does not modify or set aside  
23 the directive, the judge shall immediately affirm  
24 such directive, and order the recipient to com-  
25 ply with the directive. The judge shall provide

1 a written statement for the record of the rea-  
2 sons for a determination under this paragraph.

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

6 “(5) ENFORCEMENT OF DIRECTIVES.—

7 “(A) ORDER TO COMPEL.—In the case of  
8 a failure to comply with a directive issued pur-  
9 suant to paragraph (1), the Attorney General  
10 may file a petition for an order to compel com-  
11 pliance with the directive with the Foreign In-  
12 telligence Surveillance Court.

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

19 “(C) STANDARDS FOR REVIEW.—A judge  
20 considering a petition shall issue an order re-  
21 quiring the electronic communication service  
22 provider to comply with the directive if the  
23 judge finds that the directive was issued in ac-  
24 cordance with paragraph (1), meets the require-  
25 ments of this section, and is otherwise lawful.



1 The judge shall provide a written statement for  
2 the record of the reasons for a determination  
3 under this paragraph.

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

8 “(E) PROCESS.—Any process under this  
9 paragraph may be served in any judicial district  
10 in which the electronic communication service  
11 provider may be found.

12 “(6) APPEAL.—

13 “(A) APPEAL TO THE COURT OF RE-  
14 VIEW.—The Government or an electronic com-  
15 munication service provider receiving a directive  
16 issued pursuant to paragraph (1) may file a pe-  
17 tition with the Foreign Intelligence Surveillance  
18 Court of Review for review of the decision  
19 issued pursuant to paragraph (4) or (5) not  
20 later than 7 days after the issuance of such de-  
21 cision. The Court of Review shall have jurisdic-  
22 tion to consider such a petition and shall pro-  
23 vide a written statement for the record of the  
24 reasons for a decision under this paragraph.

1           “(B) CERTIORARI TO THE SUPREME  
2 COURT.—The Government or an electronic com-  
3 munication service provider receiving a directive  
4 issued pursuant to paragraph (1) may file a pe-  
5 tition for a writ of certiorari for review of the  
6 decision of the Court of Review issued under  
7 subparagraph (A). The record for such review  
8 shall be transmitted under seal to the Supreme  
9 Court of the United States, which shall have ju-  
10 risdiction to review such decision.

11       “(i) JUDICIAL REVIEW.—

12           “(1) IN GENERAL.—

13           “(A) REVIEW BY THE FOREIGN INTEL-  
14 LIGENCE SURVEILLANCE COURT.—The Foreign  
15 Intelligence Surveillance Court shall have juris-  
16 diction to review any certification required by  
17 subsection (d) or targeting and minimization  
18 procedures adopted pursuant to subsections (e)  
19 and (f).

20           “(B) SUBMISSION TO THE COURT.—The  
21 Attorney General shall submit to the Court any  
22 such certification or procedure, or amendment  
23 thereto, not later than 5 days after making or  
24 amending the certification or adopting or  
25 amending the procedures.

1           “(2) CERTIFICATIONS.—The Court shall review  
2 a certification provided under subsection (g) to de-  
3 termine whether the certification contains all the re-  
4 quired elements.

5           “(3) TARGETING PROCEDURES.—The Court  
6 shall review the targeting procedures required by  
7 subsection (e) to assess whether the procedures are  
8 reasonably designed to ensure that the acquisition  
9 authorized under subsection (a) is limited to the tar-  
10 geting of persons reasonably believed to be located  
11 outside the United States.

12           “(4) MINIMIZATION PROCEDURES.—The Court  
13 shall review the minimization procedures required by  
14 subsection (f) to assess whether such procedures  
15 meet the definition of minimization procedures  
16 under section 101(h).

17           “(5) ORDERS.—

18           “(A) APPROVAL.—If the Court finds that  
19 a certification required by subsection (g) con-  
20 tains all of the required elements and that the  
21 targeting and minimization procedures required  
22 by subsections (e) and (f) are consistent with  
23 the requirements of those subsections and with  
24 the fourth amendment to the Constitution of  
25 the United States, the Court shall enter an

1 order approving the continued use of the proce-  
2 dures for the acquisition authorized under sub-  
3 section (a).

4 “(B) CORRECTION OF DEFICIENCIES.—If  
5 the Court finds that a certification required by  
6 subsection (g) does not contain all of the re-  
7 quired elements, or that the procedures re-  
8 quired by subsections (e) and (f) are not con-  
9 sistent with the requirements of those sub-  
10 sections or the fourth amendment to the Con-  
11 stitution of the United States, the Court shall  
12 issue an order directing the Government to, at  
13 the Government’s election and to the extent re-  
14 quired by the Court’s order—

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

19 “(ii) cease the acquisition authorized  
20 under subsection (a).

21 “(C) REQUIREMENT FOR WRITTEN STATE-  
22 MENT.—In support of its orders under this sub-  
23 section, the Court shall provide, simultaneously  
24 with the orders, for the record a written state-  
25 ment of its reasons.

1           ~~“(6) APPEAL.—~~

2           ~~“(A) APPEAL TO THE COURT OF RE-~~  
3           ~~VIEW.—The Government may appeal any order~~  
4           ~~under this section to the Foreign Intelligence~~  
5           ~~Surveillance Court of Review, which shall have~~  
6           ~~jurisdiction to review such order. For any deci-~~  
7           ~~sion affirming, reversing, or modifying an order~~  
8           ~~of the Foreign Intelligence Surveillance Court,~~  
9           ~~the Court of Review shall provide for the record~~  
10          ~~a written statement of its reasons.~~

11          ~~“(B) CONTINUATION OF ACQUISITION~~  
12          ~~PENDING REHEARING OR APPEAL.—Any acqui-~~  
13          ~~sitions affected by an order under paragraph~~  
14          ~~(5)(B) may continue—~~

15                 ~~“(i) during the pending of any rehear-~~  
16                 ~~ing of the order by the Court en banc; and~~

17                 ~~“(ii) during the pendency of any ap-~~  
18                 ~~peal of the order to the Foreign Intel-~~  
19                 ~~ligence Surveillance Court of Review.~~

20          ~~“(C) CERTIORARI TO THE SUPREME~~  
21          ~~COURT.—The Government may file a petition~~  
22          ~~for a writ of certiorari for review of a decision~~  
23          ~~of the Court of Review issued under subpara-~~  
24          ~~graph (A). The record for such review shall be~~  
25          ~~transmitted under seal to the Supreme Court of~~

1           the United States, which shall have jurisdiction  
2           to review such decision.

3           “(j) JUDICIAL PROCEEDINGS.—Judicial proceedings  
4 under this section shall be conducted as expeditiously as  
5 possible.

6           “(k) MAINTENANCE OF RECORDS.—

7           “(1) STANDARDS.—A record of a proceeding  
8 under this section, including petitions filed, orders  
9 granted, and statements of reasons for decision,  
10 shall be maintained under security measures adopted  
11 by the Chief Justice of the United States, in con-  
12 sultation with the Attorney General and the Director  
13 of National Intelligence.

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

21           “(3) RETENTION OF RECORDS.—A directive  
22 made or an order granted under this section shall be  
23 retained for a period of not less than 10 years from  
24 the date on which such directive or such order is  
25 made.

1 “(1) OVERSIGHT.—

2 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-  
3 quently than once every 6 months, the Attorney  
4 General and Director of National Intelligence shall  
5 assess compliance with the targeting and minimiza-  
6 tion procedures required by subsections (e) and (f)  
7 and shall submit each such assessment to—

8 “(A) the Foreign Intelligence Surveillance  
9 Court; and

10 “(B) the congressional intelligence commit-  
11 tees.

12 “(2) AGENCY ASSESSMENT.—The Inspectors  
13 General of the Department of Justice and of any  
14 element of the intelligence community authorized to  
15 acquire foreign intelligence information under sub-  
16 section (a)—

17 “(A) are authorized to review the compli-  
18 ance of their agency or element with the tar-  
19 geting and minimization procedures required by  
20 subsections (e) and (f);

21 “(B) with respect to acquisitions author-  
22 ized under subsection (a), shall review the num-  
23 ber of disseminated intelligence reports con-  
24 taining a reference to a United States person  
25 identity and the number of United States per-

1 son identities subsequently disseminated by the  
2 element concerned in response to requests for  
3 identities that were not referred to by name or  
4 title in the original reporting;

5 “(C) with respect to acquisitions author-  
6 ized under subsection (a), shall review the num-  
7 ber of targets that were later determined to be  
8 located in the United States and the number of  
9 persons located in the United States whose  
10 communications were reviewed; and

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

12 “(i) the Attorney General;

13 “(ii) the Director of National Intel-  
14 ligence; and

15 “(iii) the congressional intelligence  
16 committees.

17 “(3) ANNUAL REVIEW.—

18 “(A) REQUIREMENT TO CONDUCT.—The  
19 head of an element of the intelligence commu-  
20 nity conducting an acquisition authorized under  
21 subsection (a) shall direct the element to con-  
22 duct an annual review to determine whether  
23 there is reason to believe that foreign intel-  
24 ligence information has been or will be obtained  
25 from the acquisition. The annual review shall



1 provide, with respect to such acquisitions au-  
2 thorized under subsection (a)—

3 “(i) an accounting of the number of  
4 disseminated intelligence reports con-  
5 taining a reference to a United States per-  
6 son identity;

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

13 “(iii) the number of targets that were  
14 later determined to be located in the  
15 United States and the number of persons  
16 located in the United States whose commu-  
17 nications were reviewed.

18 “(B) USE OF REVIEW.—The head of each  
19 element of the intelligence community that con-  
20 ducts an annual review under subparagraph (A)  
21 shall use each such review to evaluate the ade-  
22 quacy of the minimization procedures utilized  
23 by such element or the application of the mini-  
24 mization procedures to a particular acquisition  
25 authorized under subsection (a).

1           “(C) PROVISION OF REVIEW TO FOREIGN  
2 INTELLIGENCE SURVEILLANCE COURT.—The  
3 head of each element of the intelligence commu-  
4 nity that conducts an annual review under sub-  
5 paragraph (A) shall provide such review to the  
6 Foreign Intelligence Surveillance Court.

7           “(4) REPORTS TO CONGRESS.—

8           “(A) SEMIANNUAL REPORT.—Not less fre-  
9 quently than once every 6 months, the Attorney  
10 General shall fully inform, in a manner con-  
11 sistent with national security, the congressional  
12 intelligence committees, the Committee on the  
13 Judiciary of the Senate, and the Committee on  
14 the Judiciary of the House of Representatives,  
15 concerning the implementation of this Act.

16           “(B) CONTENT.—Each report made under  
17 subparagraph (A) shall include—

18           “(i) any certifications made under  
19 subsection (g) during the reporting period;

20           “(ii) any directives issued under sub-  
21 section (h) during the reporting period;

22           “(iii) the judicial review during the re-  
23 porting period of any such certifications  
24 and targeting and minimization procedures  
25 utilized with respect to such acquisition;

1 including a copy of any order or pleading  
2 in connection with such review that con-  
3 tains a significant legal interpretation of  
4 the provisions of this Act;

5 “(iv) any actions taken to challenge or  
6 enforce a directive under paragraphs (4) or  
7 (5) of subsections (h);

8 “(v) any compliance reviews con-  
9 ducted by the Department of Justice or  
10 the Office of the Director of National In-  
11 telligence of acquisitions authorized under  
12 subsection (a);

13 “(vi) a description of any incidents of  
14 noncompliance with a directive issued by  
15 the Attorney General and the Director of  
16 National Intelligence under subsection (h);  
17 including—

18 “(I) incidents of noncompliance  
19 by an element of the intelligence com-  
20 munity with procedures adopted pur-  
21 suant to subsections (e) and (f); and

22 “(II) incidents of noncompliance  
23 by a specified person to whom the At-  
24 torney General and Director of Na-

1                    tional Intelligence issued a directive  
 2                    under subsection (h);  
 3                    “(vii) any procedures implementing  
 4                    this section; and  
 5                    “(viii) any annual review conducted  
 6                    pursuant to paragraph (3).

7    **“SEC. 704. USE OF INFORMATION ACQUIRED UNDER SEC-**  
 8                    **TION 703.**

9                    “Information acquired from an acquisition conducted  
 10 under section 703 shall be deemed to be information ac-  
 11 quired from an electronic surveillance pursuant to title I  
 12 for purposes of section 106, except for the purposes of  
 13 subsection (j) of such section.”.

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

- 17                    (1) by striking the item relating to title VII;  
 18                    (2) by striking the item relating to section 701;  
 19                    and  
 20                    (3) by adding at the end the following:

“TITLE VII—ADDITIONAL PROCEDURES FOR TARGETING COMMU-  
 NICATIONS OF CERTAIN PERSONS OUTSIDE THE UNITED  
 STATES

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

“Sec. 702. Definitions.

“Sec. 703. Procedures for acquiring the communications of certain persons out-  
 side the United States.

“Sec. 704. Use of information acquired under section 703.”.

21                    (c) SUNSET.—

1           (1) ~~IN GENERAL.~~—Except as provided in para-  
2 graph (2), the amendments made by subsections  
3 (a)(2) and (b) shall cease to have effect on Decem-  
4 ber 31, 2013.

5           (2) ~~CONTINUING APPLICABILITY.~~—Section  
6 703(h)(3) of the Foreign Intelligence Surveillance  
7 Act of 1978 (as amended by subsection (a)) shall re-  
8 main in effect with respect to any directive issued  
9 pursuant to section 703(h) of that Act (as so  
10 amended) during the period such directive was in ef-  
11 fect. The use of information acquired by an acquisi-  
12 tion conducted under section 703 of that Act (as so  
13 amended) shall continue to be governed by the provi-  
14 sions of section 704 of that Act (as so amended).

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

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

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

4 “SEC. 112. Chapters 119 and 121 of title 18, United  
 5 States Code, and this Act shall be the exclusive means by  
 6 which electronic surveillance (as defined in section 101(f),  
 7 regardless of the limitation of section 701) and the inter-  
 8 ception of domestic wire, oral, or electronic communica-  
 9 tions may be conducted.”.

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

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

14 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**  
 15 **ORDERS UNDER THE FOREIGN INTEL-**  
 16 **LIGENCE SURVEILLANCE ACT OF 1978.**

17 (a) INCLUSION OF CERTAIN ORDERS IN SEMI-AN-  
 18 NUAL REPORTS OF ATTORNEY GENERAL.—Subsection  
 19 (a)(5) of section 601 of the Foreign Intelligence Surveil-  
 20 lance Act of 1978 (50 U.S.C. 1871) is amended by strik-  
 21 ing “(not including orders)” and inserting “, orders,”.

22 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN  
 23 OTHER ORDERS.—Such section 601 is further amended  
 24 by adding at the end the following new subsection:

1       “(e) The Attorney General shall submit to the com-  
 2 mittees of Congress referred to in subsection (a) a copy  
 3 of any decision, order, or opinion issued by the court es-  
 4 tablished under section 103(a) or the court of review es-  
 5 tablished under section 103(b) that includes significant  
 6 construction or interpretation of any provision of this Act  
 7 not later than 45 days after such decision, order, or opin-  
 8 ion is issued.”.

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)  
 15 through (10) as paragraphs (2) through (9), re-  
 16 spectively;

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

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

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

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

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

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

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

16                  (2) by striking subsection (b);

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

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



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

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

4 (1) in subsection (a)—

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

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

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

11 (3) in subsection (c)(1)—

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

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

16 (C) by striking subparagraph (F);

17 (4) by striking subsection (d);

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

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

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

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

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

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

14           “(D) makes an application in accordance with  
15 this title to a judge having jurisdiction under section  
16 103 as soon as practicable, but not later than 168  
17 hours after the Attorney General authorizes such  
18 surveillance.

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

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

1 when the information sought is obtained, when the appli-  
2 cation for the order is denied, or after the expiration of  
3 168 hours from the time of authorization by the Attorney  
4 General, whichever is earliest.

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

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

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

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

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

9 **SEC. 106. USE OF INFORMATION.**

10       Subsection (i) of section 106 of the Foreign Intel-  
 11 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is  
 12 amended by striking “radio communication” and inserting  
 13 “communication”.

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

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

18               (1) in subsection (a)—

19                       (A) by striking paragraph (2);

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

23                       (C) in paragraph (2), as redesignated by  
 24 subparagraph (B) of this paragraph, by striking  
 25 “detailed”;

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

4           (E) in paragraph (6), as redesignated by  
5           subparagraph (B) of this paragraph, in the  
6           matter preceding subparagraph (A)—

7                   (i) by striking “Affairs or” and insert-  
8                   ing “Affairs,”; and

9                   (ii) by striking “Senate—” and insert-  
10                  ing “Senate, or the Deputy Director of the  
11                  Federal Bureau of Investigation, if des-  
12                  ignated by the President as a certifying of-  
13                  ficial—”; and

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

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

21                   (1) in subsection (a)—

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

23                           (B) by redesignating paragraphs (2)  
24                           through (5) as paragraphs (1) through (4), re-  
25                           spectively; and

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

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

6           “(A) determines that an emergency situation  
7 exists with respect to the employment of a physical  
8 search to obtain foreign intelligence information be-  
9 fore an order authorizing such physical search can  
10 with due diligence be obtained;

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

14           “(C) informs, either personally or through a  
15 designee, a judge of the Foreign Intelligence Surveil-  
16 lance Court at the time of such authorization that  
17 the decision has been made to employ an emergency  
18 physical search; and

19           “(D) makes an application in accordance with  
20 this title to a judge of the Foreign Intelligence Sur-  
21 veillance Court as soon as practicable, but not more  
22 than 168 hours after the Attorney General author-  
23 izes such physical search.

24           “(2) If the Attorney General authorizes the emer-  
25 gency employment of a physical search under paragraph

1 (1), the Attorney General shall require that the minimiza-  
2 tion procedures required by this title for the issuance of  
3 a judicial order be followed.

4       ~~“(3) In the absence of a judicial order approving such~~  
5 ~~physical search, the physical search shall terminate when~~  
6 ~~the information sought is obtained, when the application~~  
7 ~~for the order is denied, or after the expiration of 168~~  
8 ~~hours from the time of authorization by the Attorney Gen-~~  
9 ~~eral, whichever is earliest.~~

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

12       ~~“(5)(A) In the event that such application for ap-~~  
13 ~~proval is denied, or in any other case where the physical~~  
14 ~~search is terminated and no order is issued approving the~~  
15 ~~physical search, no information obtained or evidence de-~~  
16 ~~rived from such physical search shall be received in evi-~~  
17 ~~dence or otherwise disclosed in any trial, hearing, or other~~  
18 ~~proceeding in or before any court, grand jury, department,~~  
19 ~~office, agency, regulatory body, legislative committee, or~~  
20 ~~other authority of the United States, a State, or political~~  
21 ~~subdivision thereof, and no information concerning any~~  
22 ~~United States person acquired from such physical search~~  
23 ~~shall subsequently be used or disclosed in any other man-~~  
24 ~~ner by Federal officers or employees without the consent~~  
25 ~~of such person, except with the approval of the Attorney~~

1 General if the information indicates a threat of death or  
 2 serious bodily harm to any person.

3 “(B) The Attorney General shall assess compliance  
 4 with the requirements of subparagraph (A).”.

5 (e) CONFORMING AMENDMENTS.—The Foreign Intel-  
 6 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
 7 is amended—

8 (1) in section 304(a)(4), as redesignated by  
 9 subsection (b) of this section, by striking  
 10 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

11 (2) in section 305(k)(2), by striking  
 12 “303(a)(7)” and inserting “303(a)(6)”.

13 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**  
 14 **AND TRAP AND TRACE DEVICES.**

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

17 (1) in subsection (a)(2), by striking “48 hours”  
 18 and inserting “168 hours”; and

19 (2) in subsection (e)(1)(C), by striking “48  
 20 hours” and inserting “168 hours”.

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

22 (a) DESIGNATION OF JUDGES.—Subsection (a) of  
 23 section 103 of the Foreign Intelligence Surveillance Act  
 24 of 1978 (50 U.S.C. 1803) is amended by inserting “at



1 least” before “seven of the United States judicial cir-  
2 cuits”.

3 (b) EN BANC AUTHORITY.—

4 (1) IN GENERAL.—Subsection (a) of section  
5 103 of the Foreign Intelligence Surveillance Act of  
6 1978, as amended by subsection (a) of this section,  
7 is further amended—

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

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

11 “(2)(A) The court established under this subsection  
12 may, on its own initiative, or upon the request of the Gov-  
13 ernment in any proceeding or a party under section 501(f)  
14 or paragraph (4) or (5) of section 703(h), hold a hearing  
15 or rehearing, en banc, when ordered by a majority of the  
16 judges that constitute such court upon a determination  
17 that—

18 “(i) en banc consideration is necessary to se-  
19 cure or maintain uniformity of the court’s decisions;  
20 or

21 “(ii) the proceeding involves a question of ex-  
22 ceptional importance.

23 “(B) Any authority granted by this Act to a judge  
24 of the court established under this subsection may be exer-  
25 cised by the court en banc. When exercising such author-

1 ity, the court en banc shall comply with any requirements  
2 of this Act on the exercise of such authority.

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

6 (2) CONFORMING AMENDMENTS.—The Foreign  
7 Intelligence Surveillance Act of 1978 is further  
8 amended—

9 (A) in subsection (a) of section 103, as  
10 amended by this subsection, by inserting “(ex-  
11 cept when sitting en banc under paragraph  
12 (2))” after “no judge designated under this  
13 subsection”; and

14 (B) in section 302(e) (50 U.S.C. 1822(e)),  
15 by inserting “(except when sitting en banc)”  
16 after “except that no judge”.

17 (e) STAY OR MODIFICATION DURING AN APPEAL.—  
18 Section 103 of the Foreign Intelligence Surveillance Act  
19 of 1978 (50 U.S.C. 1803) is amended—

20 (1) by redesignating subsection (f) as sub-  
21 section (g); and

22 (2) by inserting after subsection (e) the fol-  
23 lowing new subsection:

24 “(f)(1) A judge of the court established under sub-  
25 section (a); the court established under subsection (b) or

1 a judge of that court, or the Supreme Court of the United  
2 States or a justice of that court, may, in accordance with  
3 the rules of their respective courts, enter a stay of an order  
4 or an order modifying an order of the court established  
5 under subsection (a) or the court established under sub-  
6 section (b) entered under any title of this Act, while the  
7 court established under subsection (a) conducts a rehear-  
8 ing, while an appeal is pending to the court established  
9 under subsection (b), or while a petition of certiorari is  
10 pending in the Supreme Court of the United States, or  
11 during the pendency of any review by that court.

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

15 **SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.**

16 Section 103(e) of the Foreign Intelligence Surveil-  
17 lance Act of 1978 (50 U.S.C. 1803(e)) is amended—

18 (1) in paragraph (1), by striking “105B(h) or  
19 501(f)(1)” and inserting “501(f)(1) or 703”; and

20 (2) in paragraph (2), by striking “105B(h) or  
21 501(f)(1)” and inserting “501(f)(1) or 703”.

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

4 **SEC. 201. DEFINITIONS.**

5 In this title:

6 (1) **ASSISTANCE.**—The term “assistance”  
7 means the provision of, or the provision of access to,  
8 information (including communication contents,  
9 communications records, or other information relat-  
10 ing to a customer or communication), facilities, or  
11 another form of assistance.

12 (2) **CONTENTS.**—The term “contents” has the  
13 meaning given that term in section 101(n) of the  
14 Foreign Intelligence Surveillance Act of 1978 (50  
15 U.S.C. 1801(n)).

16 (3) **COVERED CIVIL ACTION.**—The term “cov-  
17 ered civil action” means a civil action filed in a Fed-  
18 eral or State court that—

19 (A) alleges that an electronic communica-  
20 tion service provider furnished assistance to an  
21 element of the intelligence community; and

22 (B) seeks monetary or other relief from the  
23 electronic communication service provider re-  
24 lated to the provision of such assistance.

1           (4) ELECTRONIC COMMUNICATION SERVICE  
2 PROVIDER.—The term “electronic communication  
3 service provider” means—

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

7           (B) a provider of an electronic communica-  
8 tion service, as that term is defined in section  
9 2510 of title 18, United States Code;

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

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

18          (E) a parent, subsidiary, affiliate, suc-  
19 cessor, or assignee of an entity described in  
20 subparagraph (A), (B), (C), or (D); or

21          (F) an officer, employee, or agent of an en-  
22 tity described in subparagraph (A), (B), (C),  
23 (D), or (E).

24           (5) ELEMENT OF THE INTELLIGENCE COMMU-  
25 NITY.—The term “element of the intelligence com-

1 community” means an element of the intelligence com-  
 2 munity specified in or designated under section 3(4)  
 3 of the National Security Act of 1947 (50 U.S.C.  
 4 401a(4)).

5 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**  
 6 **TRONIC COMMUNICATION SERVICE PRO-**  
 7 **VIDERS.**

8 (a) LIMITATIONS.—

9 (1) IN GENERAL.—Notwithstanding any other  
 10 provision of law, a covered civil action shall not lie  
 11 or be maintained in a Federal or State court, and  
 12 shall be promptly dismissed, if the Attorney General  
 13 certifies to the court that—

14 (A) the assistance alleged to have been  
 15 provided by the electronic communication serv-  
 16 ice provider was—

17 (i) in connection with an intelligence  
 18 activity involving communications that  
 19 was—

20 (I) authorized by the President  
 21 during the period beginning on Sep-  
 22 tember 11, 2001, and ending on Jan-  
 23 uary 17, 2007; and

24 (II) designed to detect or prevent  
 25 a terrorist attack, or activities in

1 preparation for a terrorist attack,  
2 against the United States; and

3 (ii) described in a written request or  
4 directive from the Attorney General or the  
5 head of an element of the intelligence com-  
6 munity (or the deputy of such person) to  
7 the electronic communication service pro-  
8 vider indicating that the activity was—

9 (I) authorized by the President;  
10 and

11 (II) determined to be lawful; or  
12 (B) the electronic communication service  
13 provider did not provide the alleged assistance.

14 (2) REVIEW.—A certification made pursuant to  
15 paragraph (1) shall be subject to review by a court  
16 for abuse of discretion.

17 (b) REVIEW OF CERTIFICATIONS.—If the Attorney  
18 General files a declaration under section 1746 of title 28,  
19 United States Code, that disclosure of a certification made  
20 pursuant to subsection (a) would harm the national secu-  
21 rity of the United States, the court shall—

22 (1) review such certification in camera and ex  
23 parte; and

24 (2) limit any public disclosure concerning such  
25 certification, including any public order following

1       such an ex parte review, to a statement that the con-  
2       ditions of subsection (a) have been met, without dis-  
3       closing the subparagraph of subsection (a)(1) that is  
4       the basis for the certification.

5       (c) NONDELEGATION.—The authority and duties of  
6       the Attorney General under this section shall be performed  
7       by the Attorney General (or Acting Attorney General) or  
8       a designee in a position not lower than the Deputy Attor-  
9       ney General.

10       (d) CIVIL ACTIONS IN STATE COURT.—A covered  
11       civil action that is brought in a State court shall be  
12       deemed to arise under the Constitution and laws of the  
13       United States and shall be removable under section 1441  
14       of title 28, United States Code.

15       (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
16       tion may be construed to limit any otherwise available im-  
17       munity, privilege, or defense under any other provision of  
18       law.

19       (f) EFFECTIVE DATE AND APPLICATION.—This sec-  
20       tion shall apply to any covered civil action that is pending  
21       on or filed after the date of enactment of this Act.



1 **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY**  
 2 **DEFENSES UNDER THE FOREIGN INTEL-**  
 3 **LIGENCE SURVEILLANCE ACT OF 1978.**

4 The Foreign Intelligence Surveillance Act of 1978  
 5 (50 U.S.C. 1801 et seq.), as amended by section 101, is  
 6 further amended by adding after title VII the following  
 7 new title:

8 **“TITLE VII—PROTECTION OF**  
 9 **PERSONS ASSISTING THE**  
 10 **GOVERNMENT**

11 **“SEC. 801. DEFINITIONS.**

12 “In this title:

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

19 “(2) ATTORNEY GENERAL.—The term ‘Attor-  
 20 ney General’ has the meaning give that term in sec-  
 21 tion 101(g).

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

24 “(4) ELECTRONIC COMMUNICATION SERVICE  
 25 PROVIDER.—The term ‘electronic communication  
 26 service 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 tions service, as that term is defined in section  
6 2510 of title 18, United States Code;

7           “(C) a provider of a remote computing  
8 service, as that term is defined in section 2711  
9 of 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;

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

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

21          “(5) ELEMENT OF THE INTELLIGENCE COMMU-  
22 NITY.—The term ‘element of the intelligence com-  
23 munity’ means an element of the intelligence com-  
24 munity as specified or designated under section 3(4)

1 of the National Security Act of 1947 (50 U.S.C.  
2 401a(4)).

3 ~~“(6) PERSON.—The term ‘person’ means—~~

4 ~~“(A) an electronic communication service~~  
5 ~~provider; or~~

6 ~~“(B) a landlord, custodian, or other person~~  
7 ~~who may be authorized or required to furnish~~  
8 ~~assistance pursuant to—~~

9 ~~“(i) an order of the court established~~  
10 ~~under section 103(a) directing such assist-~~  
11 ~~ance;~~

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

15 ~~“(iii) a directive under section~~  
16 ~~102(a)(4), 105B(e), as in effect on the day~~  
17 ~~before the date of the enactment of the~~  
18 ~~FISA Amendments Act of 2007 or 703(h).~~

19 ~~“(7) STATE.—The term ‘State’ means any~~  
20 ~~State, political subdivision of a State, the Common-~~  
21 ~~wealth of Puerto Rico, the District of Columbia, and~~  
22 ~~any territory or possession of the United States, and~~  
23 ~~includes any officer, public utility commission, or~~  
24 ~~other body authorized to regulate an electronic com-~~  
25 ~~munication service provider.~~

1 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**  
2 **DEFENSES.**

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

4 **“(1) IN GENERAL.—**Notwithstanding any other  
5 provision of law, no civil action may be main-  
6 tained in a Federal or State court against any per-  
7 son for providing assistance to an element of the in-  
8 telligence community, and shall be promptly dis-  
9 missed, if the Attorney General certifies to the court  
10 that—

11 **“(A)** any assistance by that person was  
12 provided pursuant to an order of the court es-  
13 tablished under section 103(a) directing such  
14 assistance;

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

19 **“(C)** any assistance by that person was  
20 provided pursuant to a directive under sections  
21 102(a)(4), 105B(e), as in effect on the day be-  
22 fore the date of the enactment of the FISA  
23 Amendments Act of 2007, or 703(h) directing  
24 such assistance; or

25 **“(D)** the person did not provide the alleged  
26 assistance.

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

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

9           “(1) review such certification in camera and ex  
10          parte; and

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

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

23          “(d) RELATIONSHIP TO OTHER LAWS.—Nothing in  
24          this section may be construed to limit any otherwise avail-

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

3 “(e) **APPLICABILITY.**—This section shall apply to a  
4 civil action pending on or filed after the date of enactment  
5 of the FISA Amendments Act of 2007.”.

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

7 Title VIII of the Foreign Intelligence Surveillance  
8 Act (50 U.S.C. 1801 et seq.), as added by section 203  
9 of this Act, is amended by adding at the end the following  
10 new section:

11 **“SEC. 803. PREEMPTION.**

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

14 “(1) conduct an investigation into an electronic  
15 communication service provider’s alleged assistance  
16 to an element of the intelligence community;

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

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

24 “(4) commence or maintain a civil action or  
25 other proceeding to enforce a requirement that an

1 electronic communication service provider disclose  
 2 information concerning alleged assistance to an ele-  
 3 ment of the intelligence community.

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

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

11 “(d) APPLICATION.—This section shall apply to any  
 12 investigation, action, or proceeding that is pending on or  
 13 filed after the date of enactment of the FISA Amendments  
 14 Act of 2007.”.

15 **SEC. 205. TECHNICAL AMENDMENTS.**

16 The table of contents in the first section of the For-  
 17 eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
 18 1801 et seq.); as amended by section 101(b), is further  
 19 amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE  
 GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.

1 **TITLE III—OTHER PROVISIONS**

2 **SEC. 301. SEVERABILITY.**

3 If any provision of this Act, any amendment made  
 4 by this Act, or the application thereof to any person or  
 5 circumstances 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  
 8 shall not be affected thereby.

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

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

14 (b) **REPEAL.**—

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

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

24 (c) **TRANSITIONS PROCEDURES.**—



1           (1) PROTECTION FROM LIABILITY.—Notwith-  
2 standing subsection (b)(1), subsection (1) of section  
3 105B of the Foreign Intelligence Surveillance Act of  
4 1978 shall remain in effect with respect to any di-  
5 rectives issued pursuant to such section 105B for in-  
6 formation, facilities, or assistance provided during  
7 the period such directive was or is in effect.

8           (2) ORDERS IN EFFECT.—

9           (A) ORDERS IN EFFECT ON DATE OF EN-  
10 ACTMENT.—Notwithstanding any other provi-  
11 sion of this Act or of the Foreign Intelligence  
12 Surveillance Act of 1978—

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

20           (ii) at the request of the applicant,  
21 the court established under section 103(a)  
22 of the Foreign Intelligence Surveillance Act  
23 of 1978 (50 U.S.C. 1803(a)) shall reau-  
24 thorize such order if the facts and cir-  
25 cumstances continue to justify issuance of

1           such order under the provisions of such  
2           Act, as in effect on the day before the date  
3           of the enactment of the Protect America  
4           Act of 2007, except as amended by sec-  
5           tions 102, 103, 104, 105, 106, 107, 108,  
6           and 109 of this Act.

7           ~~(B) ORDERS IN EFFECT ON DECEMBER 31,~~  
8           ~~2013.~~—Any order issued under title VII of the  
9           Foreign Intelligence Surveillance Act of 1978,  
10          as amended by section 101 of this Act, in effect  
11          on December 31, 2013, shall continue in effect  
12          until the date of the expiration of such order.  
13          Any such order shall be governed by the appli-  
14          cable provisions of the Foreign Intelligence Sur-  
15          veillance Act of 1978, as so amended.

16          ~~(3) AUTHORIZATIONS AND DIRECTIVES IN EF-~~  
17          ~~FECT.—~~

18          ~~(A) AUTHORIZATIONS AND DIRECTIVES IN~~  
19          ~~EFFECT ON DATE OF ENACTMENT.~~—Notwith-  
20          standing any other provision of this Act or of  
21          the Foreign Intelligence Surveillance Act of  
22          1978, any authorization or directive in effect on  
23          the date of the enactment of this Act issued  
24          pursuant to the Protect America Act of 2007,  
25          or any amendment made by that Act, shall re-

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

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

1           lance Act of 1978, as so amended, and, except  
2           as provided in section 704 of the Foreign Intel-  
3           ligence Surveillance Act of 1978, as so amend-  
4           ed, any acquisition pursuant to such authoriza-  
5           tion or directive shall be deemed not to con-  
6           stitute electronic surveillance (as that term is  
7           defined in section 101(f) of the Foreign Intel-  
8           ligence Surveillance Act of 1978, to the extent  
9           that such section 101(f) is limited by section  
10          701 of the Foreign Intelligence Surveillance Act  
11          of 1978, as so amended).

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

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

1           (A) the government may file an application  
2           for an order under the Foreign Intelligence  
3           Surveillance Act of 1978, as in effect on the  
4           day before the date of the enactment of the  
5           Protect America Act of 2007, except as amend-  
6           ed by sections 102, 103, 104, 105, 106, 107,  
7           108, and 109 of this Act; and

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

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

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

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

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

7 (a) *SHORT TITLE.*—This Act may be cited as the “For-  
 8 eign Intelligence Surveillance Act of 1978 Amendments Act  
 9 of 2007” or the “FISA Amendments Act of 2007”.

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

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

**TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

*Sec. 101. Targeting the communications of 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. Technical and conforming amendments.*

12 **TITLE I—FOREIGN**  
 13 **INTELLIGENCE SURVEILLANCE**

14 **SEC. 101. TARGETING THE COMMUNICATIONS OF CERTAIN**  
 15 **PERSONS OUTSIDE THE UNITED STATES.**

16 (a) *IN GENERAL.*—The Foreign Intelligence Surveil-  
 17 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

1           (1) *by striking title VII; and*

2           (2) *by adding after title VI the following new*  
3 *title:*

4 **“TITLE VII—ADDITIONAL PROCE-**  
5 **DURES FOR TARGETING COM-**  
6 **MUNICATIONS OF CERTAIN**  
7 **PERSONS OUTSIDE THE**  
8 **UNITED STATES**

9 **“SEC. 701. DEFINITIONS.**

10       *“In this title:*

11           *“(1) IN GENERAL.—The terms ‘agent of a foreign*  
12 *power’, ‘Attorney General’, ‘contents’, ‘electronic sur-*  
13 *veillance’, ‘foreign intelligence information’, ‘foreign*  
14 *power’, ‘minimization procedures’, ‘person’, ‘United*  
15 *States’, and ‘United States person’ shall have the*  
16 *meanings given such terms in section 101.*

17           *“(2) ADDITIONAL DEFINITIONS.—*

18           *“(A) CONGRESSIONAL INTELLIGENCE COM-*  
19 *MITTEES.—The term ‘congressional intelligence*  
20 *committees’ means—*

21           *“(i) the Select Committee on Intel-*  
22 *ligence of the Senate; and*

23           *“(ii) the Permanent Select Committee*  
24 *on Intelligence of the House of Representa-*  
25 *tives.*

1           “(B) *FOREIGN INTELLIGENCE SURVEIL-*  
2 *LANCE COURT; COURT.*—*The terms ‘Foreign In-*  
3 *telligence Surveillance Court’ and ‘Court’ mean*  
4 *the court established by section 103(a).*

5           “(C) *FOREIGN INTELLIGENCE SURVEIL-*  
6 *LANCE COURT OF REVIEW; COURT OF REVIEW.*—  
7 *The terms ‘Foreign Intelligence Surveillance*  
8 *Court of Review’ and ‘Court of Review’ mean the*  
9 *court established by section 103(b).*

10          “(D) *ELECTRONIC COMMUNICATION SERVICE*  
11 *PROVIDER.*—*The term ‘electronic communication*  
12 *service provider’ means—*

13           “(i) *a telecommunications carrier, as*  
14 *that term is defined in section 3 of the Com-*  
15 *munications Act of 1934 (47 U.S.C. 153);*

16           “(ii) *a provider of electronic commu-*  
17 *nications service, as that term is defined in*  
18 *section 2510 of title 18, United States Code;*

19           “(iii) *a provider of a remote com-*  
20 *puting service, as that term is defined in*  
21 *section 2711 of title 18, United States Code;*

22           “(iv) *any other communication service*  
23 *provider who has access to wire or electronic*  
24 *communications either as such communica-*



1            *tions are transmitted or as such commu-*  
2            *nications are stored; or*

3            *“(v) an officer, employee, or agent of*  
4            *an entity described in clause (i), (ii), (iii),*  
5            *or (iv).*

6            *“(E) ELEMENT OF THE INTELLIGENCE COM-*  
7            *MUNITY.—The term ‘element of the intelligence*  
8            *community’ means an element of the intelligence*  
9            *community specified in or designated under sec-*  
10           *tion 3(4) of the National Security Act of 1947*  
11           *(50 U.S.C. 401a(4)).*

12    **“SEC. 702. PROCEDURES FOR ACQUIRING THE COMMUNICA-**  
13                            **TIONS OF CERTAIN PERSONS OUTSIDE THE**  
14                            **UNITED STATES.**

15           *“(a) AUTHORIZATION.—Notwithstanding any other*  
16           *provision of law, including title I, the Attorney General and*  
17           *the Director of National Intelligence may authorize jointly,*  
18           *for periods of up to 1 year, the targeting of persons reason-*  
19           *ably believed to be located outside the United States to ac-*  
20           *quire foreign intelligence information.*

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

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

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

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

10          “(c) *UNITED STATES PERSONS LOCATED OUTSIDE*  
 11 *THE UNITED STATES.—*

12           “(1) *ACQUISITION INSIDE THE UNITED STATES*  
 13           *OF UNITED STATES PERSONS OUTSIDE THE UNITED*  
 14           *STATES.—An acquisition authorized under subsection*  
 15           *(a) that constitutes electronic surveillance and occurs*  
 16           *inside the United States may not intentionally target*  
 17           *a United States person reasonably believed to be out-*  
 18           *side the United States, except in accordance with the*  
 19           *procedures under title I.*

20           “(2) *ACQUISITION OUTSIDE THE UNITED STATES*  
 21           *OF UNITED STATES PERSONS OUTSIDE THE UNITED*  
 22           *STATES.—*

23           “(A) *IN GENERAL.—An acquisition by an*  
 24           *electronic, mechanical, or other surveillance de-*  
 25           *vice outside the United States may not inten-*

1           *tionally target a United States person reason-*  
2           *ably believed to be outside the United States to*  
3           *acquire the contents of a wire or radio commu-*  
4           *nication sent by or intended to be received by*  
5           *that United States person under circumstances*  
6           *in which a person has reasonable expectation of*  
7           *privacy and a warrant would be required for*  
8           *law enforcement purposes if the technique were*  
9           *used inside the United States unless—*

10                   *“(i) the Foreign Intelligence Surveil-*  
11                   *lance Court has entered an order approving*  
12                   *electronic surveillance of that United States*  
13                   *person under section 105, or in the case of*  
14                   *an emergency situation, electronic surveil-*  
15                   *lance against the target is being conducted*  
16                   *in a manner consistent with title I; or*

17                   *“(ii)(I) the Foreign Intelligence Sur-*  
18                   *veillance Court has entered a order under*  
19                   *subparagraph (B) that there is probable*  
20                   *cause to believe that the United States per-*  
21                   *son is a foreign power or an agent of a for-*  
22                   *ign power;*

23                   *“(II) the Attorney General has estab-*  
24                   *lished minimization procedures for that ac-*  
25                   *quisition that meet the definition of mini-*

1            *mization procedures under section 101(h);*  
2            *and*

3            *“(III) the dissemination provisions of*  
4            *the minimization procedures described in*  
5            *subclause (II) have been approved under*  
6            *subparagraph (C).*

7            *“(B) PROBABLE CAUSE DETERMINATION;*  
8            *REVIEW.—*

9            *“(i) IN GENERAL.—The Attorney Gen-*  
10           *eral may submit to the Foreign Intelligence*  
11           *Surveillance Court the determination of the*  
12           *Attorney General, together with any sup-*  
13           *porting affidavits, that a United States per-*  
14           *son who is outside the United States is a*  
15           *foreign power or an agent of a foreign*  
16           *power.*

17           *“(ii) REVIEW.—The Court shall re-*  
18           *view, any probable cause determination*  
19           *submitted by the Attorney General under*  
20           *this subparagraph. The review under this*  
21           *clause shall be limited to whether, on the*  
22           *basis of the facts submitted by the Attorney*  
23           *General, there is probable cause to believe*  
24           *that the United States person who is outside*

1           *the United States is a foreign power or an*  
2           *agent of a foreign power.*

3           “(iii) *ORDER.—If the Court, after con-*  
4           *ducting a review under clause (ii), deter-*  
5           *mines that there is probable cause to believe*  
6           *that the United States person is a foreign*  
7           *power or an agent of a foreign power, the*  
8           *court shall issue an order approving the ac-*  
9           *quisition. An order under this clause shall*  
10          *be effective for 90 days, and may be renewed*  
11          *for additional 90-day periods.*

12          “(iv) *NO PROBABLE CAUSE.—If the*  
13          *Court, after conducting a review under*  
14          *clause (ii), determines that there is not*  
15          *probable cause to believe that a United*  
16          *States person is a foreign power or an agent*  
17          *of a foreign power, it shall enter an order*  
18          *so stating and provide a written statement*  
19          *for the record of the reasons for such deter-*  
20          *mination. The Government may appeal an*  
21          *order under this clause to the Foreign Intel-*  
22          *ligence Surveillance Court of Review.*

23          “(C) *REVIEW OF MINIMIZATION PROCE-*  
24          *DURES.—*

1           “(i) *IN GENERAL.*—*The Foreign Intel-*  
2           *ligence Surveillance Court shall review the*  
3           *minimization procedures applicable to dis-*  
4           *semination of information obtained through*  
5           *an acquisition authorized under subpara-*  
6           *graph (A) to assess whether such procedures*  
7           *meet the definition of minimization proce-*  
8           *dures under section 101(h) with respect to*  
9           *dissemination.*

10           “(ii) *REVIEW.*—*The Court shall issue*  
11           *an order approving the procedures applica-*  
12           *ble to dissemination as submitted or as*  
13           *modified to comply with section 101(h).*

14           “(iii) *PROCEDURES DO NOT MEET*  
15           *DEFINITION.*—*If the Court determines that*  
16           *the procedures applicable to dissemination*  
17           *of information obtained through an acquisi-*  
18           *tion authorized under subparagraph (A) do*  
19           *not meet the definition of minimization*  
20           *procedures under section 101(h) with re-*  
21           *spect to dissemination, it shall enter an*  
22           *order so stating and provide a written*  
23           *statement for the record of the reasons for*  
24           *such determination. The Government may*  
25           *appeal an order under this clause to the*

1 *Foreign Intelligence Surveillance Court of*  
2 *Review.*

3 “(D) *EMERGENCY PROCEDURES.*—

4 “(i) *IN GENERAL.*—*Notwithstanding*  
5 *any other provision of this paragraph, the*  
6 *Attorney General may authorize the emer-*  
7 *gency employment of an acquisition under*  
8 *subparagraph (A) if the Attorney General—*

9 “(I) *reasonably determines that—*

10 “(aa) *an emergency situation*  
11 *exists with respect to the employ-*  
12 *ment of an acquisition under sub-*  
13 *paragraph (A) before a deter-*  
14 *mination of probable cause can*  
15 *with due diligence be obtained;*  
16 *and*

17 “(bb) *the factual basis for*  
18 *issuance of a determination under*  
19 *subparagraph (B) to approve such*  
20 *an acquisition exists;*

21 “(II) *informs a judge of the For-*  
22 *ign Intelligence Surveillance Court at*  
23 *the time of such authorization that the*  
24 *decision has been made to employ an*  
25 *emergency acquisition;*

1           “(III) submits a request in ac-  
2           cordance with subparagraph (B) to the  
3           judge notified under subclause (II) as  
4           soon as practicable, but later than 72  
5           hours after the Attorney General au-  
6           thorizes such an acquisition; and

7           “(IV) requires that minimization  
8           procedures meeting the definition of  
9           minimization procedures under section  
10          101(h) be followed.

11          “(ii) *TERMINATION.*—In the absence of  
12          a judicial determination finding probable  
13          cause to believe that the United States per-  
14          son that is the subject of an emergency em-  
15          ployment of an acquisition under clause (i)  
16          is a foreign power or an agent of a foreign  
17          power, the emergency employment of an ac-  
18          quisition under clause (i) shall terminate  
19          when the information sought is obtained,  
20          when the request for a determination is de-  
21          nied, or after the expiration of 72 hours  
22          from the time of authorization by the Attor-  
23          ney General, whichever is earliest.

24          “(iii) *USE OF INFORMATION.*—If the  
25          Court determines that there is not probable



1           *cause to believe that a United States is a*  
2           *foreign power or an agent of a foreign*  
3           *power in response to a request for a deter-*  
4           *mination under clause (i)(III), or in any*  
5           *other case where the emergency employment*  
6           *of an acquisition under this subparagraph*  
7           *is terminated and no determination finding*  
8           *probable cause is issued, no information ob-*  
9           *tained or evidence derived from such acqui-*  
10          *sition shall be received in evidence or other-*  
11          *wise disclosed in any trial, hearing, or*  
12          *other proceeding in or before any court,*  
13          *grand jury, department, office, agency, reg-*  
14          *ulatory body, legislative committee, or other*  
15          *authority of the United States, a State, or*  
16          *political subdivision thereof, and no infor-*  
17          *mation concerning any United States per-*  
18          *son acquired from such acquisition shall*  
19          *subsequently be used or disclosed in any*  
20          *other manner by Federal officers or employ-*  
21          *ees without the consent of such person, ex-*  
22          *cept with the approval of the Attorney Gen-*  
23          *eral if the information indicates a threat of*  
24          *death or serious bodily harm to any person.*

25           “(3) *PROCEDURES.*—

1           “(A) *SUBMITTAL TO FOREIGN INTEL-*  
2           *LIGENCE SURVEILLANCE COURT.*—Not later than  
3           30 days after the date of the enactment of the  
4           *FISA Amendments Act of 2007*, the Attorney  
5           General shall submit to the Foreign Intelligence  
6           Surveillance Court the procedures to be used in  
7           determining whether a target reasonably believed  
8           to be outside the United States is a United  
9           States person.

10           “(B) *REVIEW BY FOREIGN INTELLIGENCE*  
11           *SURVEILLANCE COURT.*—The Foreign Intel-  
12           ligence Surveillance Court shall review, the pro-  
13           cedures submitted under subparagraph (A), and  
14           shall approve those procedures if they are reason-  
15           ably designed to determine whether a target rea-  
16           sonably believed to be outside the United States  
17           is a United States person. If the Court concludes  
18           otherwise, the Court shall enter an order so stat-  
19           ing and provide a written statement for the  
20           record of the reasons for such determination. The  
21           Government may appeal such an order to the  
22           Foreign Intelligence Surveillance Court of Re-  
23           view.

24           “(C) *USE IN TARGETING.*—Any targeting of  
25           persons reasonably believed to be located outside

1           *the United States shall use the procedures ap-*  
2           *proved by the Foreign Intelligence Surveillance*  
3           *Court under subparagraph (B). Any new or*  
4           *amended procedures may be used with respect to*  
5           *the targeting of persons reasonably believed to be*  
6           *located outside the United States upon approval*  
7           *of the new or amended procedures by the Court,*  
8           *which shall review such procedures under para-*  
9           *graph (B).*

10           “(4) *TRANSITION PROCEDURES CONCERNING THE*  
11           *TARGETING OF UNITED STATES PERSONS OVER-*  
12           *SEAS.—Any authorization in effect on the date of en-*  
13           *actment of the FISA Amendments Act of 2007 under*  
14           *section 2.5 of Executive Order 12333 to intentionally*  
15           *target a United States person reasonably believed to*  
16           *be located outside the United States, to acquire the*  
17           *contents of a wire or radio communication sent by or*  
18           *intended to be received by that United States person,*  
19           *shall remain in effect, and shall constitute a sufficient*  
20           *basis for conducting such an acquisition of a United*  
21           *States person located outside the United States, until*  
22           *that authorization expires or 90 days after the date*  
23           *of enactment of the FISA Amendments Act of 2007,*  
24           *whichever is earlier.*

1       “(d) *CONDUCT OF ACQUISITION.*—*An acquisition au-*  
2 *thorized under subsection (a) may be conducted only in ac-*  
3 *cordance with—*

4               “(1) *a certification made by the Attorney Gen-*  
5 *eral and the Director of National Intelligence pursu-*  
6 *ant to subsection (g); and*

7               “(2) *the targeting and minimization procedures*  
8 *required pursuant to subsections (e) and (f).*

9       “(e) *TARGETING PROCEDURES.*—

10              “(1) *REQUIREMENT TO ADOPT.*—*The Attorney*  
11 *General, in consultation with the Director of National*  
12 *Intelligence, shall adopt targeting procedures that are*  
13 *reasonably designed to ensure that any acquisition*  
14 *authorized under subsection (a) is limited to targeting*  
15 *persons reasonably believed to be located outside the*  
16 *United States, and that an application is filed under*  
17 *title I, if otherwise required, when a significant pur-*  
18 *pose of an acquisition authorized under subsection (a)*  
19 *is to acquire the communications of a specific person*  
20 *reasonably believed to be located in the United States.*

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

24       “(f) *MINIMIZATION PROCEDURES.*—

1           “(1) *REQUIREMENT TO ADOPT.*—*The Attorney*  
2           *General, in consultation with the Director of National*  
3           *Intelligence, shall adopt, consistent with the require-*  
4           *ments of section 101(h), minimization procedures for*  
5           *acquisitions authorized under subsection (a).*

6           “(2) *JUDICIAL REVIEW.*—*The minimization pro-*  
7           *cedures required by this subsection shall be subject to*  
8           *judicial review pursuant to subsection (i).*

9           “(g) *CERTIFICATION.*—

10           “(1) *IN GENERAL.*—

11           “(A) *REQUIREMENT.*—*Subject to subpara-*  
12           *graph (B), prior to the initiation of an acquisi-*  
13           *tion authorized under subsection (a), the Attor-*  
14           *ney General and the Director of National Intel-*  
15           *ligence shall provide, under oath, a written cer-*  
16           *tification, as described in this subsection.*

17           “(B) *EXCEPTION.*—*If the Attorney General*  
18           *and the Director of National Intelligence deter-*  
19           *mine that immediate action by the Government*  
20           *is required and time does not permit the prepa-*  
21           *ration of a certification under this subsection*  
22           *prior to the initiation of an acquisition, the At-*  
23           *torney General and the Director of National In-*  
24           *telligence shall prepare such certification, includ-*  
25           *ing such determination, as soon as possible but*

1           *in no event more than 168 hours after such de-*  
2           *termination is made.*

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

5                   “(A) *attest that—*

6                           “(i) *there are reasonable procedures in*  
7                           *place for determining that the acquisition*  
8                           *authorized under subsection (a) is targeted*  
9                           *at persons reasonably believed to be located*  
10                           *outside the United States and that such*  
11                           *procedures have been approved by, or will*  
12                           *promptly be submitted for approval by, the*  
13                           *Foreign Intelligence Surveillance Court*  
14                           *pursuant to subsection (i);*

15                           “(ii) *the procedures referred to in*  
16                           *clause (i) are consistent with the require-*  
17                           *ments of the fourth amendment to the Con-*  
18                           *stitution of the United States and do not*  
19                           *permit the intentional targeting of any per-*  
20                           *son who is known at the time of acquisition*  
21                           *to be located in the United States;*

22                           “(iii) *the procedures referred to in*  
23                           *clause (i) require that an application is*  
24                           *filed under title I, if otherwise required,*  
25                           *when a significant purpose of an acquisi-*

1            *tion authorized under subsection (a) is to*  
2            *acquire the communications of a specific*  
3            *person reasonably believed to be located in*  
4            *the United States;*

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

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

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

13            *“(II) have been approved by, or*  
14            *will promptly be submitted for ap-*  
15            *proval by, the Foreign Intelligence*  
16            *Surveillance Court pursuant to sub-*  
17            *section (i);*

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

22            *“(vii) the acquisition is limited to*  
23            *communications to which at least 1 party is*  
24            *a specific individual target who is reason-*  
25            *ably believed to be located outside of the*

1            *United States, and a significant purpose of*  
2            *the acquisition of the communications of*  
3            *any target is to obtain foreign intelligence*  
4            *information; and*

5            *“(B) be supported, as appropriate, by the*  
6            *affidavit of any appropriate official in the area*  
7            *of national security who is—*

8                    *“(i) appointed by the President, by*  
9                    *and with the consent of the Senate; or*

10                   *“(ii) the head of any element of the in-*  
11                   *telligence community.*

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

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



1       *the Attorney General, in consultation with the Direc-*  
2       *tor of National Intelligence.*

3               “(5) *REVIEW.*—*The certification required by this*  
4       *subsection shall be subject to judicial review pursuant*  
5       *to subsection (i).*

6               “(h) *DIRECTIVES.*—

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

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

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

1           “(2) *COMPENSATION.*—*The Government shall*  
2           *compensate, at the prevailing rate, an electronic com-*  
3           *munication service provider for providing informa-*  
4           *tion, facilities, or assistance pursuant to paragraph*  
5           *(1).*

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

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

13           “(A) *AUTHORITY TO CHALLENGE.*—*An elec-*  
14           *tronic communication service provider receiving*  
15           *a directive issued pursuant to paragraph (1)*  
16           *may challenge the directive by filing a petition*  
17           *with the Foreign Intelligence Surveillance Court.*

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

23           “(C) *STANDARDS FOR REVIEW.*—*A judge*  
24           *considering a petition to modify or set aside a*  
25           *directive may grant such petition only if the*

1        *judge finds that the directive does not meet the*  
2        *requirements of this section or is otherwise un-*  
3        *lawful. If the judge does not modify or set aside*  
4        *the directive, the judge shall immediately affirm*  
5        *such directive, and order the recipient to comply*  
6        *with the directive. The judge shall provide a*  
7        *written statement for the record of the reasons*  
8        *for a determination under this paragraph.*

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

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

13                *“(A) ORDER TO COMPEL.—In the case of a*  
14                *failure to comply with a directive issued pursu-*  
15                *ant to paragraph (1), the Attorney General may*  
16                *file a petition for an order to compel compliance*  
17                *with the directive with the Foreign Intelligence*  
18                *Surveillance Court.*

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

24                *“(C) STANDARDS FOR REVIEW.—A judge*  
25                *considering a petition shall issue an order re-*

1            *quiring the electronic communication service*  
2            *provider to comply with the directive if the judge*  
3            *finds that the directive was issued in accordance*  
4            *with paragraph (1), meets the requirements of*  
5            *this section, and is otherwise lawful. The judge*  
6            *shall provide a written statement for the record*  
7            *of the reasons for a determination under this*  
8            *paragraph.*

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

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

17           *“(6) APPEAL.—*

18           *“(A) APPEAL TO THE COURT OF REVIEW.—*  
19           *The Government or an electronic communication*  
20           *service provider receiving a directive issued pur-*  
21           *suant to paragraph (1) may file a petition with*  
22           *the Foreign Intelligence Surveillance Court of*  
23           *Review for review of the decision issued pursuant*  
24           *to paragraph (4) or (5) not later than 7 days*  
25           *after the issuance of such decision. The Court of*

1           *Review shall have jurisdiction to consider such a*  
2           *petition and shall provide a written statement*  
3           *for the record of the reasons for a decision under*  
4           *this paragraph.*

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

15           “(i) *JUDICIAL REVIEW.—*

16           “(1) *IN GENERAL.—*

17           “(A) *REVIEW BY THE FOREIGN INTEL-*  
18           *LIGENCE SURVEILLANCE COURT.—The Foreign*  
19           *Intelligence Surveillance Court shall have jurisdic-*  
20           *tion to review any certification required by*  
21           *subsection (d) or targeting and minimization*  
22           *procedures adopted pursuant to subsections (e)*  
23           *and (f).*

24           “(B) *SUBMISSION TO THE COURT.—The At-*  
25           *torney General shall submit to the Court any*

1           *such certification or procedure, or amendment*  
2           *thereto, not later than 5 days after making or*  
3           *amending the certification or adopting or*  
4           *amending the procedures.*

5           “(2) *CERTIFICATIONS.*—*The Court shall review a*  
6           *certification provided under subsection (g) to deter-*  
7           *mine whether the certification contains all the re-*  
8           *quired elements.*

9           “(3) *TARGETING PROCEDURES.*—*The Court shall*  
10          *review the targeting procedures required by subsection*  
11          *(e) to assess whether the procedures are reasonably de-*  
12          *signed to ensure that the acquisition authorized under*  
13          *subsection (a) is limited to the targeting of persons*  
14          *reasonably believed to be located outside the United*  
15          *States, and are reasonably designed to ensure that an*  
16          *application is filed under title I, if otherwise re-*  
17          *quired, when a significant purpose of an acquisition*  
18          *authorized under subsection (a) is to acquire the com-*  
19          *munications of a specific person reasonably believed*  
20          *to be located in the United States.*

21          “(4) *MINIMIZATION PROCEDURES.*—*The Court*  
22          *shall review the minimization procedures required by*  
23          *subsection (f) to assess whether such procedures meet*  
24          *the definition of minimization procedures under sec-*  
25          *tion 101(h).*

1           “(5) *ORDERS.*—

2                   “(A) *APPROVAL.*—*If the Court finds that a*  
3                   *certification required by subsection (g) contains*  
4                   *all of the required elements and that the tar-*  
5                   *geting and minimization procedures required by*  
6                   *subsections (e) and (f) are consistent with the re-*  
7                   *quirements of those subsections and with the*  
8                   *fourth amendment to the Constitution of the*  
9                   *United States, the Court shall enter an order ap-*  
10                  *proving the continued use of the procedures for*  
11                  *the acquisition authorized under subsection (a).*

12                  “(B) *CORRECTION OF DEFICIENCIES.*—

13                   “(i) *IN GENERAL.*—*If the Court finds*  
14                   *that a certification required by subsection*  
15                   *(g) does not contain all of the required ele-*  
16                   *ments, or that the procedures required by*  
17                   *subsections (e) and (f) are not consistent*  
18                   *with the requirements of those subsections or*  
19                   *the fourth amendment to the Constitution of*  
20                   *the United States, the Court shall issue an*  
21                   *order directing the Government to, at the*  
22                   *Government’s election and to the extent re-*  
23                   *quired by the Court’s order—*

24                                   “(I) *correct any deficiency identi-*  
25                                   *fied by the Court’s order not later than*

1                   30 days after the date the Court issues  
2                   the order; or

3                   “(II) cease the acquisition author-  
4                   ized under subsection (a).

5                   “(ii) *LIMITATION ON USE OF INFORMA-*  
6                   *TION.—*

7                   “(I) *IN GENERAL.—*Except as pro-  
8                   vided in subclause (II), no information  
9                   obtained or evidence derived from an  
10                  acquisition under clause (i)(I) shall be  
11                  received in evidence or otherwise dis-  
12                  closed in any trial, hearing, or other  
13                  proceeding in or before any court,  
14                  grand jury, department, office, agency,  
15                  regulatory body, legislative committee,  
16                  or other authority of the United States,  
17                  a State, or political subdivision there-  
18                  of, and no information concerning any  
19                  United States person acquired from  
20                  such acquisition shall subsequently be  
21                  used or disclosed in any other manner  
22                  by Federal officers or employees with-  
23                  out the consent of such person, except  
24                  with the approval of the Attorney Gen-  
25                  eral if the information indicates a



1                   *threat of death or serious bodily harm*  
2                   *to any person.*

3                   “(II) *EXCEPTION.*—*If the Govern-*  
4                   *ment corrects any deficiency identified*  
5                   *by the Court’s order under clause (i),*  
6                   *the Court may permit the use or dis-*  
7                   *closure of information acquired before*  
8                   *the date of the correction pursuant to*  
9                   *such minimization procedures as the*  
10                   *Court shall establish for purposes of*  
11                   *this clause.*

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

17                   “(6) *APPEAL.*—

18                   “(A) *APPEAL TO THE COURT OF REVIEW.*—  
19                   *The Government may appeal any order under*  
20                   *this section to the Foreign Intelligence Surveil-*  
21                   *lance Court of Review, which shall have jurisdic-*  
22                   *tion to review such order. For any decision af-*  
23                   *firming, reversing, or modifying an order of the*  
24                   *Foreign Intelligence Surveillance Court, the*

1           *Court of Review shall provide for the record a*  
2           *written statement of its reasons.*

3           “(B) *STAY PENDING APPEAL.*—*The Govern-*  
4           *ment may move for a stay of any order of the*  
5           *Foreign Intelligence Surveillance Court under*  
6           *paragraph (5)(B)(i) pending review by the Court*  
7           *en banc or pending appeal to the Foreign Intel-*  
8           *ligence Surveillance Court of Review.*

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

17           “(7) *COMPLIANCE REVIEW.*—*The Court may re-*  
18           *view and assess compliance with the minimization*  
19           *procedures submitted to the Court pursuant to sub-*  
20           *sections (c) and (f) by reviewing the semiannual as-*  
21           *sessments submitted by the Attorney General and the*  
22           *Director of National Intelligence pursuant to sub-*  
23           *section (l)(1) with respect to compliance with mini-*  
24           *mization procedures. In conducting a review under*  
25           *this paragraph, the Court may, to the extent nec-*

1        *essary, require the Government to provide additional*  
2        *information regarding the acquisition, retention, or*  
3        *dissemination of information concerning United*  
4        *States persons during the course of an acquisition au-*  
5        *thorized under subsection (a).*

6                *“(8) REMEDIAL AUTHORITY.—The Foreign Intel-*  
7        *ligence Surveillance Court shall have authority to*  
8        *fashion remedies as necessary to enforce—*

9                *“(A) any order issued under this section;*  
10              *and*

11              *“(B) compliance with any such order.*

12              *“(j) JUDICIAL PROCEEDINGS.—Judicial proceedings*  
13        *under this section shall be conducted as expeditiously as*  
14        *possible.*

15              *“(k) MAINTENANCE OF RECORDS.—*

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

23              *“(2) FILING AND REVIEW.—All petitions under*  
24        *this section shall be filed under seal. In any pro-*  
25        *ceedings under this section, the court shall, upon re-*

1 *quest of the Government, review ex parte and in cam-*  
2 *era any Government submission, or portions of a sub-*  
3 *mission, which may include classified information.*

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

9 “(l) *OVERSIGHT.*—

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 targeting and minimization pro-*  
14 *cedures required by subsections (c), (e), and (f) and*  
15 *shall submit each such assessment to—*

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

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

20 “(2) *AGENCY ASSESSMENT.*—*The Inspectors Gen-*  
21 *eral of the Department of Justice and of any element*  
22 *of the intelligence community authorized to acquire*  
23 *foreign intelligence information under subsection*  
24 *(a)—*

1           “(A) are authorized to review the compli-  
2           ance of their agency or element with the tar-  
3           geting and minimization procedures required by  
4           subsections (c), (e), and (f);

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

14          “(C) with respect to acquisitions authorized  
15          under subsection (a), shall review the number of  
16          targets that were later determined to be located  
17          in the United States and the number of persons  
18          located in the United States whose communica-  
19          tions 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; and

24                  “(iii) the congressional intelligence  
25                  committees.

1           “(3) *ANNUAL REVIEW.*—

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

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

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

22                           “(iii) *the number of targets that were*  
23 *later determined to be located in the United*  
24 *States and the number of persons located in*

1           *the United States whose communications*  
2           *were reviewed.*

3           “(B) *USE OF REVIEW.*—*The head of each*  
4           *element of the intelligence community that con-*  
5           *ducts an annual review under subparagraph (A)*  
6           *shall use each such review to evaluate the ade-*  
7           *quacy of the minimization procedures utilized by*  
8           *such element or the application of the minimiza-*  
9           *tion procedures to a particular acquisition au-*  
10          *thorized under subsection (a).*

11          “(C) *PROVISION OF REVIEW TO FOREIGN IN-*  
12          *TELLIGENCE SURVEILLANCE COURT.*—*The head*  
13          *of each element of the intelligence community*  
14          *that conducts an annual review under subpara-*  
15          *graph (A) shall provide such review to the For-*  
16          *eign Intelligence Surveillance Court.*

17          “(4) *REPORTS TO CONGRESS.*—

18          “(A) *SEMIANNUAL REPORT.*—*Not less fre-*  
19          *quently than once every 6 months, the Attorney*  
20          *General shall fully inform, in a manner con-*  
21          *sistent with national security, the congressional*  
22          *intelligence committees, the Committee on the*  
23          *Judiciary of the Senate, and the Committee on*  
24          *the Judiciary of the House of Representatives,*  
25          *concerning the implementation of this Act.*

1           “(B) *CONTENT.*—*Each report made under*  
2           *subparagraph (A) shall include—*

3                   “(i) *any certifications made under sub-*  
4                   *section (g) during the reporting period;*

5                   “(ii) *any directives issued under sub-*  
6                   *section (h) during the reporting period;*

7                   “(iii) *the judicial review during the re-*  
8                   *porting period of any such certifications*  
9                   *and targeting and minimization procedures*  
10                   *utilized with respect to such acquisition, in-*  
11                   *cluding a copy of any order or pleading in*  
12                   *connection with such review that contains a*  
13                   *significant legal interpretation of the provi-*  
14                   *sions of this Act;*

15                   “(iv) *any actions taken to challenge or*  
16                   *enforce a directive under paragraphs (4) or*  
17                   *(5) of subsections (h);*

18                   “(v) *any compliance reviews conducted*  
19                   *by the Department of Justice or the Office*  
20                   *of the Director of National Intelligence of*  
21                   *acquisitions authorized under subsection*  
22                   *(a);*

23                   “(vi) *a description of any incidents of*  
24                   *noncompliance with a directive issued by*  
25                   *the Attorney General and the Director of*



1           *National Intelligence under subsection (h),*  
2           *including—*

3                   “(I) incidents of noncompliance  
4                   by an element of the intelligence com-  
5                   munity with procedures adopted pur-  
6                   suant to subsections (c), (e), and (f);  
7                   and

8                   “(II) incidents of noncompliance  
9                   by a specified person to whom the At-  
10                  torney General and Director of Na-  
11                  tional Intelligence issued a directive  
12                  under subsection (h);

13                  “(vii) any procedures implementing  
14                  this section; and

15                  “(viii) any annual review conducted  
16                  pursuant to paragraph (3).

17   **“SEC. 703. USE OF INFORMATION ACQUIRED UNDER SEC-**  
18                   **TION 702.**

19           *“Information acquired from an acquisition conducted*  
20   *under section 702 shall be deemed to be information ac-*  
21   *quired from an electronic surveillance pursuant to title I*  
22   *for purposes of section 106, except for the purposes of sub-*  
23   *section (j) of such section.”.*

1           (b) *TABLE OF CONTENTS.*—*The table of contents in the*  
 2 *first section of the Foreign Intelligence Surveillance Act of*  
 3 *1978 (50 U.S.C. 1801 et seq.) is amended—*

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

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

6           *and*

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

*“TITLE VII—ADDITIONAL PROCEDURES FOR TARGETING COMMUNICATIONS OF CERTAIN PERSONS OUTSIDE THE UNITED STATES*

*“Sec. 701. Definitions.*

*“Sec. 702. Procedures for acquiring the communications of certain persons outside the United States.*

*“Sec. 703. Use of information acquired under section 702.”.*

8           (c) *SUNSET.*—

9                   (1) *IN GENERAL.*—*Except as provided in para-*  
 10 *graph (2), the amendments made by subsections*  
 11 *(a)(2) and (b) shall cease to have effect on December*  
 12 *31, 2011.*

13                   (2) *CONTINUING APPLICABILITY.*—*Section*  
 14 *702(h)(3) of the Foreign Intelligence Surveillance Act*  
 15 *of 1978 (as amended by subsection (a)) shall remain*  
 16 *in effect with respect to any directive issued pursuant*  
 17 *to section 702(h) of that Act (as so amended) during*  
 18 *the period such directive was in effect. The use of in-*  
 19 *formation acquired by an acquisition conducted*  
 20 *under section 702 of that Act (as so amended) shall*  
 21 *continue to be governed by the provisions of section*  
 22 *703 of that Act (as so amended).*

1 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**  
2 **ELECTRONIC SURVEILLANCE AND INTERCEP-**  
3 **TION OF CERTAIN COMMUNICATIONS MAY BE**  
4 **CONDUCTED.**

5 (a) *STATEMENT OF EXCLUSIVE MEANS.*—*Title I of the*  
6 *Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*  
7 *1801 et seq.) is amended by adding at the end the following*  
8 *new section:*

9 “*STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-*  
10 *TRONIC SURVEILLANCE AND INTERCEPTION OF CER-*  
11 *TAIN COMMUNICATIONS MAY BE CONDUCTED*

12 “*SEC. 112. (a) This Act shall be the exclusive means*  
13 *for targeting United States persons for the purpose of ac-*  
14 *quiring their communications or communications informa-*  
15 *tion for foreign intelligence purposes, whether such persons*  
16 *are inside the United States or outside the United States,*  
17 *except in cases where specific statutory authorization exists*  
18 *to obtain communications information without an order*  
19 *under this Act.*

20 “*(b) Chapters 119 and 121 of title 18, United States*  
21 *Code, and this Act shall be the exclusive means by which*  
22 *electronic surveillance and the interception of domestic*  
23 *wire, oral, or electronic communications may be conducted.*

24 “*(c) Subsections (a) and (b) shall apply unless specific*  
25 *statutory authorization for electronic surveillance, other*  
26 *than as an amendment to this Act, is enacted. Such specific*

1 *statutory authorization shall be the only exception to sub-*  
 2 *section (a) and (b).”.*

3 (b) *CONFORMING AMENDMENTS.*—

4 (1) *IN GENERAL.*—*Section 2511(2)(a) of title 18,*  
 5 *United States Code, is amended by adding at the end*  
 6 *the following:*

7 “(iii) *A certification under subparagraph (ii)(B) for*  
 8 *assistance to obtain foreign intelligence information shall*  
 9 *identify the specific provision of the Foreign Intelligence*  
 10 *Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that pro-*  
 11 *vides an exception from providing a court order, and shall*  
 12 *certify that the statutory requirements of such provision*  
 13 *have been met.”.*

14 (2) *TABLE OF CONTENTS.*—*The table of contents*  
 15 *in the first section of the Foreign Intelligence Surveil-*  
 16 *lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended*  
 17 *by adding after the item relating to section 111, the*  
 18 *following:*

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

19 (c) *OFFENSE.*—*Section 109(a) of the Foreign Intel-*  
 20 *ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is*  
 21 *amended by striking “authorized by statute” each place it*  
 22 *appears in such section and inserting “authorized by this*  
 23 *title or chapter 119, 121, or 206 of title 18, United States*  
 24 *Code”.*

1 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**  
2 **ORDERS UNDER THE FOREIGN INTEL-**  
3 **LIGENCE SURVEILLANCE ACT OF 1978.**

4 (a) *INCLUSION OF CERTAIN ORDERS IN SEMI-ANNUAL*  
5 *REPORTS OF ATTORNEY GENERAL.*—Subsection (a)(5) of  
6 *section 601 of the Foreign Intelligence Surveillance Act of*  
7 *1978 (50 U.S.C. 1871) is amended by striking “(not includ-*  
8 *ing orders)” and inserting “, orders,”.*

9 (b) *REPORTS BY ATTORNEY GENERAL ON CERTAIN*  
10 *OTHER ORDERS.*—Such section 601 is further amended by  
11 *adding at the end the following new subsection:*

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

15 “(1) *a copy of any decision, order, or opinion*  
16 *issued by the Foreign Intelligence Surveillance Court*  
17 *or the Foreign Intelligence Surveillance Court of Re-*  
18 *view that includes significant construction or inter-*  
19 *pretation of any provision of this Act, and any plead-*  
20 *ings associated with such decision, order, or opinion,*  
21 *not later than 45 days after such decision, order, or*  
22 *opinion is issued; and*

23 “(2) *a copy of any such decision, order, or opin-*  
24 *ion, and the pleadings associated with such decision,*  
25 *order, or opinion, that was issued during the 5-year*  
26 *period ending on the date of the enactment of the*

1        *FISA Amendments Act of 2007 and not previously*  
2        *submitted in a report under subsection (a).”.*

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

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

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

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

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

11                        *(C) in paragraph (5), as redesignated by*  
12                        *subparagraph (B) of this paragraph, by striking*  
13                        *“detailed”;*

14                        *(D) in paragraph (6), as redesignated by*  
15                        *subparagraph (B) of this paragraph, in the mat-*  
16                        *ter preceding subparagraph (A)—*

17                                *(i) by striking “Affairs or” and insert-*  
18                                *ing “Affairs,”; and*

19                                *(ii) by striking “Senate—” and insert-*  
20                                *ing “Senate, or the Deputy Director of the*  
21                                *Federal Bureau of Investigation, if the Di-*  
22                                *rector of the Federal Bureau of Investiga-*  
23                                *tion is unavailable—”;*

24                        *(E) in paragraph (7), as redesignated by*  
25                        *subparagraph (B) of this paragraph, by striking*

1           “statement of” and inserting “summary state-  
2           ment of”;

3           (F) in paragraph (8), as redesignated by  
4           subparagraph (B) of this paragraph, by adding  
5           “and” at the end; and

6           (G) in paragraph (9), as redesignated by  
7           subparagraph (B) of this paragraph, by striking  
8           “; and” and inserting a period;

9           (2) by striking subsection (b);

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

12          (4) in paragraph (1)(A) of subsection (d), as re-  
13          designated by paragraph (3) of this subsection, by  
14          striking “or the Director of National Intelligence”  
15          and inserting “the Director of National Intelligence,  
16          or the Director of the Central Intelligence Agency”.

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

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

20          (1) in subsection (a)—

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

22                  (B) by redesignating paragraphs (2)  
23                  through (5) as paragraphs (1) through (4), re-  
24                  spectively;

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

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

4                 (A) *in subparagraph (D), by adding “and”*  
5                 *at the end;*

6                 (B) *in subparagraph (E), by striking “;*  
7                 *and” and inserting a period; and*

8                 (C) *by striking subparagraph (F);*

9           (4) *by striking subsection (d);*

10           (5) *by redesignating subsections (e) through (i)*  
11           *as subsections (d) through (h), respectively;*

12           (6) *by amending subsection (e), as redesignated*  
13           *by paragraph (5) of this section, to read as follows:*

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

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

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



1           “(C) informs, either personally or through a des-  
2           ignee, a judge having jurisdiction under section 103  
3           at the time of such authorization that the decision has  
4           been made to employ emergency electronic surveil-  
5           lance; and

6           “(D) makes an application in accordance with  
7           this title to a judge having jurisdiction under section  
8           103 as soon as practicable, but not later than 168  
9           hours after the Attorney General authorizes such sur-  
10          veillance.

11          “(2) If the Attorney General authorizes the emergency  
12          employment of electronic surveillance under paragraph (1),  
13          the Attorney General shall require that the minimization  
14          procedures required by this title for the issuance of a judi-  
15          cial order be followed.

16          “(3) In the absence of a judicial order approving such  
17          electronic surveillance, the surveillance shall terminate  
18          when the information sought is obtained, when the applica-  
19          tion for the order is denied, or after the expiration of 168  
20          hours from the time of authorization by the Attorney Gen-  
21          eral, whichever is earliest.

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

24          “(5) In the event that such application for approval  
25          is denied, or in any other case where the electronic surveil-

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

15       “(6) The Attorney General shall assess compliance  
16 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)*  
 13 *through (9) as paragraphs (2) through (8), re-*  
 14 *spectively;*

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

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

21                    *(E) in paragraph (6), as redesignated by*  
 22 *subparagraph (B) of this paragraph, in the mat-*  
 23 *ter preceding subparagraph (A)—*

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

1                   (ii) by striking “Senate—” and insert-  
2                   ing “Senate, or the Deputy Director of the  
3                   Federal Bureau of Investigation, if the Di-  
4                   rector of the Federal Bureau of Investiga-  
5                   tion is unavailable—”; and

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

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

12                   (1) in subsection (a)—

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

14                               (B) by redesignating paragraphs (2)  
15                               through (5) as paragraphs (1) through (4), re-  
16                               spectively; and

17                   (2) by amending subsection (e) to read as fol-  
18                   lows:

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

22                               “(A) determines that an emergency situation ex-  
23                               ists with respect to the employment of a physical  
24                               search to obtain foreign intelligence information be-

1       *fore an order authorizing such physical search can*  
2       *with due diligence be obtained;*

3               “(B) determines that the factual basis for  
4       *issuance of an order under this title to approve such*  
5       *physical search exists;*

6               “(C) informs, either personally or through a des-  
7       *ignee, a judge of the Foreign Intelligence Surveillance*  
8       *Court at the time of such authorization that the deci-*  
9       *sion has been made to employ an emergency physical*  
10       *search; and*

11               “(D) makes an application in accordance with  
12       *this title to a judge of the Foreign Intelligence Sur-*  
13       *veillance Court as soon as practicable, but not more*  
14       *than 168 hours after the Attorney General authorizes*  
15       *such physical search.*

16               “(2) If the Attorney General authorizes the emergency  
17       *employment of a physical search under paragraph (1), the*  
18       *Attorney General shall require that the minimization proce-*  
19       *dures required by this title for the issuance of a judicial*  
20       *order be followed.*

21               “(3) In the absence of a judicial order approving such  
22       *physical search, the physical search shall terminate when*  
23       *the information sought is obtained, when the application*  
24       *for the order is denied, or after the expiration of 168 hours*

1 *from the time of authorization by the Attorney General,*  
2 *whichever is earliest.*

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

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

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

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

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

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

6   **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**  
 7                           **AND TRAP AND TRACE DEVICES.**

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

10           (1) *in subsection (a)(2), by striking “48 hours”*  
 11           *and inserting “168 hours”*; and

12           (2) *in subsection (c)(1)(C), by striking “48*  
 13           *hours” and inserting “168 hours”*.

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

15           (a) *DESIGNATION OF JUDGES.*—*Subsection (a) of sec-*  
 16   *tion 103 of the Foreign Intelligence Surveillance Act of 1978*  
 17   *(50 U.S.C. 1803) is amended by inserting “at least” before*  
 18   *“seven of the United States judicial circuits”*.

19           (b) *EN BANC AUTHORITY.*—

20           (1) *IN GENERAL.*—*Subsection (a) of section 103*  
 21   *of the Foreign Intelligence Surveillance Act of 1978,*  
 22   *as amended by subsection (a) of this section, is fur-*  
 23   *ther amended—*

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

1                   (B) by adding at the end the following new  
2                   paragraph:

3           “(2)(A) The court established under this subsection  
4 may, on its own initiative, or upon the request of the Gov-  
5 ernment in any proceeding or a party under section 501(f)  
6 or paragraph (4) or (5) of section 702(h), hold a hearing  
7 or rehearing, en banc, when ordered by a majority of the  
8 judges that constitute such court upon a determination  
9 that—

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

12                   “(ii) the proceeding involves a question of excep-  
13 tional importance.

14           “(B) Any authority granted by this Act to a judge of  
15 the court established under this subsection may be exercised  
16 by the court en banc. When exercising such authority, the  
17 court en banc shall comply with any requirements of this  
18 Act on the exercise of such authority.

19           “(C) For purposes of this paragraph, the court en banc  
20 shall consist of all judges who constitute the court estab-  
21 lished under this subsection.”.

22                   (2) CONFORMING AMENDMENTS.—The Foreign  
23 Intelligence Surveillance Act of 1978 is further  
24 amended—



1           (A) in subsection (a) of section 103, as  
2           amended by this subsection, by inserting “(except  
3           when sitting en banc under paragraph (2))”  
4           after “no judge designated under this sub-  
5           section”; and

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

9           (c) *STAY OR MODIFICATION DURING AN APPEAL.*—  
10          Section 103 of the Foreign Intelligence Surveillance Act of  
11          1978 (50 U.S.C. 1803) is amended—

12           (1) by redesignating subsection (f) as subsection  
13           (g); and

14           (2) by inserting after subsection (e) the following  
15           new subsection:

16           “(f)(1) A judge of the court established under sub-  
17           section (a), the court established under subsection (b) or a  
18           judge of that court, or the Supreme Court of the United  
19           States or a justice of that court, may, in accordance with  
20           the rules of their respective courts, enter a stay of an order  
21           or an order modifying an order of the court established  
22           under subsection (a) or the court established under sub-  
23           section (b) entered under any title of this Act, while the  
24           court established under subsection (a) conducts a rehearing,  
25           while an appeal is pending to the court established under

1 subsection (b), or while a petition of certiorari is pending  
2 in the Supreme Court of the United States, or during the  
3 pendency of any review by that court.

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

6 **SEC. 110. REVIEW OF PREVIOUS ACTIONS.**

7 (a) *DEFINITIONS.*—In this section—

8 (1) the term “element of the intelligence commu-  
9 nity” means an element of the intelligence community  
10 specified in or designated under section 3(4) of the  
11 National Security Act of 1947 (50 U.S.C. 401a(4));  
12 and

13 (2) the term “Terrorist Surveillance Program”  
14 means the intelligence program publicly confirmed by  
15 the President in a radio address on December 17,  
16 2005, and any previous, subsequent or related,  
17 versions or elements of that program.

18 (b) *AUDIT.*—Not later than 180 days after the date of  
19 the enactment of this Act, the Inspectors General of the De-  
20 partment of Justice and relevant elements of the intelligence  
21 community shall work in conjunction to complete a com-  
22 prehensive audit of the Terrorist Surveillance Program and  
23 any closely related intelligence activities, which shall in-  
24 clude acquiring all documents relevant to such programs,  
25 including memoranda concerning the legal authority of a

1 *program, authorizations of a program, certifications to tele-*  
2 *communications carriers, and court orders.*

3 *(c) REPORT.—*

4 *(1) IN GENERAL.—Not later than 30 days after*  
5 *the completion of the audit under subsection (b), the*  
6 *Inspectors General shall submit to the Permanent Se-*  
7 *lect Committee on Intelligence and the Committee on*  
8 *the Judiciary of the House of Representatives and the*  
9 *Select Committee on Intelligence and the Committee*  
10 *on the Judiciary of the Senate a joint report con-*  
11 *taining the results of that audit, including all docu-*  
12 *ments acquired pursuant to the conduct of that audit.*

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

16 *(d) EXPEDITED SECURITY CLEARANCE.—The Director*  
17 *of National Intelligence shall ensure that the process for the*  
18 *investigation and adjudication of an application by an In-*  
19 *spector General or any appropriate staff of an Inspector*  
20 *General for a security clearance necessary for the conduct*  
21 *of the audit under subsection (b) is conducted as expedi-*  
22 *tiously as possible.*

23 *(e) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR*  
24 *THE INSPECTORS GENERAL.—The Inspectors General of the*  
25 *Department of Justice and of the relevant elements of the*

1 *intelligence community are authorized such additional legal*  
2 *and other personnel as may be necessary to carry out the*  
3 *prompt and timely preparation of the audit and report re-*  
4 *quired under this section. Personnel authorized by this sub-*  
5 *section shall perform such duties relating to the audit as*  
6 *the relevant Inspector General shall direct. The personnel*  
7 *authorized by this subsection are in addition to any other*  
8 *personnel authorized by law.*

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

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

12 *(1) in paragraph (1), by striking “105B(h) or*  
13 *501(f)(1)” and inserting “501(f)(1) or 702”; and*

14 *(2) in paragraph (2), by striking “105B(h) or*  
15 *501(f)(1)” and inserting “501(f)(1) or 702”.*



Calendar No. 512

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 2248**

[Report No. 110-209]

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## **A BILL**

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

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NOVEMBER 16, 2007

Reported with an amendment