

himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3947. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3948. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3949. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3950. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3919. Mrs. FEINSTEIN (for herself, Mr. NELSON of Florida, and Mr. CARDIN) submitted an amendment intended to be proposed by her to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 72, strike line 13 and all that follows through page 73, line 25, and insert the following:

(6) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence Surveillance Court” means the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(7) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The term “Foreign Intelligence Surveillance Court of Review” means the court of review established under section 103(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(b)).

SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) LIMITATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, and subject to paragraph (3), a covered civil action shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if the Attorney General certifies to the court that—

(A) the assistance alleged to have been provided by the electronic communication service provider was—

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

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

(2) SUBMISSION OF CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

(A) immediately transfer the matter to the Foreign Intelligence Surveillance Court for a determination regarding the questions described in paragraph (3)(A); and

(B) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

(3) DETERMINATION.—

(A) IN GENERAL.—The dismissal of a covered civil action under paragraph (1) shall proceed only if, after review, the Foreign Intelligence Surveillance Court determines that—

(i) the written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider under paragraph (1)(A)(ii) complied with section 2511(2)(a)(ii) of title 18, United States Code, and the assistance alleged to have been provided was provided in accordance with the terms of that written request or directive;

(ii) subject to subparagraph (C), the assistance alleged to have been provided was undertaken based on the good faith reliance of the electronic communication service provider on the written request or directive under paragraph (1)(A)(ii), such that the electronic communication service provider had an objectively reasonable belief under the circumstances that compliance with the written request or directive was lawful; or

(iii) the electronic communication service provider did not provide the alleged assistance.

(B) PROCEDURES.—

(i) IN GENERAL.—In reviewing certifications and making determinations under subparagraph (A), the Foreign Intelligence Surveillance Court shall—

(I) review and make any such determination en banc; and

(II) permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

(ii) APPEAL TO FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—A party to a proceeding described in clause (i) may appeal a determination under subparagraph (A) to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such determination.

(iii) CERTIORARI TO THE SUPREME COURT.—A party to an appeal under clause (ii) may file a petition for a writ of certiorari for review of a decision of the Foreign Intelligence Surveillance Court of Review issued under that clause. The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(iv) STATE SECRETS.—The state secrets privilege shall not apply in any proceeding under this paragraph.

(C) SCOPE OF GOOD FAITH LIMITATION.—The limitation on covered civil actions based on good faith reliance under subparagraph (A)(ii) shall only apply in a civil action relating to alleged assistance provided on or before January 17, 2007.

SA 3920. Mr. WHITEHOUSE (for himself, Mr. ROCKEFELLER, Mr. LEAHY, and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for

other purposes; which was ordered to lie on the table; as follows:

On page 19, between lines 20 and 21, insert the following:

“(7) COMPLIANCE REVIEWS.—During the period that minimization procedures approved under paragraph (5)(A) are in effect, the Court may review and assess compliance with such procedures and shall have access to the assessments and reviews required by subsections (k)(1), (k)(2), and (k)(3) with respect to compliance with such procedures. In conducting a review under this paragraph, the Court may, to the extent necessary, require the Government to provide additional information regarding the acquisition, retention, or dissemination of information concerning United States persons during the course of an acquisition authorized under subsection (a). The Court may fashion remedies it determines necessary to enforce compliance.

SA 3921. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ IMPROVEMENTS TO THE CLASSIFIED INFORMATION PROCEDURES ACT.

(a) INTERLOCUTORY APPEALS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended by adding at the end “The Government’s right to appeal under this section applies without regard to whether the order appealed from was entered under this Act.”.

(b) EX PARTE AUTHORIZATIONS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the second sentence—

(A) by striking “may” and inserting “shall”; and

(B) by striking “written statement to be inspected” and inserting “statement to be made ex parte and to be considered”; and

(2) in the third sentence—

(A) by striking “If the court enters an order granting relief following such an ex parte showing, the” and inserting “The”; and

(B) by inserting “, as well as any summary of the classified information the defendant seeks to obtain,” after “text of the statement of the United States”.

(c) APPLICATION OF CLASSIFIED INFORMATION PROCEDURES ACT TO NONDOCUMENTARY INFORMATION.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the section heading, by inserting “, AND ACCESS TO,” after “OF”;

(2) by inserting “(a) DISCOVERY OF CLASSIFIED INFORMATION FROM DOCUMENTS.—” before the first sentence; and

(3) by adding at the end the following:

“(b) ACCESS TO OTHER CLASSIFIED INFORMATION.—

“(1) If the defendant seeks access through deposition under the Federal Rules of Criminal Procedure or otherwise to non-documentary information from a potential witness or other person which he knows or reasonably believes is classified, he shall notify the attorney for the United States and the district court in writing. Such notice shall specify with particularity the classified information sought by the defendant and the legal basis for such access. At a time set by the court,

the United States may oppose access to the classified information.

“(2) If, after consideration of any objection raised by the United States, including any objection asserted on the basis of privilege, the court determines that the defendant is legally entitled to have access to the information specified in the notice required by paragraph (1), the United States may request the substitution of a summary of the classified information or the substitution of a statement admitting relevant facts that the classified information would tend to prove.

“(3) The court shall permit the United States to make its objection to access or its request for such substitution in the form of a statement to be made ex parte and to be considered by the court alone. The entire text of the statement of the United States, as well as any summary of the classified information the defendant seeks to obtain, shall be sealed and preserved in the records of the court and made available to the appellate court in the event of an appeal.

“(4) The court shall grant the request of the United States to substitute a summary of the classified information or to substitute a statement admitting relevant facts that the classified information would tend to prove if it finds that the summary or statement will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

“(5) A defendant may not obtain access to classified information subject to this subsection except as provided in this subsection. Any proceeding, whether by deposition under the Federal Rules of Criminal Procedure or otherwise, in which a defendant seeks to obtain access to such classified information not previously authorized by a court for disclosure under this subsection must be discontinued or may proceed only as to lines of inquiry not involving such classified information.”.

SA 3922. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . INVESTIGATION OF TERRORIST CRIMES.

(a) **NONDISCLOSURE OF FISA INVESTIGATIONS.**—The following provisions of the Foreign Intelligence Surveillance Act of 1978 are each amended by inserting “(other than in proceedings or other civil matters under the immigration laws, as that term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)))” after “authority of the United States”:

(1) Subsections (c), (e), and (f) of section 106 (50 U.S.C. 1806).

(2) Subsections (d), (f), and (g) of section 305 (50 U.S.C. 1825).

(3) Subsections (c), (e), and (f) of section 405 (50 U.S.C. 1845).

(b) **MULTIDISTRICT SEARCH WARRANTS IN TERRORISM INVESTIGATIONS.**—Rule 41(b)(3) of the Federal Rules of Criminal Procedure is amended to read as follows:

“(3) a magistrate judge—in an investigation of—

“(A) a Federal crime of terrorism (as defined in section 2332b(g)(g) of title 18, United States Code); or

“(B) an offense under section 1001 or 1505 of title 18, United States Code, relating to information or purported information con-

cerning a Federal crime of terrorism (as defined in section 2332b(g)(5) of title 18, United States Code)—having authority in any district in which activities related to the Federal crime of terrorism or offense may have occurred, may issue a warrant for a person or property within or outside that district.”.

(c) **INCREASED PENALTIES FOR OBSTRUCTION OF JUSTICE IN TERRORISM CASES.**—Sections 1001(a) and 1505 of title 18, United States Code, are amended by striking “8 years” and inserting “10 years”.

SA 3923. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . DENIAL OF FEDERAL BENEFITS TO CONVICTED TERRORISTS.

(a) **IN GENERAL.**—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“§ 2339E. Denial of Federal benefits to terrorists

“(a) **IN GENERAL.**—Any individual who is convicted of a Federal crime of terrorism (as defined in section 2332b(g)) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

“(b) **FEDERAL BENEFIT DEFINED.**—In this section, ‘Federal benefit’ has the meaning given that term in section 421(d) of the Controlled Substances Act (21 U.S.C. 862(d)).”.

(b) **TABLE OF SECTIONS.**—The table of sections for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“2339D. Receiving military-type training from a foreign terrorist organization.

“2339E. Denial of Federal benefits to terrorists.”.

SA 3924. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . TERRORIST MURDERS, KIDNAPPINGS, AND ASSAULTS.

(a) **PENALTIES FOR TERRORIST MURDER AND MANSLAUGHTER.**—Section 2332(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “, punished by death” and all that follows and inserting “and punished by death or imprisoned for life;”;

(2) in paragraph (2), by striking “ten years” and inserting “30 years”.

(b) **ADDITION OF OFFENSE OF TERRORIST KIDNAPPING.**—Section 2332 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

“(c) **KIDNAPPING.**—Whoever outside the United States unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away, or attempts or conspires to seize, confine, inveigle, decoy, kidnap, abduct or carry away, a national of the United States shall

be fined under this title and imprisoned for any term of years or for life.”.

(c) **ADDITION OF SEXUAL ASSAULT TO DEFINITION OF OFFENSE OF TERRORIST ASSAULT.**—Section 2332(d) of title 18, United States Code, as redesignated by subsection (b) of this section, is amended—

(1) in paragraph (1), by inserting “(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)” after “injury”;

(2) in paragraph (2), by inserting “(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)” after “injury”; and

(3) in the matter following paragraph (2), by striking “or imprisoned” and all that follows and inserting “and imprisoned for any term of years not less than 30 or for life.”.

SA 3925. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . PREVENTION AND DETERRENCE OF TERRORIST SUICIDE BOMBINGS.

(a) **OFFENSE OF REWARDING OR FACILITATING INTERNATIONAL TERRORIST ACTS.**—

(1) **IN GENERAL.**—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“§ 2339E. Providing material support to international terrorism

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

“(1) The term ‘facility of interstate or foreign commerce’ has the same meaning as in section 1958(b)(2).

“(2) The term ‘international terrorism’ has the same meaning as in section 2331.

“(3) The term ‘material support or resources’ has the same meaning as in section 2339A(b).

“(4) The term ‘perpetrator of an act’ includes any person who—

“(A) commits the act;

“(B) aids, abets, counsels, commands, induces, or procures its commission; or

“(C) attempts, plots, or conspires to commit the act.

“(5) The term ‘serious bodily injury’ has the same meaning as in section 1365.

“(b) **PROHIBITION.**—Whoever, in a circumstance described in subsection (c), provides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism, shall be fined under this title, imprisoned for any term of years or for life, or both, and, if death results, shall be imprisoned for any term of years not less than 10 or for life.

“(c) **JURISDICTIONAL BASES.**—A circumstance referred to in subsection (b) is that—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense involves the use of the mails or a facility of interstate or foreign commerce;

“(3) an offender intends to facilitate, reward, or encourage an act of international terrorism that affects interstate or foreign commerce or would have affected interstate

or foreign commerce had it been summarized;

“(4) an offender intends to facilitate, reward, or encourage an act of international terrorism that violates the criminal laws of the United States;

“(5) an offender intends to facilitate, reward, or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of the United States Government;

“(6) an offender intends to facilitate, reward, or encourage an act of international terrorism that occurs in part within the United States and is designed to influence the policy or affect the conduct of a foreign government;

“(7) an offender intends to facilitate, reward, or encourage an act of international terrorism that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

“(8) the offense occurs in whole or in part within the United States, and an offender intends to facilitate, reward or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of a foreign government; or

“(9) the offense occurs in whole or in part outside of the United States, and an offender is a national of the United States, a stateless person whose habitual residence is in the United States, or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions).”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TABLE OF SECTIONS.—The table of sections for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“2339D. Receiving military-type training from a foreign terrorist organization.

“2339E. Providing material support to international terrorism.”.

(B) OTHER AMENDMENT.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by inserting “2339E (relating to providing material support to international terrorism),” before “or 2340A (relating to torture)”.

(b) INCREASED PENALTIES FOR PROVIDING MATERIAL SUPPORT TO TERRORISTS.—

(1) PROVIDING MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a) of title 18, United States Code, is amended by striking “15 years” and inserting “30 years”.

(2) PROVIDING MATERIAL SUPPORT OR RESOURCES IN AID OF A TERRORIST CRIME.—Section 2339A(a) of title 18, United States Code, is amended by striking “imprisoned not more than 15 years” and all that follows through “life.” and inserting “imprisoned for any term of years or for life, or both, and, if the death of any person results, shall be imprisoned for any term of years not less than 10 or for life.”.

(3) RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.—Section 2339D(a) of title 18, United States Code, is amended by striking “ten years” and inserting “25 years”.

(4) ADDITION OF ATTEMPTS AND CONSPIRACIES TO AN OFFENSE RELATING TO MILITARY TRAINING.—Section 2339D(a) of title 18, United States Code, is amended by inserting “, or attempts or conspires to receive,” after “receives”.

SA 3926. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . TERRORIST HOAXES AGAINST FAMILIES OF UNITED STATES SERVICEMEN.

(a) HOAX STATUTE.—Section 1038 of title 18, United States Code, is amended—

(1) in subsections (a)(1) and (b), by inserting “or any other offense listed under section 2332b(g)(5)(B) of this title” after “title 49.”; and

(2) in subsection (a)(2)—

(A) in subparagraph (A), by striking “, imprisoned not more than 5 years, or both” and inserting “and imprisoned for not less than 2 years nor more than 10 years”;

(B) in subparagraph (B), by striking “, imprisoned not more than 20 years, or both” and inserting “and imprisoned for not less than 5 years nor more than 25 years”; and

(C) in subparagraph (C), by striking “, imprisoned for any term of years or for life, or both” and inserting “and imprisoned for any term of years not less than 10 or for life”.

(b) ATTACKS ON UNITED STATES SERVICEMEN.—

(1) IN GENERAL.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following:

“§ 1389. Prohibition on attacks on United States servicemen on account of service

“(a) IN GENERAL.—Whoever knowingly assaults or batters a United States serviceman or an immediate family member of a United States serviceman, or who knowingly destroys or injures the property of such serviceman or immediate family member, on account of the military service of that serviceman or status of that individual as a United States serviceman, or who attempts or conspires to do so, shall—

“(1) in the case of a simple assault, or destruction or injury to property in which the damage or attempted damage to such property is not more than \$500, be fined under this title in an amount not less than \$500 nor more than \$10,000 and imprisoned not more than 2 years;

“(2) in the case of destruction or injury to property in which the damage or attempted damage to such property is more than \$500, be fined under this title in an amount not less than \$1000 nor more than \$100,000 and imprisoned not less than 90 days nor more than 10 years; and

“(3) in the case of a battery, or an assault resulting in bodily injury, be fined under this title in an amount not less than \$2500 and imprisoned not less than 2 years nor more than 30 years.

“(b) EXCEPTION.—This section shall not apply to conduct by a person who is subject to the Uniform Code of Military Justice.

“(c) DEFINITIONS.—In this section—

“(1) the term ‘Armed Forces’ has the meaning given that term in section 1388;

“(2) the term ‘immediate family member’ has the meaning given that term in section 115; and

“(3) the term ‘United States serviceman’—

“(A) means a member of the Armed Forces; and

“(B) includes a former member of the Armed Forces during the 5-year period beginning on the date of the discharge from the Armed Forces of that member of the Armed Forces.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 67 of

title 18, United States Code, is amended by adding at the end the following:

“1389. Prohibition on attacks on United States servicemen on account of service.”.

(c) THREATENING COMMUNICATIONS.—

(1) MAILED WITHIN THE UNITED STATES.—Section 876 of title 18, United States Code, is amended by adding at the end the following:

“(e) For purposes of this section, the term ‘addressed to any other person’ includes an individual (other than the sender), a corporation or other legal person, and a government or agency or component thereof.”.

(2) MAILED TO A FOREIGN COUNTRY.—Section 877 of title 18, United States Code, is amended by adding at the end the following:

“For purposes of this section, the term ‘addressed to any person’ includes an individual, a corporation or other legal person, and a government or agency or component thereof.”.

SA 3927. Mr. SPECTER (for himself and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 72, strike line 13 and all that follows through page 75, line 5, and insert the following:

(6) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence Surveillance Court” means the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

SEC. 202. SUBSTITUTION OF THE UNITED STATES IN CERTAIN ACTIONS.

(a) IN GENERAL.—

(1) CERTIFICATION.—Notwithstanding any other provision of law, a Federal or State court shall substitute the United States for an electronic communication service provider with respect to any claim in a covered civil action as provided in this subsection, if the Attorney General certifies to that court that—

(A) with respect to that claim, the assistance alleged to have been provided by the electronic communication service provider was—

(i) provided in connection with an intelligence activity involving communications that was—

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

(2) SUBSTITUTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), upon receiving a certification under paragraph (1), a Federal or State court shall—

(i) substitute the United States for the electronic communication service provider

as the defendant as to all claims designated by the Attorney General in that certification, consistent with the procedures under rule 25(c) of the Federal Rules of Civil Procedure, as if the United States were a party to whom the interest of the electronic communication service provider in the litigation had been transferred; and

(i) as to that electronic communication service provider—

(I) dismiss all claims designated by the Attorney General in that certification; and

(II) enter a final judgment relating to those claims.

(B) CONTINUATION OF CERTAIN CLAIMS.—If a certification by the Attorney General under paragraph (1) states that not all of the alleged assistance was provided under a written request or directive described in paragraph (1)(A)(ii), the electronic communication service provider shall remain as a defendant.

(C) DETERMINATION.—

(i) IN GENERAL.—Substitution under subparagraph (A) shall proceed only after a determination by the Foreign Intelligence Surveillance Court that—

(I) the written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider under paragraph (1)(A)(ii) complied with section 2511(2)(a)(ii)(B) of title 18, United States Code;

(II) the assistance alleged to have been provided was undertaken by the electronic communication service provider acting in good faith and pursuant to an objectively reasonable belief that compliance with the written request or directive under paragraph (1)(A)(ii) was permitted by law; or

(III) the electronic communication service provider did not provide the alleged assistance.

(ii) CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

(I) immediately certify the questions described in clause (i) to the Foreign Intelligence Surveillance Court; and

(II) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

(iii) PARTICIPATION OF PARTIES.—In reviewing a certification and making a determination under clause (i), the Foreign Intelligence Surveillance Court shall permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

(iv) DECLARATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a determination made pursuant to clause (i) would harm the national security of the United States, the Foreign Intelligence Surveillance Court shall limit any public disclosure concerning such determination, including any public order following such an ex parte review, to a statement that the conditions of clause (i) have or have not been met, without disclosing the basis for the determination.

(3) PROCEDURES.—

(A) TORT CLAIMS.—Upon a substitution under paragraph (2), for any tort claim—

(i) the claim shall be deemed to have been filed under section 1346(b) of title 28, United States Code, except that sections 2401(b), 2675, and 2680(a) of title 28, United States Code, shall not apply; and

(ii) the claim shall be deemed timely filed against the United States if it was timely

filed against the electronic communication service provider.

(B) CONSTITUTIONAL AND STATUTORY CLAIMS.—Upon a substitution under paragraph (2), for any claim under the Constitution of the United States or any Federal statute—

(i) the claim shall be deemed to have been filed against the United States under section 1331 of title 28, United States Code;

(ii) with respect to any claim under a Federal statute that does not provide a cause of action against the United States, the plaintiff shall be permitted to amend such claim to substitute, as appropriate, a cause of action under—

(I) section 704 of title 5, United States Code (commonly known as the Administrative Procedure Act);

(II) section 2712 of title 18, United States Code; or

(III) section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810);

(iii) the statutes of limitation applicable to the causes of action identified in clause (ii) shall not apply to any amended claim under that clause, and any such cause of action shall be deemed timely filed if any Federal statutory cause of action against the electronic communication service provider was timely filed; and

(iv) for any amended claim under clause (ii) the United States shall be deemed a proper defendant under any statutes described in that clause, and any plaintiff that had standing to proceed against the original defendant shall be deemed an aggrieved party for purposes of proceeding under section 2712 of title 18, United States Code, or section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810).

(C) DISCOVERY.—

(i) IN GENERAL.—In a covered civil action in which the United States is substituted as party-defendant under paragraph (2), any plaintiff may serve third-party discovery requests to any electronic communications service provider as to which all claims are dismissed.

(ii) BINDING THE GOVERNMENT.—If a plaintiff in a covered civil action serves deposition notices under rule 30(b)(6) of the Federal Rules of Civil Procedure or requests under rule 36 of the Federal Rules of Civil Procedure for admission upon an electronic communications service provider as to which all claims were dismissed, the electronic communications service provider shall be deemed a party-defendant for purposes rule 30(b)(6) or rule 36 and its answers and admissions shall be deemed binding upon the Government.

(b) CERTIFICATIONS.—

(1) IN GENERAL.—For purposes of substitution proceedings under this section—

(A) a certification under subsection (a) may be provided and reviewed in camera, ex parte, and under seal; and

(B) for any certification provided and reviewed as described in subparagraph (A), the court shall not disclose or cause the disclosure of its contents.

(2) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney General or a designee in a position not lower than the Deputy Attorney General.

(c) SOVEREIGN IMMUNITY.—This section, including any Federal statute cited in this section that operates as a waiver of sovereign immunity, constitute the sole waiver of sovereign immunity with respect to any covered civil action.

(d) CIVIL ACTIONS IN STATE COURT.—For purposes of section 1441 of title 28, United States Code, any covered civil action that is brought in a State court or administrative or regulatory bodies shall be deemed to arise

under the Constitution or laws of the United States and shall be removable under that section.

(e) RULE OF CONSTRUCTION.—Except as expressly provided in this section, nothing in this section may be construed to limit any immunity, privilege, or defense under any other provision of law, including any privilege, immunity, or defense that would otherwise have been available to the United States absent its substitution as party-defendant or had the United States been the named defendant.

(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action pending on or filed after the date of enactment of this Act.

SA 3928. Mr. KYL submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, after line 23, insert the following:

SEC. ____ . PREVENTION AND DETERRENCE OF TERRORIST SUICIDE BOMBINGS.

(a) IN GENERAL.—

(1) OFFENSE OF REWARDING OR FACILITATING INTERNATIONAL TERRORIST ACTS.—

(A) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“§ 2339E. Providing material support to international terrorism

“(a) DEFINITIONS.—In this section:

“(1) The term ‘facility of interstate or foreign commerce’ has the same meaning as in section 1958(b)(2).

“(2) The term ‘international terrorism’ has the same meaning as in section 2331.

“(3) The term ‘material support or resources’ has the same meaning as in section 2339A(b).

“(4) The term ‘perpetrator of an act’ includes any person who—

“(A) commits the act;

“(B) aids, abets, counsels, commands, induces, or procures its commission; or

“(C) attempts, plots, or conspires to commit the act.

“(5) The term ‘serious bodily injury’ has the same meaning as in section 1365.

“(b) PROHIBITION.—Whoever, in a circumstance described in subsection (c), provides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism, shall be fined under this title, imprisoned for any term of years or for life, or both, and, if death results, shall be imprisoned for any term of years not less than 10 or for life.

“(c) JURISDICTIONAL BASES.—A circumstance referred to in subsection (b) is that—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense involves the use of the mails or a facility of interstate or foreign commerce;

“(3) an offender intends to facilitate, reward, or encourage an act of international terrorism that affects interstate or foreign commerce or would have affected interstate or foreign commerce had it been consummated;

“(4) an offender intends to facilitate, reward, or encourage an act of international

terrorism that violates the criminal laws of the United States;

“(5) an offender intends to facilitate, reward, or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of the United States Government;

“(6) an offender intends to facilitate, reward, or encourage an act of international terrorism that occurs in part within the United States and is designed to influence the policy or affect the conduct of a foreign government;

“(7) an offender intends to facilitate, reward, or encourage an act of international terrorism that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

“(8) the offense occurs in whole or in part within the United States, and an offender intends to facilitate, reward or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of a foreign government; or

“(9) the offense occurs in whole or in part outside of the United States, and an offender is a national of the United States, a stateless person whose habitual residence is in the United States, or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions).”

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) TABLE OF SECTIONS.—The table of sections for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“2339D. Receiving military-type training from a foreign terrorist organization.

“2339E. Providing material support to international terrorism.”

(ii) OTHER AMENDMENT.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by inserting “2339E (relating to providing material support to international terrorism),” before “or 2340A (relating to torture)”.

(2) INCREASED PENALTIES FOR PROVIDING MATERIAL SUPPORT TO TERRORISTS.—

(A) PROVIDING MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a) of title 18, United States Code, is amended by striking “15 years” and inserting “30 years”.

(B) PROVIDING MATERIAL SUPPORT OR RESOURCES IN AID OF A TERRORIST CRIME.—Section 2339A(a) of title 18, United States Code, is amended by striking “imprisoned not more than 15 years” and all that follows through “life.” and inserting “imprisoned for any term of years or for life, or both, and, if the death of any person results, shall be imprisoned for any term of years not less than 10 or for life.”.

(C) RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.—Section 2339D(a) of title 18, United States Code, is amended by striking “ten years” and inserting “25 years”.

(D) ADDITION OF ATTEMPTS AND CONSPIRACIES TO AN OFFENSE RELATING TO MILITARY TRAINING.—Section 2339D(a) of title 18, United States Code, is amended by inserting “, or attempts or conspires to receive,” after “receives”.

(b) TERRORIST MURDERS, KIDNAPPINGS, AND ASSAULTS.—

(1) PENALTIES FOR TERRORIST MURDER AND MANSLAUGHTER.—Section 2332(a) of title 18, United States Code, is amended—

(A) in paragraph (1), by striking “, punished by death” and all that follows and inserting “and punished by death or imprisoned for life;” and

(B) in paragraph (2), by striking “ten years” and inserting “30 years”.

(2) ADDITION OF OFFENSE OF TERRORIST KIDNAPPING.—Section 2332 of title 18, United States Code, is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following:

“(c) KIDNAPPING.—Whoever outside the United States unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away, or attempts or conspires to seize, confine, inveigle, decoy, kidnap, abduct or carry away, a national of the United States shall be fined under this title and imprisoned for any term of years or for life.”.

(3) ADDITION OF SEXUAL ASSAULT TO DEFINITION OF OFFENSE OF TERRORIST ASSAULT.—Section 2332(d) of title 18, United States Code, as redesignated by paragraph (2) of this subsection, is amended—

(A) in paragraph (1), by inserting “(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)” after “injury”; and

(B) in paragraph (2), by inserting “(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)” after “injury”; and

(C) in the matter following paragraph (2), by striking “or imprisoned” and all that follows and inserting “and imprisoned for any term of years not less than 30 or for life.”.

(c) TERRORIST HOAXES AGAINST FAMILIES OF UNITED STATES SERVICEMEN.—

(1) HOAX STATUTE.—Section 1038 of title 18, United States Code, is amended—

(A) in subsections (a)(1) and (b), by inserting “or any other offense listed under section 2332b(g)(5)(B) of this title” after “title 49,”; and

(B) in subsection (a)(2)—

(i) in subparagraph (A), by striking “, imprisoned not more than 5 years, or both” and inserting “and imprisoned for not less than 2 years nor more than 10 years”; and

(ii) in subparagraph (B), by striking “, imprisoned not more than 20 years, or both” and inserting “and imprisoned for not less than 5 years nor more than 25 years”; and

(iii) in subparagraph (C), by striking “, imprisoned for any term of years or for life, or both” and inserting “and imprisoned for any term of years not less than 10 or for life”.

(2) ATTACKS ON UNITED STATES SERVICEMEN.—

(A) IN GENERAL.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following:

“§ 1389. Prohibition on attacks on United States servicemen on account of service

“(a) IN GENERAL.—Whoever knowingly assaults or batters a United States serviceman or an immediate family member of a United States serviceman, or who knowingly destroys or injures the property of such serviceman or immediate family member, on account of the military service of that serviceman or status of that individual as a United States serviceman, or who attempts or conspires to do so, shall—

“(1) in the case of a simple assault, or destruction or injury to property in which the damage or attempted damage to such property is not more than \$500, be fined under

this title in an amount not less than \$500 nor more than \$10,000 and imprisoned not more than 2 years;

“(2) in the case of destruction or injury to property in which the damage or attempted damage to such property is more than \$500, be fined under this title in an amount not less than \$1000 nor more than \$100,000 and imprisoned not less than 90 days nor more than 10 years; and

“(3) in the case of a battery, or an assault resulting in bodily injury, be fined under this title in an amount not less than \$2500 and imprisoned not less than 2 years nor more than 30 years.

“(b) EXCEPTION.—This section shall not apply to conduct by a person who is subject to the Uniform Code of Military Justice.

“(c) DEFINITIONS.—In this section—

“(1) the term ‘Armed Forces’ has the meaning given that term in section 1388;

“(2) the term ‘immediate family member’ has the meaning given that term in section 115; and

“(3) the term ‘United States serviceman’—

“(A) means a member of the Armed Forces; and

“(B) includes a former member of the Armed Forces during the 5-year period beginning on the date of the discharge from the Armed Forces of that member of the Armed Forces.”.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 67 of title 18, United States Code, is amended by adding at the end the following:

“1389. Prohibition on attacks on United States servicemen on account of service.”.

(3) THREATENING COMMUNICATIONS.—

(A) MAILED WITHIN THE UNITED STATES.—Section 876 of title 18, United States Code, is amended by adding at the end the following:

“(e) For purposes of this section, the term ‘addressed to any other person’ includes an individual (other than the sender), a corporation or other legal person, and a government or agency or component thereof.”.

(B) MAILED TO A FOREIGN COUNTRY.—Section 877 of title 18, United States Code, is amended by adding at the end the following:

“For purposes of this section, the term ‘addressed to any person’ includes an individual, a corporation or other legal person, and a government or agency or component thereof.”.

(d) DENIAL OF FEDERAL BENEFITS TO CONVICTED TERRORISTS.—

(1) IN GENERAL.—Chapter 113B of title 18, United States Code, as amended by this section, is amended by adding at the end the following:

“§ 2339F. Denial of Federal benefits to terrorists

“(a) IN GENERAL.—Any individual who is convicted of a Federal crime of terrorism (as defined in section 2332b(g)) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

“(b) FEDERAL BENEFIT DEFINED.—In this section, ‘Federal benefit’ has the meaning given that term in section 421(d) of the Controlled Substances Act (21 U.S.C. 862(d)).”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113B of title 18, United States Code, as amended by this section, is amended by adding at the end the following:

“Sec. 2339F. Denial of Federal benefits to terrorists.”.

(e) INVESTIGATION OF TERRORIST CRIMES.—

(1) NONDISCLOSURE OF FISA INVESTIGATIONS.—The following provisions of the Foreign Intelligence Surveillance Act of 1978 are each amended by inserting “(other than in

proceedings or other civil matters under the immigration laws, as that term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)))” after “authority of the United States”:

(A) Subsections (c), (e), and (f) of section 106 (50 U.S.C. 1806).

(B) Subsections (d), (f), and (g) of section 305 (50 U.S.C. 1825).

(C) Subsections (c), (e), and (f) of section 405 (50 U.S.C. 1845).

(2) MULTIDISTRICT SEARCH WARRANTS IN TERRORISM INVESTIGATIONS.—Rule 41(b)(3) of the Federal Rules of Criminal Procedure is amended to read as follows:

“(3) a magistrate judge—in an investigation of—

“(A) a Federal crime of terrorism (as defined in section 2332b(g)(g) of title 18, United States Code); or

“(B) an offense under section 1001 or 1505 of title 18, United States Code, relating to information or purported information concerning a Federal crime of terrorism (as defined in section 2332b(g)(5) of title 18, United States Code)—having authority in any district in which activities related to the Federal crime of terrorism or offense may have occurred, may issue a warrant for a person or property within or outside that district.”.

(3) INCREASED PENALTIES FOR OBSTRUCTION OF JUSTICE IN TERRORISM CASES.—Sections 1001(a) and 1505 of title 18, United States Code, are amended by striking “8 years” and inserting “10 years”.

(f) IMPROVEMENTS TO THE CLASSIFIED INFORMATION PROCEDURES ACT.—

(1) INTERLOCUTORY APPEALS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended by adding at the end “The Government’s right to appeal under this section applies without regard to whether the order appealed from was entered under this Act.”.

(2) EX PARTE AUTHORIZATIONS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(A) in the second sentence—

(i) by striking “may” and inserting “shall”; and

(ii) by striking “written statement to be inspected” and inserting “statement to be made ex parte and to be considered”; and

(B) in the third sentence—

(i) by striking “If the court enters an order granting relief following such an ex parte showing, the” and inserting “The”; and

(ii) by inserting “, as well as any summary of the classified information the defendant seeks to obtain,” after “text of the statement of the United States”.

(3) APPLICATION OF CLASSIFIED INFORMATION PROCEDURES ACT TO NONDOCUMENTARY INFORMATION.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(A) in the section heading, by inserting “, AND ACCESS TO,” after “OF”;

(B) by inserting “(a) DISCOVERY OF CLASSIFIED INFORMATION FROM DOCUMENTS.—” before the first sentence; and

(C) by adding at the end the following:

“(b) ACCESS TO OTHER CLASSIFIED INFORMATION.—

“(1) If the defendant seeks access through deposition under the Federal Rules of Criminal Procedure or otherwise to non-documentary information from a potential witness or other person which he knows or reasonably believes is classified, he shall notify the attorney for the United States and the district court in writing. Such notice shall specify with particularity the classified information sought by the defendant and the legal basis for such access. At a time set by the court,

the United States may oppose access to the classified information.

“(2) If, after consideration of any objection raised by the United States, including any objection asserted on the basis of privilege, the court determines that the defendant is legally entitled to have access to the information specified in the notice required by paragraph (1), the United States may request the substitution of a summary of the classified information or the substitution of a statement admitting relevant facts that the classified information would tend to prove.

“(3) The court shall permit the United States to make its objection to access or its request for such substitution in the form of a statement to be made ex parte and to be considered by the court alone. The entire text of the statement of the United States, as well as any summary of the classified information the defendant seeks to obtain, shall be sealed and preserved in the records of the court and made available to the appellate court in the event of an appeal.

“(4) The court shall grant the request of the United States to substitute a summary of the classified information or to substitute a statement admitting relevant facts that the classified information would tend to prove if it finds that the summary or statement will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

“(5) A defendant may not obtain access to classified information subject to this subsection except as provided in this subsection. Any proceeding, whether by deposition under the Federal Rules of Criminal Procedure or otherwise, in which a defendant seeks to obtain access to such classified information not previously authorized by a court for disclosure under this subsection must be discontinued or may proceed only as to lines of inquiry not involving such classified information.”.

SA 3929. Mr. LEAHY (for himself, Mr. KENNEDY, Mr. MENENDEZ, and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 82, after the matter following line 5, add the following:

SEC. 206. REVIEW OF PREVIOUS ACTIONS.

(a) DEFINITIONS.—In this section:

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

(A) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) TERRORIST SURVEILLANCE PROGRAM AND PROGRAM.—The terms “Terrorist Surveillance Program” and “Program” mean the intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007.

(b) REVIEWS.—

(1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Office of the Director of National Intelligence, the Department of Justice, the National Security Agency, and any other element of the intelligence community that participated in the Terrorist Surveillance Program shall work in conjunction to complete a comprehensive review of,

with respect to the oversight authority and responsibility of each such Inspector General—

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

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

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

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

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

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

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

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

(c) REPORTS.—

(1) PRELIMINARY REPORTS.—Not later than 60 days after the date of the enactment of this Act, the Inspectors General of the Office of the Director of National Intelligence, the Department of Justice, and the National Security Agency, in conjunction with any other Inspector General required to conduct a review under subsection (b)(1), shall submit to the appropriate committees of Congress an interim report that describes the planned scope of such review.

(2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspectors General required to conduct such a review shall submit to the appropriate committees of Congress, to the extent practicable, a comprehensive report on such reviews that includes any recommendations of any such Inspectors General within the oversight authority and responsibility of any such Inspector General with respect to the reviews.

(3) FORM.—A report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex. The unclassified report shall not disclose the name or identity of any individual or entity of the private sector that participated in the Program or with whom there was communication about the Program.

(d) RESOURCES.—

(1) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by an Inspector General or any appropriate staff of an Inspector General for a security clearance necessary for the conduct of the review under subsection (b)(1) is carried out as expeditiously as possible.

(2) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR THE INSPECTORS GENERAL.—An Inspector General required to conduct a review under subsection (b)(1) and submit a report under subsection (c) is authorized to hire such additional legal or other personnel as may be necessary to carry out such review and prepare such report in a prompt and timely manner. Personnel authorized to be hired under this paragraph—

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

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

SA 3930. Mr. CARDIN (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, line 16, strike “2013.” and insert the following: “2011. Notwithstanding any other provision of this Act, the transitional procedures under paragraphs (2)(B) and (3)(B) of section 302(c) shall apply to any order, authorization, or directive, as the case may be, issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2011.”

SA 3931. Mr. KENNEDY (for himself, Mr. KERRY, and Mr. MENENDEZ) submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, line 13, strike “and” and all that follows through page 8, line 3, and insert the following:

“(4) shall not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

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

“(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

“(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (f); and

“(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

“(d) TARGETING PROCEDURES.—

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

“(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

“(e) MINIMIZATION PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt, consistent with the requirements of section 101(h) or section 301(4), minimization procedures for acquisitions authorized under subsection (a).

“(2) PERSONS IN THE UNITED STATES.—The minimization procedures required by this subsection shall require the destruction, upon recognition, of any communication as to which the sender and all intended recipients are known to be located in the United States, a person has a reasonable expectation of privacy, and a warrant would be required for law enforcement purposes, unless the Attorney General determines that the communication indicates a threat of death or serious bodily harm to any person.

“(3) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

“(f) CERTIFICATION.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—

“(i) IN GENERAL.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

“(ii) PROCEDURES.—A certification made under this subsection shall attest that there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States, and that such procedures have been approved by, or will promptly be submitted for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h).

SA 3932. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 19, strike line 10 through line 12, and insert the following:

“(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subsection (C).

“(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.”

On page 21, line 14, strike “(C)” and insert “(D)”.

SA 3933. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 24, strike line 20 and all that follows through page 48, line 3, and insert the following:

SEC. 704. ACQUISITION INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—An acquisition authorized under subsection (a) that occurs inside the United States and—

“(A) constitutes electronic surveillance (regardless of the limitation in section 701(a)), or

“(B) is an acquisition of stored electronic communications or stored electronic data that otherwise requires a court order under this Act,

may not intentionally target a United States person reasonably believed to be outside the United States, except in accordance with title I or III. For the purposes of an acquisition under this subsection, the term ‘agent

of a foreign power’ as used in those titles shall include a person who is an officer or employee of a foreign power.

SEC. 705. OTHER ACQUISITION OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—

“(A) JURISDICTION AND SCOPE.—

“(i) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subparagraph (C).

“(ii) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subparagraphs (C) or (D) or any other provision of this Act.

“(iii) LIMITATIONS.—

“(I) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subparagraph (C), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subparagraph (C).

“(II) APPLICABILITY.—If the acquisition could be authorized under paragraph (1), the procedures of paragraph (1) shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

“(B) APPLICATION.—Each application for an order under this paragraph shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subparagraph (A)(i). Each application shall require the approval of the Attorney General based upon the Attorney General’s finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

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

“(ii) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the target of the acquisition is—

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

“(II) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power who is reasonably believed to have access to foreign intelligence information;

“(iii) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

“(I) that the certifying official deems the information sought to be foreign intelligence information; and

“(II) that a significant purpose of the acquisition is to obtain foreign intelligence information;

“(III) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

“(IV) including a statement of the basis for the certification that the information sought is the type of foreign intelligence information designated;

“(iv) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

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

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

“(C) ORDER.—

“(i) FINDINGS.—If, upon an application made pursuant to subparagraph (B), a judge having jurisdiction under subparagraph (A)(i) finds that—

“(I) on the basis of the facts submitted by the applicant there is probable cause to believe that the specified target of the acquisition is—

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

(bb) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power who is reasonably believed to have access to foreign intelligence information;

“(II) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4);

“(III) the certification or certifications required by subparagraph (B) are not clearly erroneous on the basis of the statement made under subparagraph (B)(iii)(IV), the Court shall issue an *ex parte* order so stating.

“(ii) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under clause (i)(I), a judge having jurisdiction under subsection (A)(i) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

“(iii) REVIEW.—

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

“(II) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subparagraph (B) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subparagraph (E).

“(III) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subparagraph (E).

“(iv) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subparagraph (B).

“(v) COMPLIANCE.—At, or prior to, the end of the period of time for which an order or extension is approved under this paragraph, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

“(D) EMERGENCY AUTHORIZATION.—

“(i) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

“(I) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subparagraph (C) before an order under that subsection may, with due diligence, be obtained; and

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

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subparagraph (A)(i) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

“(ii) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subparagraph be followed.

“(iii) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subparagraph (C), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

“(iv) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(E) APPEAL.—

“(i) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subparagraph (C). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement

for the record of the reasons for a decision under this paragraph.

“(ii) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under clause (i). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(F) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under paragraph 1 or this paragraph is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under subparagraph (A) and section 103(a) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of subparagraph (B) and section 104 or 303, orders authorizing the proposed acquisition under subparagraph (B) and section 105 or 304, as applicable.

“(G) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or 304 and that order is in effect, the Attorney General may authorize, during the pendency of such order and without an order under this paragraph, an acquisition under this paragraph of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States. Prior to issuing such an authorization, the Attorney General shall submit dissemination provisions of minimization procedures for such an acquisition to a judge having jurisdiction under subparagraph (A) for approval.

SA 3934. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike title I and insert the following:

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

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

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

“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

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

“SEC. 702. DEFINITIONS.

“(a) IN GENERAL.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’, ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’, ‘minimization procedures’, ‘person’, ‘United States’, and ‘United States person’ shall have the meanings given such terms in section 101, except as specifically provided in this title.

“(b) ADDITIONAL DEFINITIONS.—

“(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence committees’ means—

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

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

“(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The terms ‘Foreign Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

“(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the court established by section 103(b).

“(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic communication service provider’ means—

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

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

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

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

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

“(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the intelligence community’ means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

“(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

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

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

“(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

“(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706; and

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

“(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

“(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (f); and

“(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

“(d) TARGETING PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States.

“(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

“(e) MINIMIZATION PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt, consistent with the requirements of section 101(h) or section 301(4), minimization procedures for acquisitions authorized under subsection (a).

“(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

“(f) CERTIFICATION.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

“(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 168 hours after such determination is made.

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

“(A) attest that—

“(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(ii) the procedures referred to in clause (i) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States;

“(iii) a significant purpose of the acquisition is to obtain foreign intelligence information;

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

“(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(v) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

“(vi) the acquisition does not constitute electronic surveillance, as limited by section 701; and

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

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

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

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

“(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made. Such certification shall be maintained under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

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

“(g) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

“(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

“(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and

“(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

“(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

“(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

“(4) CHALLENGING OF DIRECTIVES.—

“(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

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

“(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with the directive. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

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

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

“(5) ENFORCEMENT OF DIRECTIVES.—

“(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel

compliance with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

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

“(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an order requiring the electronic communication service provider to comply with the directive if the judge finds that the directive was issued in accordance with paragraph (1), meets the requirements of this section, and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

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

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

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5) not later than 7 days after the issuance of such decision. The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

“(1) IN GENERAL.—

“(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification required by subsection (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

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

“(2) CERTIFICATIONS.—The Court shall review a certification provided under subsection (f) to determine whether the certification contains all the required elements.

“(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States.

“(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

“(5) ORDERS.—

“(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government, at the Government's election and to the extent required by the Court's order—

“(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

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

“(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

“(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

“(i) during the pendency of any rehearing of the order by the Court en banc; and

“(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

“(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

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

“(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

“(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

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

“(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Govern-

ment submission, or portions of a submission, which may include classified information.

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

“(k) ASSESSMENTS AND REVIEWS.—

“(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

“(A) the Foreign Intelligence Surveillance Court; and

“(B) the congressional intelligence committees.

“(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

“(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

“(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

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

“(D) shall provide each such review to—

“(i) the Attorney General;

“(ii) the Director of National Intelligence; and

“(iii) the congressional intelligence committees.

“(3) ANNUAL REVIEW.—

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

“(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

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

“(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

“(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

“(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

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

“(i) the Foreign Intelligence Surveillance Court;

“(ii) the Attorney General;

“(iii) the Director of National Intelligence; and

“(iv) the congressional intelligence committees.

“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

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

“(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

“(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(b) APPLICATION.—

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

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

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

“(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

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

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

“(D) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

“(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

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

“(i) the certifying official deems the information sought to be foreign intelligence information;

“(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

“(iii) such information cannot reasonably be obtained by normal investigative techniques;

“(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

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

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

“(II) such information cannot reasonably be obtained by normal investigative techniques;

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

“(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

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

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

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

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

“(c) ORDER.—

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

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

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

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

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

“(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

“(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1), a judge

having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

“(3) REVIEW.—

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

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (2) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

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

“(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

“(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

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

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

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

“(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

“(A) that the minimization procedures be followed;

“(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target;

“(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

“(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

“(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained; and

“(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection for the issuance of a judicial order be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the infor-

mation indicates a threat of death or serious bodily harm to any person.

“(e) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

“(f) APPEAL.—

“(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

“(a) JURISDICTION AND SCOPE.—

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

“(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

“(3) LIMITATIONS.—

“(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

“(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

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

“(2) a statement of the facts and circumstances relied upon to justify the appli-

cant's belief that the United States person who is the target of the acquisition is—

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

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

“(3) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

“(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

“(A) the certifying official deems the information sought to be foreign intelligence information; and

“(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

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

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

“(c) ORDER.—

“(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

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

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

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

“(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b), the Court shall issue an ex parte order so stating.

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

“(3) REVIEW.—

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

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may

appeal an order under this clause pursuant to subsection (e).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained; and

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

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of

the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) APPEAL.—

“(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

“(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(b) or section 705(b), as applicable.

“(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

“SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

“(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

“(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

“SEC. 708. CONGRESSIONAL OVERSIGHT.

“(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

“(b) CONTENT.—Each report made under subparagraph (a) shall include—

“(1) with respect to section 703—

“(A) any certifications made under subsection 703(f) during the reporting period;

“(B) any directives issued under subsection 703(g) during the reporting period;

“(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

“(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

“(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

“(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

“(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

“(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

“(G) any procedures implementing this section;

“(2) with respect to section 704—

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

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

“(3) with respect to section 705—

“(A) the total number of applications made for orders under 705(b);

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.”

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

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

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

(3) by adding at the end the following:

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

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

“Sec. 702. Definitions.

“Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

“Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

“Sec. 705. Other acquisitions targeting United States persons outside the United States.

“Sec. 706. Joint applications and concurrent authorizations.

“Sec. 707. Use of information acquired under title VII.

“Sec. 708. Congressional oversight.”

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)” after “electronic surveillance”.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting “or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978” after “assistance”.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

“(e) DEFINITION.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an “(a)” before “CIVIL ACTION”;

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

“(b) DEFINITION.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

“(C) pen registers under section 402;

“(D) access to records under section 501;

“(E) acquisitions under section 704; and

“(F) acquisitions under section 705;”.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2011. Notwithstanding any other provision of this Act, the transitional procedures under paragraphs (2)(B) and (3)(B) of section 302(c) shall apply to any order, authorization, or directive, as the case may be, issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2011.

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) during the period such directive was in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

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

“STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED

“SEC. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121 and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.

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

(b) OFFENSE.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 112”.

(c) CONFORMING AMENDMENTS.—

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

“(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision, and shall certify that the statutory requirements have been met.”.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after the item relating to section 111, the following:

“Sec. 112. 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.

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

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601, as amended by subsection (a), is further amended by adding at the end the following:

“(c) The Attorney General shall submit to the committees of Congress referred to in subsection (a) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act not later than 45 days after such decision, order, or opinion is issued.”.

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

“(d) DEFINITIONS.—In this section:

“(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term ‘Foreign Intelligence Surveillance Court’ means the court established by section 103(a).

“(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The

term ‘Foreign Intelligence Surveillance Court of Review’ means the court established by section 103(b).”.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

(1) in subsection (a)—

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

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

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

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

(i) by striking “Affairs or” and inserting “Affairs.”; and

(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—”;

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking “statement of” and inserting “summary statement of”;

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

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

(2) by striking subsection (b);

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

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking “or the Director of National Intelligence” and inserting “the Director of National Intelligence, or the Director of the Central Intelligence Agency”.

SEC. 105. ISSUANCE OF AN ORDER.

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

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

(3) in subsection (c)(1)—

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

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

(C) by striking subparagraph (F);

(4) by striking subsection (d);

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

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

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General reasonably—

“(A) determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

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

“(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

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

“(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

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

“(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(7) by adding at the end the following:

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

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by striking “radio communication” and inserting “communication”.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

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

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

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

(i) by striking “Affairs or” and inserting “Affairs.”; and

(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Fed-

eral Bureau of Investigation, if designated by the President as a certifying official—”; and

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

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

(2) by amending subsection (e) to read as follows:

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

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

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

“(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

“(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such physical search.

“(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

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

“(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking

“303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

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

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

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

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

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

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

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

(b) EN BANC AUTHORITY.—

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

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

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

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

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

“(ii) the proceeding involves a question of exceptional importance.

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

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

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

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

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

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

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

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

“(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of

the United States, or during the pendency of any review by that court.

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

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

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

SA 3935. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike title I and insert the following:

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

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

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

“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

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

“SEC. 702. DEFINITIONS.

“(a) IN GENERAL.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’, ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’, ‘minimization procedures’, ‘person’, ‘United States’, and ‘United States person’ shall have the meanings given such terms in section 101, except as specifically provided in this title.

“(b) ADDITIONAL DEFINITIONS.—

“(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence committees’ means—

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

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

“(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

“(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the court established by section 103(b).

“(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic communication service provider’ means—

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

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

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

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

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

“(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the intelligence community’ means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

“(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

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

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

“(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

“(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706; and

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

“(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

“(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (f); and

“(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

“(d) TARGETING PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States.

“(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

“(e) MINIMIZATION PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt, consistent with the requirements of section 101(h) or section 301(4), minimization procedures for acquisitions authorized under subsection (a).

“(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

“(f) CERTIFICATION.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

“(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence de-

termine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 168 hours after such determination is made.

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

“(A) attest that—

“(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(ii) the procedures referred to in clause (i) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States;

“(iii) a significant purpose of the acquisition is to obtain foreign intelligence information;

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

“(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(v) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

“(vi) the acquisition does not constitute electronic surveillance, as limited by section 701; and

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

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

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

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

“(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made. Such certification shall be maintained under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

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

“(g) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

“(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

“(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the

acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and

“(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

“(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

“(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

“(4) CHALLENGING OF DIRECTIVES.—

“(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

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

“(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with the directive. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

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

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

“(5) ENFORCEMENT OF DIRECTIVES.—

“(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel compliance with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

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

“(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an order requiring the electronic communication service provider to comply with the directive if the judge finds that the directive was issued in accordance with paragraph (1), meets the requirements of this section, and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

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

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

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5) not later than 7 days after the issuance of such decision. The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

“(1) IN GENERAL.—

“(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification required by subsection (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

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

“(2) CERTIFICATIONS.—The Court shall review a certification provided under subsection (f) to determine whether the certification contains all the required elements.

“(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States.

“(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

“(5) ORDERS.—

“(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

“(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

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

“(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

“(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

“(i) during the pendency of any rehearing of the order by the Court en banc; and

“(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

“(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

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

“(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

“(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

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

“(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

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

“(k) ASSESSMENTS AND REVIEWS.—

“(1) SEMI-ANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

“(A) the Foreign Intelligence Surveillance Court; and

“(B) the congressional intelligence committees.

“(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

“(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

“(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

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

“(D) shall provide each such review to—

“(i) the Attorney General;

“(ii) the Director of National Intelligence; and

“(iii) the congressional intelligence committees.

“(3) ANNUAL REVIEW.—

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

“(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

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

“(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

“(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

“(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

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

“(i) the Foreign Intelligence Surveillance Court;

“(ii) the Attorney General;

“(iii) the Director of National Intelligence; and

“(iv) the congressional intelligence committees.

“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

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

“(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

“(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(b) APPLICATION.—

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

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

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

“(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

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

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

“(D) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

“(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

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

“(i) the certifying official deems the information sought to be foreign intelligence information;

“(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

“(iii) such information cannot reasonably be obtained by normal investigative techniques;

“(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

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

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

“(II) such information cannot reasonably be obtained by normal investigative techniques;

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

“(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the

application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

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

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

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

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

“(c) ORDER.—

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

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

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

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

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

“(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

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

“(3) REVIEW.—

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

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required

under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (2) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

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

“(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

“(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

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

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

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

“(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

“(A) that the minimization procedures be followed;

“(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target;

“(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

“(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

“(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained; and

“(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection for the issuance of a judicial order be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

“(f) APPEAL.—

“(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

“(a) JURISDICTION AND SCOPE.—

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

“(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

“(3) LIMITATIONS.—

“(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

“(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

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

“(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

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

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

“(3) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

“(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

“(A) the certifying official deems the information sought to be foreign intelligence information; and

“(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

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

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

“(c) ORDER.—

“(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

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

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

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

“(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b), the Court shall issue an ex parte order so stating.

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

“(3) REVIEW.—

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

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be re-

newed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained; and

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

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) APPEAL.—

“(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a

writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

“(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(b) or section 705(b), as applicable.

“(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

“SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

“(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

“(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

“SEC. 708. CONGRESSIONAL OVERSIGHT.

“(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

“(b) CONTENT.—Each report made under subparagraph (a) shall include—

“(1) with respect to section 703—

“(A) any certifications made under subsection 703(f) during the reporting period;

“(B) any directives issued under subsection 703(g) during the reporting period;

“(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

“(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

“(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

“(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

“(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

“(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

“(G) any procedures implementing this section;

“(2) with respect to section 704—

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

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

“(3) with respect to section 705—

“(A) the total number of applications made for orders under 705(b);

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.”.

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

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

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

(3) by adding at the end the following:

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

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

“Sec. 702. Definitions.

“Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

“Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

“Sec. 705. Other acquisitions targeting United States persons outside the United States.

“Sec. 706. Joint applications and concurrent authorizations.

“Sec. 707. Use of information acquired under title VII.

“Sec. 708. Congressional oversight.”.

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

(1) **TITLE 18, UNITED STATES CODE.**—

(A) **SECTION 2232.**—Section 2232(e) of title 18, United States Code, is amended by inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)” after “electronic surveillance”.

(B) **SECTION 2511.**—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting “or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978” after “assistance”.

(2) **FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**—

(A) **SECTION 109.**—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

“(e) **DEFINITION.**—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(B) **SECTION 110.**—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an “(a)” before “CIVIL ACTION”;

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

“(b) **DEFINITION.**—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(C) **SECTION 601.**—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

“(C) pen registers under section 402;

“(D) access to records under section 501;

“(E) acquisitions under section 704; and

“(F) acquisitions under section 705.”.

(d) **TERMINATION OF AUTHORITY.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2011. Notwithstanding any other provision of this Act, the transitional procedures under paragraphs (2)(B) and (3)(B) of section 302(c) shall apply to any order, authorization, or directive, as the case may be, issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2011.

(2) **CONTINUING APPLICABILITY.**—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) during the period such directive was in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

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

“**STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED**

“**SEC. 112.** (a) Except as provided in subsection (b), the procedures of chapters 119, 121 and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.

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

(b) **OFFENSE.**—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 112”.

(c) **CONFORMING AMENDMENTS.**—

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

“(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision, and shall certify that the statutory requirements have been met.”.

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

“Sec. 112. 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.

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

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

“(c) **SUBMISSIONS TO CONGRESS.**—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

“(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

“(2) a copy of any such decision, order, or opinion, and the pleadings associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).”.

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

“(d) **DEFINITIONS.**—In this section:

“(1) **FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.**—The term “Foreign Intelligence Surveillance Court” means the court established by section 103(a).

“(2) **FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.**—The term ‘Foreign Intelligence Surveillance Court of Review’ means the court established by section 103(b).”.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

(1) in subsection (a)—

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

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

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

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

(i) by striking “Affairs or” and inserting “Affairs,”; and

(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—”;

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking “statement of” and inserting “summary statement of”;

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

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

(2) by striking subsection (b);

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

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking “or the Director of National Intelligence” and inserting “the Director of National Intelligence, or the Director of the Central Intelligence Agency”.

SEC. 105. ISSUANCE OF AN ORDER.

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

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

(3) in subsection (c)(1)—

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

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

(C) by striking subparagraph (F);

(4) by striking subsection (d);

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

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

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General reasonably—

“(A) determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

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

“(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

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

“(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

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

“(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(7) by adding at the end the following:

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

SEC. 106. USE OF INFORMATION.

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

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

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

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

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

(i) by striking “Affairs or” and inserting “Affairs.”; and

(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—”; and

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

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

(2) by amending subsection (e) to read as follows:

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may

authorize the emergency employment of a physical search if the Attorney General reasonably—

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

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

“(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

“(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such physical search.

“(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

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

“(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

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

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

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

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

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

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

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is

amended by inserting "at least" before "seven of the United States judicial circuits".

(b) EN BANC AUTHORITY.—

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

(A) by inserting "(1)" after "(a)"; and

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

"(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

"(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

"(ii) the proceeding involves a question of exceptional importance.

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

"(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection."

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

(A) in subsection (a) of section 103, as amended by this subsection, by inserting "(except when sitting en banc under paragraph (2))" after "no judge designated under this subsection"; and

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

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

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

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

"(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

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

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) in paragraph (1), by striking "105B(h) or 501(f)(1)" and inserting "501(f)(1) or 703"; and

(2) in paragraph (2), by striking "105B(h) or 501(f)(1)" and inserting "501(f)(1) or 703".

SA 3936. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 pro-

posed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike title I and insert the following:

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

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

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

"SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

"Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.

"SEC. 702. DEFINITIONS.

"(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101, except as specifically provided in this title.

"(b) ADDITIONAL DEFINITIONS.—

"(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

"(A) the Select Committee on Intelligence of the Senate; and

"(B) the Permanent Select Committee on Intelligence of the House of Representatives.

"(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

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

"(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

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

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

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

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

"(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

"(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

"SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

"(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

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

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

"(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

"(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706; and

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

"(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

"(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (f); and

"(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

"(d) TARGETING PROCEDURES.—

"(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States.

"(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

"(e) MINIMIZATION PROCEDURES.—

"(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt, consistent with the requirements of section 101(h) or section 301(4), minimization procedures for acquisitions authorized under subsection (a).

"(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

"(f) CERTIFICATION.—

"(1) IN GENERAL.—

"(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

"(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 168 hours after such determination is made.

"(2) REQUIREMENTS.—A certification made under this subsection shall—

"(A) attest that—

"(i) there are reasonable procedures in place for determining that the acquisition

authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(ii) the procedures referred to in clause (i) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States;

“(iii) a significant purpose of the acquisition is to obtain foreign intelligence information;

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

“(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(v) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

“(vi) the acquisition does not constitute electronic surveillance, as limited by section 701; and

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

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

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

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

“(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made. Such certification shall be maintained under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

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

“(g) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

“(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

“(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and

“(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

“(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

“(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

“(4) CHALLENGING OF DIRECTIVES.—

“(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

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

“(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with the directive. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

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

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

“(5) ENFORCEMENT OF DIRECTIVES.—

“(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel compliance with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

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

“(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an order requiring the electronic communication service provider to comply with the directive if the judge finds that the directive was issued in accordance with paragraph (1), meets the requirements of this section, and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

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

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

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5) not later than 7 days after the issuance of such decision. The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(7) COMPLIANCE REVIEWS.—During the period that minimization procedures approved under paragraph (5)(A) are in effect, the Court may review and assess compliance with such procedures and shall have access to the assessments and reviews required by subsections (1)(1), (1)(2), and (1)(3) with respect to compliance with such procedures. In conducting a review under this paragraph, the Court may, to the extent necessary, require the Government to provide additional information regarding the acquisition, retention, or dissemination of information concerning United States persons during the course of an acquisition authorized under subsection (a). The Court may fashion remedies it determines necessary to enforce compliance.

“(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

“(1) IN GENERAL.—

“(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification required by subsection (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

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

“(2) CERTIFICATIONS.—The Court shall review a certification provided under subsection (f) to determine whether the certification contains all the required elements.

“(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States.

“(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

“(5) ORDERS.—

“(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

“(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

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

“(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

“(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

“(i) during the pendency of any rehearing of the order by the Court en banc; and

“(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

“(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

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

“(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

“(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

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

“(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

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

“(k) ASSESSMENTS AND REVIEWS.—

“(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

“(A) the Foreign Intelligence Surveillance Court; and

“(B) the congressional intelligence committees.

“(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of

any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

“(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

“(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

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

“(D) shall provide each such review to—

“(i) the Attorney General;

“(ii) the Director of National Intelligence; and

“(iii) the congressional intelligence committees.

“(3) ANNUAL REVIEW.—

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

“(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

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

“(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

“(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

“(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

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

“(i) the Foreign Intelligence Surveillance Court;

“(ii) the Attorney General;

“(iii) the Director of National Intelligence; and

“(iv) the congressional intelligence committees.

“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

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

“(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

“(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(b) APPLICATION.—

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

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

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

“(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

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

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

“(D) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

“(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

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

“(i) the certifying official deems the information sought to be foreign intelligence information;

“(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

“(iii) such information cannot reasonably be obtained by normal investigative techniques;

“(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

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

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

“(II) such information cannot reasonably be obtained by normal investigative techniques;

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

“(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

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

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

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

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

“(c) ORDER.—

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

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

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

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

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

“(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

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

“(3) REVIEW.—

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

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written state-

ment for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (2) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

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

“(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

“(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

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

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

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

“(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

“(A) that the minimization procedures be followed;

“(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target;

“(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

“(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

“(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which informa-

tion concerning United States persons was acquired, retained, or disseminated.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained; and

“(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection for the issuance of a judicial order be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

“(f) APPEAL.—

“(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a

writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

“(a) JURISDICTION AND SCOPE.—

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

“(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

“(3) LIMITATIONS.—

“(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

“(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

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

“(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

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

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

“(3) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

“(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

“(A) the certifying official deems the information sought to be foreign intelligence information; and

“(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

“(5) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the

United States person specified in the application and the action taken on each previous application; and

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

“(c) ORDER.—

“(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

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

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

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

“(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b),

the Court shall issue an ex parte order so stating.

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

“(3) REVIEW.—

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

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained; and

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

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) APPEAL.—

“(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the

record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

“(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(b) or section 705(b), as applicable.

“(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

“SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

“(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

“(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

“SEC. 708. CONGRESSIONAL OVERSIGHT.

“(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

“(b) CONTENT.—Each report made under subparagraph (a) shall include—

“(1) with respect to section 703—

“(A) any certifications made under subsection 703(f) during the reporting period;

“(B) any directives issued under subsection 703(g) during the reporting period;

“(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

“(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

“(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

“(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

“(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

“(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

“(G) any procedures implementing this section;

“(2) with respect to section 704—

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

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

“(3) with respect to section 705—

“(A) the total number of applications made for orders under 705(b);

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.”.

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

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

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

(3) by adding at the end the following:

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

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

“Sec. 702. Definitions.

“Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

“Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

“Sec. 705. Other acquisitions targeting United States persons outside the United States.

“Sec. 706. Joint applications and concurrent authorizations.

“Sec. 707. Use of information acquired under title VII.

“Sec. 708. Congressional oversight.”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)” after “electronic surveillance”.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting “or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978” after “assistance”.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

“(e) DEFINITION.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an “(a)” before “CIVIL ACTION”;

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

“(b) DEFINITION.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

“(C) pen registers under section 402;

“(D) access to records under section 501;

“(E) acquisitions under section 704; and

“(F) acquisitions under section 705;”.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2011. Notwithstanding any other provision of this Act, the transitional procedures under paragraphs (2)(B) and (3)(B) of section 302(c) shall apply to any order, authorization, or directive, as the case may be, issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2011.

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) during the period such directive was in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

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

“STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED

“SEC. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121 and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.

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

(b) OFFENSE.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and inserting “authorized by

this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 112”.

(c) CONFORMING AMENDMENTS.—

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

“(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision, and shall certify that the statutory requirements have been met.”.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after the item relating to section 111, the following:

“Sec. 112. 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.

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

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

“(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

“(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

“(2) a copy of any such decision, order, or opinion, and the pleadings associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).”.

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

“(d) DEFINITIONS.—In this section:

“(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term ‘Foreign Intelligence Surveillance Court’ means the court established by section 103(a).

“(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The term ‘Foreign Intelligence Surveillance Court of Review’ means the court established by section 103(b).”.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

(1) in subsection (a)—

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

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

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

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

(i) by striking “Affairs or” and inserting “Affairs.”; and

(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—”;

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking “statement of” and inserting “summary statement of”;

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

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

(2) by striking subsection (b);

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

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking “or the Director of National Intelligence” and inserting “the Director of National Intelligence, or the Director of the Central Intelligence Agency”.

SEC. 105. ISSUANCE OF AN ORDER.

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

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

(3) in subsection (c)(1)—

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

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

(C) by striking subparagraph (F);

(4) by striking subsection (d);

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

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

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General reasonably—

“(A) determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

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

“(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

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

“(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

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

“(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(7) by adding at the end the following:

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

SEC. 106. USE OF INFORMATION.

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

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

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

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

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

(i) by striking “Affairs or” and inserting “Affairs.”; and

(ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—”;

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

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

(2) by amending subsection (e) to read as follows:

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may

authorize the emergency employment of a physical search if the Attorney General reasonably—

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

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

“(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

“(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such physical search.

“(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

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

“(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

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

(C) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

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

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

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

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

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

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

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is

amended by inserting “at least” before “seven of the United States judicial circuits”.

(b) EN BANC AUTHORITY.—

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

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

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

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

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

“(ii) the proceeding involves a question of exceptional importance.

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

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

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

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

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

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

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

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

“(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

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

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

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

SA 3937. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr.

ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 22, beginning with line 1 strike all through page 23 line 13, and insert the following:

“(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed, and an estimate of the total number of persons reasonably believed to be located in the United States whose communications were reviewed; and

“(D) shall provide each such review to—

“(i) the Attorney General;

“(ii) the Director of National Intelligence; and

“(iii) the congressional intelligence committees.

“(3) ANNUAL REVIEW.—

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

“(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

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

“(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed, and an estimate of the total number of persons reasonably believed to be located in the United States whose communications were reviewed; and

SA 3938. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 103 and insert the following:

SEC. 103. WEAPONS OF MASS DESTRUCTION.

(a) DEFINITIONS.—

(1) FOREIGN POWER.—Subsection (a)(4) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting “, the international proliferation of weapons of mass destruction,” after “international terrorism”.

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

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

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

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

“(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

“(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power; or”.

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

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by inserting after subsection (c) the following:

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

“(1) any destructive device (as such term is defined in section 921 of title 18, United States Code) that is intended or has the capability to cause death or serious bodily injury to a significant number of people;

“(2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

“(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code); or

“(4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.”.

(b) USE OF INFORMATION.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

SA 3939. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 63, strike lines 7 through 9, and insert the following:

(D) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by inserting “and” at the end;

(ii) by striking subparagraphs (B) and (C) and inserting the following:

“(B) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;”.

SA 3940. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 103 and insert the following:

SEC. 103. MODERNIZING DEFINITIONS.

(a) ELECTRONIC SURVEILLANCE.—Subsection (f) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended to read as follows:

“(f) ‘Electronic surveillance’ means—

“(1) the installation or use of an electronic, mechanical, or other surveillance device for acquiring information by intentionally directing surveillance at a particular, known person who is reasonably believed to be located within the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; or

“(2) the intentional acquisition of the contents of any communication under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, if both the sender and all intended recipients are reasonably believed to be located outside the United States.”.

(b) WIRE COMMUNICATION.—Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended by striking subsection (1).

(c) CONTENTS.—Subsection (n) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended to read as follows:

“(n) ‘Contents’, when used with respect to a communication, includes any information concerning the substance, purport, or meaning of that communication.”.

SA 3941. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, between lines 2 and 3, insert the following:

“(C) EXPEDITED REVIEW.—Not later than 48 hours after the assignment of a petition filed under subparagraph (A), the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines that the petition is not frivolous, the assigned judge shall, within 72 hours, consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subparagraph.”.

(b) CONFORMING AMENDMENTS.

(1) On page 13, line 3, strike “(C)” and insert “(D)”;

(2) On page 13, line 14, strike “(D)” and insert “(E)”;

(3) On page 13, line 21, strike “(E)” and insert “(F)”.

SA 3942. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 12, strike lines 8 through 13, and insert the following:

“(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, and in addition to the immunities, privileges, and defenses provided by any other source of law, no cause of

action or claim may lie or proceeding be maintained in any court or any other body, and no penalty, sanction, or other form of remedy or relief shall be imposed by any court or any other body, against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).”.

SA 3943. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 62, strike lines 15 through 18, and insert the following:

Section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended—

(1) in subsection (i), by striking “radio communication” and inserting “communication”; and

(2) by adding at the end the following new subsection:

“(1) Nothing in this section shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information.”.

SA 3944. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 103 and insert the following:

SEC. 103. CLARIFICATION OF THE DEFINITION OF UNITED STATES PERSON.

Subsection (i) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended by striking “, as defined in subsection (a)(1), (2), or (3)”.

SA 3945. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 15, beginning on line 10, strike “not later than 7 days after the issuance of such decision”.

SA 3946. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 102 and insert the following:

SEC. 102. CONSTITUTIONAL POWER OF THE PRESIDENT.

Subsection (2)(f) of section 2511 of title 18, United States Code, is amended to read as follows:

“(f) Nothing contained in this chapter, in section 705 of the Communications Act of 1934 (47 U.S.C. 605), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall limit the constitutional power of the President to take such measures as the President deems necessary to protect the United States against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter or the Foreign Intelligence Surveillance Act of 1978 be deemed to limit the constitutional power of the President to take such measures as the President deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.”.

SA 3947. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, strike line 12 and all that follows through page 55, line 5.

SA 3948. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after page 1, line 7 and insert the following:

TITLE I—EXTENSION OF THE PROTECT AMERICA ACT OF 2007

SEC. 101. EXTENSION OF THE PROTECT AMERICA ACT OF 2007.

Section 6 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 557; 50 U.S.C. 1803 note) is amended by striking subsection (c).

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

SEC. 201. DEFINITIONS.

In this title:

(1) **ASSISTANCE.**—The term “assistance” means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) **CONTENTS.**—The term “contents” has the meaning given that term in section

101(n) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

(3) **COVERED CIVIL ACTION.**—The term “covered civil action” means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

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

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

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

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

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

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

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

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

(5) **ELEMENT OF THE INTELLIGENCE COMMUNITY.**—The term “element of the intelligence community” means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) **LIMITATIONS.**—

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

(A) the assistance alleged to have been provided by the electronic communication service provider was—

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

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

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

(b) **REVIEW OF CERTIFICATIONS.**—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

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

(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a

statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

(c) **NONDELEGATION.**—The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or a designee in a position not lower than the Deputy Attorney General.

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

(e) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(f) **EFFECTIVE DATE AND APPLICATION.**—This section shall apply to any covered civil action that is pending on or filed after the date of enactment of this Act.

SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

“SEC. 801. DEFINITIONS.

“In this title:

“(1) **ASSISTANCE.**—The term ‘assistance’ means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

“(2) **ATTORNEY GENERAL.**—The term ‘Attorney General’ has the meaning give that term in section 101(g).

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

“(4) **ELECTRONIC COMMUNICATION SERVICE PROVIDER.**—The term ‘electronic communication service provider’ means—

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

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

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

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

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

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

“(5) **ELEMENT OF THE INTELLIGENCE COMMUNITY.**—The term ‘element of the intelligence community’ means an element of the intelligence community as specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

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

“(A) an electronic communication service provider; or

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

“(i) an order of the court established under section 103(a) directing such assistance;

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

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

“(7) STATE.—The term ‘State’ means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.

“(a) REQUIREMENT FOR CERTIFICATION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, no civil action may lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the court that—

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

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

“(C) any assistance by that person was provided pursuant to a directive under sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2007, or 703(h) directing such assistance; or

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

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

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

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

“(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

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

“(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

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

SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.

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

“SEC. 803. PREEMPTION.

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

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

“(2) require through regulation or any other means the disclosure of information

about an electronic communication service provider’s alleged assistance to an element of the intelligence community;

“(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

“(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

“(b) SUITS BY THE UNITED STATES.—The United States may bring suit to enforce the provisions of this section.

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

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

SEC. 205. TECHNICAL AMENDMENTS.

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

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.

SA 3949. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 63, strike lines 7 through 9 and insert the following:

(D) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by inserting “and” at the end;

(ii) by striking subparagraphs (B) and (C) and inserting the following:

“(B) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;”;

SA 3950. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, between lines 2 and 3, insert the following:

“(C) EXPEDITED REVIEW.—Not later than 48 hours after the assignment of a petition filed under subparagraph (A), the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines that the petition is not frivolous, the assigned judge shall,

within 72 hours, consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subparagraph.”.

CONGRATULATING THE STANFORD UNIVERSITY WOMEN’S CROSS COUNTRY TEAM

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 426, submitted earlier today.

The PRESIDING OFFICER (Mr. CASEY). The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 426) congratulating the Stanford University women’s cross country team on winning the 2007 National Collegiate Athletic Association Division I Championship.

There being no objection, the Senate proceeded to consider the resolution.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the resolution and the preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervening action, and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 426) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 426

Whereas the Stanford University Cardinal won the 2007 National Collegiate Athletic Association (NCAA) Women’s Cross Country Championship on November 19, 2007, in Terre Haute, Indiana;

Whereas the Cardinal won every postseason race and maintained a top ranking throughout the 2007 season;

Whereas in 2007 the Cardinal won a Division I women’s cross country title for the 3rd year in a row and the 5th time in school history;

Whereas Arianna Lambie, Lauren Centrowitz, and Katie Harrington were honored as All-Americans for their exceptional contributions during the 2007 season; and

Whereas the 2007 Stanford women’s cross country team members are players Arianna Lambie, Lauren Centrowitz, Katie Harrington, Alexandra Gits, Teresa McWalters, Lindsay Allen, Kate Niehaus, Alicia Follmar, Maddie Omeara, and Lindsay Flacks, and coaches Peter Tegen and David Vidal: Now, therefore, be it

Resolved, That the Senate congratulates the Stanford University women’s cross country team for winning the 2007 National Collegiate Athletic Association Division I Championship.

CONGRATULATING THE UNIVERSITY OF CALIFORNIA AT BERKELEY MEN’S WATER POLO TEAM

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 427, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.