

[Discussion Draft]

AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 3773

OFFERED BY M. _____

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

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

Sec. 109. Foreign intelligence surveillance court.

Sec. 110. Review of previous actions.

Sec. 111. Weapons of mass destruction.

Sec. 112. Statute of limitations.

TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

- Sec. 201. Statutory defenses.
- Sec. 202. Technical amendments.

TITLE III—COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES

- Sec. 301. Commission on Warrantless Electronic Surveillance Activities.

TITLE IV—OTHER PROVISIONS

- Sec. 401. Severability.
- Sec. 402. Effective date.
- Sec. 403. Repeals.
- Sec. 404. Transition procedures.
- Sec. 405. No rights under the FISA Amendments Act of 2008 for undocumented aliens.
- Sec. 406. Surveillance to protect the United States.

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

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

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

7 (1) by striking title VII; and

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

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

14 **“SEC. 701. DEFINITIONS.**

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

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

6 “(b) ADDITIONAL DEFINITIONS.—

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

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

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

14 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
15 COURT; COURT.—The terms ‘Foreign Intelligence
16 Surveillance Court’ and ‘Court’ mean the court es-
17 tablished by section 103(a).

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

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

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

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

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

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

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

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

1 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
2 **SONS OUTSIDE THE UNITED STATES OTHER**
3 **THAN UNITED STATES PERSONS.**

4 “(a) **AUTHORIZATION.**—Notwithstanding any other
5 provision of law, pursuant to an order issued in accord-
6 ance with subsection (i)(3) or a determination under sub-
7 section (g)(1)(B), the Attorney General and the Director
8 of National Intelligence may authorize jointly, for a period
9 of up to 1 year from the effective date of the authoriza-
10 tion, the targeting of persons reasonably believed to be lo-
11 cated outside the United States to acquire foreign intel-
12 ligence information.

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

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

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

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

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

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

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

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

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

13 “(2) the procedures and guidelines required
14 pursuant to subsections (d), (e), and (f).

15 “(d) TARGETING PROCEDURES.—

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

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

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

6 “(e) MINIMIZATION PROCEDURES.—

7 “(1) REQUIREMENT TO ADOPT.—The Attorney
8 General, in consultation with the Director of Na-
9 tional Intelligence, shall adopt minimization proce-
10 dures that meet the definition of minimization proce-
11 dures under section 101(h) or section 301(4), as ap-
12 propriate, for acquisitions authorized under sub-
13 section (a).

14 “(2) JUDICIAL REVIEW.—The minimization
15 procedures required by paragraph (1) shall be sub-
16 ject to judicial review pursuant to subsection (i).

17 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
18 TIONS.—

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

22 “(A) compliance with the limitations in
23 subsection (b); and

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

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

9 “(A) the department or agency of the Fed-
10 eral Government conducting the acquisition has
11 made an inquiry to another department or
12 agency of the Federal Government to gather in-
13 formation on the specific United States person;

14 “(B) the department or agency of the Fed-
15 eral Government conducting the acquisition has
16 provided information that identifies the specific
17 United States person to another department or
18 agency of the Federal Government;

19 “(C) the department or agency of the Fed-
20 eral Government conducting the acquisition de-
21 termines that the specific United States person
22 has been the subject of ongoing interest or re-
23 peated investigation by a department or agency
24 of the Federal Government; and

1 “(D) the specific United States person is a
2 natural person.

3 “(3) TRAINING.—The Director of National In-
4 telligence shall establish a training program for ap-
5 propriate personnel of the intelligence community to
6 ensure that the guidelines adopted pursuant to para-
7 graph (1) are properly implemented.

8 “(4) SUBMISSION TO CONGRESS AND FOREIGN
9 INTELLIGENCE SURVEILLANCE COURT.—The Attor-
10 ney General shall submit the guidelines adopted pur-
11 suant to paragraph (1) to—

12 “(A) the congressional intelligence commit-
13 tees;

14 “(B) the Committees on the Judiciary of
15 the House of Representatives and the Senate;
16 and

17 “(C) the Foreign Intelligence Surveillance
18 Court.

19 “(g) CERTIFICATION.—

20 “(1) IN GENERAL.—

21 “(A) REQUIREMENT.—Subject to subpara-
22 graph (B), if the Attorney General and the Di-
23 rector of National Intelligence seek to authorize
24 an acquisition under this section, the Attorney
25 General and the Director of National Intel-

1 ligence shall provide, under oath, a written cer-
2 tification, as described in this subsection.

3 “(B) EMERGENCY AUTHORIZATION.—If
4 the Attorney General and the Director of Na-
5 tional Intelligence determine that an emergency
6 situation exists, immediate action by the Gov-
7 ernment is required, and time does not permit
8 the completion of judicial review pursuant to
9 subsection (i) prior to the initiation of an acqui-
10 sition, the Attorney General and the Director of
11 National Intelligence may authorize the acquisi-
12 tion and shall submit to the Foreign Intel-
13 ligence Surveillance Court a certification under
14 this subsection as soon as possible but in no
15 event more than 7 days after such determina-
16 tion is made.

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

19 “(A) attest that—

20 “(i) there are reasonable procedures
21 in place for determining that the acquisi-
22 tion authorized under subsection (a)—

23 “(I) is targeted at persons rea-
24 sonably believed to be located outside
25 the United States and such proce-

1 dures have been submitted to the For-
2 eign Intelligence Surveillance Court;
3 and

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

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

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

20 “(I) meet the definition of mini-
21 mization procedures under section
22 101(h) or section 301(4), as appro-
23 priate; and

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

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

9 “(v) a significant purpose of the ac-
10 quisition is to obtain foreign intelligence
11 information;

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

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

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

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

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

25 “(C) include—

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

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

9 “(I) the date the acquisition
10 began or the effective date for the ac-
11 quisition;

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

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

24 “(3) LIMITATION.—A certification made under
25 this subsection is not required to identify the specific

1 facilities, places, premises, or property at which the
2 acquisition authorized under subsection (a) will be
3 directed or conducted.

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

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

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

20 “(1) AUTHORITY.—Pursuant to an order issued
21 in accordance with subsection (i)(3) or a determina-
22 tion under subsection (g)(1)(B), the Attorney Gen-
23 eral and the Director of National Intelligence may
24 direct, in writing, an electronic communication serv-
25 ice provider to—

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

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

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

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

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

3 “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

23 “(D) PROCEDURES FOR INITIAL RE-
24 VIEW.—A judge shall conduct an initial review
25 of a petition filed under subparagraph (A) not

1 later than 5 days after being assigned such pe-
2 tition. If the judge determines that the petition
3 does not consist of claims, defenses, or other
4 legal contentions that are warranted by existing
5 law, a nonfrivolous argument for extending,
6 modifying, or reversing existing law, or estab-
7 lishing new law, the judge shall immediately
8 deny the petition and affirm the directive or
9 any part of the directive that is the subject of
10 the petition and order the recipient to comply
11 with the directive or any part of it. Upon mak-
12 ing such a determination or promptly there-
13 after, the judge shall provide a written state-
14 ment for the record of the reasons for a deter-
15 mination under this subparagraph.

16 “(E) PROCEDURES FOR PLENARY RE-
17 VIEW.—If a judge determines that a petition
18 filed under subparagraph (A) requires plenary
19 review, the judge shall affirm, modify, or set
20 aside the directive that is the subject of that pe-
21 tition not later than 30 days after being as-
22 signed the petition. If the judge does not set
23 aside the directive, the judge shall immediately
24 affirm or modify the directive and order the re-
25 cipient to comply with the directive in its en-

1 tirety or as modified. The judge shall provide a
2 written statement for the records of the reasons
3 for a determination under this subparagraph.

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

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

11 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

1 later than 24 hours after the filing of the peti-
2 tion.

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

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

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

22 “(6) APPEAL.—

23 “(A) APPEAL TO THE COURT OF RE-
24 VIEW.—The Government or an electronic com-
25 munication service provider receiving a directive

1 issued pursuant to paragraph (1) may file a pe-
2 tition with the Foreign Intelligence Surveillance
3 Court of Review for review of a decision issued
4 pursuant to paragraph (4) or (5). The Court of
5 Review shall have jurisdiction to consider such
6 a petition and shall provide a written statement
7 for the record of the reasons for a decision
8 under this paragraph.

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

19 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
20 PROCEDURES.—

21 “(1) IN GENERAL.—

22 “(A) REVIEW BY THE FOREIGN INTEL-
23 LIGENCE SURVEILLANCE COURT.—The Foreign
24 Intelligence Surveillance Court shall have juris-
25 diction to review any certification submitted

1 pursuant to subsection (g) and the targeting
2 and minimization procedures required by sub-
3 sections (d) and (e).

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

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

14 “(A) CERTIFICATIONS.—A certification
15 submitted pursuant to subsection (g) to deter-
16 mine whether the certification contains all the
17 required elements.

18 “(B) TARGETING PROCEDURES.—The tar-
19 geting procedures required by subsection (d) to
20 assess whether the procedures are reasonably
21 designed to ensure that the acquisition author-
22 ized under subsection (a) is limited to the tar-
23 geting of persons reasonably believed to be lo-
24 cated outside the United States and does not
25 result in the intentional acquisition of any com-

1 munication as to which the sender and all in-
2 tended recipients are known at the time of the
3 acquisition to be located in the United States.

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

9 “(3) ORDERS.—

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

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

1 sections or the fourth amendment to the Con-
2 stitution of the United States—

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

10 “(ii) in the case of a certification sub-
11 mitted in accordance with subsection
12 (g)(1)(B), the Court shall issue an order
13 directing the Government to, at the Gov-
14 ernment’s election and to the extent re-
15 quired by the Court’s order—

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

20 “(II) cease the acquisition au-
21 thorized under subsection (g)(1)(B).

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

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

3 “(4) APPEAL.—

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

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

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

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

24 “(C) IMPLEMENTATION OF EMERGENCY
25 AUTHORITY PENDING APPEAL.—Not later than

1 60 days after the filing of an appeal of an order
2 issued under paragraph (3)(B)(ii) directing the
3 correction of a deficiency, the Court of Review
4 shall determine, and enter a corresponding
5 order regarding, whether all or any part of the
6 correction order, as issued or modified, shall be
7 implemented during the pendency of the appeal.

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

16 “(5) SCHEDULE.—

17 “(A) REPLACEMENT OF AUTHORIZATIONS
18 IN EFFECT.—If the Attorney General and the
19 Director of National Intelligence seek to replace
20 an authorization issued pursuant to section
21 105B of the Foreign Intelligence Surveillance
22 Act of 1978, as added by section 2 of the Pro-
23 tect America Act of 2007 (Public Law 110-55),
24 the Attorney General and the Director of Na-
25 tional Intelligence shall, to the extent prac-

1 ticable, submit to the Court the certification re-
2 quired under subsection (g) and the procedures
3 adopted pursuant to subsections (d) and (e) at
4 least 30 days before the expiration of such au-
5 thorization.

6 “(B) REAUTHORIZATION OF AUTHORIZA-
7 TIONS IN EFFECT.—If the Attorney General
8 and the Director of National Intelligence seek
9 to replace an authorization issued pursuant to
10 this section, the Attorney General and the Di-
11 rector of National Intelligence shall, to the ex-
12 tent practicable, submit to the Court the certifi-
13 cation required by subsection (g) and the proce-
14 dures adopted pursuant to subsections (d) and
15 (e) at least 30 days prior to the expiration of
16 such authorization.

17 “(C) CONSOLIDATED SUBMISSIONS.—The
18 Attorney General and Director of National In-
19 telligence shall, to the extent practicable, annu-
20 ally submit to the Court a consolidation of—

21 “(i) certifications required by sub-
22 section (g) for reauthorization of author-
23 izations in effect;

24 “(ii) the procedures adopted pursuant
25 to subsections (d) and (e); and

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

3 “(D) TIMING OF REVIEWS.—The Attorney
4 General and the Director of National Intel-
5 ligence shall, to the extent practicable, schedule
6 the completion of the annual review under sub-
7 section (l)(3) and a semiannual assessment
8 under subsection (l)(1) so that they may be
9 submitted to the Court at the time of the con-
10 solidated submission under subparagraph (C).

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

17 “(6) COMPLIANCE.—At or before the end of the
18 period of time for which an acquisition is approved
19 by an order under this section, the Foreign Intel-
20 ligence Surveillance Court may assess compliance
21 with the minimization procedures adopted in accord-
22 ance with subsection (e) by reviewing the cir-
23 cumstances under which information concerning
24 United States persons was acquired, retained, or dis-
25 seminated.

1 “(j) JUDICIAL PROCEEDINGS.—

2 “(1) EXPEDITED PROCEEDINGS.—Judicial pro-
3 ceedings under this section shall be conducted as ex-
4 peditiously as possible.

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

10 “(k) MAINTENANCE AND SECURITY OF RECORDS
11 AND PROCEEDINGS.—

12 “(1) STANDARDS.—The Foreign Intelligence
13 Surveillance Court shall maintain a record of a pro-
14 ceeding under this section, including petitions filed,
15 orders granted, and statements of reasons for deci-
16 sion, under security measures adopted by the Chief
17 Justice of the United States, in consultation with
18 the Attorney General and the Director of National
19 Intelligence.

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

1 a submission, which may include classified informa-
2 tion.

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

9 “(1) ASSESSMENTS AND REVIEWS.—

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

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

18 “(B) the congressional intelligence commit-
19 tees; and

20 “(C) the Committees on the Judiciary of
21 the House of Representatives and the Senate.

22 “(2) AGENCY ASSESSMENT.—The Inspectors
23 General of the Department of Justice and of each
24 element of the intelligence community authorized to
25 acquire foreign intelligence information under sub-

1 section (a), with respect to such Department or such
2 element—

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

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

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

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

22 “(i) the Attorney General;

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

1 “(iii) the congressional intelligence
2 committees;

3 “(iv) the Committees on the Judiciary
4 of the House of Representatives and the
5 Senate; and

6 “(v) the Foreign Intelligence Surveil-
7 lance Court.

8 “(3) ANNUAL REVIEW.—

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

19 “(i) the number and nature of dis-
20 seminated intelligence reports containing a
21 reference to a United States person iden-
22 tity;

23 “(ii) the number and nature of United
24 States person identities subsequently dis-
25 seminated by that element in response to

1 requests for identities that were not re-
2 ferred to by name or title in the original
3 reporting;

4 “(iii) the number of targets that were
5 later determined to be located in the
6 United States and, to the extent possible,
7 whether their communications were re-
8 viewed; and

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

21 “(B) USE OF REVIEW.—The head of each
22 element of the intelligence community that con-
23 ducts an annual review under subparagraph (A)
24 shall use each such review to evaluate the ade-
25 quacy of the minimization procedures utilized

1 by such element or the application of the mini-
2 mization procedures to a particular acquisition
3 authorized under subsection (a).

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

8 “(i) the Foreign Intelligence Surveil-
9 lance Court;

10 “(ii) the Attorney General;

11 “(iii) the Director of National Intel-
12 ligence;

13 “(iv) the congressional intelligence
14 committees; and

15 “(v) the Committees on the Judiciary
16 of the House of Representatives and the
17 Senate.

18 “(m) CONSTRUCTION.—Nothing in this Act shall be
19 construed to require an application under section 104 for
20 an acquisition that is targeted in accordance with this sec-
21 tion at a person reasonably believed to be located outside
22 the United States.

1 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**
2 **STATES OF UNITED STATES PERSONS OUT-**
3 **SIDE THE UNITED STATES.**

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

6 “(1) IN GENERAL.—The Foreign Intelligence
7 Surveillance Court shall have jurisdiction to review
8 an application and enter an order approving the tar-
9 geting of a United States person reasonably believed
10 to be located outside the United States to acquire
11 foreign intelligence information if the acquisition in-
12 volves acquiring communications information, includ-
13 ing stored electronic communications or stored elec-
14 tronic data, that requires an order under title I or
15 title III of this Act, and such acquisition is con-
16 ducted within the United States.

17 “(2) LIMITATION.—If a United States person
18 targeted under this subsection is reasonably believed
19 to be located in the United States during the pend-
20 ency of an order issued pursuant to subsection (c),
21 such acquisition shall cease unless authority, other
22 than under this section, is obtained pursuant to this
23 Act or the targeted United States person is again
24 reasonably believed to be located outside the United
25 States during the pendency of an order issued pur-
26 suant to subsection (c).

1 “(b) APPLICATION.—

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

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

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

16 “(C) a statement of the facts and cir-
17 cumstances relied upon to justify the appli-
18 cant’s belief that the United States person who
19 is the target of the acquisition is—

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

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

1 “(D) a statement of proposed minimization
2 procedures that meet the definition of mini-
3 mization procedures in section 101(h) or section
4 301(4), as appropriate;

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

8 “(F) a certification made by the Attorney
9 General or an official specified in section
10 104(a)(6) that—

11 “(i) the certifying official deems the
12 information sought to be foreign intel-
13 ligence information;

14 “(ii) a significant purpose of the ac-
15 quisition is to obtain foreign intelligence
16 information;

17 “(iii) such information cannot reason-
18 ably be obtained by normal investigative
19 techniques;

20 “(iv) identifies the type of foreign in-
21 telligence information being sought accord-
22 ing to the categories described in each sub-
23 paragraph of section 101(e); and

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

1 “(I) the information sought is
2 the type of foreign intelligence infor-
3 mation designated; and

4 “(II) such information cannot
5 reasonably be obtained by normal in-
6 vestigative techniques;

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

11 “(H) the identity of any electronic commu-
12 nication service provider necessary to effect the
13 acquisition, provided, however, that the applica-
14 tion is not required to identify the specific fa-
15 cilities, places, premises, or property at which
16 the acquisition authorized under this section
17 will be directed or conducted;

18 “(I) a statement of the facts concerning
19 any previous applications that have been made
20 to any judge of the Foreign Intelligence Surveil-
21 lance Court involving the United States person
22 specified in the application and the action taken
23 on each previous application; and

24 “(J) a statement of the period of time for
25 which the acquisition is required to be main-

1 tained, provided that such period of time shall
2 not exceed 90 days per application.

3 “(2) OTHER REQUIREMENTS OF THE ATTOR-
4 NEY GENERAL.—The Attorney General may require
5 any other affidavit or certification from any other
6 officer in connection with the application.

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

11 “(c) ORDER.—

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

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

20 “(B) on the basis of the facts submitted by
21 the applicant, for the United States person who
22 is the target of the acquisition, there is prob-
23 able cause to believe that the target is—

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

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

4 “(C) the proposed minimization procedures
5 meet the definition of minimization procedures
6 under section 101(h) or section 301(4), as ap-
7 propriate; and

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

15 “(2) PROBABLE CAUSE.—In determining
16 whether or not probable cause exists for purposes of
17 paragraph (1)(B), a judge having jurisdiction under
18 subsection (a)(1) may consider past activities of the
19 target and facts and circumstances relating to cur-
20 rent or future activities of the target. No United
21 States person may be considered a foreign power,
22 agent of a foreign power, or officer or employee of
23 a foreign power solely upon the basis of activities
24 protected by the first amendment to the Constitution
25 of the United States.

1 “(3) REVIEW.—

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

6 “(B) REVIEW OF PROBABLE CAUSE.—If
7 the judge determines that the facts submitted
8 under subsection (b) are insufficient to estab-
9 lish probable cause under paragraph (1)(B), the
10 judge shall enter an order so stating and pro-
11 vide a written statement for the record of the
12 reasons for such determination. The Govern-
13 ment may appeal an order under this subpara-
14 graph pursuant to subsection (f).

15 “(C) REVIEW OF MINIMIZATION PROCE-
16 DURES.—If the judge determines that the pro-
17 posed minimization procedures referred to in
18 paragraph (1)(C) do not meet the definition of
19 minimization procedures under section 101(h)
20 or section 301(4), as appropriate, the judge
21 shall enter an order so stating and provide a
22 written statement for the record of the reasons
23 for such determination. The Government may
24 appeal an order under this subparagraph pursu-
25 ant to subsection (f).

1 “(D) REVIEW OF CERTIFICATION.—If the
2 judge determines that an application required
3 by subsection (b) does not contain all of the re-
4 quired elements, or that the certification or cer-
5 tifications are clearly erroneous on the basis of
6 the statement made under subsection
7 (b)(1)(F)(v) and any other information fur-
8 nished under subsection (b)(3), the judge shall
9 enter an order so stating and provide a written
10 statement for the record of the reasons for such
11 determination. The Government may appeal an
12 order under this subparagraph pursuant to sub-
13 section (f).

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

16 “(A) the identity, if known, or a descrip-
17 tion of the United States person who is the tar-
18 get of the acquisition identified or described in
19 the application pursuant to subsection
20 (b)(1)(B);

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

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

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

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

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

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

14 “(B) an electronic communication service
15 provider to provide to the Government forthwith
16 all information, facilities, or assistance nec-
17 essary to accomplish the acquisition authorized
18 under such order in a manner that will protect
19 the secrecy of the acquisition and produce a
20 minimum of interference with the services that
21 such electronic communication service provider
22 is providing to the target of the acquisition;

23 “(C) an electronic communication service
24 provider to maintain under security procedures
25 approved by the Attorney General any records

1 concerning the acquisition or the aid furnished
2 that such electronic communication service pro-
3 vider wishes to maintain; and

4 “(D) that the Government compensate, at
5 the prevailing rate, such electronic communica-
6 tion service provider for providing such infor-
7 mation, facilities, or assistance.

8 “(6) DURATION.—An order approved under this
9 subsection shall be effective for a period not to ex-
10 ceed 90 days and such order may be renewed for ad-
11 ditional 90-day periods upon submission of renewal
12 applications meeting the requirements of subsection
13 (b).

14 “(7) COMPLIANCE.—At or prior to the end of
15 the period of time for which an acquisition is ap-
16 proved by an order or extension under this section,
17 the judge may assess compliance with the minimiza-
18 tion procedures referred to in paragraph (1)(C) by
19 reviewing the circumstances under which informa-
20 tion concerning United States persons was acquired,
21 retained, or disseminated.

22 “(d) EMERGENCY AUTHORIZATION.—

23 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
24 TION.—Notwithstanding any other provision of this

1 Act, if the Attorney General reasonably determines
2 that—

3 “(A) an emergency situation exists with re-
4 spect to the acquisition of foreign intelligence
5 information for which an order may be obtained
6 under subsection (c) before an order author-
7 izing such acquisition can with due diligence be
8 obtained, and

9 “(B) the factual basis for issuance of an
10 order under this subsection to approve such ac-
11 quisition exists,

12 the Attorney General may authorize such acquisition
13 if a judge having jurisdiction under subsection (a)(1)
14 is informed by the Attorney General, or a designee
15 of the Attorney General, at the time of such author-
16 ization that the decision has been made to conduct
17 such acquisition and if an application in accordance
18 with this section is made to a judge of the Foreign
19 Intelligence Surveillance Court as soon as prac-
20 ticable, but not more than 7 days after the Attorney
21 General authorizes such acquisition.

22 “(2) MINIMIZATION PROCEDURES.—If the At-
23 torney General authorizes an acquisition under para-
24 graph (1), the Attorney General shall require that
25 the minimization procedures referred to in sub-

1 section (c)(1)(C) for the issuance of a judicial order
2 be followed.

3 “(3) TERMINATION OF EMERGENCY AUTHOR-
4 IZATION.—In the absence of a judicial order approv-
5 ing an acquisition authorized under paragraph (1),
6 such acquisition shall terminate when the informa-
7 tion sought is obtained, when the application for the
8 order is denied, or after the expiration of 7 days
9 from the time of authorization by the Attorney Gen-
10 eral, whichever is earliest.

11 “(4) USE OF INFORMATION.—If an application
12 for approval submitted pursuant to paragraph (1) is
13 denied, or in any other case where the acquisition is
14 terminated and no order is issued approving the ac-
15 quisition, no information obtained or evidence de-
16 rived from such acquisition, except under cir-
17 cumstances in which the target of the acquisition is
18 determined not to be a United States person, shall
19 be received in evidence or otherwise disclosed in any
20 trial, hearing, or other proceeding in or before any
21 court, grand jury, department, office, agency, regu-
22 latory body, legislative committee, or other authority
23 of the United States, a State, or political subdivision
24 thereof, and no information concerning any United
25 States person acquired from such acquisition shall

1 subsequently be used or disclosed in any other man-
2 ner by Federal officers or employees without the
3 consent of such person, except with the approval of
4 the Attorney General if the information indicates a
5 threat of death or serious bodily harm to any per-
6 son.

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

13 “(f) APPEAL.—

14 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
15 SURVEILLANCE COURT OF REVIEW.—The Govern-
16 ment may file an appeal with the Foreign Intel-
17 ligence Surveillance Court of Review for review of an
18 order issued pursuant to subsection (c). The Court
19 of Review shall have jurisdiction to consider such ap-
20 peal and shall provide a written statement for the
21 record of the reasons for a decision under this para-
22 graph.

23 “(2) CERTIORARI TO THE SUPREME COURT.—
24 The Government may file a petition for a writ of
25 certiorari for review of a decision of the Court of Re-

1 view under paragraph (1). The record for such re-
2 view shall be transmitted under seal to the Supreme
3 Court of the United States, which shall have juris-
4 diction to review such decision.

5 **“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED**
6 **STATES PERSONS OUTSIDE THE UNITED**
7 **STATES.**

8 “(a) JURISDICTION AND SCOPE.—

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

12 “(2) SCOPE.—No department or agency of the
13 Federal Government may intentionally target, for
14 the purpose of acquiring foreign intelligence infor-
15 mation, a United States person reasonably believed
16 to be located outside the United States under cir-
17 cumstances in which the targeted United States per-
18 son has a reasonable expectation of privacy and a
19 warrant would be required if the acquisition were
20 conducted inside the United States for law enforce-
21 ment purposes, unless a judge of the Foreign Intel-
22 ligence Surveillance Court has entered an order or
23 the Attorney General has authorized an emergency
24 acquisition pursuant to subsection (c) or (d) or any
25 other provision of this Act.

1 “(3) LIMITATIONS.—

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

12 “(B) APPLICABILITY.—If an acquisition is
13 to be conducted inside the United States and
14 could be authorized under section 703, the ac-
15 quisition may not be authorized under this sec-
16 tion and must be authorized under section 703
17 or in accordance with another provision of this
18 Act other than this section.

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

1 requirements of such application as set forth in this sec-
2 tion and shall include—

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

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

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

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

15 “(3) a statement of proposed minimization pro-
16 cedures that meet the definition of minimization pro-
17 cedures under section 101(h) or section 301(4), as
18 appropriate;

19 “(4) a certification made by the Attorney Gen-
20 eral, an official specified in section 104(a)(6), or the
21 head of an element of the intelligence community
22 that—

23 “(A) the certifying official deems the infor-
24 mation sought to be foreign intelligence infor-
25 mation; and

1 “(B) a significant purpose of the acquisi-
2 tion is to obtain foreign intelligence informa-
3 tion;

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

10 “(6) a statement of the period of time for which
11 the acquisition is required to be maintained, pro-
12 vided that such period of time shall not exceed 90
13 days per application.

14 “(c) ORDER.—

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

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

23 “(B) on the basis of the facts submitted by
24 the applicant, for the United States person who

1 is the target of the acquisition, there is prob-
2 able cause to believe that the target is—

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

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

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

11 “(D) the application that has been filed
12 contains all statements and certifications re-
13 quired by subsection (b) and the certification
14 provided under subsection (b)(4) is not clearly
15 erroneous on the basis of the information fur-
16 nished under subsection (b).

17 “(2) PROBABLE CAUSE.—In determining
18 whether or not probable cause exists for purposes of
19 an order under paragraph (1)(B), a judge having ju-
20 risdiction under subsection (a)(1) may consider past
21 activities of the target and facts and circumstances
22 relating to current or future activities of the target.
23 No United States person may be considered a for-
24 eign power, agent of a foreign power, or officer or
25 employee of a foreign power solely upon the basis of

1 activities protected by the first amendment to the
2 Constitution of the United States.

3 “(3) REVIEW.—

4 “(A) LIMITATIONS ON REVIEW.—Review
5 by a judge having jurisdiction under subsection
6 (a)(1) shall be limited to that required to make
7 the findings described in paragraph (1). The
8 judge shall not have jurisdiction to review the
9 means by which an acquisition under this sec-
10 tion may be conducted.

11 “(B) REVIEW OF PROBABLE CAUSE.—If
12 the judge determines that the facts submitted
13 under subsection (b) are insufficient to estab-
14 lish probable cause under paragraph (1)(B), the
15 judge shall enter an order so stating and pro-
16 vide a written statement for the record of the
17 reasons for such determination. The Govern-
18 ment may appeal an order under this clause
19 pursuant to subsection (e).

20 “(C) REVIEW OF MINIMIZATION PROCE-
21 DURES.—If the judge determines that the mini-
22 mization procedures applicable to dissemination
23 of information obtained through an acquisition
24 under this subsection do not meet the definition
25 of minimization procedures under section

1 101(h) or section 301(4), as appropriate, the
2 judge shall enter an order so stating and pro-
3 vide a written statement for the record of the
4 reasons for such determination. The Govern-
5 ment may appeal an order under this clause
6 pursuant to subsection (e).

7 “(D) SCOPE OF REVIEW OF CERTIFI-
8 CATION.—If the judge determines that the cer-
9 tification provided under subsection (b)(4) is
10 clearly erroneous on the basis of the informa-
11 tion furnished under subsection (b), the judge
12 shall enter an order so stating and provide a
13 written statement for the record of the reasons
14 for such determination. The Government may
15 appeal an order under this clause pursuant to
16 subsection (e).

17 “(4) DURATION.—An order under this para-
18 graph shall be effective for a period not to exceed 90
19 days and such order may be renewed for additional
20 90-day periods upon submission of renewal applica-
21 tions meeting the requirements of subsection (b).

22 “(5) COMPLIANCE.—At or prior to the end of
23 the period of time for which an order or extension
24 is granted under this section, the judge may assess
25 compliance with the minimization procedures re-

1 ferred to in paragraph (1)(B) by reviewing the cir-
2 cumstances under which information concerning
3 United States persons was disseminated, provided
4 that the judge may not inquire into the cir-
5 cumstances relating to the conduct of the acquisi-
6 tion.

7 “(d) EMERGENCY AUTHORIZATION.—

8 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
9 TION.—Notwithstanding any other provision of this
10 section, if the Attorney General reasonably deter-
11 mines that—

12 “(A) an emergency situation exists with re-
13 spect to the acquisition of foreign intelligence
14 information for which an order may be obtained
15 under subsection (c) before an order under that
16 subsection may, with due diligence, be obtained,
17 and

18 “(B) the factual basis for the issuance of
19 an order under this section exists,
20 the Attorney General may authorize the emergency
21 acquisition if a judge having jurisdiction under sub-
22 section (a)(1) is informed by the Attorney General
23 or a designee of the Attorney General at the time of
24 such authorization that the decision has been made
25 to conduct such acquisition and if an application in

1 accordance with this section is made to a judge of
2 the Foreign Intelligence Surveillance Court as soon
3 as practicable, but not more than 7 days after the
4 Attorney General authorizes such acquisition.

5 “(2) MINIMIZATION PROCEDURES.—If the At-
6 torney General authorizes an emergency acquisition
7 under paragraph (1), the Attorney General shall re-
8 quire that the minimization procedures referred to in
9 subsection (c)(1)(B) be followed.

10 “(3) TERMINATION OF EMERGENCY AUTHOR-
11 IZATION.—In the absence of an order under sub-
12 section (c), the an acquisition authorized under
13 paragraph (1) shall terminate when the information
14 sought is obtained, if the application for the order
15 is denied, or after the expiration of 7 days from the
16 time of authorization by the Attorney General,
17 whichever is earliest.

18 “(4) USE OF INFORMATION.—If an application
19 submitted pursuant to paragraph (1) is denied, or in
20 any other case where an acquisition authorized
21 under paragraph (1) is terminated and no order is
22 issued approving the acquisition, no information ob-
23 tained or evidence derived from such acquisition, ex-
24 cept under circumstances in which the target of the
25 acquisition is determined not to be a United States

1 person, shall be received in evidence or otherwise
2 disclosed in any trial, hearing, or other proceeding
3 in or before any court, grand jury, department, of-
4 fice, agency, regulatory body, legislative committee,
5 or other authority of the United States, a State, or
6 political subdivision thereof, and no information con-
7 cerning any United States person acquired from
8 such acquisition shall subsequently be used or dis-
9 closed in any other manner by Federal officers or
10 employees without the consent of such person, ex-
11 cept with the approval of the Attorney General if the
12 information indicates a threat of death or serious
13 bodily harm to any person.

14 “(e) APPEAL.—

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

23 “(2) CERTIORARI TO THE SUPREME COURT.—
24 The Government may file a petition for a writ of
25 certiorari for review of a decision of the Court of Re-

1 view issued under paragraph (1). The record for
2 such review shall be transmitted under seal to the
3 Supreme Court of the United States, which shall
4 have jurisdiction to review such decision.

5 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-**
6 **THORIZATIONS.**

7 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
8 quisition targeting a United States person under section
9 703 or section 704 is proposed to be conducted both inside
10 and outside the United States, a judge having jurisdiction
11 under section 703(a)(1) or section 704(a)(1) may issue si-
12 multaneously, upon the request of the Government in a
13 joint application complying with the requirements of sec-
14 tion 703(b) and section 704(b), orders under section
15 703(c) and section 704(c), as appropriate.

16 “(b) CONCURRENT AUTHORIZATION.—

17 “(1) ELECTRONIC SURVEILLANCE.—If an order
18 authorizing electronic surveillance has been obtained
19 under section 105 and that order is still in effect,
20 during the pendency of that order the Attorney Gen-
21 eral may authorize, without an order under section
22 703 or 704, electronic surveillance for the purpose of
23 acquiring foreign intelligence information targeting
24 that United States person while such person is rea-

1 sonably believed to be located outside the United
2 States.

3 “(2) PHYSICAL SEARCH.—If an order author-
4 izing a physical search has been obtained under sec-
5 tion 304 and that order is still in effect, during the
6 pendency of that order the Attorney General may
7 authorize, without an order under section 703 or
8 704, a physical search for the purpose of acquiring
9 foreign intelligence information targeting that
10 United States person while such person is reason-
11 ably believed to be located outside the United States.

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

13 **VII.**

14 “Information acquired pursuant to section 702 or
15 703 shall be considered information acquired from an elec-
16 tronic surveillance pursuant to title I for purposes of sec-
17 tion 106.

18 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

19 “(a) SEMIANNUAL REPORT.—Not less frequently
20 than once every 6 months, the Attorney General shall fully
21 inform, in a manner consistent with national security, the
22 congressional intelligence committees and the Committees
23 on the Judiciary of the Senate and the House of Rep-
24 resentatives, concerning the implementation of this title.

1 “(b) CONTENT.—Each report made under subsection

2 (a) shall include—

3 “(1) with respect to section 702—

4 “(A) any certifications made under section
5 702(g) during the reporting period;

6 “(B) with respect to each certification
7 made under paragraph (1)(B) of such section,
8 the reasons for exercising the authority under
9 such paragraph;

10 “(C) any directives issued under section
11 702(h) during the reporting period;

12 “(D) a description of the judicial review
13 during the reporting period of any such certifi-
14 cations and targeting and minimization proce-
15 dures adopted pursuant to subsections (d) and
16 (e) of section 702 utilized with respect to such
17 acquisition, including a copy of any order or
18 pleading in connection with such review that
19 contains a significant legal interpretation of the
20 provisions of section 702;

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

24 “(F) any compliance reviews conducted by
25 the Attorney General or the Director of Na-

1 tional Intelligence of acquisitions authorized
2 under subsection 702(a);

3 “(G) a description of any incidents of non-
4 compliance with a directive issued by the Attor-
5 ney General and the Director of National Intel-
6 ligence under subsection 702(h), including—

7 “(i) incidents of noncompliance by an
8 element of the intelligence community with
9 procedures and guidelines adopted pursu-
10 ant to subsections (d), (e), and (f) of sec-
11 tion 702; and

12 “(ii) incidents of noncompliance by a
13 specified person to whom the Attorney
14 General and Director of National Intel-
15 ligence issued a directive under subsection
16 702(h); and

17 “(H) any procedures implementing section
18 702;

19 “(2) with respect to section 703—

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

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

23 “(i) granted;

24 “(ii) modified; or

25 “(iii) denied; and

1 “(C) the total number of emergency acqui-
2 sitions authorized by the Attorney General
3 under section 703(d) and the total number of
4 subsequent orders approving or denying such
5 acquisitions; and

6 “(3) with respect to section 704—

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

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

10 “(i) granted;

11 “(ii) modified; or

12 “(iii) denied; and

13 “(C) the total number of emergency acqui-
14 sitions authorized by the Attorney General
15 under subsection 704(d) and the total number
16 of subsequent orders approving or denying such
17 applications.

18 **“SEC. 708. SAVINGS PROVISION.**

19 “Nothing in this title shall be construed to limit the
20 authority of the Federal Government to seek an order or
21 authorization under, or otherwise engage in any activity
22 that is authorized under, any other title of this Act.”.

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

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

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

“Sec. 701. Definitions.

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

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

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

“Sec. 705. Joint applications and concurrent authorizations.

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

“Sec. 707. Congressional oversight.

“Sec. 708. Savings provision.”.

5 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

6 (1) TITLE 18, UNITED STATES CODE.—Section
7 2511(2)(a)(ii)(A) of title 18, United States Code, is
8 amended by inserting “or a court order pursuant to
9 section 704 of the Foreign Intelligence Surveillance
10 Act of 1978” after “assistance”.

11 (2) FOREIGN INTELLIGENCE SURVEILLANCE
12 ACT OF 1978.—Section 601(a)(1) of the Foreign In-
13 telligence Surveillance Act of 1978 (50 U.S.C.
14 1871(a)(1)) is amended by striking subparagraphs
15 (C) and (D) and inserting the following:

16 “(C) pen registers under section 402;

17 “(D) access to records under section 501;

18 “(E) acquisitions under section 703; and

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

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

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

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

12 “SEC. 112. (a) Except as provided in subsection (b),
13 the procedures of chapters 119, 121, and 206 of title 18,
14 United States Code, and this Act shall be the exclusive
15 means by which electronic surveillance and the intercep-
16 tion of domestic wire, oral, or electronic communications
17 may be conducted.

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

24 (b) OFFENSE.—Section 109(a) of the Foreign Intel-
25 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
26 amended by striking “authorized by statute” each place

1 it appears in such section and inserting “authorized by
2 this Act, chapter 119, 121, or 206 of title 18, United
3 States Code, or any express statutory authorization that
4 is an additional exclusive means for conducting electronic
5 surveillance under section 112.”; and

6 (c) CONFORMING AMENDMENTS.—

7 (1) TITLE 18, UNITED STATES CODE.—Section
8 2511(2)(a) of title 18, United States Code, is
9 amended by adding at the end the following:

10 “(iii) If a certification under subpara-
11 graph (ii)(B) for assistance to obtain for-
12 eign intelligence information is based on
13 statutory authority, the certification shall
14 identify the specific statutory provision,
15 and shall certify that the statutory require-
16 ments have been met.”; and

17 (2) TABLE OF CONTENTS.—The table of con-
18 tents in the first section of the Foreign Intelligence
19 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
20 is amended by inserting after the item relating to
21 section 111 the following new item:

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

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

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

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

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

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

24 “(2) a copy of any such decision, order, or opin-
25 ion, and any pleadings, applications, or memoranda
26 of law associated with such decision, order, or opin-

1 ion, that was issued during the 5-year period ending
2 on the date of the enactment of the FISA Amend-
3 ments Act of 2008 and not previously submitted in
4 a report under subsection (a).

5 “(d) PROTECTION OF NATIONAL SECURITY.—The
6 Attorney General, in consultation with the Director of Na-
7 tional Intelligence, may authorize redactions of materials
8 described in subsection (c) that are provided to the com-
9 mittees of Congress referred to in subsection (a), if such
10 redactions are necessary to protect the national security
11 of the United States and are limited to sensitive sources
12 and methods information or the identities of targets.”.

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

16 “(e) DEFINITIONS.—In this section:

17 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
18 COURT.—The term ‘Foreign Intelligence Surveillance
19 Court’ means the court established by section
20 103(a).

21 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
22 COURT OF REVIEW.—The term ‘Foreign Intelligence
23 Surveillance Court of Review’ means the court estab-
24 lished by section 103(b).”.

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

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

4 (1) in subsection (a)—

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

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

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

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

15 (i) by striking “Affairs or” and insert-
16 ing “Affairs,”; and

17 (ii) By striking “Senate—” and in-
18 sserting “Senate, or the Deputy Director of
19 the Federal Bureau of Investigation, if
20 designated by the President as a certifying
21 official—”;

22 (E) in paragraph (7), as redesignated by
23 subparagraph (B) of this paragraph, by striking
24 “statement of” and inserting “summary state-
25 ment of”;

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

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

7 (2) by striking subsection (b);

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

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

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

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

18 (1) in subsection (a)—

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

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

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

25 (3) in subsection (c)(1)—

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

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

5 (C) by striking subparagraph (F);

6 (4) by striking subsection (d);

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

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

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

15 “(A) reasonably determines that an emer-
16 gency situation exists with respect to the em-
17 ployment of electronic surveillance to obtain for-
18 eign intelligence information before an order
19 authorizing such surveillance can with due dili-
20 gence be obtained;

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

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

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

11 “(2) If the Attorney General authorizes the
12 emergency employment of electronic surveillance
13 under paragraph (1), the Attorney General shall re-
14 quire that the minimization procedures required by
15 this title for the issuance of a judicial order be fol-
16 lowed.

17 “(3) In the absence of a judicial order approv-
18 ing such electronic surveillance, the surveillance shall
19 terminate when the information sought is obtained,
20 when the application for the order is denied, or after
21 the expiration of 7 days from the time of authoriza-
22 tion by the Attorney General, whichever is earliest.

23 “(4) A denial of the application made under
24 this subsection may be reviewed as provided in sec-
25 tion 103.

1 “(5) In the event that such application for ap-
2 proval is denied, or in any other case where the elec-
3 tronic surveillance is terminated and no order is
4 issued approving the surveillance, no information ob-
5 tained or evidence derived from such surveillance
6 shall be received in evidence or otherwise disclosed
7 in any trial, hearing, or other proceeding in or be-
8 fore any court, grand jury, department, office, agen-
9 cy, regulatory body, legislative committee, or other
10 authority of the United States, a State, or political
11 subdivision thereof, and no information concerning
12 any United States person acquired from such sur-
13 veillance shall subsequently be used or disclosed in
14 any other manner by Federal officers or employees
15 without the consent of such person, except with the
16 approval of the Attorney General if the information
17 indicates a threat of death or serious bodily harm to
18 any person.

19 “(6) The Attorney General shall assess compli-
20 ance with the requirements of paragraph (5).”; and

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

22 “(i) In any case in which the Government makes an
23 application to a judge under this title to conduct electronic
24 surveillance involving communications and the judge
25 grants such application, upon the request of the applicant,

1 the judge shall also authorize the installation and use of
2 pen registers and trap and trace devices, and direct the
3 disclosure of the information set forth in section
4 402(d)(2).”.

5 **SEC. 106. USE OF INFORMATION.**

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

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

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

14 (1) in subsection (a)—

15 (A) by striking paragraph (2);

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

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

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

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

4 (i) by striking “Affairs or” and insert-
5 ing “Affairs,”; and

6 (ii) By striking “Senate—” and in-
7 serting “Senate, or the Deputy Director of
8 the Federal Bureau of Investigation, if
9 designated by the President as a certifying
10 official—”; and

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

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

18 (1) in subsection (a)—

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

20 (B) by redesignating paragraphs (2)
21 through (5) as paragraphs (1) through (4), re-
22 spectively; and

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

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

4 “(A) reasonably determines that an emer-
5 gency situation exists with respect to the em-
6 ployment of a physical search to obtain foreign
7 intelligence information before an order author-
8 izing such physical search can with due dili-
9 gence be obtained;

10 “(B) reasonably determines that the fac-
11 tual basis for issuance of an order under this
12 title to approve such physical search exists;

13 “(C) informs, either personally or through
14 a designee, a judge of the Foreign Intelligence
15 Surveillance Court at the time of such author-
16 ization that the decision has been made to em-
17 ploy an emergency physical search; and

18 “(D) makes an application in accordance
19 with this title to a judge of the Foreign Intel-
20 ligence Surveillance Court as soon as prac-
21 ticable, but not more than 7 days after the At-
22 torney General authorizes such physical search.

23 “(2) If the Attorney General authorizes the
24 emergency employment of a physical search under
25 paragraph (1), the Attorney General shall require

1 that the minimization procedures required by this
2 title for the issuance of a judicial order be followed.

3 “(3) In the absence of a judicial order approv-
4 ing such physical search, the physical search shall
5 terminate when the information sought is obtained,
6 when the application for the order is denied, or after
7 the expiration of 7 days from the time of authoriza-
8 tion by the Attorney General, whichever is earliest.

9 “(4) A denial of the application made under
10 this subsection may be reviewed as provided in sec-
11 tion 103.

12 “(5)(A) In the event that such application for
13 approval is denied, or in any other case where the
14 physical search is terminated and no order is issued
15 approving the physical search, no information ob-
16 tained or evidence derived from such physical search
17 shall be received in evidence or otherwise disclosed
18 in any trial, hearing, or other proceeding in or be-
19 fore any court, grand jury, department, office, agen-
20 cy, regulatory body, legislative committee, or other
21 authority of the United States, a State, or political
22 subdivision thereof, and no information concerning
23 any United States person acquired from such phys-
24 ical search shall subsequently be used or disclosed in
25 any other manner by Federal officers or employees

1 without the consent of such person, except with the
2 approval of the Attorney General if the information
3 indicates a threat of death or serious bodily harm to
4 any person.

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

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

10 (1) in section 304(a)(4), as redesignated by
11 subsection (b) of this section, by striking
12 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

13 (2) in section 305(k)(2), by striking
14 “303(a)(7)” and inserting “303(a)(6)”.

15 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**

16 **AND TRAP AND TRACE DEVICES.**

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

19 (1) in subsection (a)(2), by striking “48 hours”
20 and inserting “7 days”; and

21 (2) in subsection (c)(1)(C), by striking “48
22 hours” and inserting “7 days”.

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

24 (a) DESIGNATION OF JUDGES.—Subsection (a) of
25 section 103 of the Foreign Intelligence Surveillance Act

1 of 1978 (50 U.S.C. 1803) is amended by inserting “at
2 least” before “seven of the United States judicial cir-
3 cuits”.

4 (b) EN BANC AUTHORITY.—

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

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

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

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

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

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

24 “(B) Any authority granted by this Act to a judge
25 of the court established under this subsection may be exer-

1 cised by the court en banc. When exercising such author-
2 ity, the court en banc shall comply with any requirements
3 of this Act on the exercise of such authority.

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

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

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

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

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

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

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

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

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

17 (d) **AUTHORITY OF FOREIGN INTELLIGENCE SUR-**
18 **VEILLANCE COURT.**—Section 103 of the Foreign Intel-
19 ligence Surveillance Act of 1978 (50 U.S.C. 1803), as
20 amended by this Act, is further amended by adding at the
21 end the following:

22 “(i) Nothing in this Act shall be construed to reduce
23 or contravene the inherent authority of the court estab-
24 lished by subsection (a) to determine or enforce compli-

1 ance with an order or a rule of such court or with a proce-
2 dure approved by such court.”.

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

4 (a) DEFINITIONS.—In this section:

5 (1) APPROPRIATE COMMITTEES OF CON-
6 GRESS.—The term “appropriate committees of Con-
7 gress” means—

8 (A) the Select Committee on Intelligence
9 and the Committee on the Judiciary of the Sen-
10 ate; and

11 (B) the Permanent Select Committee on
12 Intelligence and the Committee on the Judici-
13 ary of the House of Representatives.

14 (2) FOREIGN INTELLIGENCE SURVEILLANCE
15 COURT.—The term “Foreign Intelligence Surveil-
16 lance Court” means the court established by section
17 103(a) of the Foreign Intelligence Surveillance Act
18 of 1978 (50 U.S.C. 1803(a)).

19 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND
20 PROGRAM.—The terms “President’s Surveillance
21 Program” and “Program” mean the intelligence ac-
22 tivity involving communications that was authorized
23 by the President during the period beginning on
24 September 11, 2001, and ending on January 17,
25 2007, including the program referred to by the

1 President in a radio address on December 17, 2005
2 (commonly known as the Terrorist Surveillance Pro-
3 gram).

4 (b) REVIEWS.—

5 (1) REQUIREMENT TO CONDUCT.—The Inspec-
6 tors General of the Department of Justice, the Of-
7 fice of the Director of National Intelligence, the Na-
8 tional Security Agency, and any other element of the
9 intelligence community that participated in the
10 President’s Surveillance Program shall complete a
11 comprehensive review of, with respect to the over-
12 sight authority and responsibility of each such In-
13 spector General—

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

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

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

22 (D) interaction with the Foreign Intel-
23 ligence Surveillance Court and transition to
24 court orders related to the Program; and

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

6 (2) COOPERATION AND COORDINATION.—

7 (A) COOPERATION.—Each Inspector Gen-
8 eral required to conduct a review under para-
9 graph (1) shall—

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

13 (ii) utilize, to the extent practicable,
14 and not unnecessarily duplicate or delay
15 such reviews or audits that have been com-
16 pleted or are being undertaken by any such
17 Inspector General or by any other office of
18 the Executive Branch related to the Pro-
19 gram.

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

1 to coordinate the conduct of the reviews and the
2 preparation of the reports.

3 (c) REPORTS.—

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

13 (2) FINAL REPORT.—Not later than 1 year
14 after the date of the enactment of this Act, the In-
15 spectors General of the Department of Justice, the
16 Office of the Director of National Intelligence, the
17 National Security Agency, and any other Inspector
18 General required to conduct a review under sub-
19 section (b)(1) shall submit to the appropriate com-
20 mittees of Congress and the Commission established
21 under section 301(a) a comprehensive report on such
22 reviews that includes any recommendations of any
23 such Inspectors General within the oversight author-
24 ity and responsibility of any such Inspector General.

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

9 (d) RESOURCES.—

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

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

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

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

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

7 (a) DEFINITIONS.—

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

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

13 (B) in paragraph (6), by striking the pe-
14 riod and inserting “; or”; and

15 (C) by adding at the end the following new
16 paragraph:

17 “(7) an entity not substantially composed of
18 United States persons that is engaged in the inter-
19 national proliferation of weapons of mass destruc-
20 tion.”.

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

23 (A) in subparagraph (B), by striking “or”
24 at the end; and

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

3 “(D) engages in the international prolifera-
4 tion of weapons of mass destruction, or activi-
5 ties in preparation therefor; or”.

6 (3) FOREIGN INTELLIGENCE INFORMATION.—
7 Subsection (e)(1)(B) of such section 101 is amended
8 by striking “sabotage or international terrorism”
9 and inserting “sabotage, international terrorism, or
10 the international proliferation of weapons of mass
11 destruction”.

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

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

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

19 “(2) any weapon that is designed or intended to
20 cause death or serious bodily injury to a significant
21 number of persons through the release, dissemina-
22 tion, or impact of toxic or poisonous chemicals or
23 their precursors;

24 “(3) any weapon involving a biological agent,
25 toxin, or vector (as such terms are defined in section

1 178 of title 18, United States Code) that is de-
2 signed, intended, or has the capability of causing
3 death, illness, or serious bodily injury to a signifi-
4 cant number of persons; or

5 “(4) any weapon that is designed, intended, or
6 has the capability of releasing radiation or radioac-
7 tivity causing death, illness, or serious bodily injury
8 to a significant number of persons.”.

9 (b) USE OF INFORMATION.—

10 (1) IN GENERAL.—Section 106(k)(1)(B) of the
11 Foreign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
13 otage or international terrorism” and inserting “sab-
14 otage, international terrorism, or the international
15 proliferation of weapons of mass destruction”.

16 (2) PHYSICAL SEARCHES.—Section
17 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
18 is amended by striking “sabotage or international
19 terrorism” and inserting “sabotage, international
20 terrorism, or the international proliferation of weap-
21 ons of mass destruction”.

22 (c) TECHNICAL AND CONFORMING AMENDMENT.—
23 Section 301(1) of the Foreign Intelligence Surveillance
24 Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting
25 “weapon of mass destruction ,” after “person,”.

1 **SEC. 112. STATUTE OF LIMITATIONS.**

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

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

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

16 **TITLE II—PROTECTION OF PER-**
17 **SONS ASSISTING THE GOV-**
18 **ERNMENT**

19 **SEC. 201. STATUTORY DEFENSES.**

20 The Foreign Intelligence Surveillance Act of 1978
21 (50 U.S.C. 1801 et seq.) is amended by adding after title
22 VII the following:

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

4 **“SEC. 801. DEFINITIONS.**

5 “In this title:

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

12 “(2) ATTORNEY GENERAL.—The term ‘Attor-
13 ney General’ has the meaning given that term in
14 section 101(g).

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

17 “(4) COVERED CIVIL ACTION.—The term ‘cov-
18 ered civil action’ means a suit in Federal or State
19 court against any person for providing assistance to
20 an element of the intelligence community.

21 “(5) ELECTRONIC COMMUNICATION SERVICE
22 PROVIDER.—The term ‘electronic communication
23 service provider’ means—

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

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

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

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

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

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

21 “(6) INTELLIGENCE COMMUNITY.—The term
22 ‘intelligence community’ has the meaning given that
23 term in section 3(4) of the National Security Act of
24 1947 (50 U.S.C. 401a(4)).

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

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

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

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

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

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

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

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

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

1 to intervene. Whether or not the Government intervenes
2 in the civil action, the Attorney General may submit any
3 information in any form the Attorney General determines
4 is appropriate and the court shall consider all such sub-
5 missions.

6 “(b) **FACTUAL DETERMINATIONS.**—In any covered
7 civil action, the court shall review in accordance with the
8 procedures set forth in section 106(f) any evidence or in-
9 formation with respect to which a privilege based on state
10 secrets is asserted, whether that evidence or information
11 is submitted by any party or the Government. The court
12 may, on motion of the Attorney General, take any addi-
13 tional actions the court deems necessary to protect classi-
14 fied information. In order to ensure full argument of all
15 legal issues, the court shall, to the extent practicable and
16 consistent with national security, request that any party
17 present briefs and arguments on any legal question the
18 court determines is raised by such a submission even if
19 that party does not have full access to such submission.
20 The court shall consider whether the employment of a spe-
21 cial master or an expert witness, or both, would facilitate
22 proceedings under this section.

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

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

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

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

17 **SEC. 202. TECHNICAL AMENDMENTS.**

18 The table of contents in the first section of the For-
19 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
20 1801 et seq.) is amended by adding at the end the fol-
21 lowing:

“TITLE VIII-PROTECTION OF PERSONS ASSISTING THE
GOVERNMENT

“Sec. 801. Definitions

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

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

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

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

11 (b) DUTIES OF COMMISSION.—The Commission
12 shall—

13 (1) ascertain, evaluate, and report upon the
14 facts and circumstances relating to electronic sur-
15 veillance activities conducted without a warrant be-
16 tween September 11, 2001 and January 17, 2007;

17 (2) evaluate the lawfulness of such activities;

18 (3) examine all programs and activities relating
19 to intelligence collection inside the United States or
20 regarding United States persons that were in effect
21 or operation on September 11, 2001, and all such
22 programs and activities undertaken since that date,
23 including the legal framework or justification for
24 those activities; and

1 (4) report to the President and Congress the
2 findings and conclusions of the Commission and any
3 recommendations the Commission considers appro-
4 priate.

5 (c) COMPOSITION OF COMMISSION.—

6 (1) MEMBERS.—The Commission shall be com-
7 posed of 9 members, of whom—

8 (A) 5 members shall be appointed jointly
9 by the majority leader of the Senate and the
10 Speaker of the House of Representatives; and

11 (B) 4 members shall be appointed jointly
12 by the minority leader of the Senate and the
13 minority leader of the House of Representa-
14 tives.

15 (2) QUALIFICATIONS.—It is the sense of Con-
16 gress that individuals appointed to the Commission
17 should be prominent United States citizens with sig-
18 nificant depth of experience in national security,
19 Constitutional law, and civil liberties.

20 (3) CHAIR; VICE CHAIR.—

21 (A) CHAIR.—The Chair of the Commission
22 shall be jointly appointed by the majority leader
23 of the Senate and the Speaker of the House of
24 Representatives from among the members ap-
25 pointed under paragraph (1)(A).

1 (B) VICE CHAIR.—The Vice Chair of the
2 Commission shall be jointly appointed by the
3 minority leader of the Senate and the minority
4 leader of the House of Representatives from
5 among the members appointed under paragraph
6 (1)(B).

7 (4) DEADLINE FOR APPOINTMENT.—All mem-
8 bers of the Commission shall be appointed not later
9 than 90 days after the date of the enactment of this
10 Act.

11 (5) INITIAL MEETING.—The Commission shall
12 hold its first meeting and begin operations not later
13 than 45 days after the date on which a majority of
14 its members have been appointed.

15 (6) SUBSEQUENT MEETINGS.—After its initial
16 meeting, the Commission shall meet upon the call of
17 the Chair.

18 (7) QUORUM.—A majority of the members of
19 the Commission shall constitute a quorum, but a
20 lesser number may hold hearings.

21 (8) VACANCIES.—Any vacancy in the Commis-
22 sion shall not affect its powers and shall be filled in
23 the same manner in which the original appointment
24 was made.

25 (d) POWERS OF COMMISSION.—

1 (1) HEARINGS AND EVIDENCE.—The Commis-
2 sion or, on the authority of the Chair, any sub-
3 committee or member thereof may, for the purpose
4 of carrying out this section, hold such hearings and
5 sit and act at such times and places, take such testi-
6 mony, receive such evidence, and administer such
7 oaths as the Commission, such designated sub-
8 committee, or designated member may determine ad-
9 visable.

10 (2) SUBPOENAS.—

11 (A) ISSUANCE.—

12 (i) IN GENERAL.—The Commission
13 may issue subpoenas requiring the attend-
14 ance and testimony of witnesses and the
15 production of any evidence relating to any
16 matter that the Commission is empowered
17 to investigate under this section. The at-
18 tendance of witnesses and the production
19 of evidence may be required from any place
20 within the United States at any designated
21 place of hearing within the United States.

22 (ii) SIGNATURE.—Subpoenas issued
23 under this paragraph may be issued under
24 the signature of the Chair of the Commis-
25 sion, the chair of any subcommittee cre-

1 ated by a majority of the Commission, or
2 any member designated by a majority of
3 the Commission and may be served by any
4 person designated by such Chair, sub-
5 committee chair, or member.

6 (B) ENFORCEMENT.—

7 (i) IN GENERAL.—If a person refuses
8 to obey a subpoena issued under subpara-
9 graph (A), the Commission may apply to a
10 United States district court for an order
11 requiring that person to appear before the
12 Commission to give testimony, produce evi-
13 dence, or both, relating to the matter
14 under investigation. The application may
15 be made within the judicial district where
16 the hearing is conducted or where that per-
17 son is found, resides, or transacts business.
18 Any failure to obey the order of the court
19 may be punished by the court as civil con-
20 tempt.

21 (ii) JURISDICTION.—In the case of
22 contumacy or failure to obey a subpoena
23 issued under subparagraph (A), the United
24 States district court for the judicial district
25 in which the subpoenaed person resides, is

1 served, or may be found, or where the sub-
2 poena is returnable, may issue an order re-
3 quiring such person to appear at any des-
4 ignated place to testify or to produce docu-
5 mentary or other evidence. Any failure to
6 obey the order of the court may be pun-
7 ished by the court as a contempt of that
8 court.

9 (iii) ADDITIONAL ENFORCEMENT.—In
10 the case of the failure of a witness to com-
11 ply with any subpoena or to testify when
12 summoned under authority of this para-
13 graph, the Commission, by majority vote,
14 may certify a statement of fact attesting to
15 such failure to the appropriate United
16 States attorney, who shall bring the matter
17 before the grand jury for its action, under
18 the same statutory authority and proce-
19 dures as if the United States attorney had
20 received a certification under sections 102
21 through 104 of the Revised Statutes of the
22 United States (2 U.S.C. 192 through 194).

23 (3) CONTRACTING.—The Commission may, to
24 such extent and in such amounts as are provided in
25 appropriations Acts, enter into contracts to enable

1 the Commission to discharge its duties under this
2 section.

3 (4) INFORMATION FROM FEDERAL AGENCIES.—

4 (A) IN GENERAL.—The Commission is au-
5 thorized to secure directly from any executive
6 department, bureau, agency, board, commission,
7 office, independent establishment, or instrumen-
8 tality of the Government documents, informa-
9 tion, suggestions, estimates, and statistics for
10 the purposes of this section. Each department,
11 bureau, agency, board, commission, office, inde-
12 pendent establishment, or instrumentality shall
13 furnish such documents, information, sugges-
14 tions, estimates, and statistics directly to the
15 Commission upon request made by the Chair,
16 the chair of any subcommittee created by a ma-
17 jority of the Commission, or any member des-
18 igned by a majority of the Commission.

19 (B) RECEIPT, HANDLING, STORAGE, AND
20 DISSEMINATION.—Information shall only be re-
21 ceived, handled, stored, and disseminated by
22 members of the Commission and its staff con-
23 sistent with all applicable statutes, regulations,
24 and Executive orders.

25 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

1 (A) GENERAL SERVICES ADMINISTRA-
2 TION.—The Administrator of General Services
3 shall provide to the Commission on a reimburs-
4 able basis administrative support and other
5 services for the performance of the Commis-
6 sion's functions.

7 (B) OTHER DEPARTMENTS AND AGEN-
8 CIES.—In addition to the assistance prescribed
9 in subparagraph (A), departments and agencies
10 of the United States may provide to the Com-
11 mission such services, funds, facilities, staff,
12 and other support services as they may deter-
13 mine advisable and as may be authorized by
14 law.

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

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

22 (e) STAFF OF COMMISSION.—

23 (1) IN GENERAL.—

24 (A) APPOINTMENT AND COMPENSATION.—

25 The Chair, in consultation with Vice Chair and

1 in accordance with rules agreed upon by the
2 Commission, may appoint and fix the com-
3 pensation of an executive director and such
4 other personnel as may be necessary to enable
5 the Commission to carry out its functions, with-
6 out regard to the provisions of title 5, United
7 States Code, governing appointments in the
8 competitive service, and without regard to the
9 provisions of chapter 51 and subchapter III of
10 chapter 53 of such title relating to classification
11 and General Schedule pay rates, except that no
12 rate of pay fixed under this paragraph may ex-
13 ceed the equivalent of that payable for a posi-
14 tion at level V of the Executive Schedule under
15 section 5316 of title 5, United States Code.

16 (B) PERSONNEL AS FEDERAL EMPLOY-
17 EES.—

18 (i) IN GENERAL.—The executive di-
19 rector and any personnel of the Commis-
20 sion who are employees shall be employees
21 under section 2105 of title 5, United
22 States Code, for purposes of chapters 63,
23 81, 83, 84, 85, 87, 89, 89A, 89B, and 90
24 of that title.

1 (ii) MEMBERS OF COMMISSION.—

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

4 (2) DETAILEES.—A Federal Government em-
5 ployee may be detailed to the Commission without
6 reimbursement from the Commission, and such
7 detailee shall retain the rights, status, and privileges
8 of his or her regular employment without interrup-
9 tion.

10 (3) CONSULTANT SERVICES.—The Commission
11 is authorized to procure the services of experts and
12 consultants in accordance with section 3109 of title
13 5, United States Code, at rates not to exceed the
14 daily rate paid a person occupying a position at level
15 IV of the Executive Schedule under section 5315 of
16 title 5, United States Code.

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

19 (1) EXPEDITIOUS PROVISION OF CLEAR-
20 ANCES.—The appropriate Federal agencies or de-
21 partments shall cooperate with the Commission in
22 expeditiously providing to the Commission members
23 and staff appropriate security clearances to the ex-
24 tent possible pursuant to existing procedures and re-
25 quirements, except that no person shall be provided

1 with access to classified information under this sec-
2 tion without the appropriate security clearances.

3 (2) ACCESS TO CLASSIFIED INFORMATION RE-
4 LATED TO THE TERRORIST SURVEILLANCE PRO-
5 GRAM.—All members of the Commission and com-
6 mission staff, as authorized by the Chair or the des-
7 ignee of the Chair, who have obtained appropriate
8 security clearances, shall have access to classified in-
9 formation related to the surveillance activities within
10 the scope of the examination of the Commission and
11 any other related classified information that the
12 members of the Commission determine relevant to
13 carrying out the duties of the Commission under this
14 section.

15 (3) FACILITIES AND RESOURCES.—The Direc-
16 tor of National Intelligence shall provide the Com-
17 mission with appropriate space and technical facili-
18 ties approved by the Commission.

19 (g) COMPENSATION AND TRAVEL EXPENSES.—

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

1 member is engaged in the actual performance of the
2 duties of the Commission.

3 (2) TRAVEL EXPENSES.—While away from
4 their homes or regular places of business in the per-
5 formance of services for the Commission, members
6 of the Commission shall be allowed travel expenses,
7 including per diem in lieu of subsistence, in the
8 same manner as persons employed intermittently in
9 the Government service are allowed expenses under
10 section 5703(b) of title 5, United States Code.

11 (h) NONAPPLICABILITY OF FEDERAL ADVISORY
12 COMMITTEE ACT.—

13 (1) IN GENERAL.—The Federal Advisory Com-
14 mittee Act (5 U.S.C. App.) shall not apply to the
15 Commission.

16 (2) PUBLIC MEETINGS.—The Commission shall
17 hold public hearings and meetings to the extent ap-
18 propriate.

19 (3) PUBLIC HEARINGS.—Any public hearings of
20 the Commission shall be conducted in a manner con-
21 sistent with the protection of information provided
22 to or developed for or by the Commission as re-
23 quired by any applicable statute, regulation, or Ex-
24 ecutive order.

1 (i) REPORTS AND RECOMMENDATIONS OF COMMIS-
2 SION.—

3 (1) INTERIM REPORTS.—The Commission may
4 submit to the President and Congress interim re-
5 ports containing such findings, conclusions, and rec-
6 ommendations for corrective measures as have been
7 agreed to by a majority of Commission members.

8 (2) FINAL REPORT.—Not later than one year
9 after the date of its first meeting, the Commission,
10 in consultation with appropriate representatives of
11 the intelligence community, shall submit to the
12 President and Congress a final report containing
13 such information, analysis, findings, conclusions, and
14 recommendations as have been agreed to by a major-
15 ity of Commission members.

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

19 (4) RECOMMENDATIONS FOR DECLASSIFICA-
20 TION.—The Commission may make recommenda-
21 tions to the appropriate department or agency of the
22 Federal Government regarding the declassification of
23 documents or portions of documents.

24 (j) TERMINATION.—

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

5 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
6 MINATION.—The Commission may use the 60-day
7 period referred to in paragraph (1) for the purpose
8 of concluding its activities, including providing testi-
9 mony to committees of Congress concerning its re-
10 port and disseminating the final report.

11 (k) DEFINITIONS.—In this section:

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

16 (2) UNITED STATES PERSON.—The term
17 “United States person” has the meaning given the
18 term in section 101(i) of the Foreign Intelligence
19 Surveillance Act of 1978 (50 U.S.C. 1801(i)).

20 (l) FUNDING.—

21 (1) IN GENERAL.—There are authorized to be
22 appropriated such sums as may be necessary to
23 carry out the activities of the Commission under this
24 section.

1 (2) DURATION OF AVAILABILITY.—Amounts
2 made available to the Commission under paragraph
3 (1) shall remain available until the termination of
4 the Commission.

5 **TITLE IV—OTHER PROVISIONS**

6 **SEC. 401. SEVERABILITY.**

7 If any provision of this Act, any amendment made
8 by this Act, or the application thereof to any person or
9 circumstances is held invalid, the validity of the remainder
10 of the Act, any such amendments, and of the application
11 of such provisions to other persons and circumstances
12 shall not be affected thereby.

13 **SEC. 402. EFFECTIVE DATE.**

14 Except as provided in section 404, the amendments
15 made by this Act shall take effect on the date of the enact-
16 ment of this Act.

17 **SEC. 403. REPEALS.**

18 (a) REPEAL OF PROTECT AMERICA ACT OF 2007
19 PROVISIONS.—

20 (1) AMENDMENTS TO FISA.—

21 (A) IN GENERAL.—Except as provided in
22 section 404, sections 105A, 105B, and 105C of
23 the Foreign Intelligence Surveillance Act of
24 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are
25 repealed.

1 (B) TECHNICAL AND CONFORMING AMEND-
2 MENTS.—

3 (i) TABLE OF CONTENTS.—The table
4 of contents in the first section of the For-
5 eign Intelligence Surveillance Act of 1978
6 (50 U.S.C. 1801 nt) is amended by strik-
7 ing the items relating to sections 105A,
8 105B, and 105C.

9 (ii) CONFORMING AMENDMENTS.—Ex-
10 cept as provided in section 404, section
11 103(e) of the Foreign Intelligence Surveil-
12 lance Act of 1978 (50 U.S.C. 1803(e)) is
13 amended—

14 (I) in paragraph (1), by striking
15 “105B(h) or 501(f)(1)” and inserting
16 “501(f)(1) or 702(h)(4)”; and

17 (II) in paragraph (2), by striking
18 “105B(h) or 501(f)(1)” and inserting
19 “501(f)(1) or 702(h)(4)”.

20 (2) REPORTING REQUIREMENTS.—Except as
21 provided in section 404, section 4 of the Protect
22 America Act of 2007 (Public Law 110-55; 121 Stat.
23 555) is repealed.

24 (3) TRANSITION PROCEDURES.—Except as pro-
25 vided in section 404, subsection (b) of section 6 of

1 the Protect America Act of 2007 (Public Law 110-
2 55; 121 Stat. 556) is repealed.

3 (b) FISA AMENDMENTS ACT OF 2008.—

4 (1) IN GENERAL.—Except as provided in sec-
5 tion 404, effective December 31, 2009, title VII of
6 the Foreign Intelligence Surveillance Act of 1978, as
7 amended by section 101(a), is repealed.

8 (2) TECHNICAL AND CONFORMING AMEND-
9 MENTS.—Effective December 31, 2009—

10 (A) the table of contents in the first sec-
11 tion of such Act (50 U.S.C. 1801 nt) is amend-
12 ed by striking the items related to title VII;

13 (B) except as provided in section 404, sec-
14 tion 601(a)(1) of such Act (50 U.S.C.
15 1871(a)(1)) is amended to read as such section
16 read on the day before the date of the enact-
17 ment of this Act; and

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

23 **SEC. 404. TRANSITION PROCEDURES.**

24 (a) TRANSITION PROCEDURES FOR PROTECT AMER-
25 ICA ACT OF 2007 PROVISIONS.—

1 (1) CONTINUED EFFECT OF ORDERS, AUTHOR-
2 IZATIONS, DIRECTIVES.—Notwithstanding any other
3 provision of law, any order, authorization, or direc-
4 tive issued or made pursuant to section 105B of the
5 Foreign Intelligence Surveillance Act of 1978, as
6 added by section 2 of the Protect America Act of
7 2007 (Public Law 110-55; 121 Stat. 552), shall con-
8 tinue in effect until the expiration of such order, au-
9 thorization, or directive.

10 (2) APPLICABILITY OF PROTECT AMERICA ACT
11 OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS,
12 DIRECTIVES.—Notwithstanding any other provision
13 of this Act or of the Foreign Intelligence Surveil-
14 lance Act of 1978 (50 U.S.C. 1801 et seq.)—

15 (A) subject to paragraph (3), section 105A
16 of such Act, as added by section 2 of the Pro-
17 tect America Act of 2007 (Public Law 110-55;
18 121 Stat. 552), shall continue to apply to any
19 acquisition conducted pursuant to an order, au-
20 thorization, or directive referred to in para-
21 graph (1); and

22 (B) sections 105B and 105C of such Act
23 (as so added) shall continue to apply with re-
24 spect to an order, authorization, or directive re-

1 ferred to in paragraph (1) until the expiration
2 of such order, authorization, or directive.

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

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

17 (5) JURISDICTION OF FOREIGN INTELLIGENCE
18 SURVEILLANCE COURT.—Notwithstanding any other
19 provision of this Act or of the Foreign Intelligence
20 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
21 section 103(e), as amended by section 5(a) of the
22 Protect America Act of 2007 (Public Law 110-55;
23 121 Stat. 556), shall continue to apply with respect
24 to a directive issued pursuant to section 105B of the
25 Foreign Intelligence Surveillance Act of 1978, as

1 added by section 2 of the Protect America Act of
2 2007, until the expiration of all orders, authoriza-
3 tions, and directives issued or made pursuant to
4 such section.

5 (6) REPORTING REQUIREMENTS.—

6 (A) CONTINUED APPLICABILITY.—Not-
7 withstanding any other provision of this Act,
8 the Protect America Act of 2007 (Public Law
9 110-55), or the Foreign Intelligence Surveil-
10 lance Act of 1978 (50 U.S.C. 1801 et seq.),
11 section 4 of the Protect America Act of 2007
12 shall continue to apply until the date that the
13 certification described in subparagraph (B) is
14 submitted.

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

17 (i) made by the Attorney General;
18 (ii) submitted as part of a semi-an-
19 nual report required by section 4 of the
20 Protect America Act of 2007;

21 (iii) that states that there will be no
22 further acquisitions carried out under sec-
23 tion 105B of the Foreign Intelligence Sur-
24 veillance Act of 1978, as added by section

1 2 of the Protect America Act of 2007,
2 after the date of such certification; and

3 (iv) that states that the information
4 required to be included under such section
5 4 relating to any acquisition conducted
6 under such section 105B has been included
7 in a semi-annual report required by such
8 section 4.

9 (7) EFFECTIVE DATE.—Paragraphs (1)
10 through (6) shall take effect as if enacted on August
11 5, 2007.

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

14 (1) ORDERS IN EFFECT ON DECEMBER 31,
15 2009.—Notwithstanding any other provision of this
16 Act or of the Foreign Intelligence Surveillance Act
17 of 1978 (50 U.S.C. 1801 et seq.), any order, author-
18 ization, or directive issued or made under title VII
19 of the Foreign Intelligence Surveillance Act of 1978,
20 as amended by section 101(a), shall continue in ef-
21 fect until the date of the expiration of such order,
22 authorization, or directive.

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

1 Act or of the Foreign Intelligence Surveillance Act
2 of 1978 (50 U.S.C. 1801 et seq.), with respect to
3 any order, authorization, or directive referred to in
4 paragraph (1), title VII of such Act, as amended by
5 section 101(a), shall continue to apply until the expi-
6 ration of such order, authorization, or directive.

7 (3) CHALLENGE OF DIRECTIVES; PROTECTION
8 FROM LIABILITY; USE OF INFORMATION.—Notwith-
9 standing any other provision of this Act or of the
10 Foreign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1801 et seq.)—

12 (A) section 103(e) of such Act, as amended
13 by section 113, shall continue to apply with re-
14 spect to any directive issued pursuant to section
15 702(h) of such Act, as added by section 101(a);

16 (B) section 702(h)(3) of such Act (as so
17 added) shall continue to apply with respect to
18 any directive issued pursuant to section 702(h)
19 of such Act (as so added);

20 (C) section 703(e) of such Act (as so
21 added) shall continue to apply with respect to
22 an order or request for emergency assistance
23 under that section;

24 (D) section 706 of such Act (as so added)
25 shall continue to apply to an acquisition con-

1 ducted under section 702 or 703 of such Act
2 (as so added); and

3 (E) section 2511(2)(a)(ii)(A) of title 18,
4 United States Code, as amended by section
5 101(c)(1), shall continue to apply to an order
6 issued pursuant to section 704 of the Foreign
7 Intelligence Surveillance Act of 1978, as added
8 by section 101(a).

9 (4) REPORTING REQUIREMENTS.—

10 (A) CONTINUED APPLICABILITY.—Not-
11 withstanding any other provision of this Act or
12 of the Foreign Intelligence Surveillance Act of
13 1978 (50 U.S.C. 1801 et seq.), section 601(a)
14 of such Act (50 U.S.C. 1871(a)), as amended
15 by section 101(c)(2), and sections 702(l) and
16 707 of such Act, as added by section 101(a),
17 shall continue to apply until the date that the
18 certification described in subparagraph (B) is
19 submitted.

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

22 (i) made by the Attorney General;

23 (ii) submitted to the Select Committee
24 on Intelligence of the Senate, the Perma-
25 nent Select Committee on Intelligence of

1 the House of Representatives, and the
2 Committees on the Judiciary of the Senate
3 and the House of Representatives;

4 (iii) that states that there will be no
5 further acquisitions carried out under title
6 VII of the Foreign Intelligence Surveil-
7 lance Act of 1978, as amended by section
8 101(a), after the date of such certification;
9 and

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

20 (5) TRANSITION PROCEDURES CONCERNING
21 THE TARGETING OF UNITED STATES PERSONS OVER-
22 SEAS.—Any authorization in effect on the date of
23 enactment of this Act under section 2.5 of Executive
24 Order 12333 to intentionally target a United States
25 person reasonably believed to be located outside the

1 United States shall continue in effect, and shall con-
2 stitute a sufficient basis for conducting such an ac-
3 quisition targeting a United States person located
4 outside the United States until the earlier of—

5 (A) the date that such authorization ex-
6 pires; or

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

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

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

15 **SEC. 406. SURVEILLANCE TO PROTECT THE UNITED**
16 **STATES.**

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

22 (1) prevent Osama Bin Laden, al Qaeda, or any
23 other terrorist or terrorist organization from attack-
24 ing the United States, any United States person, or
25 any ally of the United States;

1 (2) ensure the safety and security of members
2 of the United States Armed Forces or any other of-
3 ficer or employee of the Federal Government in-
4 volved in protecting the national security of the
5 United States; or

6 (3) protect the United States, any United
7 States person, or any ally of the United States from
8 threats posed by weapons of mass destruction or
9 other threats to national security.