

## HOUSE AMENDMENT TO THE SENATE

### AMENDMENT TO H.R. 3773

**OFFERED BY** Mr. Conyers of Michigan and Mr. Reyes of Texas

In lieu of the matter proposed to be inserted by the  
Senate, 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-  
17 lance’, ‘foreign intelligence information’, ‘foreign power’,  
18 ‘minimization procedures’, ‘person’, ‘United States’, and

1 ‘United States person’ have the meanings given such  
2 terms in section 101, except as specifically provided in this  
3 title.

4 “(b) ADDITIONAL DEFINITIONS.—

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

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

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

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

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

21 “(4) 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; 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 for acquisitions authorized under subsection  
11 (a) that—

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

22                   “(g) CERTIFICATION.—

23                   “(1) IN GENERAL.—

24                   “(A) REQUIREMENT.—Subject to subpara-  
25          graph (B), if the Attorney General and the Di-

1           rector of National Intelligence seek to authorize  
2           an acquisition under this section, the Attorney  
3           General and the Director of National Intel-  
4           ligence shall provide, under oath, a written cer-  
5           tification, as described in this subsection.

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

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

22                  “(A) attest that—

23                          “(i) there are reasonable procedures  
24                          in place for determining that the acquisi-  
25                          tion authorized under subsection (a)—

1           “(I) is targeted at persons rea-  
2           sonably believed to be located outside  
3           the United States and such proce-  
4           dures have been submitted to the For-  
5           eign Intelligence Surveillance Court;  
6           and

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

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

21          “(iii) the minimization procedures to  
22          be used with respect to such acquisition—

23                  “(I) meet the definition of mini-  
24                  mization procedures under section

1 101(h) or section 301(4) in accord-  
2 ance with subsection (e); and

3 “(II) have been submitted to the  
4 Foreign Intelligence Surveillance  
5 Court;

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

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

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

18 “(vii) the acquisition complies with  
19 the limitations in subsection (b);

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

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

1                   “(ii) the head of an element of the in-  
2                   telligence community; and

3                   “(C) include—

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

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

12                  “(I) the date the acquisition  
13                  began or the effective date for the ac-  
14                  quisition;

15                  “(II) a description of why imple-  
16                  mentation was required in less than  
17                  30 days from the submission of the  
18                  written certification to the court; and

19                  “(III) if the acquisition is au-  
20                  thorized under paragraph (1)(B), the  
21                  basis for the determination that an  
22                  emergency situation exists, immediate  
23                  action by the government is required,  
24                  and time does not permit the comple-

1                   tion of judicial review prior to the ini-  
2                   tiation of the acquisition.

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

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

19                  “(5) REVIEW.—A certification submitted pursu-  
20                  ant to this subsection shall be subject to judicial re-  
21                  view pursuant to subsection (i).

22                  “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-  
23                  TIVES.—

24                  “(1) AUTHORITY.—Pursuant to an order issued  
25                  in accordance with subsection (i)(3) or a determina-

1           tion under subsection (g)(1)(B), the Attorney Gen-  
2           eral and the Director of National Intelligence may  
3           direct, in writing, an electronic communication serv-  
4           ice provider to—

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

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

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

1           “(3) RELEASE FROM LIABILITY.—Notwith-  
2 standing any other provision of law, no cause of ac-  
3 tion shall lie in any court against any electronic  
4 communication service provider for providing any in-  
5 formation, facilities, or assistance in accordance with  
6 a directive issued pursuant to paragraph (1).

7           “(4) CHALLENGING OF DIRECTIVES.—

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

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

21           “(C) STANDARDS FOR REVIEW.—A judge  
22 considering a petition to modify or set aside a  
23 directive may grant such petition only if the  
24 judge finds that the directive does not meet the



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

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

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

1           tition not later than 30 days after being as-  
2           signed the petition. If the judge does not set  
3           aside the directive, the judge shall immediately  
4           affirm or modify the directive and order the re-  
5           cipient to comply with the directive in its en-  
6           tirety or as modified. The judge shall provide a  
7           written statement for the records of the reasons  
8           for a determination under this subparagraph.

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

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

16          “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

1 “(6) APPEAL.—

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

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

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

25 “(1) IN GENERAL.—

1           “(A) REVIEW BY THE FOREIGN INTEL-  
2           LIGENCE SURVEILLANCE COURT.—The Foreign  
3           Intelligence Surveillance Court shall have juris-  
4           diction to review any certification submitted  
5           pursuant to subsection (g) and the targeting  
6           and minimization procedures required by sub-  
7           sections (d) and (e).

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

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

18                 “(A) CERTIFICATIONS.—A certification  
19                 submitted pursuant to subsection (g) to deter-  
20                 mine whether the certification contains all the  
21                 required elements.

22                 “(B) TARGETING PROCEDURES.—The tar-  
23                 geting procedures required by subsection (d) to  
24                 assess whether the procedures are reasonably  
25                 designed to ensure that the acquisition author-

1           ized under subsection (a) is limited to the tar-  
2           geting of persons reasonably believed to be lo-  
3           cated outside the United States and does not  
4           result in the intentional acquisition of any com-  
5           munication as to which the sender and all in-  
6           tended recipients are known at the time of the  
7           acquisition to be located in the United States.

8           “(C) MINIMIZATION PROCEDURES.—The  
9           minimization procedures required by subsection  
10          (e) to assess whether such procedures meet the  
11          definition of minimization procedures under sec-  
12          tion 101(h) or section 301(4) in accordance  
13          with subsection (e).

14          “(3) ORDERS.—

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

1           “(B) CORRECTION OF DEFICIENCIES.—If  
2           the Court finds that a certification submitted  
3           pursuant to subsection (g) does not contain all  
4           of the required elements or that the procedures  
5           required by subsections (d) and (e) are not con-  
6           sistent with the requirements of those sub-  
7           sections or the fourth amendment to the Con-  
8           stitution of the United States—

9                   “(i) in the case of a certification sub-  
10                   mitted in accordance with subsection  
11                   (g)(1)(A), the Court shall deny the order,  
12                   identify any deficiency in the certification  
13                   or procedures, and provide the Government  
14                   with an opportunity to correct such defi-  
15                   ciency; and

16                   “(ii) in the case of a certification sub-  
17                   mitted in accordance with subsection  
18                   (g)(1)(B), the Court shall issue an order  
19                   directing the Government to, at the Gov-  
20                   ernment’s election and to the extent re-  
21                   quired by the Court’s order—

22                           “(I) correct any deficiency identi-  
23                           fied by the Court not later than 30  
24                           days after the date the Court issues  
25                           the order; or

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

3                                   “(C) REQUIREMENT FOR WRITTEN STATE-  
4                                   MENT.—In support of its orders under this sub-  
5                                   section, the Court shall provide, simultaneously  
6                                   with the orders, for the record a written state-  
7                                   ment of its reasons.

8                                   “(4) APPEAL.—

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

18                                  “(B) CONTINUATION OF ACQUISITION  
19                                  PENDING REHEARING OR APPEAL.—Any acqui-  
20                                  sition affected by an order under paragraph  
21                                  (3)(B)(ii) may continue—

22   “(i) during the pendency of any re-  
23   hearing of the order by the Court en banc;  
24   and



1                   “(ii) if the Government appeals an  
2                   order under this section, subject to sub-  
3                   paragraph (C), until the Court of Review  
4                   enters an order under subparagraph (A).

5                   “(C) IMPLEMENTATION OF EMERGENCY  
6                   AUTHORITY PENDING APPEAL.—Not later than  
7                   60 days after the filing of an appeal of an order  
8                   issued under paragraph (3)(B)(ii) directing the  
9                   correction of a deficiency, the Court of Review  
10                  shall determine, and enter a corresponding  
11                  order regarding whether all or any part of the  
12                  correction order, as issued or modified, shall be  
13                  implemented during the pendency of the appeal.  
14                  The Government shall conduct an acquisition  
15                  affected by such order issued under paragraph  
16                  (3)(B)(ii) in accordance with an order issued  
17                  under this subparagraph or shall cease such ac-  
18                  quisition.

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

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

3 “(5) SCHEDULE.—

4 “(A) REPLACEMENT OF AUTHORIZATIONS  
5 IN EFFECT.—If the Attorney General and the  
6 Director of National Intelligence seek to replace  
7 an authorization issued pursuant to section  
8 105B of the Foreign Intelligence Surveillance  
9 Act of 1978, as added by section 2 of the Pro-  
10 tect America Act of 2007 (Public Law 110-55),  
11 the Attorney General and the Director of Na-  
12 tional Intelligence shall, to the extent prac-  
13 ticable, submit to the Court a certification  
14 under subsection (g) and the procedures re-  
15 quired by subsections (d), (e), and (f) at least  
16 30 days before the expiration of such authoriza-  
17 tion.

18 “(B) REAUTHORIZATION OF AUTHORIZA-  
19 TIONS IN EFFECT.—If the Attorney General  
20 and the Director of National Intelligence seek  
21 to replace an authorization issued pursuant to  
22 this section, the Attorney General and the Di-  
23 rector of National Intelligence shall, to the ex-  
24 tent practicable, submit to the Court a certifi-  
25 cation under subsection (g) and the procedures

1 required by subsections (d), (e), and (f) at least  
2 30 days prior to the expiration of such author-  
3 ization.

4 “(C) CONSOLIDATED SUBMISSIONS.—The  
5 Attorney General and Director of National In-  
6 telligence shall, to the extent practicable, annu-  
7 ally submit to the Court a consolidation of—

8 “(i) certifications under subsection (g)  
9 for reauthorization of authorizations in ef-  
10 fect;

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

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

15 “(D) TIMING OF REVIEWS.—The Attorney  
16 General and the Director of National Intel-  
17 ligence shall, to the extent practicable, schedule  
18 the completion of the annual review under sub-  
19 section (l)(3) and a semiannual assessment  
20 under subsection (l)(1) so that they may be  
21 submitted to the Court at the time of the con-  
22 solidated submission under subparagraph (C).

23 “(E) CONSTRUCTION.—The requirements  
24 of subparagraph (C) shall not be construed to  
25 preclude the Attorney General and the Director

1 of National Intelligence from submitting certifi-  
2 cations for additional authorizations at other  
3 times during the year as necessary.

4 “(6) COMPLIANCE.—At or before the end of the  
5 period of time for which a certification submitted  
6 pursuant to subsection (g) and procedures required  
7 by subsection (d) and (e) are approved by an order  
8 under this section, the Foreign Intelligence Surveil-  
9 lance Court may assess compliance with the mini-  
10 mization procedures required by subsection (e) by  
11 reviewing the circumstances under which informa-  
12 tion concerning United States persons was acquired,  
13 retained, or disseminated.

14 “(j) JUDICIAL PROCEEDINGS.—

15 “(1) EXPEDITED PROCEEDINGS.—Judicial pro-  
16 ceedings under this section shall be conducted as ex-  
17 peditiously as possible.

18 “(2) TIME LIMITS.—A time limit for a judicial  
19 decision in this section shall apply unless the Court,  
20 the Court of Review, or any judge of either the  
21 Court or the Court of Review, by order for reasons  
22 stated, extends that time for good cause.

23 “(k) MAINTENANCE AND SECURITY OF RECORDS  
24 AND PROCEEDINGS.—

1           “(1) STANDARDS.—The Foreign Intelligence  
2           Surveillance Court shall maintain a record of a pro-  
3           ceeding under this section, including petitions filed,  
4           orders granted, and statements of reasons for deci-  
5           sion, under security measures adopted by the Chief  
6           Justice of the United States, in consultation with  
7           the Attorney General and the Director of National  
8           Intelligence.

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

16          “(3) RETENTION OF RECORDS.—The Director  
17          of National Intelligence and the Attorney General  
18          shall retain a directive made or an order granted  
19          under this section for a period of not less than 10  
20          years from the date on which such directive or such  
21          order is made.

22          “(1) ASSESSMENTS AND REVIEWS.—

23                 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-  
24                 quently than once every 6 months, the Attorney  
25                 General and Director of National Intelligence shall

1        assess compliance with the procedures and guidelines  
2        required by subsections (d), (e), and (f) and shall  
3        submit each assessment to—

4                “(A) the congressional intelligence commit-  
5        tees;

6                “(B) the Committees on the Judiciary of  
7        the House of Representatives and the Senate;  
8        and

9                “(C) the Foreign Intelligence Surveillance  
10       Court.

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

17               “(A) are authorized to review compliance  
18       with the procedures and guidelines required by  
19       subsections (d), (e), and (f);

20               “(B) with respect to acquisitions author-  
21       ized under subsection (a), shall review the dis-  
22       seminated intelligence reports containing a ref-  
23       erence to a United States person identity and  
24       the number of United States person identities  
25       subsequently disseminated by the element con-

1           cerned in response to requests for identities  
2           that were not referred to by name or title in the  
3           original reporting;

4           “(C) with respect to acquisitions author-  
5           ized under subsection (a), shall review the tar-  
6           gets that were later determined to be located in  
7           the United States and, to the extent possible,  
8           whether their communications were reviewed;  
9           and

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

11           “(i) the Attorney General;

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

14           “(iii) the congressional intelligence  
15           committees;

16           “(iv) the Committees on the Judiciary  
17           of the House of Representatives and the  
18           Senate; and

19           “(v) the Foreign Intelligence Surveil-  
20           lance Court.

21          “(3) ANNUAL REVIEW.—

22           “(A) REQUIREMENT TO CONDUCT.—The  
23           head of each element of the intelligence commu-  
24           nity conducting an acquisition authorized under  
25           subsection (a) shall conduct an annual review to

1           determine whether there is reason to believe  
2           that foreign intelligence information has been  
3           or will be obtained from the acquisition. The  
4           annual review shall provide, with respect to  
5           such acquisitions authorized under subsection  
6           (a)—

7                   “(i) the number and nature of dis-  
8                   seminated intelligence reports containing a  
9                   reference to a United States person iden-  
10                  tity;

11                  “(ii) the number and nature of United  
12                  States person identities subsequently dis-  
13                  seminated by that element in response to  
14                  requests for identities that were not re-  
15                  ferred to by name or title in the original  
16                  reporting;

17                  “(iii) the number of targets that were  
18                  later determined to be located in the  
19                  United States and, to the extent possible,  
20                  whether their communications were re-  
21                  viewed; and

22                  “(iv) a description of any procedures  
23                  developed by the head of such element of  
24                  the intelligence community and approved  
25                  by the Director of National Intelligence to



1            assess, in a manner consistent with na-  
2            tional security, operational requirements  
3            and the privacy interests of United States  
4            persons, the extent to which the acquisi-  
5            tions authorized under subsection (a) ac-  
6            quire the communications of United States  
7            persons, and the results of any such as-  
8            sessment.

9            “(B) USE OF REVIEW.—The head of each  
10           element of the intelligence community that con-  
11           ducts an annual review under subparagraph (A)  
12           shall use each such review to evaluate the ade-  
13           quacy of the minimization procedures utilized  
14           by such element or the application of the mini-  
15           mization procedures to a particular acquisition  
16           authorized under subsection (a).

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

21                    “(i) the Foreign Intelligence Surveil-  
22                    lance Court;

23                    “(ii) the Attorney General;

24                    “(iii) the Director of National Intel-  
25                    ligence;

1                   “(iv) the congressional intelligence  
2                   committees; and

3                   “(v) the Committees on the Judiciary  
4                   of the House of Representatives and the  
5                   Senate.

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

11 **“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED**  
12 **STATES OF UNITED STATES PERSONS OUT-**  
13 **SIDE THE UNITED STATES.**

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

16                   “(1) IN GENERAL.—The Foreign Intelligence  
17 Surveillance Court shall have jurisdiction to review  
18 an application and enter an order approving the tar-  
19 geting of a United States person reasonably believed  
20 to be located outside the United States to acquire  
21 foreign intelligence information if the acquisition  
22 constitutes electronic surveillance or the acquisition  
23 of stored electronic communications or stored elec-  
24 tronic data that requires an order under this Act

1       and such acquisition is conducted within the United  
2       States.

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

13      “(b) APPLICATION.—

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

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

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

4           “(C) a statement of the facts and cir-  
5           cumstances relied upon to justify the appli-  
6           cant’s belief that the United States person who  
7           is the target of the acquisition is—

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

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

13           “(D) a statement of proposed minimization  
14           procedures that—

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

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

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

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

4                   “(i) the certifying official deems the  
5                   information sought to be foreign intel-  
6                   ligence information;

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

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

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

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

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

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

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

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

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

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

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

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

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

5           “(c) ORDER.—

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

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

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

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

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

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

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

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

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

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

25                  “(3) REVIEW.—



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19          “(d) EMERGENCY AUTHORIZATION.—

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

24                         “(A) an emergency situation exists with re-  
25                         spect to the acquisition of foreign intelligence

1 information for which an order may be obtained  
2 under subsection (e) before an order author-  
3 izing such acquisition can with due diligence be  
4 obtained, and

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

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

18 “(2) MINIMIZATION PROCEDURES.—If the At-  
19 torney General authorizes an acquisition under para-  
20 graph (1), the Attorney General shall require that  
21 the minimization procedures referred to in sub-  
22 section (c)(1)(C) for the issuance of a judicial order  
23 be followed.

24 “(3) TERMINATION OF EMERGENCY AUTHOR-  
25 IZATION.—In the absence of a judicial order approv-

1       ing an acquisition authorized under paragraph (1),  
2       such acquisition shall terminate when the informa-  
3       tion sought is obtained, when the application for the  
4       order is denied, or after the expiration of 7 days  
5       from the time of authorization by the Attorney Gen-  
6       eral, whichever is earliest.

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

1 threat of death or serious bodily harm to any per-  
2 son.

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

9 “(f) APPEAL.—

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

19 “(2) CERTIORARI TO THE SUPREME COURT.—  
20 The Government may file a petition for a writ of  
21 certiorari for review of a decision of the Court of Re-  
22 view under paragraph (1). The record for such re-  
23 view shall be transmitted under seal to the Supreme  
24 Court of the United States, which shall have juris-  
25 diction to review such decision.

1           “(g) CONSTRUCTION.—Nothing in this Act shall be  
2 construed to require an application under section 104 for  
3 an acquisition that is targeted in accordance with this sec-  
4 tion at a person reasonably believed to be located outside  
5 the United States.

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

9           “(a) JURISDICTION AND SCOPE.—

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

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



1       quisition pursuant to subsection (c) or (d) or any  
2       other provision of this Act.

3               “(3) LIMITATIONS.—

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

15                     “(B) APPLICABILITY.—If an acquisition is  
16                     to be conducted inside the United States and  
17                     could be authorized under section 703, the ac-  
18                     quisition may only be conducted if authorized  
19                     under section 703 or in accordance with an-  
20                     other provision of this Act other than this sec-  
21                     tion.

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

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

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

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

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

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

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

19          “(4) a statement of proposed minimization pro-  
20          cedures that—

21                 “(A) in the case of electronic surveillance,  
22                 meet the definition of minimization procedures  
23                 in section 101(h); and

1           “(B) in the case of a physical search, meet  
2           the definition of minimization procedures in  
3           section 301(4);

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

8           “(A) the certifying official deems the infor-  
9           mation sought to be foreign intelligence infor-  
10          mation; and

11          “(B) a significant purpose of the acquisi-  
12          tion is to obtain foreign intelligence informa-  
13          tion;

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

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

24          “(c) ORDER.—

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

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

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

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

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

18           “(C) the proposed minimization proce-  
19 dures—

20           “(i) in the case of electronic surveil-  
21 lance, meet the definition of minimization  
22 procedures in section 101(h); and

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

1           “(D) the application that has been filed  
2           contains all statements and certifications re-  
3           quired by subsection (b) and the certification  
4           provided under subsection (b)(5) is not clearly  
5           erroneous on the basis of the information fur-  
6           nished under subsection (b).

7           “(2) PROBABLE CAUSE.—In determining  
8           whether or not probable cause exists for purposes of  
9           an order under paragraph (1)(B), a judge having ju-  
10          risdiction under subsection (a)(1) may consider past  
11          activities of the target and facts and circumstances  
12          relating to current or future activities of the target.  
13          No United States person may be considered a for-  
14          eign power, agent of a foreign power, or officer or  
15          employee of a foreign power solely upon the basis of  
16          activities protected by the first amendment to the  
17          Constitution of the United States.

18          “(3) REVIEW.—

19                 “(A) LIMITATIONS ON REVIEW.—Review  
20                 by a judge having jurisdiction under subsection  
21                 (a)(1) shall be limited to that required to make  
22                 the findings described in paragraph (1). The  
23                 judge shall not have jurisdiction to review the  
24                 means by which an acquisition under this sec-  
25                 tion may be conducted.

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

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

20           “(D) SCOPE OF REVIEW OF CERTIFI-  
21           CATION.—If the judge determines that an appli-  
22           cation under subsection (b) does not contain all  
23           the required elements, or that the certification  
24           provided under subsection (b)(5) is clearly erro-  
25           neous on the basis of the information furnished

1 under subsection (b), the judge shall enter an  
2 order so stating and provide a written state-  
3 ment for the record of the reasons for such de-  
4 termination. The Government may appeal an  
5 order under this clause pursuant to subsection  
6 (e).

7 “(4) DURATION.—An order under this para-  
8 graph shall be effective for a period not to exceed 90  
9 days and such order may be renewed for additional  
10 90-day periods upon submission of renewal applica-  
11 tions meeting the requirements of subsection (b).

12 “(5) COMPLIANCE.—At or prior to the end of  
13 the period of time for which an order or extension  
14 is granted under this section, the judge may assess  
15 compliance with the minimization procedures re-  
16 ferred to in paragraph (1)(C) by reviewing the cir-  
17 cumstances under which information concerning  
18 United States persons was disseminated, provided  
19 that the judge may not inquire into the cir-  
20 cumstances relating to the conduct of the acquisi-  
21 tion.

22 “(d) EMERGENCY AUTHORIZATION.—

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

1 section, if the Attorney General reasonably deter-  
2 mines 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 under that  
7 subsection may, with due diligence, be obtained,  
8 and

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

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

21 “(2) MINIMIZATION PROCEDURES.—If the At-  
22 torney General authorizes an emergency acquisition  
23 under paragraph (1), the Attorney General shall re-  
24 quire that the minimization procedures referred to in  
25 subsection (c)(1)(C) be followed.



1           “(3) TERMINATION OF EMERGENCY AUTHOR-  
2           IZATION.—In the absence of an order under sub-  
3           section (c), the acquisition authorized under para-  
4           graph (1) shall terminate when the information  
5           sought is obtained, if the application for the order  
6           is denied, or after the expiration of 7 days from the  
7           time of authorization by the Attorney General,  
8           whichever is earliest.

9           “(4) USE OF INFORMATION.—If an application  
10          submitted pursuant to paragraph (1) is denied, or in  
11          any other case where an acquisition under this sec-  
12          tion is terminated and no order with respect to the  
13          target of the acquisition is issued under subsection  
14          (c), no information obtained or evidence derived  
15          from such acquisition, except under circumstances in  
16          which the target of the acquisition is determined not  
17          to be a United States person, shall be received in  
18          evidence or otherwise disclosed in any trial, hearing,  
19          or other proceeding in or before any court, grand  
20          jury, department, office, agency, regulatory body,  
21          legislative committee, or other authority of the  
22          United States, a State, or political subdivision there-  
23          of, and no information concerning any United States  
24          person acquired from such acquisition shall subse-  
25          quently be used or disclosed in any other manner by

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

5 “(e) APPEAL.—

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

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

21 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-**  
22 **THORIZATIONS.**

23 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-  
24 quisition targeting a United States person under section  
25 703 or section 704 is proposed to be conducted both inside

1 and outside the United States, a judge having jurisdiction  
2 under section 703(a)(1) or section 704(a)(1) may issue si-  
3 multaneously, upon the request of the Government in a  
4 joint application complying with the requirements of sec-  
5 tion 703(b) and section 704(b), orders under section  
6 703(c) and section 704(c), as appropriate.

7 “(b) CONCURRENT AUTHORIZATION.—

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

18 “(2) PHYSICAL SEARCH.—If an order author-  
19 izing a physical search has been obtained under sec-  
20 tion 304 and that order is still in effect, during the  
21 pendency of that order the Attorney General may  
22 authorize, without an order under section 703 or  
23 704, a physical search for the purpose of acquiring  
24 foreign intelligence information targeting that

1 United States person while such person is reason-  
2 ably believed to be located outside the United States.

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

4 **VII.**

5 “Information acquired pursuant to section 702 or  
6 703 shall be considered information acquired from an elec-  
7 tronic surveillance pursuant to title I for purposes of sec-  
8 tion 106.

9 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

10 “(a) SEMIANNUAL REPORT.—Not less frequently  
11 than once every 6 months, the Attorney General shall fully  
12 inform, in a manner consistent with national security, the  
13 congressional intelligence committees and the Committees  
14 on the Judiciary of the Senate and the House of Rep-  
15 resentatives, concerning the implementation of this title.

16 “(b) CONTENT.—Each report made under subsection  
17 (a) shall include—

18 “(1) with respect to section 702—

19 “(A) any certifications made under section  
20 702(g) during the reporting period;

21 “(B) with respect to each certification  
22 made under paragraph (1)(B) of such section,  
23 the reasons for exercising the authority under  
24 such paragraph;

1           “(C) any directives issued under section  
2           702(h) during the reporting period;

3           “(D) a description of the judicial review  
4           during the reporting period of any such certifi-  
5           cations and targeting and minimization proce-  
6           dures adopted pursuant to subsections (d) and  
7           (e) of section 702 utilized with respect to such  
8           acquisition, including a copy of any order or  
9           pleading in connection with such review that  
10          contains a significant legal interpretation of the  
11          provisions of section 702;

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

15          “(F) any compliance reviews conducted by  
16          the Attorney General or the Director of Na-  
17          tional Intelligence of acquisitions authorized  
18          under subsection 702(a);

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

23                  “(i) incidents of noncompliance by an  
24                  element of the intelligence community with  
25                  procedures and guidelines adopted pursu-

1 ant to subsections (d), (e), and (f) of sec-  
2 tion 702; and

3 “(ii) incidents of noncompliance by a  
4 specified person to whom the Attorney  
5 General and Director of National Intel-  
6 ligence issued a directive under subsection  
7 702(h); and

8 “(H) any procedures implementing section  
9 702;

10 “(2) with respect to section 703—

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

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

14 “(i) granted;

15 “(ii) modified; or

16 “(iii) denied; and

17 “(C) the total number of emergency acqui-  
18 sitions authorized by the Attorney General  
19 under section 703(d) and the total number of  
20 subsequent orders approving or denying such  
21 acquisitions; and

22 “(3) with respect to section 704—

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

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

1 “(i) granted;  
2 “(ii) modified; or  
3 “(iii) denied; and  
4 “(C) the total number of emergency acqui-  
5 sitions authorized by the Attorney General  
6 under subsection 704(d) and the total number  
7 of subsequent orders approving or denying such  
8 applications.

9 **“SEC. 708. SAVINGS PROVISION.**

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

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

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

“TITLE VII—ADDITIONAL PROCEDURES 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 per-  
sons 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.”.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) TITLE 18, UNITED STATES CODE.—Section  
3 2511(2)(a)(ii)(A) of title 18, United States Code, is  
4 amended by inserting “or a court order pursuant to  
5 section 704 of the Foreign Intelligence Surveillance  
6 Act of 1978” after “assistance”.

7 (2) FOREIGN INTELLIGENCE SURVEILLANCE  
8 ACT OF 1978.—Section 601(a)(1) of the Foreign In-  
9 telligence Surveillance Act of 1978 (50 U.S.C.  
10 1871(a)(1)) is amended—

11 (A) in subparagraph (C), by striking  
12 “and”; and

13 (B) by adding at the end the following new  
14 subparagraphs:

15 “(E) acquisitions under section 703; and

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

17 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**  
18 **ELECTRONIC SURVEILLANCE AND INTERCEP-**  
19 **TION OF CERTAIN COMMUNICATIONS MAY BE**  
20 **CONDUCTED.**

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



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

4 “SEC. 112. (a) Except as provided in subsection (b),  
5 the procedures of chapters 119, 121, and 206 of title 18,  
6 United States Code, and this Act shall be the exclusive  
7 means by which electronic surveillance and the intercep-  
8 tion of domestic wire, oral, or electronic communications  
9 may be conducted.

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

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

24 (c) CONFORMING AMENDMENTS.—

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

4                   “(iii) If a certification under subpara-  
5                   graph (ii)(B) for assistance to obtain for-  
6                   eign intelligence information is based on  
7                   statutory authority, the certification shall  
8                   identify the specific statutory provision,  
9                   and shall certify that the statutory require-  
10                  ments have been met.”; and

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

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

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

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

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

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

7 “(1) a copy of any decision, order, or opinion  
8 issued by the Foreign Intelligence Surveillance Court  
9 or the Foreign Intelligence Surveillance Court of Re-  
10 view that includes significant construction or inter-  
11 pretation of any provision of this Act, and any  
12 pleadings, applications, or memoranda of law associ-  
13 ated with such decision, order, or opinion, not later  
14 than 45 days after such decision, order, or opinion  
15 is issued; and

16 “(2) a copy of any such decision, order, or opin-  
17 ion, and any pleadings, applications, or memoranda  
18 of law associated with such decision, order, or opin-  
19 ion, that was issued during the 5-year period ending  
20 on the date of the enactment of the FISA Amend-  
21 ments Act of 2008 and not previously submitted in  
22 a report under subsection (a).

23 “(d) PROTECTION OF NATIONAL SECURITY.—The  
24 Attorney General, in consultation with the Director of Na-  
25 tional Intelligence, may authorize redactions of materials

1 described in subsection (c) that are provided to the com-  
2 mittees of Congress referred to in subsection (a), if such  
3 redactions are necessary to protect the national security  
4 of the United States and are limited to sensitive sources  
5 and methods information or the identities of targets.”.

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

9 “(e) DEFINITIONS.—In this section:

10 “(1) FOREIGN INTELLIGENCE SURVEILLANCE  
11 COURT.—The term ‘Foreign Intelligence Surveillance  
12 Court’ means the court established by section  
13 103(a).

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

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

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

21 (1) in subsection (a)—

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

23 (B) by redesignating paragraphs (3)  
24 through (10) as paragraphs (2) through (9), re-  
25 spectively;

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

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

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

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

14 (2) by striking subsection (b);

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

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

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

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

25 (1) in subsection (a)—

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

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

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

7 (3) in subsection (c)(1)—

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

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

12 (C) by striking subparagraph (F);

13 (4) by striking subsection (d);

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

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

18 “(e)(1) Notwithstanding any other provision of this  
19 title, the Attorney General may authorize the emergency  
20 employment of electronic surveillance if the Attorney Gen-  
21 eral—

22 “(A) reasonably determines that an emer-  
23 gency situation exists with respect to the em-  
24 ployment of electronic surveillance to obtain for-  
25 eign intelligence information before an order

1 authorizing such surveillance can with due dili-  
2 gence be obtained;

3 “(B) reasonably determines that the fac-  
4 tual basis for the issuance of an order under  
5 this title to approve such electronic surveillance  
6 exists;

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

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

17 “(2) If the Attorney General authorizes the  
18 emergency employment of electronic surveillance  
19 under paragraph (1), the Attorney General shall re-  
20 quire that the minimization procedures required by  
21 this title for the issuance of a judicial order be fol-  
22 lowed.

23 “(3) In the absence of a judicial order approv-  
24 ing such electronic surveillance, the surveillance shall  
25 terminate when the information sought is obtained,

1       when the application for the order is denied, or after  
2       the expiration of 7 days from the time of authoriza-  
3       tion by the Attorney General, whichever is earliest.

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

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



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

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

4           “(i) In any case in which the Government makes an  
5           application to a judge under this title to conduct electronic  
6           surveillance involving communications and the judge  
7           grants such application, upon the request of the applicant,  
8           the judge shall also authorize the installation and use of  
9           pen registers and trap and trace devices, and direct the  
10          disclosure of the information set forth in section  
11          402(d)(2).”.

12          **SEC. 106. USE OF INFORMATION.**

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

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

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

21                  (1) in subsection (a)—

22                          (A) by striking paragraph (2);

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

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

4 (D) in paragraph (3)(C), as redesignated  
5 by subparagraph (B) of this paragraph, by in-  
6 serting “or is about to be” before “owned”; and  
7 (2) in subsection (d)(1)(A), by striking “or the  
8 Director of National Intelligence” and inserting “the  
9 Director of National Intelligence, or the Director of  
10 the Central Intelligence Agency”.

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

14 (1) in subsection (a)—

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

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

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

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

24 “(A) reasonably determines that an emer-  
25 gency situation exists with respect to the em-

1           ployment of a physical search to obtain foreign  
2           intelligence information before an order author-  
3           izing such physical search can with due dili-  
4           gence be obtained;

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

8           “(C) informs, either personally or through  
9           a designee, a judge of the Foreign Intelligence  
10          Surveillance Court at the time of such author-  
11          ization that the decision has been made to em-  
12          ploy an emergency physical search; and

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

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

23          “(3) In the absence of a judicial order approv-  
24          ing such physical search, the physical search shall  
25          terminate when the information sought is obtained,

1       when the application for the order is denied, or after  
2       the expiration of 7 days from the time of authoriza-  
3       tion by the Attorney General, whichever is earliest.

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

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

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

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

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

9           (2) in section 305(k)(2), by striking  
10          “303(a)(7)” and inserting “303(a)(6)”.

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

12                           **AND TRAP AND TRACE DEVICES.**

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

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

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

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

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

25          (b) EN BANC AUTHORITY.—

1           (1) IN GENERAL.—Subsection (a) of section  
2           103 of the Foreign Intelligence Surveillance Act of  
3           1978, as amended by subsection (a) of this section,  
4           is further amended—

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

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

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

15                   “(i) en banc consideration is necessary to se-  
16          cure or maintain uniformity of the court’s decisions;  
17          or

18                   “(ii) the proceeding involves a question of ex-  
19          ceptional importance.

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

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

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

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

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

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

18           (1) by redesignating subsection (f) as sub-  
19 section (g); and

20           (2) by inserting after subsection (e) the fol-  
21 lowing new subsection:

22       “(f)(1) A judge of the court established under sub-  
23 section (a), the court established under subsection (b) or  
24 a judge of that court, or the Supreme Court of the United  
25 States or a justice of that court, may, in accordance with

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

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

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

18 “(i) Nothing in this Act shall be construed to reduce  
19 or contravene the inherent authority of the court estab-  
20 lished by subsection (a) to determine or enforce compli-  
21 ance with an order or a rule of such court or with a proce-  
22 dure approved by such court.”.

23 **SEC. 110. INSPECTOR GENERAL REVIEW OF PREVIOUS AC-**  
24 **TIONS.**

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



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

4                   (A) the Select Committee on Intelligence  
5                   and the Committee on the Judiciary of the Sen-  
6                   ate; and

7                   (B) the Permanent Select Committee on  
8                   Intelligence and the Committee on the Judici-  
9                   ary of the House of Representatives.

10           (2) FOREIGN INTELLIGENCE SURVEILLANCE  
11           COURT.—The term “Foreign Intelligence Surveil-  
12           lance Court” means the court established by section  
13           103(a) of the Foreign Intelligence Surveillance Act  
14           of 1978 (50 U.S.C. 1803(a)).

15           (3) PRESIDENT’S SURVEILLANCE PROGRAM AND  
16           PROGRAM.—The terms “President’s Surveillance  
17           Program” and “Program” mean the intelligence ac-  
18           tivity involving communications that was authorized  
19           by the President during the period beginning on  
20           September 11, 2001, and ending on January 17,  
21           2007, including the program referred to by the  
22           President in a radio address on December 17, 2005  
23           (commonly known as the Terrorist Surveillance Pro-  
24           gram).

25           (b) REVIEWS.—

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

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

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

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

18                   (D) interaction with the Foreign Intel-  
19                   ligence Surveillance Court and transition to  
20                   court orders related to the Program; and

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

1 (2) COOPERATION AND COORDINATION.—

2 (A) COOPERATION.—Each Inspector Gen-  
3 eral required to conduct a review under para-  
4 graph (1) shall—

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

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

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

22 (c) REPORTS.—

23 (1) PRELIMINARY REPORTS.—Not later than 60  
24 days after the date of the enactment of this Act, the  
25 Inspectors General of the Department of Justice, the

1 Office of the Director of National Intelligence, the  
2 National Security Agency, and any other Inspector  
3 General required to conduct a review under sub-  
4 section (b)(1) shall submit to the appropriate com-  
5 mittees of Congress an interim report that describes  
6 the planned scope of such review.

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

19 (3) FORM.—A report submitted under this sub-  
20 section shall be submitted in unclassified form, but  
21 may include a classified annex. The unclassified re-  
22 port shall not disclose the name or identity of any  
23 individual or entity of the private sector that partici-  
24 pated in the Program or with whom there was com-

1           munication about the Program, to the extent that  
2           information is classified.

3           (d) RESOURCES.—

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

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

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

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

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

2 (a) DEFINITIONS.—

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

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

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

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

12 “(7) an entity not substantially composed of  
13 United States persons that is engaged in the inter-  
14 national proliferation of weapons of mass destruc-  
15 tion.”.

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

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

20 (B) by adding at the end the following new  
21 subparagraph:

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

25 (3) FOREIGN INTELLIGENCE INFORMATION.—  
26 Subsection (e)(1)(B) of such section 101 is amended

1 by striking “sabotage or international terrorism”  
2 and inserting “sabotage, international terrorism, or  
3 the international proliferation of weapons of mass  
4 destruction”.

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

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

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

12 “(2) any weapon that is designed or intended to  
13 cause death or serious bodily injury to a significant  
14 number of persons through the release, dissemina-  
15 tion, or impact of toxic or poisonous chemicals or  
16 their precursors;

17 “(3) any weapon involving a biological agent,  
18 toxin, or vector (as such terms are defined in section  
19 178 of title 18, United States Code) that is de-  
20 signed, intended, or has the capability of causing  
21 death, illness, or serious bodily injury to a signifi-  
22 cant number of persons; or

23 “(4) any weapon that is designed, intended, or  
24 has the capability of releasing radiation or radioac-

1           tivity causing death, illness, or serious bodily injury  
2           to a significant number of persons.”.

3           (b) USE OF INFORMATION.—

4                 (1) IN GENERAL.—Section 106(k)(1)(B) of the  
5           Foreign Intelligence Surveillance Act of 1978 (50  
6           U.S.C. 1806(k)(1)(B)) is amended by striking “sab-  
7           otage or international terrorism” and inserting “sab-  
8           otage, international terrorism, or the international  
9           proliferation of weapons of mass destruction”.

10                (2)           PHYSICAL           SEARCHES.—Section  
11           305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))  
12           is amended by striking “sabotage or international  
13           terrorism” and inserting “sabotage, international  
14           terrorism, or the international proliferation of weap-  
15           ons of mass destruction”.

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

20           **SEC. 112. STATUTE OF LIMITATIONS.**

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



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

6           (b) APPLICATION.—The amendment made by sub-  
7 section (a) shall apply to any offense committed before the  
8 date of the enactment of this Act if the statute of limita-  
9 tions applicable to that offense has not run as of such  
10 date.

11 **TITLE II—PROTECTION OF PER-**  
12 **SONS ASSISTING THE GOV-**  
13 **ERNMENT**

14 **SEC. 201. STATUTORY DEFENSES.**

15           The Foreign Intelligence Surveillance Act of 1978  
16 (50 U.S.C. 1801 et seq.) is amended by adding after title  
17 VII the following:

18 **“TITLE VIII—PROTECTION OF**  
19 **PERSONS ASSISTING THE**  
20 **GOVERNMENT**

21 **“SEC. 801. DEFINITIONS.**

22           “In this title:

23                   “(1) ASSISTANCE.—The term ‘assistance’  
24 means the provision of, or the provision of access to,  
25 information (including communication contents,

1 communications records, or other information relat-  
2 ing to a customer or communication), facilities, or  
3 another form of assistance.

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

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

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

13 “(5) ELECTRONIC COMMUNICATION SERVICE  
14 PROVIDER.—The term ‘electronic communication  
15 service provider’ means—

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

19 “(B) a provider of electronic communica-  
20 tion service, as that term is defined in section  
21 2510 of title 18, United States Code;

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

1           “(D) any other communication service pro-  
2           vider who has access to wire or electronic com-  
3           munications either as such communications are  
4           transmitted or as such communications are  
5           stored;

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

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

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

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

17                 “(A) an electronic communication service  
18                 provider; or

19                 “(B) a landlord, custodian, or other person  
20                 who may be authorized or required to furnish  
21                 assistance pursuant to—

22                         “(i) an order of the court established  
23                         under section 103(a) directing such assist-  
24                         ance;

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

4                   “(iii) a directive under section  
5                   102(a)(4), 105B(e), as added by section 2  
6                   of the Protect America Act of 2007 (Public  
7                   Law 110-55), or 703(h).

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

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

16                  “(a) INTERVENTION BY GOVERNMENT.— In any cov-  
17                  ered civil action, the court shall permit the Government  
18                  to intervene. Whether or not the Government intervenes  
19                  in the civil action, the Attorney General may submit any  
20                  information in any form the Attorney General determines  
21                  is appropriate and the court shall consider all such sub-  
22                  missions.

23                  “(b) FACTUAL AND LEGAL DETERMINATIONS.—In  
24                  any covered civil action, any party may submit to the court  
25                  evidence, briefs, arguments, or other information on any

1 matter with respect to which a privilege based on state  
2 secrets is asserted. The court shall review any such sub-  
3 mission in accordance with the procedures set forth in sec-  
4 tion 106(f) and may, based on the review, make any ap-  
5 propriate determination of fact or law. The court may, on  
6 motion of the Attorney General, take any additional ac-  
7 tions the court deems necessary to protect classified infor-  
8 mation. The court may, to the extent practicable and con-  
9 sistent with national security, request that any party  
10 present briefs and arguments on any legal question the  
11 court determines is raised by such a submission even if  
12 that party does not have full access to the submission. The  
13 court shall consider whether the employment of a special  
14 master or an expert witness, or both, would facilitate pro-  
15 ceedings under this section.

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

19       “(d) REMOVAL.—A covered civil action that is  
20 brought in a State court shall be deemed to arise under  
21 the Constitution and laws of the United States and shall  
22 be removable under section 1441 of title 28, United States  
23 Code.

24       “(e) SPECIAL RULE FOR CERTAIN CASES.—For any  
25 covered civil action alleging that a person provided assist-

1 ance to an element of the intelligence community pursuant  
2 to a request or directive during the period from September  
3 11, 2001 through January 17, 2007, the Attorney General  
4 shall provide to the court any request or directive related  
5 to the allegations under the procedures set forth in sub-  
6 section (b).

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

10 **SEC. 202. TECHNICAL AMENDMENTS.**

11 The table of contents in the first section of the For-  
12 eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
13 1801 et seq.) is amended by adding at the end the fol-  
14 lowing:

“TITLE VIII-PROTECTION OF PERSONS ASSISTING THE  
GOVERNMENT

“Sec. 801. Definitions

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

15 **TITLE III—COMMISSION ON**  
16 **WARRANTLESS ELECTRONIC**  
17 **SURVEILLANCE ACTIVITIES**

18 **SEC. 301. COMMISSION ON WARRANTLESS ELECTRONIC**  
19 **SURVEILLANCE ACTIVITIES.**

20 (a) ESTABLISHMENT OF COMMISSION.—There is es-  
21 tablished in the legislative branch a commission to be  
22 known as the “Commission on Warrantless Electronic

1 Surveillance Activities” (in this section referred to as the  
2 “Commission”).

3 (b) DUTIES OF COMMISSION.—

4 (1) IN GENERAL.—The Commission shall—

5 (A) ascertain, evaluate, and report upon  
6 the facts and circumstances relating to elec-  
7 tronic surveillance activities conducted without  
8 a warrant between September 11, 2001 and  
9 January 17, 2007;

10 (B) evaluate the lawfulness of such activi-  
11 ties;

12 (C) examine all programs and activities re-  
13 lating to intelligence collection inside the United  
14 States or regarding United States persons that  
15 were in effect or operation on September 11,  
16 2001, and all such programs and activities un-  
17 dertaken since that date, including the legal  
18 framework or justification for those activities;  
19 and

20 (D) report to the President and Congress  
21 the findings and conclusions of the Commission  
22 and any recommendations the Commission con-  
23 siders appropriate.

24 (2) PROTECTION OF NATIONAL SECURITY.—

25 The Commission shall carry out the duties of the

1 Commission under this section in a manner con-  
2 sistent with the need to protect national security.

3 (c) COMPOSITION OF COMMISSION.—

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

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

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

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

18 (3) CHAIR; VICE CHAIR.—

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

24 (B) VICE CHAIR.—The Vice Chair of the  
25 Commission shall be jointly appointed by the



1 minority leader of the Senate and the minority  
2 leader of the House of Representatives from  
3 among the members appointed under paragraph  
4 (1)(B).

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

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

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

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

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

23 (d) POWERS OF COMMISSION.—

24 (1) HEARINGS AND EVIDENCE.—The Commis-  
25 sion or, on the authority of the Chair, any sub-

1 committee or member thereof may, for the purpose  
2 of carrying out this section, hold such hearings and  
3 sit and act at such times and places, take such testi-  
4 mony, receive such evidence, and administer such  
5 oaths as the Commission, such designated sub-  
6 committee, or designated member may determine ad-  
7 visable.

8 (2) SUBPOENAS.—

9 (A) ISSUANCE.—

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

20 (ii) SIGNATURE.—Subpoenas issued  
21 under this paragraph may be issued under  
22 the signature of the Chair of the Commis-  
23 sion, the chair of any subcommittee cre-  
24 ated by a majority of the Commission, or  
25 any member designated by a majority of

1 the Commission and may be served by any  
2 person designated by such Chair, sub-  
3 committee chair, or member.

4 (B) ENFORCEMENT.—

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

19 (ii) JURISDICTION.—In the case of  
20 contumacy or failure to obey a subpoena  
21 issued under subparagraph (A), the United  
22 States district court for the judicial district  
23 in which the subpoenaed person resides, is  
24 served, or may be found, or where the sub-  
25 poena is returnable, may issue an order re-

1           quiring such person to appear at any des-  
2           ignated place to testify or to produce docu-  
3           mentary or other evidence. Any failure to  
4           obey the order of the court may be pun-  
5           ished by the court as a contempt of that  
6           court.

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

21                   (3) CONTRACTING.—The Commission may, to  
22          such extent and in such amounts as are provided in  
23          appropriations Acts, enter into contracts to enable  
24          the Commission to discharge its duties under this  
25          section.

1 (4) INFORMATION FROM FEDERAL AGENCIES.—

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

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

23 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

24 (A) GENERAL SERVICES ADMINISTRA-  
25 TION.—The Administrator of General Services

1 shall provide to the Commission on a reimburs-  
2 able basis administrative support and other  
3 services for the performance of the Commis-  
4 sion's functions.

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

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

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

20 (e) STAFF OF COMMISSION.—

21 (1) IN GENERAL.—

22 (A) APPOINTMENT AND COMPENSATION.—  
23 The Chair, in consultation with Vice Chair and  
24 in accordance with rules agreed upon by the  
25 Commission, may appoint and fix the com-

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

14                   (B) PERSONNEL AS FEDERAL EMPLOY-  
15                   EES.—

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

23                           (ii) MEMBERS OF COMMISSION.—  
24                           Clause (i) shall not be construed to apply  
25                           to members of the Commission.

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

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

14      (f) SECURITY CLEARANCES FOR COMMISSION MEM-  
15      BERS AND STAFF.—

16           (1) EXPEDITIOUS PROVISION OF CLEAR-  
17      ANCES.—The appropriate Federal agencies or de-  
18      partments shall cooperate with the Commission in  
19      expeditiously providing to the Commission members  
20      and staff appropriate security clearances to the ex-  
21      tent possible pursuant to existing procedures and re-  
22      quirements, except that no person shall be provided  
23      with access to classified information under this sec-  
24      tion without the appropriate security clearances.



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

11           (3) FACILITIES AND RESOURCES.—The Direc-  
12 tor of National Intelligence shall provide the Com-  
13 mission with appropriate space and technical facili-  
14 ties approved by the Commission.

15           (g) COMPENSATION AND TRAVEL EXPENSES.—

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

24           (2) TRAVEL EXPENSES.—While away from  
25 their homes or regular places of business in the per-

1 formance of services for the Commission, members  
2 of the Commission shall be allowed travel expenses,  
3 including per diem in lieu of subsistence, in the  
4 same manner as persons employed intermittently in  
5 the Government service are allowed expenses under  
6 section 5703(b) of title 5, United States Code.

7 (h) NONAPPLICABILITY OF FEDERAL ADVISORY  
8 COMMITTEE ACT.—

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

12 (2) PUBLIC MEETINGS.—The Commission shall  
13 hold public hearings and meetings to the extent ap-  
14 propriate.

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

21 (i) REPORTS AND RECOMMENDATIONS OF COMMIS-  
22 SION.—

23 (1) INTERIM REPORTS.—The Commission may  
24 submit to the President and Congress interim re-  
25 ports containing such findings, conclusions, and rec-

1       ommendations for corrective measures as have been  
2       agreed to by a majority of Commission members.

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

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

14          (4) RECOMMENDATIONS FOR DECLASSIFICA-  
15      TION.—The Commission may make recommenda-  
16      tions to the appropriate department or agency of the  
17      Federal Government regarding the declassification of  
18      documents or portions of documents.

19      (j) TERMINATION.—

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

24          (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-  
25      MINATION.—The Commission may use the 60-day

1 period referred to in paragraph (1) for the purpose  
2 of concluding its activities, including providing testi-  
3 mony to committees of Congress concerning its re-  
4 port and disseminating the final report.

5 (k) DEFINITIONS.—In this section:

6 (1) INTELLIGENCE COMMUNITY.—The term  
7 “intelligence community” has the meaning given the  
8 term in section 3(4) of the National Security Act of  
9 1947 (50 U.S.C. 401a(4)).

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

14 (l) FUNDING.—

15 (1) IN GENERAL.—There are authorized to be  
16 appropriated such sums as may be necessary to  
17 carry out the activities of the Commission under this  
18 section.

19 (2) DURATION OF AVAILABILITY.—Amounts  
20 made available to the Commission under paragraph  
21 (1) shall remain available until the termination of  
22 the Commission.

# 1     **TITLE IV—OTHER PROVISIONS**

## 2     **SEC. 401. SEVERABILITY.**

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

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

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

## 13     **SEC. 403. REPEALS.**

14           (a) REPEAL OF PROTECT AMERICA ACT OF 2007  
15 PROVISIONS.—

16                 (1) AMENDMENTS TO FISA.—

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

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

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

1                   eign Intelligence Surveillance Act of 1978  
2                   (50 U.S.C. 1801 nt) is amended by strik-  
3                   ing the items relating to sections 105A,  
4                   105B, and 105C.

5                   (ii) CONFORMING AMENDMENTS.—Ex-  
6                   cept as provided in section 404, section  
7                   103(e) of the Foreign Intelligence Surveil-  
8                   lance Act of 1978 (50 U.S.C. 1803(e)) is  
9                   amended—

10                   (I) in paragraph (1), by striking  
11                   “105B(h) or 501(f)(1)” and inserting  
12                   “501(f)(1) or 702(h)(4)”; and

13                   (II) in paragraph (2), by striking  
14                   “105B(h) or 501(f)(1)” and inserting  
15                   “501(f)(1) or 702(h)(4)”.

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

20                   (3) TRANSITION PROCEDURES.—Except as pro-  
21                   vided in section 404, subsection (b) of section 6 of  
22                   the Protect America Act of 2007 (Public Law 110-  
23                   55; 121 Stat. 556) is repealed.

24                   (b) FISA AMENDMENTS ACT OF 2008.—

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

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

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

10                   (B) except as provided in section 404, sec-  
11                   tion 601(a)(1) of such Act (50 U.S.C.  
12                   1871(a)(1)) is amended to read as such section  
13                   read on the day before the date of the enact-  
14                   ment of this Act; and

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

20   **SEC. 404. TRANSITION PROCEDURES.**

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

23                   (1) CONTINUED EFFECT OF ORDERS, AUTHOR-  
24                   IZATIONS, DIRECTIVES.—Notwithstanding any other  
25                   provision of law, any order, authorization, or direc-

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

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

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

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

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



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

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

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

1 (6) REPORTING REQUIREMENTS.—

2 (A) CONTINUED APPLICABILITY.—Not-  
3 withstanding any other provision of this Act,  
4 the Protect America Act of 2007 (Public Law  
5 110-55), or the Foreign Intelligence Surveil-  
6 lance Act of 1978 (50 U.S.C. 1801 et seq.),  
7 section 4 of the Protect America Act of 2007  
8 shall continue to apply until the date that the  
9 certification described in subparagraph (B) is  
10 submitted.

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

13 (i) made by the Attorney General;

14 (ii) submitted as part of a semi-an-  
15 nual report required by section 4 of the  
16 Protect America Act of 2007;

17 (iii) that states that there will be no  
18 further acquisitions carried out under sec-  
19 tion 105B of the Foreign Intelligence Sur-  
20 veillance Act of 1978, as added by section  
21 2 of the Protect America Act of 2007,  
22 after the date of such certification; and

23 (iv) that states that the information  
24 required to be included under such section  
25 4 relating to any acquisition conducted

1                   under such section 105B has been included  
2                   in a semi-annual report required by such  
3                   section 4.

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

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

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

18                  (2) APPLICABILITY OF TITLE VII OF FISA TO  
19                  CONTINUED ORDERS, AUTHORIZATIONS, DIREC-  
20                  TIVES.—Notwithstanding any other provision of this  
21                  Act or of the Foreign Intelligence Surveillance Act  
22                  of 1978 (50 U.S.C. 1801 et seq.), with respect to  
23                  any order, authorization, or directive referred to in  
24                  paragraph (1), title VII of such Act, as amended by

1 section 101(a), shall continue to apply until the expi-  
2 ration of such order, authorization, or directive.

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

8 (A) section 103(e) of such Act, as amended  
9 by section 113, shall continue to apply with re-  
10 spect to any directive issued pursuant to section  
11 702(h) of such Act, as added by section 101(a);

12 (B) section 702(h)(3) of such Act (as so  
13 added) shall continue to apply with respect to  
14 any directive issued pursuant to section 702(h)  
15 of such Act (as so added);

16 (C) section 703(e) of such Act (as so  
17 added) shall continue to apply with respect to  
18 an order or request for emergency assistance  
19 under that section;

20 (D) section 706 of such Act (as so added)  
21 shall continue to apply to an acquisition con-  
22 ducted under section 702 or 703 of such Act  
23 (as so added); and

24 (E) section 2511(2)(a)(ii)(A) of title 18,  
25 United States Code, as amended by section

1           101(c)(1), shall continue to apply to an order  
2           issued pursuant to section 704 of the Foreign  
3           Intelligence Surveillance Act of 1978, as added  
4           by section 101(a).

5           (4) REPORTING REQUIREMENTS.—

6                   (A) CONTINUED APPLICABILITY.—Not-  
7           withstanding any other provision of this Act or  
8           of the Foreign Intelligence Surveillance Act of  
9           1978 (50 U.S.C. 1801 et seq.), section 601(a)  
10          of such Act (50 U.S.C. 1871(a)), as amended  
11          by section 101(c)(2), and sections 702(l) and  
12          707 of such Act, as added by section 101(a),  
13          shall continue to apply until the date that the  
14          certification described in subparagraph (B) is  
15          submitted.

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

- 18                           (i) made by the Attorney General;
- 19                           (ii) submitted to the Select Committee  
20                   on Intelligence of the Senate, the Perma-  
21                   nent Select Committee on Intelligence of  
22                   the House of Representatives, and the  
23                   Committees on the Judiciary of the Senate  
24                   and the House of Representatives;

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

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

17 (5) TRANSITION PROCEDURES CONCERNING  
18 THE TARGETING OF UNITED STATES PERSONS OVER-  
19 SEAS.—Any authorization in effect on the date of  
20 enactment of this Act under section 2.5 of Executive  
21 Order 12333 to intentionally target a United States  
22 person reasonably believed to be located outside the  
23 United States shall continue in effect, and shall con-  
24 stitute a sufficient basis for conducting such an ac-

1       quisition targeting a United States person located  
2       outside the United States until the earlier of—

3               (A) the date that such authorization ex-  
4               pires; or

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

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

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

13      **SEC. 406. SURVEILLANCE TO PROTECT THE UNITED**  
14              **STATES.**

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

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

24              (2) ensure the safety and security of members  
25              of the United States Armed Forces or any other of-

1        ficer or employee of the Federal Government in-  
2        volved in protecting the national security of the  
3        United States; or

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