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United States Senate

SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, DC 20510-6475

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*** NOTICE ***

The attached legislation was approved by the Senate Select Committee on Intelligence on Thursday, October 18, 2007.

It is the Committee's expectation that the bill and an accompanying report will be officially reported and filed with the Senate next week.

The Committee agreed to make this legislation available to the public at the earliest possible time. Under this agreement, however, this draft is still subject to possible changes to make minor technical and conforming corrections.

The filed version may reflect minor changes.

Calendar No. _____

110TH CONGRESS
1ST SESSION**S.** _____

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

IN THE SENATE OF THE UNITED STATES

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

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Foreign Intelligence Surveillance Act of 1978 Amend-
6 ments Act of 2007” or the “FISA Amendments Act of
7 2007”.

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

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

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

Sec. 109. Foreign Intelligence Surveillance Court.

Sec. 110. Technical and conforming amendments.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

Sec. 201. Definitions.

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

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

Sec. 204. Preemption of State investigations.

Sec. 205. Technical amendments.

TITLE III—OTHER PROVISIONS

Sec. 301. Severability.

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

3 **TITLE I—FOREIGN**
4 **INTELLIGENCE SURVEILLANCE**
5 **SEC. 101. TARGETING THE COMMUNICATIONS OF CERTAIN**
6 **PERSONS OUTSIDE THE UNITED STATES.**

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

9 (1) by striking title VII; and

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

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES FOR TARGETING COM-**
3 **MUNICATIONS OF CERTAIN**
4 **PERSONS OUTSIDE THE**
5 **UNITED STATES**

6 **“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC**
7 **SURVEILLANCE.**

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

13 **“SEC. 702. DEFINITIONS.**

14 “(a) **IN GENERAL.**—The terms ‘agent of a foreign
15 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
16 lance’, ‘foreign intelligence information’, ‘foreign power’,
17 ‘minimization procedures’, ‘person’, ‘United States’, and
18 ‘United States person’ shall have the meanings given such
19 terms in section 101, except as specifically provided in this
20 title.

21 “(b) **ADDITIONAL DEFINITIONS.**—

22 “(1) **CONGRESSIONAL INTELLIGENCE COMMIT-**
23 **TEES.**—The term ‘congressional intelligence commit-

24 tees’ means—

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

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

5 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
6 COURT; COURT.—The terms ‘Foreign Intelligence
7 Surveillance Court’ and ‘Court’ mean the court es-
8 tablished by section 103(a).

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

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

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

20 “(B) a provider of electronic communica-
21 tions service, as that term is defined in section
22 2510 of title 18, United States Code;

23 “(C) a provider of a remote computing
24 service, as that term is defined in section 2711
25 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; or

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

9 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
10 NITY.—The term ‘element of the intelligence com-
11 munity’ means an element of the intelligence com-
12 munity specified in or designated under section 3(4)
13 of the National Security Act of 1947 (50 U.S.C.
14 401a(4)).

15 **“SEC. 703. PROCEDURES FOR ACQUIRING THE COMMU-**
16 **NICATIONS OF CERTAIN PERSONS OUTSIDE**
17 **THE UNITED STATES.**

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

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

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

4 “(2) may not intentionally target a person rea-
5 sonably believed to be outside the United States if
6 the purpose of such acquisition is to target for sur-
7 veillance a particular, known person reasonably be-
8 lieved to be in the United States, except in accord-
9 ance with title I; and

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

13 “(c) UNITED STATES PERSONS LOCATED OUTSIDE
14 THE UNITED STATES.—

15 “(1) ACQUISITION INSIDE THE UNITED STATES
16 OF UNITED STATES PERSONS OUTSIDE THE UNITED
17 STATES.—An acquisition authorized by subsection
18 (a) that occurs inside the United States may not
19 target a United States person except in accordance
20 with the provisions of title I.

21 “(2) ACQUISITION OUTSIDE THE UNITED
22 STATES OF UNITED STATES PERSONS OUTSIDE THE
23 UNITED STATES.—An acquisition by an electronic,
24 mechanical, or other surveillance device outside the
25 United States may not intentionally target the con-

1 tents of a wire or radio communication sent by or
2 intended to be received by a United States person
3 who is reasonably believed to be located outside the
4 United States under circumstances in which a per-
5 son has reasonable expectation of privacy and a war-
6 rant would be required for law enforcement purposes
7 if the technique were used inside the United States
8 unless—

9 “(A) the Attorney General or the Attorney
10 General’s designee submits an application to
11 the Foreign Intelligence Surveillance Court that
12 includes a statement of the facts and cir-
13 cumstances relied upon by the applicant to jus-
14 tify the Attorney General’s belief that the tar-
15 get of the acquisition is a foreign power or an
16 agent of a foreign power; and

17 “(B) the Foreign Intelligence Surveillance
18 Court—

19 “(i) finds on the basis of the facts
20 submitted by the applicant there is prob-
21 able cause to believe that the target of the
22 electronic surveillance is a foreign power or
23 an agent of a foreign power; and

1 “(ii) issues an ex parte order as re-
2 quested or as modified approving the ac-
3 quisition.

4 “(3) PROCEDURES.—

5 “(A) SUBMITTAL TO FOREIGN INTEL-
6 LIGENCE SURVEILLANCE COURT.—Not later
7 than 30 days after the date of the enactment of
8 this title, the Attorney General shall submit to
9 the Foreign Intelligence Surveillance Court the
10 procedures to be utilized in determining wheth-
11 er a target reasonably believed to be outside the
12 United States is a United States person.

13 “(B) APPROVAL BY FOREIGN INTEL-
14 LIGENCE SURVEILLANCE COURT.—The proce-
15 dures submitted under subparagraph (A) shall
16 be utilized as described in that subparagraph
17 only upon the approval of the Foreign Intel-
18 ligence Surveillance Court.

19 “(C) UTILIZATION IN TARGETING.—Any
20 targeting of persons authorized by subsection
21 (a) shall utilize the procedures submitted under
22 subparagraph (A) as approved by the Foreign
23 Intelligence Surveillance Court under subpara-
24 graph (B).

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

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

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

9 “(e) TARGETING PROCEDURES.—

10 “(1) REQUIREMENT TO ADOPT.—The Attorney
11 General, in consultation with the Director of Na-
12 tional Intelligence, shall adopt targeting procedures
13 that are reasonably designed to ensure that any ac-
14 quisition authorized under subsection (a) is limited
15 to targeting persons reasonably believed to be lo-
16 cated outside the United States.

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

20 “(f) MINIMIZATION PROCEDURES.—

21 “(1) REQUIREMENT TO ADOPT.—The Attorney
22 General, in consultation with the Director of Na-
23 tional Intelligence, shall adopt, consistent with the
24 requirements of section 101(h), minimization proce-

1 dures for acquisitions authorized under subsection
2 (a).

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

6 “(g) CERTIFICATION.—

7 “(1) IN GENERAL.—

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

14 “(B) EXCEPTION.—If the Attorney Gen-
15 eral and the Director of National Intelligence
16 determine that immediate action by the Govern-
17 ment is required and time does not permit the
18 preparation of a certification under this sub-
19 section prior to the initiation of an acquisition,
20 the Attorney General and the Director of Na-
21 tional Intelligence shall prepare such certifi-
22 cation, including such determination, as soon as
23 possible but in no event more than 168 hours
24 after such determination is made.

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

3 “(A) attest that—

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

13 “(ii) the procedures referred to in
14 clause (i) are consistent with the require-
15 ments of the fourth amendment to the
16 Constitution of the United States and do
17 not permit the intentional targeting of any
18 person who is known at the time of acqui-
19 sition to be located in the United States;

20 “(iii) a significant purpose of the ac-
21 quisition is to obtain foreign intelligence
22 information;

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

1 “(I) meet the definition of mini-
2 mization procedures under section
3 101(h); and

4 “(II) have been approved by, or
5 will promptly be submitted for ap-
6 proval by, the Foreign Intelligence
7 Surveillance Court pursuant to sub-
8 section (i);

9 “(v) the acquisition involves obtaining
10 the foreign intelligence information from or
11 with the assistance of an electronic com-
12 munication service provider; and

13 “(vi) the acquisition does not con-
14 stitute electronic surveillance, as limited by
15 section 701; and

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

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

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

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

1 acquisition authorized under subsection (a) will be
2 directed or conducted.

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

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

16 “(h) DIRECTIVES.—

17 “(1) AUTHORITY.—With respect to an acquisi-
18 tion authorized under subsection (a), the Attorney
19 General and the Director of National Intelligence
20 may direct, in writing, an electronic communication
21 service provider to—

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

1 quisition and produce a minimum of inter-
2 ference with the services that such electronic
3 communication service provider is providing to
4 the target; and

5 “(B) maintain under security procedures
6 approved by the Attorney General and the Di-
7 rector of National Intelligence any records con-
8 cerning the acquisition or the aid furnished that
9 such electronic communication service provider
10 wishes to maintain.

11 “(2) COMPENSATION.—The Government shall
12 compensate, at the prevailing rate, an electronic
13 communication service provider for providing infor-
14 mation, facilities, or assistance pursuant to para-
15 graph (1).

16 “(3) RELEASE FROM LIABILITY.—Notwith-
17 standing any other law, no cause of action shall lie
18 in any court against any electronic communication
19 service provider for providing any information, facili-
20 ties, or assistance in accordance with a directive
21 issued pursuant to paragraph (1).

22 “(4) CHALLENGING OF DIRECTIVES.—

23 “(A) AUTHORITY TO CHALLENGE.—An
24 electronic communication service provider re-
25 ceiving a directive issued pursuant to paragraph

1 (1) may challenge the directive by filing a peti-
2 tion with the Foreign Intelligence Surveillance
3 Court.

4 “(B) ASSIGNMENT.—The presiding judge
5 of the Court shall assign the petition filed
6 under subparagraph (A) to 1 of the judges serv-
7 ing in the pool established by section 103(e)(1)
8 not later than 24 hours after the filing of the
9 petition.

10 “(C) STANDARDS FOR REVIEW.—A judge
11 considering a petition to modify or set aside a
12 directive may grant such petition only if the
13 judge finds that the directive does not meet the
14 requirements of this section or is otherwise un-
15 lawful. If the judge does not modify or set aside
16 the directive, the judge shall immediately affirm
17 such directive, and order the recipient to com-
18 ply with the directive. The judge shall provide
19 a written statement for the record of the rea-
20 sons for a determination under this paragraph.

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

24 “(5) ENFORCEMENT OF DIRECTIVES.—

1 “(A) ORDER TO COMPEL.—In the case of
2 a failure to comply with a directive issued pur-
3 suant to paragraph (1), the Attorney General
4 may file a petition for an order to compel com-
5 pliance with the directive with the Foreign In-
6 telligence Surveillance Court.

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

13 “(C) STANDARDS FOR REVIEW.—A judge
14 considering a petition shall issue an order re-
15 quiring the electronic communication service
16 provider to comply with the directive if the
17 judge finds that the directive was issued in ac-
18 cordance with paragraph (1), meets the require-
19 ments of this section, and is otherwise lawful.
20 The judge shall provide a written statement for
21 the record of the reasons for a determination
22 under this paragraph.

23 “(D) CONTEMPT OF COURT.—Failure to
24 obey an order of the Court issued under this

1 paragraph may be punished by the Court as
2 contempt of court.

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

7 “(6) APPEAL.—

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

20 “(B) CERTIORARI TO THE SUPREME
21 COURT.—The Government or an electronic com-
22 munication service provider receiving a directive
23 issued pursuant to paragraph (1) may file a pe-
24 tition for a writ of certiorari for review of the
25 decision of the Court of Review issued under

1 subparagraph (A). The record for such review
2 shall be transmitted under seal to the Supreme
3 Court of the United States, which shall have ju-
4 risdiction to review such decision.

5 “(i) JUDICIAL REVIEW.—

6 ““(1) IN GENERAL.—

7 “(A) REVIEW BY THE FOREIGN INTEL-
8 LIGENCE SURVEILLANCE COURT.—The Foreign
9 Intelligence Surveillance Court shall have juris-
10 diction to review any certification required by
11 subsection (d) or targeting and minimization
12 procedures adopted pursuant to subsections (e)
13 and (f).

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

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

24 “(3) TARGETING PROCEDURES.—The Court
25 shall review the targeting procedures required by

1 subsection (e) to assess whether the procedures are
2 reasonably designed to ensure that the acquisition
3 activity is limited to the targeting of persons reason-
4 ably believed to be located outside the United States.

5 “(4) MINIMIZATION PROCEDURES.—The Court
6 shall review the minimization procedures required by
7 subsection (f) to assess whether such procedures
8 meet the definition of minimization procedures
9 under section 101(h).

10 “(5) ORDERS.—

11 “(A) APPROVAL.—If the Court finds that
12 a certification required by subsection (g) con-
13 tains all of the required elements and that the
14 targeting and minimization procedures required
15 by subsections (e) and (f) are consistent with
16 the requirements of those subsections and with
17 the fourth amendment to the Constitution of
18 the United States, the Court shall enter an
19 order approving the continued use of the proce-
20 dures for the acquisition authorized under sub-
21 section (a).

22 “(B) CORRECTION OF DEFICIENCIES.—If
23 the Court finds that a certification required by
24 subsection (g) does not contain all of the re-
25 quired elements, or that the procedures re-

1 quired by subsections (e) and (f) are not con-
2 sistent with the requirements of those sub-
3 sections or the fourth amendment to the Con-
4 stitution of the United States, the Court shall
5 issue an order directing the Government to, at
6 the Government's election and to the extent re-
7 quired by the Court's order—

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

11 or

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

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

19 “(6) APPEAL.—

20 “(A) APPEAL TO THE COURT OF RE-
21 VIEW.—The Government may appeal any order
22 under this section to the Foreign Intelligence
23 Surveillance Court of Review, which shall have
24 jurisdiction to review such order. For any deci-
25 sion affirming, reversing, or modifying an order

1 of the Foreign Intelligence Surveillance Court,
2 the Court of Review shall provide for the record
3 a written statement of its reasons.

4 “(B) CONTINUATION OF ACQUISITION
5 PENDING APPEAL.—Any acquisitions affected
6 by an order under paragraph (5)(B) may con-
7 tinue during the pendency of any appeal to the
8 Foreign Intelligence Surveillance Court of Re-
9 view.

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

18 “(j) JUDICIAL PROCEEDINGS.—Judicial proceedings
19 under this section shall be conducted as expeditiously as
20 possible.

21 “(k) MAINTENANCE OF RECORDS.—

22 “(1) STANDARDS.—A record of a proceeding
23 under this section, including petitions filed, orders
24 granted, and statements of reasons for decision,
25 shall be maintained under security measures adopted

1 by the Chief Justice of the United States, in con-
2 sultation with the Attorney General and the Director
3 of National Intelligence.

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

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

16 “(1) OVERSIGHT.—

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

23 “(A) the Foreign Intelligence Surveillance
24 Court; and

1 “(B) the congressional intelligence commit-
2 tees.

3 “(2) AGENCY ASSESSMENT.—The Inspectors
4 General of the Department of Justice and of any
5 element of the intelligence community authorized to
6 acquire foreign intelligence information under sub-
7 section (a)—

8 “(A) are authorized to review the compli-
9 ance of their agency or element with the tar-
10 geting and minimization procedures required by
11 subsections (e) and (f);

12 “(B) with respect to acquisitions author-
13 ized under subsection (a), shall review the num-
14 ber of disseminated intelligence reports con-
15 taining a reference to a United States person
16 identity and the number of United States per-
17 son identities subsequently disseminated by the
18 element concerned in response to requests for
19 identities that were not referred to by name or
20 title in the original reporting;

21 “(C) with respect to acquisitions author-
22 ized under subsection (a), shall review the num-
23 ber of targets that were later determined to be
24 located in the United States and the number of

1 persons located in the United States whose
2 communications were reviewed; and

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

4 “(i) the Attorney General;

5 “(ii) the Director of National Intel-
6 ligence; and

7 “(iii) the congressional intelligence
8 committees.

9 “(3) ANNUAL REVIEW.—

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

20 “(i) an accounting of the number of
21 disseminated intelligence reports con-
22 taining a reference to a United States per-
23 son identity;

24 “(ii) an accounting of the number of
25 United States person identities subse-

1 quently disseminated by that element in re-
2 sponse to requests for identities that were
3 not referred to by name or title in the
4 original reporting; and

5 “(iii) the number of targets that were
6 later determined to be located in the
7 United States and the number of persons
8 located in the United States whose commu-
9 nications were reviewed.

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

18 “(C) PROVISION OF REVIEW TO FOREIGN
19 INTELLIGENCE SURVEILLANCE COURT.—The
20 head of each element of the intelligence commu-
21 nity that conducts an annual review under sub-
22 paragraph (A) shall provide such review to the
23 Foreign Intelligence Surveillance Court.

24 “(4) REPORTS TO CONGRESS.—

1 “(A) SEMIANNUAL REPORT.—Not less fre-
2 quently than once every 6 months, the Attorney
3 General shall fully inform, in a manner con-
4 sistent with national security, the congressional
5 intelligence committees, the Committee on the
6 Judiciary of the Senate, and the Committee on
7 the Judiciary of the House of Representatives,
8 concerning the implementation of this Act.

9 “(B) CONTENT.—Each report made under
10 subparagraph (A) shall include—

11 “(i) any certifications made under
12 subsection (g) during the reporting period;

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

15 “(iii) the judicial review during the re-
16 porting period of any such certifications
17 and targeting and minimization procedures
18 utilized with respect to such acquisition,
19 including a copy of any order or pleading
20 in connection with such review that con-
21 tains a significant legal interpretation of
22 the provisions of this Act;

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

1 “(v) a description of any compliance
2 reviews conducted by the Department of
3 Justice or the Office of the Director of Na-
4 tional Intelligence of acquisitions author-
5 ized under subsection (a);

6 “(vi) a description of any incidents of
7 noncompliance with a directive issued by
8 the Attorney General and the Director of
9 National Intelligence under subsection (a),
10 including—

11 “(I) incidents of noncompliance
12 by an element of the intelligence com-
13 munity with procedures adopted pur-
14 suant to subsections (e) and (f); and

15 “(II) incidents of noncompliance
16 by a specified person to whom the At-
17 torney General and Director of Na-
18 tional Intelligence issued a directive
19 under subsection (h);

20 “(vii) any procedures implementing
21 this section; and

22 “(viii) any annual review conducted
23 pursuant to paragraph (3).

1 **“SEC. 704. USE OF INFORMATION ACQUIRED UNDER SEC-**
2 **TION 703.**

3 “Information acquired from an acquisition conducted
4 under section 703 shall be deemed to be information ac-
5 quired from an electronic surveillance pursuant to title I
6 for purposes of section 106, except for the purposes of
7 subsection (j) of such section.”.

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

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

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

13 and

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

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

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

“Sec. 702. Definitions.

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

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

15 (c) SUNSET.—The amendments made by subsections
16 (a) and (b) shall cease to have effect on December 31,
17 2013.

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

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

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

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

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

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

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

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

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

12 “(c) The Attorney General shall submit to the com-
13 mittees of Congress referred to in subsection (a) a copy
14 of any decision, order, or opinion issued by the court es-
15 tablished under section 103(a) or the court of review es-
16 tablished under section 103(b) that includes significant
17 construction or interpretation of any provision of this Act
18 not later than 45 days after such decision, order, or opin-
19 ion is issue.”.

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

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

23 (1) in subsection (a)—

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

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

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

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

10 (i) by striking “Affairs or” and insert-
11 ing “Affairs,”; and

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

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

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

1 (G) in paragraph (9), as redesignated by
2 subparagraph (B) of this paragraph, by striking
3 “; and” and inserting a period;
4 (2) by striking subsection (b);
5 (3) by redesignating subsections (c) through (e)
6 as subsections (b) through (d), respectively; and
7 (4) in paragraph (1)(A) of subsection (d), as re-
8 designated by paragraph (3) of this subsection, by
9 striking “or the Director of National Intelligence”
10 and inserting “the Director of National Intelligence,
11 or the Director of the Central Intelligence Agency”.

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

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

15 (1) in subsection (a)—

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

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

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

22 (3) in subsection (c)(1)—

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

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

3 (C) by striking subparagraph (F);

4 (4) by striking subsection (d);

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

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

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

13 “(A) determines that an emergency situation
14 exists with respect to the employment of electronic
15 surveillance to obtain foreign intelligence informa-
16 tion before an order authorizing such surveillance
17 can with due diligence be obtained;

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

21 “(C) informs, either personally or through a
22 designee, a judge having jurisdiction under section
23 103 at the time of such authorization that the deci-
24 sion has been made to employ emergency electronic
25 surveillance; and

1 “(D) makes an application in accordance with
2 this title to a judge having jurisdiction under section
3 103 as soon as practicable, but not later than 168
4 hours after the Attorney General authorizes such
5 surveillance.

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

11 “(3) In the absence of a judicial order approving such
12 electronic surveillance, the surveillance shall terminate
13 when the information sought is obtained, when the appli-
14 cation for the order is denied, or after the expiration of
15 168 hours from the time of authorization by the Attorney
16 General, whichever is earliest.

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

19 “(5) In the event that such application for approval
20 is denied, or in any other case where the electronic surveil-
21 lance is terminated and no order is issued approving the
22 surveillance, no information obtained or evidence derived
23 from such surveillance shall be received in evidence or oth-
24 erwise disclosed in any trial, hearing, or other proceeding
25 in or before any court, grand jury, department, office,

1 agency, regulatory body, legislative committee, or other
2 authority of the United States, a State, or political sub-
3 division thereof, and no information concerning any
4 United States person acquired from such surveillance shall
5 subsequently be used or disclosed in any other manner by
6 Federal officers or employees without the consent of such
7 person, except with the approval of the Attorney General
8 if the information indicates a threat of death or serious
9 bodily harm to any person.

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

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

13 “(i) In any case in which the Government makes an
14 application to a judge under this title to conduct electronic
15 surveillance involving communications and the judge
16 grants such application, upon the request of the applicant,
17 the judge shall also authorize the installation and use of
18 pen registers and trap and trace devices, and direct the
19 disclosure of the information set forth in section
20 402(d)(2).”.

21 **SEC. 106. USE OF INFORMATION.**

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

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

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

5 (1) in subsection (a)—

6 (A) by striking paragraph (2);

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

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

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

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

19 (i) by striking “Affairs or” and insert-
20 ing “Affairs,”; and

21 (ii) by striking “Senate—” and insert-
22 ing “Senate, or the Deputy Director of the
23 Federal Bureau of Investigation, if des-
24 ignated by the President as a certifying of-
25 ficial—”; and

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

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

8 (1) in subsection (a)—

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

10 (B) by redesignating paragraphs (2)
11 through (5) as paragraphs (1) through (4), re-
12 spectively; and

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

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

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

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

1 “(C) informs, either personally or through a
2 designee, a judge of the Foreign Intelligence Surveil-
3 lance Court at the time of such authorization that
4 the decision has been made to employ an emergency
5 physical search; and

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

11 “(2) If the Attorney General authorizes the emer-
12 gency employment of a physical search under paragraph
13 (1), the Attorney General shall require that the minimiza-
14 tion procedures required by this title for the issuance of
15 a judicial order be followed.

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

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

24 “(5)(A) In the event that such application for ap-
25 proval is denied, or in any other case where the physical

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

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

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

20 (1) in section 304(a)(4), as redesignated by
21 subsection (b) of this section, by striking
22 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

23 (2) in section 305(k)(2), by striking
24 “303(a)(7)” and inserting “303(a)(6)”.

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

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

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

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

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

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

15 (b) EN BANC AUTHORITY.—

16 (1) IN GENERAL.—Subsection (a) of section
17 103 of the Foreign Intelligence Surveillance Act of
18 1978 (50 U.S.C. 1803), as amended by subsection
19 (a) of this section, is further amended—

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

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

23 “(2)(A) The court established under this subsection
24 may, on its own initiative or upon the request of the Gov-
25 ernment in any proceeding or a party under section
26 501(c)(2) or paragraph (4) or (5) of section 703(h), hold

1 a hearing or rehearing, en banc, when ordered by a major-
2 ity of the judges sitting on such court upon a determina-
3 tion that—

4 “(i) en banc consideration is necessary to se-
5 cure or maintain uniformity of the court’s decisions;
6 or

7 “(ii) the proceeding involves a question of ex-
8 ceptional importance.

9 “(B) The court en banc shall consist of all judges
10 who constitute the court established under this sub-
11 section.”.

12 (2) CONFORMING AMENDMENTS.—The Foreign
13 Intelligence Surveillance Act of 1978 (50 U.S.C.
14 1801 et seq.) is amended—

15 (A) in the last sentence of section 302(c)—

16 (i) by inserting “, or the en banc
17 court,” after “designated”; and

18 (ii) by inserting “, or the en banc
19 court,” after “such judge”;

20 (B) in section 402(d)(1), by inserting “, or
21 the en banc court,” after “judge” both places
22 that term appears; and

23 (C) in section 501(c)(1), by inserting “, or
24 the en banc court,” after “judge” both places
25 that term appears.

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

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

6 (2) by inserting after subsection (e) the fol-
7 lowing new subsection:

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

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

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

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

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

3 (2) in paragraph (2), by striking “105B(h) or
4 501(f)(1)” and inserting “501(f)(1) or 703”.

5 **TITLE II—PROTECTIONS FOR**
6 **ELECTRONIC COMMUNICA-**
7 **TION SERVICE PROVIDERS**

8 **SEC. 201. DEFINITIONS.**

9 In this title:

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

16 (2) CONTENTS.—The term “contents” has the
17 meaning given that term in section 101(n) of the
18 Foreign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1801(n)).

20 (3) COVERED CIVIL ACTION.—The term “cov-
21 ered civil action” means a civil action filed in a Fed-
22 eral or State court that—

23 (A) alleges that an electronic communica-
24 tion service provider furnished assistance to an
25 element of the intelligence community; and

1 (B) seeks monetary or other relief from the
2 electronic communication service provider re-
3 lated to the provision of such assistance.

4 (4) ELECTRONIC COMMUNICATION SERVICE
5 PROVIDER.—The term “electronic communication
6 service provider” means—

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

10 (B) a provider of an electronic communica-
11 tion service, as that term is defined in section
12 2510 of title 18, United States Code;

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

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

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

1 (F) an officer, employee, or agent of an en-
2 tity described in subparagraph (A), (B), (C),
3 (D), or (E).

4 (5) ELEMENT OF THE INTELLIGENCE COMMU-
5 NITY.—The term “element of the intelligence com-
6 munity” means an element of the intelligence com-
7 munity specified in or designated under section 3(4)
8 of the National Security Act of 1947 (50 U.S.C.
9 401a(4)).

10 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**
11 **TRONIC COMMUNICATION SERVICE PRO-**
12 **VIDERS.**

13 (a) LIMITATIONS.—

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

19 (A) the assistance alleged to have been
20 provided by the electronic communication serv-
21 ice provider was—

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

1 (I) authorized by the President
2 during the period beginning on Sep-
3 tember 11, 2001, and ending on Jan-
4 uary 17, 2007; and

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

9 (ii) described in a written request or
10 directive from the Attorney General or the
11 head of an element of the intelligence com-
12 munity (or the deputy of such person) to
13 the electronic communication service pro-
14 vider indicating that the activity was—

15 (I) authorized by the President;
16 and

17 (II) determined to be lawful; or

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

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

23 (b) REVIEW OF CERTIFICATIONS.—If the Attorney
24 General files a declaration under section 1746 of title 28,
25 United States Code, that disclosure of a certification made

1 pursuant to subsection (a) would harm the national secu-
2 rity of the United States, the court shall—

3 (1) review such certification in camera and ex
4 parte; and

5 (2) limit any public disclosure concerning such
6 certification, including any public order following
7 such an ex parte review, to a statement that the con-
8 ditions of subsection (a) have been met, without dis-
9 closing the subparagraph of subsection (a)(1) that is
10 the basis for the certification.

11 (c) NONDELEGATION.—The authority and duties of
12 the Attorney General under this section shall be performed
13 by the Attorney General (or Acting Attorney General) or
14 a designee in a position not lower than the Deputy Attor-
15 ney General.

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

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

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

4 **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY**
5 **DEFENSES UNDER THE FOREIGN INTEL-**
6 **LIGENCE SURVEILLANCE ACT OF 1978.**

7 The Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1801 et seq.), as amended by section 101, is
9 further amended by adding after title VII the following
10 new title:

11 **“TITLE VIII—PROTECTION OF**
12 **PERSONS ASSISTING THE**
13 **GOVERNMENT**

14 **“SEC. 801. DEFINITIONS.**

15 “In this title:

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

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

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

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

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

9 “(B) a provider of electronic communica-
10 tions service, as that term is defined in section
11 2510 of title 18, United States Code;

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

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

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

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

1 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
2 NITY.—The term ‘element of the intelligence com-
3 munity’ means an element of the intelligence com-
4 munity as specified or designated under section 3(4)
5 of the National Security Act of 1947 (50 U.S.C.
6 401a(4)).

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

8 “(A) an electronic communication service
9 provider; or

10 “(B) a landlord, custodian, or other person
11 who may be authorized or required to furnish
12 assistance pursuant to—

13 “(i) an order of the court established
14 under section 103(a) directing such assist-
15 ance;

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

19 “(iii) a directive under section
20 102(a)(4), 105B(e), as in effect on the day
21 before the date of the enactment of the
22 FISA Amendments Act of 2007 or 703(h).

23 “(7) STATE.—The term ‘State’ means any
24 State, political subdivision of a State, the Common-
25 wealth of Puerto Rico, the District of Columbia, and

1 any territory or possession of the United States, and
2 includes any officer, public utility commission, or
3 other body authorized to regulate an electronic com-
4 munication service provider.

5 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
6 **DEFENSES.**

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

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

15 **“(A)** any assistance by that person was
16 provided pursuant to an order of the court es-
17 tablished under section 103(a) directing such
18 assistance;

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

23 **“(C)** any assistance by that person was
24 provided pursuant to a directive under sections
25 102(a)(4), 105B(e), as in effect on the day be-

1 fore the date of the enactment of the FISA
2 Amendments Act of 2007, or 703(h) directing
3 such assistance; or

4 “(D) the person did not provide the alleged
5 assistance.

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

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

14 “(1) review such certification in camera and ex
15 parte; and

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

22 “(e) REMOVAL.—A civil action against a person for
23 providing assistance to an element of the intelligence com-
24 munity that is brought in a State court shall be deemed
25 to arise under the Constitution and laws of the United

1 States and shall be removable under section 1441 of title
2 28, United States Code.

3 “(d) RELATIONSHIP TO OTHER LAWS.—Nothing in
4 this section may be construed to limit any otherwise avail-
5 able immunity, privilege, or defense under any other provi-
6 sion of law.

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

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

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

15 **“SEC. 803. PREEMPTION.**

16 “(a) IN GENERAL.—No State shall have authority
17 to—

18 “(1) conduct an investigation into an electronic
19 communication service provider’s alleged assistance
20 to an element of the intelligence community;

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

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

4 “(4) commence or maintain a civil action or
5 other proceeding to enforce a requirement that an
6 electronic communication service provider disclose
7 information concerning alleged assistance to an ele-
8 ment of the intelligence community.

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

12 “(c) JURISDICTION.—The district courts of the
13 United States shall have jurisdiction over any civil action
14 brought by the United States to enforce the provisions of
15 this section.

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

20 **SEC. 205. TECHNICAL AMENDMENTS.**

21 The table of contents in the first section of the For-
22 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
23 1801 et seq.), as amended by section 101(b), is further
24 amended by adding at the end the following:

 “TITLE VIII—PROTECTION OF PERSONS ASSISTING THE
 GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.

1 **TITLE III—OTHER PROVISIONS**

2 **SEC. 301. SEVERABILITY.**

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

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

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

14 (b) REPEAL.—

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

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

24 (c) TRANSITIONS PROCEDURES.—

1 thorize such order if the facts and cir-
2 cumstances continue to justify issuance of
3 such order under the provisions of such
4 Act, as in effect on the day before the date
5 of the enactment of the Protect America
6 Act of 2007, except as amended by sec-
7 tions 102, 103, 104, 105, 106, 107, and
8 108 of this Act.

9 (B) ORDERS IN EFFECT ON DECEMBER 31,
10 2013.—Any authorization or order issued under
11 title VII of the Foreign Intelligence Surveillance
12 Act of 1978, as amended by section 101 of this
13 Act, in effect on December 31, 2013, shall con-
14 tinue in effect until the date of the expiration
15 of such authorization or order.

16 (3) DIRECTIVES IN EFFECT.—Notwithstanding
17 any other provision of this Act or of the Foreign In-
18 telligence Surveillance Act of 1978 (50 U.S.C. 1801
19 et seq.), any directive in effect on the date of the en-
20 actment of this Act issued pursuant to the Protect
21 America Act of 2007 (Public Law 110–55; 121 Stat.
22 552), or any amendment made by that Act, shall re-
23 main in effect until the date of expiration of such di-
24 rective.

1 (4) NEW ORDERS.—Notwithstanding any other
2 provision of this Act or of the Foreign Intelligence
3 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

4 (A) the head of an appropriate agency or
5 department of the United States may file an
6 application for an order under the Foreign In-
7 telligence Surveillance Act of 1978 (50 U.S.C.
8 1801 et seq.), as in effect on the day before the
9 date of the enactment of the Protect America
10 Act of 2007 (Public Law 110–55; 121 Stat.
11 552), except as amended by sections 102, 103,
12 104, 105, 106, 107 and 108 of this Act; and

13 (B) the court established under section
14 103(a) of the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1803(a)) shall enter an
16 order granting such an application if the appli-
17 cation meets the requirements of such Act, as
18 in effect on the day before the date of the en-
19 actment of the Protect America Act of 2007,
20 except as amended by sections 102, 103, 104,
21 105, 106, 107, and 108 of this Act.

22 (5) EXTANT AUTHORIZATIONS.—At the request
23 of the applicant, the court established under section
24 103(a) of the Foreign Intelligence Surveillance Act
25 of 1978 (50 U.S.C. 1803(a)) shall extinguish any

1 extant authorization to conduct electronic surveil-
2 lance or physical search entered pursuant to such
3 Act.

4 (6) APPLICABLE PROVISIONS.—Any surveillance
5 conducted pursuant to an order entered pursuant to
6 this subsection shall be subject to the provisions of
7 the Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1801 et seq.), as in effect on the day be-
9 fore the date of the enactment of the Protect Amer-
10 ica Act of 2007 (Public Law 110–55; 121 Stat.
11 552), except as amended by sections 102, 103, 104,
12 105, 106, 107, and 108 of this Act.