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110TH CONGRESS
1ST SESSION

S. 2248

[Report No. 110–209]

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2007

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

NOVEMBER 1, 2007

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

NOVEMBER 16, 2007

Reported by Mr. LEAHY, with an amendment

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

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,*

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

~~(a) SHORT TITLE.—This Act may be cited as the "Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007" or the "FISA Amendments Act of 2007".~~

~~(b) TABLE OF CONTENTS.—The table of contents for 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.~~

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

(1) by striking title VII; and

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

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

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

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

"SEC. 702. DEFINITIONS.

''(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power',

~~'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101, except as specifically provided in this title.~~

~~"(b) ADDITIONAL DEFINITIONS.—~~

~~"(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—~~

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

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

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

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

~~"(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—~~

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

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

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

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

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

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

~~"SEC. 703. PROCEDURES FOR ACQUIRING THE COMMUNICATIONS OF CERTAIN PERSONS OUTSIDE THE UNITED STATES.~~

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

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

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

~~"(2) may not intentionally target a person reasonably believed to be outside the United States if the purpose of such acquisition is to target for surveillance a particular, known person reasonably believed to be in the United States, except in accordance with title I; and~~

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

~~"(c) UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.—~~

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

~~"(2) ACQUISITION OUTSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—An acquisition by an electronic, mechanical, or other surveillance device outside the United States may not intentionally target a United States person reasonably believed to be outside the United States to acquire the contents of a wire or radio communication sent by or intended to be received by that United States person under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes if the technique were used inside the United States unless—~~

~~"(A) the Attorney General or the Attorney General's designee submits an application to the Foreign Intelligence Surveillance Court that includes a statement of the facts and circumstances relied upon by the applicant to justify the Attorney General's belief that the tar-~~

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

~~"(B) the Foreign Intelligence Surveillance Court—~~

~~"(i) finds on the basis of the facts submitted by the applicant there is probable cause to believe that the target of the electronic surveillance is a foreign power or an agent of a foreign power; and~~

~~"(ii) issues an ex parte order as requested or as modified approving the targeting of that United States person.~~

~~"(3) PROCEDURES.—~~

~~"(A) SUBMITTAL TO FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Not later than 30 days after the date of the enactment of this title, the Attorney General shall submit to the Foreign Intelligence Surveillance Court the procedures to be utilized in determining whether a target reasonably believed to be outside the United States is a United States person.~~

~~"(B) APPROVAL BY FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The procedures submitted under subparagraph (A) shall be utilized as described in that subparagraph~~

~~only upon the approval of the Foreign Intelligence Surveillance Court.~~

~~"(C) UTILIZATION IN TARGETING.—Any targeting of persons authorized by subsection (a) shall utilize the procedures submitted under subparagraph (A) as approved by the Foreign Intelligence Surveillance Court under subparagraph (B).~~

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

~~"(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (g); and~~

~~"(2) the targeting and minimization procedures required pursuant to subsections (e) and (f).~~

~~"(e) TARGETING PROCEDURES.—~~

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

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

~~"(f) MINIMIZATION PROCEDURES.—~~

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

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

~~"(g) CERTIFICATION.—~~

~~"(1) IN GENERAL.—~~

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

~~"(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the~~

~~preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 168 hours after such determination is made.~~

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

~~"(A) attest that—~~

~~"(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will promptly be submitted for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (i);~~

~~"(ii) the procedures referred to in clause (i) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any~~

~~person who is known at the time of acquisition to be located in the United States;~~

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

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

~~"(I) meet the definition of minimization procedures under section 101(h); and~~

~~"(II) have been approved by, or will promptly be submitted for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (i);~~

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

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

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

1 ~~"(i) appointed by the President, by~~
2 ~~and with the consent of the Senate; or~~
3 ~~"(ii) the head of any element of the~~
4 ~~intelligence community.~~
5 ~~"(3) LIMITATION.—A certification made under~~
6 ~~this subsection is not required to identify the specific~~
7 ~~facilities, places, premises, or property at which the~~
8 ~~acquisition authorized under subsection (a) will be~~
9 ~~directed or conducted.~~
10 ~~"(4) SUBMISSION TO THE COURT.—The Attor-~~
11 ~~ney General shall transmit a copy of a certification~~
12 ~~made under this subsection, and any supporting affi-~~
13 ~~davit, under seal to the Foreign Intelligence Surveil-~~
14 ~~lance Court as soon as possible, but in no event~~
15 ~~more than 5 days after such certification is made.~~
16 ~~Such certification shall be maintained under security~~
17 ~~measures adopted by the Chief Justice of the United~~
18 ~~States and the Attorney General, in consultation~~
19 ~~with the Director of National Intelligence.~~
20 ~~"(5) REVIEW.—The certification required by~~
21 ~~this subsection shall be subject to judicial review~~
22 ~~pursuant to subsection (i).~~
23 ~~"(h) DIRECTIVES.—~~
24 ~~"(1) AUTHORITY.—With respect to an acquisi-~~
25 ~~tion authorized under subsection (a), the Attorney~~

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

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

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

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

~~"(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication~~

~~service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).~~

~~"(4) CHALLENGING OF DIRECTIVES.—~~

~~"(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court.~~

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

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

~~a written statement for the record of the reasons for a determination under this paragraph.~~

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

~~"(5) ENFORCEMENT OF DIRECTIVES.—~~

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

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

~~"(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an order requiring the electronic communication service provider to comply with the directive if the judge finds that the directive was issued in accordance with paragraph (1), meets the requirements of this section, and is otherwise lawful.~~

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

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

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

~~"(6) APPEAL.—~~

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

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

~~"(i) JUDICIAL REVIEW.—~~

~~"(1) IN GENERAL.—~~

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

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

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

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

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

~~"(5) ORDERS.—~~

~~"(A) APPROVAL.—If the Court finds that a certification required by subsection (g) contains all of the required elements and that the targeting and minimization procedures required by subsections (e) and (f) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an~~

~~order approving the continued use of the procedures for the acquisition authorized under subsection (a).~~

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

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

~~"(ii) cease the acquisition authorized under subsection (a).~~

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

1 ~~"(6) APPEAL.—~~

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

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

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

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

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

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

~~"(j) JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.~~

~~"(k) MAINTENANCE OF RECORDS.—~~

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

~~"(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.~~

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

1 ~~"(l) OVERSIGHT.—~~

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

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

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

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

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

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

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

"(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and the number of persons located in the United States whose communications were reviewed; and

"(D) shall provide each such review to—

"(i) the Attorney General;

"(ii) the Director of National Intelligence; and

"(iii) the congressional intelligence committees.

"(3) ANNUAL REVIEW.—

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

~~provide, with respect to such acquisitions authorized under subsection (a)—~~

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

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

~~"(iii) the number of targets that were later determined to be located in the United States and the number of persons located in the United States whose communications were reviewed.~~

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

1 ~~"(C) PROVISION OF REVIEW TO FOREIGN~~
2 ~~INTELLIGENCE SURVEILLANCE COURT.—The~~
3 ~~head of each element of the intelligence commu-~~
4 ~~nity that conducts an annual review under sub-~~
5 ~~paragraph (A) shall provide such review to the~~
6 ~~Foreign Intelligence Surveillance Court.~~
7 ~~"(4) REPORTS TO CONGRESS.—~~
8 ~~"(A) SEMIANNUAL REPORT.—Not less fre-~~
9 ~~quently than once every 6 months, the Attorney~~
10 ~~General shall fully inform, in a manner con-~~
11 ~~sistent with national security, the congressional~~
12 ~~intelligence committees, the Committee on the~~
13 ~~Judiciary of the Senate, and the Committee on~~
14 ~~the Judiciary of the House of Representatives,~~
15 ~~concerning the implementation of this Act.~~
16 ~~"(B) CONTENT.—Each report made under~~
17 ~~subparagraph (A) shall include—~~
18 ~~"(i) any certifications made under~~
19 ~~subsection (g) during the reporting period;~~
20 ~~"(ii) any directives issued under sub-~~
21 ~~section (h) during the reporting period;~~
22 ~~"(iii) the judicial review during the re-~~
23 ~~porting period of any such certifications~~
24 ~~and targeting and minimization procedures~~
25 ~~utilized with respect to such acquisition,~~

~~including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this Act;~~

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

~~"(v) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection (a);~~

~~"(vi) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection (h), including—~~

~~"(I) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (e) and (f); and~~

~~"(II) incidents of noncompliance by a specified person to whom the Attorney General and Director of Na-~~

1 ~~tional Intelligence issued a directive~~
2 ~~under subsection (h);~~
3 ~~"(vii) any procedures implementing~~
4 ~~this section; and~~
5 ~~"(viii) any annual review conducted~~
6 ~~pursuant to paragraph (3).~~
7 ~~**"SEC. 704. USE OF INFORMATION ACQUIRED UNDER SEC-**~~
8 ~~**TION 703.**~~
9 ~~"Information acquired from an acquisition conducted~~
10 ~~under section 703 shall be deemed to be information ac-~~
11 ~~quired from an electronic surveillance pursuant to title I~~
12 ~~for purposes of section 106, except for the purposes of~~
13 ~~subsection (j) of such section.".~~
14 ~~(b) TABLE OF CONTENTS.—The table of contents in~~
15 ~~the first section of the Foreign Intelligence Surveillance~~
16 ~~Act of 1978 (50 U.S.C. 1801 et seq.) is amended—~~
17 ~~(1) by striking the item relating to title VII;~~
18 ~~(2) by striking the item relating to section 701;~~
19 ~~and~~
20 ~~(3) by adding at the end the following:~~

~~"TITLE VII—ADDITIONAL PROCEDURES FOR TARGETING COMMUNICATIONS 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 outside the United States.~~
~~"Sec. 704. Use of information acquired under section 703.".~~

21 ~~(c) SUNSET.—~~

~~(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2) and (b) shall cease to have effect on December 31, 2013.~~

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

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

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

~~"STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS MAY BE CONDUCTED~~

~~"SEC. 112. Chapters 119 and 121 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.".~~

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

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

~~SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.~~

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

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

~~"(c) The Attorney General shall submit to the committees of Congress referred to in subsection (a) a copy of any decision, order, or opinion issued by the court established under section 103(a) or the court of review established under section 103(b) that includes significant construction or interpretation of any provision of this Act not later than 45 days after such decision, order, or opinion is issued.".~~

~~SEC. 104. APPLICATIONS FOR COURT ORDERS.~~

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

~~(1) in subsection (a)—~~

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

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

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

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

~~(i) by striking "Affairs or" and inserting "Affairs,"; and~~

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

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

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

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

~~(2) by striking subsection (b);~~

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

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

~~SEC. 105. ISSUANCE OF AN ORDER.~~

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

~~(1) in subsection (a)—~~

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

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

~~(2) in subsection (b), by striking "(a)(3)" and inserting "(a)(2)";~~

~~(3) in subsection (c)(1)—~~

~~(A) in subparagraph (D), by adding "and" at the end;~~

~~(B) in subparagraph (E), by striking "; and" and inserting a period; and~~

~~(C) by striking subparagraph (F);~~

~~(4) by striking subsection (d);~~

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

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

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

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

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

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

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

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

~~"(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate~~

when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

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

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

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

(7) by adding at the end the following:

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

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

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

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

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

18 ~~(1) in subsection (a)—~~

19 ~~(A) by striking paragraph (2);~~

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

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

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

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

~~(i) by striking "Affairs or" and inserting "Affairs,"; and~~

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

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

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

~~(1) in subsection (a)—~~

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

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

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

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

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

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

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

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

~~"(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph~~

~~(1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.~~

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

~~least'' before ''seven of the United States judicial circuits''.~~

~~(b) EN BANC AUTHORITY.—~~

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

~~(A) by inserting ''(1)'' after ''(a)''; and~~

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

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

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

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

~~''(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such author-~~

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

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

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

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

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

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

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

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

~~"(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or~~

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

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

~~SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.~~

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

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

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

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

~~SEC. 201. DEFINITIONS.~~

~~In this title:~~

~~(1) ASSISTANCE.—The term "assistance" means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.~~

~~(2) CONTENTS.—The term "contents" has the meaning given that term in section 101(n) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).~~

~~(3) COVERED CIVIL ACTION.—The term "covered civil action" means a civil action filed in a Federal or State court that—~~

~~(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and~~

~~(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.~~

~~(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term "electronic communication service provider" means—~~

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

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

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

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

~~(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or~~

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

~~(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term "element of the intelligence com-~~

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

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

~~(a) LIMITATIONS.—~~

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

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

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

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

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

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

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

~~(I) authorized by the President; and~~

~~(II) determined to be lawful; or~~

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

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

~~(b) REVIEW OF CERTIFICATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—~~

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

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

~~such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.~~

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

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

~~(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.~~

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

~~SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.~~

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

~~"TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT~~

~~"SEC. 801. DEFINITIONS.~~

~~"In this title:~~

~~"(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.~~

~~"(2) ATTORNEY GENERAL.—The term 'Attorney General' has the meaning give that term in section 101(g).~~

~~"(3) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).~~

~~"(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—~~

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

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

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

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

~~"(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or~~

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

~~"(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community as specified or designated under section 3(4)~~

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

~~"(6) PERSON.—The term 'person' means—~~

~~"(A) an electronic communication service provider; or~~

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

~~"(i) an order of the court established under section 103(a) directing such assistance;~~

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

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

~~"(7) STATE.—The term 'State' means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.~~

~~"SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.~~

~~"(a) REQUIREMENT FOR CERTIFICATION.—~~

~~"(1) IN GENERAL.—Notwithstanding any other provision of law, no civil action may lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the court that—~~

~~"(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;~~

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

~~"(C) any assistance by that person was provided pursuant to a directive under sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2007, or 703(h) directing such assistance; or~~

~~"(D) the person did not provide the alleged assistance.~~

1 ~~"(2) REVIEW.—A certification made pursuant~~
2 ~~to paragraph (1) shall be subject to review by a~~
3 ~~court for abuse of discretion.~~
4 ~~"(b) LIMITATIONS ON DISCLOSURE.—If the Attorney~~
5 ~~General files a declaration under section 1746 of title 28,~~
6 ~~United States Code, that disclosure of a certification made~~
7 ~~pursuant to subsection (a) would harm the national secu-~~
8 ~~rity of the United States, the court shall—~~
9 ~~"(1) review such certification in camera and ex~~
10 ~~parte; and~~
11 ~~"(2) limit any public disclosure concerning such~~
12 ~~certification, including any public order following~~
13 ~~such an ex parte review, to a statement that the con-~~
14 ~~ditions of subsection (a) have been met, without dis-~~
15 ~~closing the subparagraph of subsection (a)(1) that is~~
16 ~~the basis for the certification.~~
17 ~~"(c) REMOVAL.—A civil action against a person for~~
18 ~~providing assistance to an element of the intelligence com-~~
19 ~~munity that is brought in a State court shall be deemed~~
20 ~~to arise under the Constitution and laws of the United~~
21 ~~States and shall be removable under section 1441 of title~~
22 ~~28, United States Code.~~
23 ~~"(d) RELATIONSHIP TO OTHER LAWS.—Nothing in~~
24 ~~this section may be construed to limit any otherwise avail-~~

able immunity, privilege, or defense under any other provision of law.

"(c) APPLICABILITY.—This section shall apply to a civil action pending on or filed after the date of enactment of the FISA Amendments Act of 2007.".

SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.

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

"SEC. 803. PREEMPTION.

"(a) IN GENERAL.—No State shall have authority to—

"(1) conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community;

"(2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;

"(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

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

~~electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.~~

~~"(b) SUITS BY THE UNITED STATES.—The United States may bring suit to enforce the provisions of this section.~~

~~"(c) JURISDICTION.—The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.~~

~~"(d) APPLICATION.—This section shall apply to any investigation, action, or proceeding that is pending on or filed after the date of enactment of the FISA Amendments Act of 2007.".~~

~~SEC. 205. TECHNICAL AMENDMENTS.~~

~~The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further 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.".~~

~~TITLE III—OTHER PROVISIONS~~

~~SEC. 301. SEVERABILITY.~~

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

~~SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCEDURES.~~

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

~~(b) REPEAL.—~~

~~(1) IN GENERAL.—Except as provided in subsection (c), sections 105A, 105B, and 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are repealed.~~

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

~~(c) TRANSITIONS PROCEDURES.—~~

~~(1) PROTECTION FROM LIABILITY.—Notwithstanding subsection (b)(1), subsection (l) of section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain in effect with respect to any directives issued pursuant to such section 105B for information, facilities, or assistance provided during the period such directive was or is in effect.~~

~~(2) ORDERS IN EFFECT.—~~

~~(A) ORDERS IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—~~

~~(i) any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 or section 6(b) of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 556) shall remain in effect until the date of expiration of such order; and~~

~~(ii) at the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall reauthorize such order if the facts and circumstances continue to justify issuance of~~

~~such order under the provisions of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, and 109 of this Act.~~

~~(B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such order. Any such order shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended.~~

~~(3) AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—~~

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

~~main in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except as provided in paragraph (4) of this subsection, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), as construed in accordance with section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a)).~~

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

~~lance Act of 1978, as so amended, and, except as provided in section 704 of the Foreign Intelligence Surveillance Act of 1978, as so amended, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, to the extent that such section 101(f) is limited by section 701 of the Foreign Intelligence Surveillance Act of 1978, as so amended).~~

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

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

~~(A) the government may file an application for an order under the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, and 109 of this Act; and~~

~~(B) the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall enter an order granting such an application if the application meets the requirements of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, and 109 of this Act.~~

~~(6) EXTANT AUTHORIZATIONS.—At the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall extinguish any extant authorization to conduct electronic surveillance or physical search entered pursuant to such Act.~~

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007" or the "FISA Amendments Act of 2007".

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

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

Sec. 101. Targeting the communications of certain persons outside the United States.
Sec. 102. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.
Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
Sec. 104. Applications for court orders.
Sec. 105. Issuance of an order.
Sec. 106. Use of information.
Sec. 107. Amendments for physical searches.
Sec. 108. Amendments for emergency pen registers and trap and trace devices.
Sec. 109. Foreign Intelligence Surveillance Court.
Sec. 110. Review of previous actions.
Sec. 111. Technical and conforming amendments.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

(1) by striking title VII; and

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

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

"SEC. 701. DEFINITIONS.

"In this title:

"(1) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101.

"(2) ADDITIONAL DEFINITIONS.—

"(A) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

"(i) the Select Committee on Intelligence of the Senate; and

"(ii) the Permanent Select Committee on Intelligence of the House of Representatives.

"(B) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

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

"(D) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

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

"(ii) a provider of electronic communications service, as that term is defined in section 2510 of title 18, United States Code;

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

"(iv) any other communication service provider who has access to wire or electronic communications either as such communica-

tions are transmitted or as such communications are stored; or

"(v) an officer, employee, or agent of an entity described in clause (i), (ii), (iii), or (iv).

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

"SEC. 702. PROCEDURES FOR ACQUIRING THE COMMUNICATIONS OF CERTAIN PERSONS OUTSIDE THE UNITED STATES.

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

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

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

"(2) may not intentionally target a person reasonably believed to be outside the United States if a significant purpose of such acquisition is to acquire the communications of a specific person reasonably believed to be located in the United States, except in accordance with title I; and

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

"(c) UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.—

"(1) ACQUISITION INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—An acquisition authorized under subsection (a) that constitutes electronic surveillance and occurs inside the United States may not intentionally target a United States person reasonably believed to be outside the United States, except in accordance with the procedures under title I.

"(2) ACQUISITION OUTSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—

"(A) IN GENERAL.—An acquisition by an electronic, mechanical, or other surveillance device outside the United States may not inten-

tionally target a United States person reasonably believed to be outside the United States to acquire the contents of a wire or radio communication sent by or intended to be received by that United States person under circumstances in which a person has reasonable expectation of privacy and a warrant would be required for law enforcement purposes if the technique were used inside the United States unless—

"(i) the Foreign Intelligence Surveillance Court has entered an order approving electronic surveillance of that United States person under section 105, or in the case of an emergency situation, electronic surveillance against the target is being conducted in a manner consistent with title I; or

"(ii)(I) the Foreign Intelligence Surveillance Court has entered a order under subparagraph (B) that there is probable cause to believe that the United States person is a foreign power or an agent of a foreign power;

"(II) the Attorney General has established minimization procedures for that acquisition that meet the definition of mini-

mization procedures under section 101(h); and

"(III) the dissemination provisions of the minimization procedures described in subclause (II) have been approved under subparagraph (C).

"(B) PROBABLE CAUSE DETERMINATION; REVIEW.—

"(i) IN GENERAL.—The Attorney General may submit to the Foreign Intelligence Surveillance Court the determination of the Attorney General, together with any supporting affidavits, that a United States person who is outside the United States is a foreign power or an agent of a foreign power.

"(ii) REVIEW.—The Court shall review, any probable cause determination submitted by the Attorney General under this subparagraph. The review under this clause shall be limited to whether, on the basis of the facts submitted by the Attorney General, there is probable cause to believe that the United States person who is outside

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

"(iii) ORDER.—If the Court, after conducting a review under clause (ii), determines that there is probable cause to believe that the United States person is a foreign power or an agent of a foreign power, the court shall issue an order approving the acquisition. An order under this clause shall be effective for 90 days, and may be renewed for additional 90-day periods.

"(iv) NO PROBABLE CAUSE.—If the Court, after conducting a review under clause (ii), determines that there is not probable cause to believe that a United States person is a foreign power or an agent of a foreign power, it shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause to the Foreign Intelligence Surveillance Court of Review.

"(C) REVIEW OF MINIMIZATION PROCEDURES.—

"(i) IN GENERAL.—The Foreign Intelligence Surveillance Court shall review the minimization procedures applicable to dissemination of information obtained through an acquisition authorized under subparagraph (A) to assess whether such procedures meet the definition of minimization procedures under section 101(h) with respect to dissemination.

"(ii) REVIEW.—The Court shall issue an order approving the procedures applicable to dissemination as submitted or as modified to comply with section 101(h).

"(iii) PROCEDURES DO NOT MEET DEFINITION.—If the Court determines that the procedures applicable to dissemination of information obtained through an acquisition authorized under subparagraph (A) do not meet the definition of minimization procedures under section 101(h) with respect to dissemination, it shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause to the

Foreign Intelligence Surveillance Court of Review.

"(D) EMERGENCY PROCEDURES.—

"(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, the Attorney General may authorize the emergency employment of an acquisition under subparagraph (A) if the Attorney General—

"(I) reasonably determines that—

"(aa) an emergency situation exists with respect to the employment of an acquisition under subparagraph (A) before a determination of probable cause can with due diligence be obtained; and

"(bb) the factual basis for issuance of a determination under subparagraph (B) to approve such an acquisition exists;

"(II) informs a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency acquisition;

"(III) submits a request in accordance with subparagraph (B) to the judge notified under subclause (II) as soon as practicable, but later than 72 hours after the Attorney General authorizes such an acquisition; and

"(IV) requires that minimization procedures meeting the definition of minimization procedures under section 101(h) be followed.

"(ii) TERMINATION.—In the absence of a judicial determination finding probable cause to believe that the United States person that is the subject of an emergency employment of an acquisition under clause (i) is a foreign power or an agent of a foreign power, the emergency employment of an acquisition under clause (i) shall terminate when the information sought is obtained, when the request for a determination is denied, or after the expiration of 72 hours from the time of authorization by the Attorney General, whichever is earliest.

"(iii) USE OF INFORMATION.—If the Court determines that there is not probable

cause to believe that a United States is a foreign power or an agent of a foreign power in response to a request for a determination under clause (i)(III), or in any other case where the emergency employment of an acquisition under this subparagraph is terminated and no determination finding probable cause is issued, no information obtained or evidence derived from such acquisition shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

"(3) PROCEDURES.—

"(A) SUBMITTAL TO FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Not later than 30 days after the date of the enactment of the FISA Amendments Act of 2007, the Attorney General shall submit to the Foreign Intelligence Surveillance Court the procedures to be used in determining whether a target reasonably believed to be outside the United States is a United States person.

"(B) REVIEW BY FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall review, the procedures submitted under subparagraph (A), and shall approve those procedures if they are reasonably designed to determine whether a target reasonably believed to be outside the United States is a United States person. If the Court concludes otherwise, the Court shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal such an order to the Foreign Intelligence Surveillance Court of Review.

"(C) USE IN TARGETING.—Any targeting of persons reasonably believed to be located outside

the United States shall use the procedures approved by the Foreign Intelligence Surveillance Court under subparagraph (B). Any new or amended procedures may be used with respect to the targeting of persons reasonably believed to be located outside the United States upon approval of the new or amended procedures by the Court, which shall review such procedures under paragraph (B).

"(4) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the date of enactment of the FISA Amendments Act of 2007 under section 2.5 of Executive Order 12333 to intentionally target a United States person reasonably believed to be located outside the United States, to acquire the contents of a wire or radio communication sent by or intended to be received by that United States person, shall remain in effect, and shall constitute a sufficient basis for conducting such an acquisition of a United States person located outside the United States, until that authorization expires or 90 days after the date of enactment of the FISA Amendments Act of 2007, whichever is earlier.

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

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

"(2) the targeting and minimization procedures required pursuant to subsections (e) and (f).

"(e) TARGETING PROCEDURES.—

"(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States, and that an application is filed under title I, if otherwise required, when a significant purpose of an acquisition authorized under subsection (a) is to acquire the communications of a specific person reasonably believed to be located in the United States.

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

"(f) MINIMIZATION PROCEDURES.—

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

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

"(g) CERTIFICATION.—

"(1) IN GENERAL.—

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

"(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but

in no event more than 168 hours after such determination is made.

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

"(A) attest that—

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

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

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

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

"(iv) a significant purpose of the acquisition is to obtain foreign intelligence information;

"(v) the minimization procedures to be used with respect to such acquisition—

"(I) meet the definition of minimization procedures under section 101(h); and

"(II) have been approved by, or will promptly be submitted for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (i);

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

"(vii) the acquisition is limited to communications to which at least 1 party is a specific individual target who is reasonably believed to be located outside of the

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

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

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

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

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

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

the Attorney General, in consultation with the Director of National Intelligence.

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

"(h) DIRECTIVES.—

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

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

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

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

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

"(4) CHALLENGING OF DIRECTIVES.—

"(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court.

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

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

judge finds that the directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with the directive. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

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

"(5) ENFORCEMENT OF DIRECTIVES.—

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

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

"(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an order re-

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

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

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

"(6) APPEAL.—

"(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5) not later than 7 days after the issuance of such decision. The Court of

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

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

"(i) JUDICIAL REVIEW.—

"(1) IN GENERAL.—

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

"(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the Court any

such certification or procedure, or amendment thereto, not later than 5 days after making or amending the certification or adopting or amending the procedures.

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

"(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (e) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States, and are reasonably designed to ensure that an application is filed under title I, if otherwise required, when a significant purpose of an acquisition authorized under subsection (a) is to acquire the communications of a specific person reasonably believed to be located in the United States.

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

"(5) ORDERS.—

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

"(B) CORRECTION OF DEFICIENCIES.—

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

"(I) correct any deficiency identified by the Court's order not later than

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

"(II) cease the acquisition authorized under subsection (a).

"(ii) LIMITATION ON USE OF INFORMATION.—

"(I) IN GENERAL.—Except as provided in subclause (II), no information obtained or evidence derived from an acquisition under clause (i)(I) shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a

threat of death or serious bodily harm to any person.

"(II) EXCEPTION.—If the Government corrects any deficiency identified by the Court's order under clause (i), the Court may permit the use or disclosure of information acquired before the date of the correction pursuant to such minimization procedures as the Court shall establish for purposes of this clause.

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

"(6) APPEAL.—

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

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

"(B) STAY PENDING APPEAL.—The Government may move for a stay of any order of the Foreign Intelligence Surveillance Court under paragraph (5)(B)(i) pending review by the Court en banc or pending appeal to the Foreign Intelligence Surveillance Court of Review.

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

"(7) COMPLIANCE REVIEW.—The Court may review and assess compliance with the minimization procedures submitted to the Court pursuant to subsections (c) and (f) by reviewing the semiannual assessments submitted by the Attorney General and the Director of National Intelligence pursuant to subsection (l)(1) with respect to compliance with minimization procedures. In conducting a review under this paragraph, the Court may, to the extent nec-

essary, require the Government to provide additional information regarding the acquisition, retention, or dissemination of information concerning United States persons during the course of an acquisition authorized under subsection (a).

"(8) REMEDIAL AUTHORITY.—The Foreign Intelligence Surveillance Court shall have authority to fashion remedies as necessary to enforce—

"(A) any order issued under this section; and

"(B) compliance with any such order.

"(j) JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

"(k) MAINTENANCE OF RECORDS.—

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

"(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon re-

quest of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

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

"(l) OVERSIGHT.—

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

"(A) the Foreign Intelligence Surveillance Court; and

"(B) the congressional intelligence committees.

"(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a)—

"(A) are authorized to review the compliance of their agency or element with the targeting and minimization procedures required by subsections (c), (e), and (f);

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

"(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and the number of persons located in the United States whose communications were reviewed; and

"(D) shall provide each such review to—

"(i) the Attorney General;

"(ii) the Director of National Intelligence; and

"(iii) the congressional intelligence committees.

"(3) ANNUAL REVIEW.—

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

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

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

"(iii) the number of targets that were later determined to be located in the United States and the number of persons located in

the United States whose communications were reviewed.

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

"(C) PROVISION OF REVIEW TO FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to the Foreign Intelligence Surveillance Court.

"(4) REPORTS TO CONGRESS.—

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

"(B) CONTENT.—Each report made under subparagraph (A) shall include—

"(i) any certifications made under subsection (g) during the reporting period;

"(ii) any directives issued under subsection (h) during the reporting period;

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

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

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

"(vi) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of

National Intelligence under subsection (h), including—

"(I) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (c), (e), and (f); and

"(II) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection (h);

"(vii) any procedures implementing this section; and

"(viii) any annual review conducted pursuant to paragraph (3).

"SEC. 703. USE OF INFORMATION ACQUIRED UNDER SECTION 702.

"Information acquired from an acquisition conducted under section 702 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.".

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

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

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

(3) by adding at the end the following:

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

"Sec. 701. Definitions.
"Sec. 702. Procedures for acquiring the communications of certain persons outside the United States.
"Sec. 703. Use of information acquired under section 702.".

(c) SUNSET.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2) and (b) shall cease to have effect on December 31, 2011.

(2) CONTINUING APPLICABILITY.—Section 702(h)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 702(h) of that Act (as so amended) during the period such directive was in effect. The use of information acquired by an acquisition conducted under section 702 of that Act (as so amended) shall continue to be governed by the provisions of section 703 of that Act (as so amended).

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

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

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

"SEC. 112. (a) This Act shall be the exclusive means for targeting United States persons for the purpose of acquiring their communications or communications information for foreign intelligence purposes, whether such persons are inside the United States or outside the United States, except in cases where specific statutory authorization exists to obtain communications information without an order under this Act.

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

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

statutory authorization shall be the only exception to subsection (a) and (b).".

(b) CONFORMING AMENDMENTS.—

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

"(iii) A certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information shall identify the specific provision of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that provides an exception from providing a court order, and shall certify that the statutory requirements of such provision have been met.".

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

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

(c) OFFENSE.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended by striking "authorized by statute" each place it appears in such section and inserting "authorized by this title or chapter 119, 121, or 206 of title 18, United States Code".

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

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

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

"(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

"(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

"(2) a copy of any such decision, order, or opinion, and the pleadings associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the

FISA Amendments Act of 2007 and not previously submitted in a report under subsection (a).".

SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

(1) in subsection (a)—

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

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

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

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

(i) by striking "Affairs or" and inserting "Affairs,"; and

(ii) by striking "Senate—" and inserting "Senate, or the Deputy Director of the Federal Bureau of Investigation, if the Director of the Federal Bureau of Investigation is unavailable—";

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

"statement of" and inserting "summary statement of";

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

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

(2) by striking subsection (b);

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

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

SEC. 105. ISSUANCE OF AN ORDER.

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

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

(3) in subsection (c)(1)—

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

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

(C) by striking subparagraph (F);

(4) by striking subsection (d);

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) by adding at the end the following:

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

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking "radio communication" and inserting "communication".

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

(1) in subsection (a)—

(A) by striking paragraph (2);

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

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

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

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

(i) by striking "Affairs or" and inserting "Affairs,"; and

(ii) by striking "Senate—" and inserting "Senate, or the Deputy Director of the Federal Bureau of Investigation, if the Director of the Federal Bureau of Investigation is unavailable—"; and

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

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

(1) in subsection (a)—

(A) by striking paragraph (1); and

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

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

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

"(A) determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information be-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

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

(b) EN BANC AUTHORITY.—

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

(A) by inserting "(1)" after "(a)"; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 110. REVIEW OF PREVIOUS ACTIONS.

(a) DEFINITIONS.—In this section—

(1) the term "element of the intelligence community" means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)); and

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

(b) AUDIT.—Not later than 180 days after the date of the enactment of this Act, the Inspectors General of the Department of Justice and relevant elements of the intelligence community shall work in conjunction to complete a comprehensive audit of the Terrorist Surveillance Program and any closely related intelligence activities, which shall include acquiring all documents relevant to such programs, including memoranda concerning the legal authority of a

program, authorizations of a program, certifications to telecommunications carriers, and court orders.

(c) REPORT.——

(1) IN GENERAL.—Not later than 30 days after the completion of the audit under subsection (b), the Inspectors General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a joint report containing the results of that audit, including all documents acquired pursuant to the conduct of that audit.

(2) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

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

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

intelligence community are authorized such additional legal and other personnel as may be necessary to carry out the prompt and timely preparation of the audit and report required under this section. Personnel authorized by this subsection shall perform such duties relating to the audit as the relevant Inspector General shall direct. The personnel authorized by this subsection are in addition to any other personnel authorized by law.

SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) in paragraph (1), by striking "105B(h) or 501(f)(1)" and inserting "501(f)(1) or 702"; and

(2) in paragraph (2), by striking "105B(h) or 501(f)(1)" and inserting "501(f)(1) or 702".

Calendar No. 512

110TH CONGRESS
1ST SESSION

S. 2248

[Report No. 110–209]

A BILL

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

NOVEMBER 16, 2007

Reported with an amendment