27

AMENDMENT TO H.R. 2016, AS REPORTED

OFFERED BY M R. Fossella

Page 1, after line 2 insert the following:

TITLE I—NATIONAL LANDSCAPE CONSERVATION SYSTEM ACT

At the end of the bill, add the following new title:

TITLE II—FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AMENDMENTS ACT OF 2008

SEC. 100. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008" or the "FISA Amendments Act of 2008".

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

Sec. 100. Short title; table of contents.

Subtitle A—Foreign Intelligence Surveillance

Sec. 101. Additional procedures regarding certain persons outside the United States.
Sec. 102. Statement of exclusive means by which electronic surveillance and interception of 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. Weapons of mass destruction.
Sec. 111. Technical and conforming amendments.

Subtitle B—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.

Subtitle C—Other Provisions

Sec. 301. Severability.
Sec. 302. Effective date; repeal; transition procedures.

Subtitle A—Foreign Intelligence Surveillance

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

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

(1) by striking title VII; and

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

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

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

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

"SEC. 702. DEFINITIONS.

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

"(b) ADDITIONAL DEFINITIONS.—

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

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

1 "(B) the Permanent Select Committee on
2 Intelligence of the House of Representatives.
3 "(2) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT; COURT.—The terms 'Foreign Intelligence
5 Surveillance Court' and 'Court' mean the court es-
6 tablished by section 103(a).
7 "(3) FOREIGN INTELLIGENCE SURVEILLANCE
8 COURT OF REVIEW; COURT OF REVIEW.—The terms
9 'Foreign Intelligence Surveillance Court of Review'
10 and 'Court of Review' mean the court established by
11 section 103(b).
12 "(4) ELECTRONIC COMMUNICATION SERVICE
13 PROVIDER.—The term 'electronic communication
14 service provider' means—
15 "(A) a telecommunications carrier, as that
16 term is defined in section 3 of the Communica-
17 tions Act of 1934 (47 U.S.C. 153);
18 "(B) a provider of electronic communica-
19 tion service, as that term is defined in section
20 2510 of title 18, United States Code;
21 "(C) a provider of a remote computing
22 service, as that term is defined in section 2711
23 of title 18, United States Code;
24 "(D) any other communication service pro-
25 vider who has access to wire or electronic com-

1 munications either as such communications are
2 transmitted or as such communications are
3 stored; or
4 "(E) an officer, employee, or agent of an
5 entity described in subparagraph (A), (B), (C),
6 or (D).
7 "(5) ELEMENT OF THE INTELLIGENCE COMMU-
8 NITY.—The term 'element of the intelligence com-
9 munity' means an element of the intelligence com-
10 munity specified in or designated under section 3(4)
11 of the National Security Act of 1947 (50 U.S.C.
12 401a(4)).
13 **"SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**
14 **SONS OUTSIDE THE UNITED STATES OTHER**
15 **THAN UNITED STATES PERSONS.**
16 "(a) AUTHORIZATION.—Notwithstanding any other
17 law, the Attorney General and the Director of National
18 Intelligence may authorize jointly, for periods of up to 1
19 year, the targeting of persons reasonably believed to be
20 located outside the United States to acquire foreign intel-
21 ligence information.
22 "(b) LIMITATIONS.—An acquisition authorized under
23 subsection (a)—

1 "(1) may not intentionally target any person
2 known at the time of acquisition to be located in the
3 United States;
4 "(2) may not intentionally target a person rea-
5 sonably believed to be located outside the United
6 States if the purpose of such acquisition is to target
7 a particular, known person reasonably believed to be
8 in the United States, except in accordance with title
9 I or title III;
10 "(3) may not intentionally target a United
11 States person reasonably believed to be located out-
12 side the United States, except in accordance with
13 sections 704, 705, or 706;
14 "(4) shall not intentionally acquire any commu-
15 nication as to which the sender and all intended re-
16 cipients are known at the time of the acquisition to
17 be located in the United States; and
18 "(5) shall be conducted in a manner consistent
19 with the fourth amendment to the Constitution of
20 the United States.
21 "(c) CONDUCT OF ACQUISITION.—An acquisition au-
22 thorized under subsection (a) may be conducted only in
23 accordance with—

1 "(1) a certification made by the Attorney Gen-
2 eral and the Director of National Intelligence pursu-
3 ant to subsection (f); and
4 "(2) the targeting and minimization procedures
5 required pursuant to subsections (d) and (e).
6 "(d) TARGETING PROCEDURES.—
7 "(1) REQUIREMENT TO ADOPT.—The Attorney
8 General, in consultation with the Director of Na-
9 tional Intelligence, shall adopt targeting procedures
10 that are reasonably designed to ensure that any ac-
11 quisition authorized under subsection (a) is limited
12 to targeting persons reasonably believed to be lo-
13 cated outside the United States and does not result
14 in the intentional acquisition of any communication
15 as to which the sender and all intended recipients
16 are known at the time of the acquisition to be lo-
17 cated in the United States.
18 "(2) JUDICIAL REVIEW.—The procedures re-
19 ferred to in paragraph (1) shall be subject to judicial
20 review pursuant to subsection (h).
21 "(e) MINIMIZATION PROCEDURES.—
22 "(1) REQUIREMENT TO ADOPT.—The Attorney
23 General, in consultation with the Director of Na-
24 tional Intelligence, shall adopt minimization proce-
25 dures that meet the definition of minimization proce-

1 dures under section 101(h) or section 301(4) for ac-
2 quisitions authorized under subsection (a).
3 "(2) JUDICIAL REVIEW.—The minimization
4 procedures required by this subsection shall be sub-
5 ject to judicial review pursuant to subsection (h).
6 "(f) CERTIFICATION.—
7 "(1) IN GENERAL.—
8 "(A) REQUIREMENT.—Subject to subpara-
9 graph (B), prior to the initiation of an acquisi-
10 tion authorized under subsection (a), the Attor-
11 ney General and the Director of National Intel-
12 ligence shall provide, under oath, a written cer-
13 tification, as described in this subsection.
14 "(B) EXCEPTION.—If the Attorney Gen-
15 eral and the Director of National Intelligence
16 determine that immediate action by the Govern-
17 ment is required and time does not permit the
18 preparation of a certification under this sub-
19 section prior to the initiation of an acquisition,
20 the Attorney General and the Director of Na-
21 tional Intelligence shall prepare such certifi-
22 cation, including such determination, as soon as
23 possible but in no event more than 7 days after
24 such determination is made.

1 "(2) REQUIREMENTS.—A certification made
2 under this subsection shall—
3 "(A) attest that—
4 "(i) there are reasonable procedures
5 in place for determining that the acquisi-
6 tion authorized under subsection (a) is tar-
7 geted at persons reasonably believed to be
8 located outside the United States and that
9 such procedures have been approved by, or
10 will be submitted in not more than 5 days
11 for approval by, the Foreign Intelligence
12 Surveillance Court pursuant to subsection
13 (h);
14 "(ii) there are reasonable procedures
15 in place for determining that the acquisi-
16 tion authorized under subsection (a) does
17 not result in the intentional acquisition of
18 any communication as to which the sender
19 and all intended recipients are known at
20 the time of the acquisition to be located in
21 the United States, and that such proce-
22 dures have been approved by, or will be
23 submitted in not more than 5 days for ap-
24 proval by, the Foreign Intelligence Surveil-
25 lance Court pursuant to subsection (h);

1 "(iii) the procedures referred to in
2 clauses (i) and (ii) are consistent with the
3 requirements of the fourth amendment to
4 the Constitution of the United States and
5 do not permit the intentional targeting of
6 any person who is known at the time of ac-
7 quisition to be located in the United States
8 or the intentional acquisition of any com-
9 munication as to which the sender and all
10 intended recipients are known at the time
11 of acquisition to be located in the United
12 States;
13 "(iv) a significant purpose of the ac-
14 quisition is to obtain foreign intelligence
15 information;
16 "(v) the minimization procedures to
17 be used with respect to such acquisition—
18 "(I) meet the definition of mini-
19 mization procedures under section
20 101(h) or section 301(4); and
21 "(II) have been approved by, or
22 will be submitted in not more than 5
23 days for approval by, the Foreign In-
24 telligence Surveillance Court pursuant
25 to subsection (h);

1 "(vi) the acquisition involves obtaining
2 the foreign intelligence information from or
3 with the assistance of an electronic com-
4 munication service provider; and
5 "(vii) the acquisition does not con-
6 stitute electronic surveillance, as limited by
7 section 701; and
8 "(B) be supported, as appropriate, by the
9 affidavit of any appropriate official in the area
10 of national security who is—
11 "(i) appointed by the President, by
12 and with the consent of the Senate; or
13 "(ii) the head of any element of the
14 intelligence community.
15 "(3) LIMITATION.—A certification made under
16 this subsection is not required to identify the specific
17 facilities, places, premises, or property at which the
18 acquisition authorized under subsection (a) will be
19 directed or conducted.
20 "(4) SUBMISSION TO THE COURT.—The Attor-
21 ney General shall transmit a copy of a certification
22 made under this subsection, and any supporting affi-
23 davit, under seal to the Foreign Intelligence Surveil-
24 lance Court as soon as possible, but in no event
25 more than 5 days after such certification is made.

1 Such certification shall be maintained under security
2 measures adopted by the Chief Justice of the United
3 States and the Attorney General, in consultation
4 with the Director of National Intelligence.
5 "(5) REVIEW.—The certification required by
6 this subsection shall be subject to judicial review
7 pursuant to subsection (h).
8 "(g) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
9 TIVES.—
10 "(1) AUTHORITY.—With respect to an acquisi-
11 tion authorized under subsection (a), the Attorney
12 General and the Director of National Intelligence
13 may direct, in writing, an electronic communication
14 service provider to—
15 "(A) immediately provide the Government
16 with all information, facilities, or assistance
17 necessary to accomplish the acquisition in a
18 manner that will protect the secrecy of the ac-
19 quisition and produce a minimum of inter-
20 ference with the services that such electronic
21 communication service provider is providing to
22 the target; and
23 "(B) maintain under security procedures
24 approved by the Attorney General and the Di-
25 rector of National Intelligence any records con-

1 cerning the acquisition or the aid furnished that
2 such electronic communication service provider
3 wishes to maintain.
4 "(2) COMPENSATION.—The Government shall
5 compensate, at the prevailing rate, an electronic
6 communication service provider for providing infor-
7 mation, facilities, or assistance pursuant to para-
8 graph (1).
9 "(3) RELEASE FROM LIABILITY.—Notwith-
10 standing any other law, no cause of action shall lie
11 in any court against any electronic communication
12 service provider for providing any information, facili-
13 ties, or assistance in accordance with a directive
14 issued pursuant to paragraph (1).
15 "(4) CHALLENGING OF DIRECTIVES.—
16 "(A) AUTHORITY TO CHALLENGE.—An
17 electronic communication service provider re-
18 ceiving a directive issued pursuant to paragraph
19 (1) may challenge the directive by filing a peti-
20 tion with the Foreign Intelligence Surveillance
21 Court, which shall have jurisdiction to review
22 such a petition.
23 "(B) ASSIGNMENT.—The presiding judge
24 of the Court shall assign the petition filed
25 under subparagraph (A) to 1 of the judges serv-

1 ing in the pool established by section 103(e)(1)
2 not later than 24 hours after the filing of the
3 petition.
4 "(C) STANDARDS FOR REVIEW.—A judge
5 considering a petition to modify or set aside a
6 directive may grant such petition only if the
7 judge finds that the directive does not meet the
8 requirements of this section, or is otherwise un-
9 lawful.
10 "(D) PROCEDURES FOR INITIAL RE-
11 VIEW.—A judge shall conduct an initial review
12 not later than 5 days after being assigned a pe-
13 tition described in subparagraph (C). If the
14 judge determines that the petition consists of
15 claims, defenses, or other legal contentions that
16 are not warranted by existing law or by a non-
17 frivolous argument for extending, modifying, or
18 reversing existing law or for establishing new
19 law, the judge shall immediately deny the peti-
20 tion and affirm the directive or any part of the
21 directive that is the subject of the petition and
22 order the recipient to comply with the directive
23 or any part of it. Upon making such a deter-
24 mination or promptly thereafter, the judge shall
25 provide a written statement for the record of

1 the reasons for a determination under this sub-
2 paragraph.
3 "(E) PROCEDURES FOR PLENARY RE-
4 VIEW.—If a judge determines that a petition
5 described in subparagraph (C) requires plenary
6 review, the judge shall affirm, modify, or set
7 aside the directive that is the subject of that pe-
8 tition not later than 30 days after being as-
9 signed the petition, unless the judge, by order
10 for reasons stated, extends that time as nec-
11 essary to comport with the due process clause
12 of the fifth amendment to the Constitution of
13 the United States. Unless the judge sets aside
14 the directive, the judge shall immediately affirm
15 or affirm with modifications the directive, and
16 order the recipient to comply with the directive
17 in its entirety or as modified. The judge shall
18 provide a written statement for the records of
19 the reasons for a determination under this sub-
20 paragraph.
21 "(F) CONTINUED EFFECT.—Any directive
22 not explicitly modified or set aside under this
23 paragraph shall remain in full effect.
24 "(G) CONTEMPT OF COURT.—Failure to
25 obey an order of the Court issued under this

1 paragraph may be punished by the Court as
2 contempt of court.
3 "(5) ENFORCEMENT OF DIRECTIVES.—
4 "(A) ORDER TO COMPEL.—In the case of
5 a failure to comply with a directive issued pur-
6 suant to paragraph (1), the Attorney General
7 may file a petition for an order to compel com-
8 pliance with the directive with the Foreign In-
9 telligence Surveillance Court, which shall have
10 jurisdiction to review such a petition.
11 "(B) ASSIGNMENT.—The presiding judge
12 of the Court shall assign a petition filed under
13 subparagraph (A) to 1 of the judges serving in
14 the pool established by section 103(e)(1) not
15 later than 24 hours after the filing of the peti-
16 tion.
17 "(C) STANDARDS FOR REVIEW.—A judge
18 considering a petition filed under subparagraph
19 (A) shall issue an order requiring the electronic
20 communication service provider to comply with
21 the directive or any part of it, as issued or as
22 modified, if the judge finds that the directive
23 meets the requirements of this section, and is
24 otherwise lawful.

1 "(D) PROCEDURES FOR REVIEW.—The
2 judge shall render a determination not later
3 than 30 days after being assigned a petition
4 filed under subparagraph (A), unless the judge,
5 by order for reasons stated, extends that time
6 if necessary to comport with the due process
7 clause of the fifth amendment to the Constitu-
8 tion of the United States. The judge shall pro-
9 vide a written statement for the record of the
10 reasons for a determination under this para-
11 graph.
12 "(E) CONTEMPT OF COURT.—Failure to
13 obey an order of the Court issued under this
14 paragraph may be punished by the Court as
15 contempt of court.
16 "(F) PROCESS.—Any process under this
17 paragraph may be served in any judicial district
18 in which the electronic communication service
19 provider may be found.
20 "(6) APPEAL.—
21 "(A) APPEAL TO THE COURT OF RE-
22 VIEW.—The Government or an electronic com-
23 munication service provider receiving a directive
24 issued pursuant to paragraph (1) may file a pe-
25 tition with the Foreign Intelligence Surveillance

1 Court of Review for review of the decision
2 issued pursuant to paragraph (4) or (5). The
3 Court of Review shall have jurisdiction to con-
4 sider such a petition and shall provide a written
5 statement for the record of the reasons for a
6 decision under this paragraph.
7 "(B) CERTIORARI TO THE SUPREME
8 COURT.—The Government or an electronic com-
9 munication service provider receiving a directive
10 issued pursuant to paragraph (1) may file a pe-
11 tition for a writ of certiorari for review of the
12 decision of the Court of Review issued under
13 subparagraph (A). The record for such review
14 shall be transmitted under seal to the Supreme
15 Court of the United States, which shall have ju-
16 risdiction to review such decision.
17 "(h) JUDICIAL REVIEW OF CERTIFICATIONS AND
18 PROCEDURES.—
19 "(1) IN GENERAL.—
20 "(A) REVIEW BY THE FOREIGN INTEL-
21 LIGENCE SURVEILLANCE COURT.—The Foreign
22 Intelligence Surveillance Court shall have juris-
23 diction to review any certification required by
24 subsection (c) and the targeting and minimiza-

1 tion procedures adopted pursuant to subsections
2 (d) and (e).
3 "(B) SUBMISSION TO THE COURT.—The
4 Attorney General shall submit to the Court any
5 such certification or procedure, or amendment
6 thereto, not later than 5 days after making or
7 amending the certification or adopting or
8 amending the procedures.
9 "(2) CERTIFICATIONS.—The Court shall review
10 a certification provided under subsection (f) to deter-
11 mine whether the certification contains all the re-
12 quired elements.
13 "(3) TARGETING PROCEDURES.—The Court
14 shall review the targeting procedures required by
15 subsection (d) to assess whether the procedures are
16 reasonably designed to ensure that the acquisition
17 authorized under subsection (a) is limited to the tar-
18 geting of persons reasonably believed to be located
19 outside the United States and does not result in the
20 intentional acquisition of any communication as to
21 which the sender and all intended recipients are
22 known at the time of the acquisition to be located
23 in the United States.
24 "(4) MINIMIZATION PROCEDURES.—The Court
25 shall review the minimization procedures required by

1 subsection (e) to assess whether such procedures
2 meet the definition of minimization procedures
3 under section 101(h) or section 301(4).
4 "(5) ORDERS.—
5 "(A) APPROVAL.—If the Court finds that
6 a certification required by subsection (f) con-
7 tains all of the required elements and that the
8 targeting and minimization procedures required
9 by subsections (d) and (e) are consistent with
10 the requirements of those subsections and with
11 the fourth amendment to the Constitution of
12 the United States, the Court shall enter an
13 order approving the continued use of the proce-
14 dures for the acquisition authorized under sub-
15 section (a).
16 "(B) CORRECTION OF DEFICIENCIES.—If
17 the Court finds that a certification required by
18 subsection (f) does not contain all of the re-
19 quired elements, or that the procedures re-
20 quired by subsections (d) and (e) are not con-
21 sistent with the requirements of those sub-
22 sections or the fourth amendment to the Con-
23 stitution of the United States, the Court shall
24 issue an order directing the Government to, at

1 the Government's election and to the extent re-
2 quired by the Court's order—
3 "(i) correct any deficiency identified
4 by the Court's order not later than 30 days
5 after the date the Court issues the order;
6 or
7 "(ii) cease the acquisition authorized
8 under subsection (a).
9 "(C) REQUIREMENT FOR WRITTEN STATE-
10 MENT.—In support of its orders under this sub-
11 section, the Court shall provide, simultaneously
12 with the orders, for the record a written state-
13 ment of its reasons.
14 "(6) APPEAL.—
15 "(A) APPEAL TO THE COURT OF RE-
16 VIEW.—The Government may appeal any order
17 under this section to the Foreign Intelligence
18 Surveillance Court of Review, which shall have
19 jurisdiction to review such order. For any deci-
20 sion affirming, reversing, or modifying an order
21 of the Foreign Intelligence Surveillance Court,
22 the Court of Review shall provide for the record
23 a written statement of its reasons.
24 "(B) CONTINUATION OF ACQUISITION
25 PENDING REHEARING OR APPEAL.—Any acqui-

1 sitions affected by an order under paragraph
2 (5)(B) may continue—
3 "(i) during the pendency of any re-
4 hearing of the order by the Court en banc;
5 and
6 "(ii) if the Government appeals an
7 order under this section, until the Court of
8 Review enters an order under subpara-
9 graph (C).
10 "(C) IMPLEMENTATION PENDING AP-
11 PEAL.—Not later than 60 days after the filing
12 of an appeal of an order under paragraph
13 (5)(B) directing the correction of a deficiency,
14 the Court of Review shall determine, and enter
15 a corresponding order regarding, whether all or
16 any part of the correction order, as issued or
17 modified, shall be implemented during the pend-
18 ency of the appeal.
19 "(D) CERTIORARI TO THE SUPREME
20 COURT.—The Government may file a petition
21 for a writ of certiorari for review of a decision
22 of the Court of Review issued under subpara-
23 graph (A). The record for such review shall be
24 transmitted under seal to the Supreme Court of

1 the United States, which shall have jurisdiction
2 to review such decision.
3 "(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial
4 proceedings under this section shall be conducted as expe-
5 ditiously as possible.
6 "(j) MAINTENANCE AND SECURITY OF RECORDS AND
7 PROCEEDINGS.—
8 "(1) STANDARDS.—A record of a proceeding
9 under this section, including petitions filed, orders
10 granted, and statements of reasons for decision,
11 shall be maintained under security measures adopted
12 by the Chief Justice of the United States, in con-
13 sultation with the Attorney General and the Director
14 of National Intelligence.
15 "(2) FILING AND REVIEW.—All petitions under
16 this section shall be filed under seal. In any pro-
17 ceedings under this section, the court shall, upon re-
18 quest of the Government, review ex parte and in
19 camera any Government submission, or portions of
20 a submission, which may include classified informa-
21 tion.
22 "(3) RETENTION OF RECORDS.—A directive
23 made or an order granted under this section shall be
24 retained for a period of not less than 10 years from

1 the date on which such directive or such order is
2 made.
3 "(k) ASSESSMENTS AND REVIEWS.—
4 "(1) SEMIANNUAL ASSESSMENT.—Not less fre-
5 quently than once every 6 months, the Attorney
6 General and Director of National Intelligence shall
7 assess compliance with the targeting and minimiza-
8 tion procedures required by subsections (e) and (f)
9 and shall submit each such assessment to—
10 "(A) the Foreign Intelligence Surveillance
11 Court; and
12 "(B) the congressional intelligence commit-
13 tees.
14 "(2) AGENCY ASSESSMENT.—The Inspectors
15 General of the Department of Justice and of any
16 element of the intelligence community authorized to
17 acquire foreign intelligence information under sub-
18 section (a) with respect to their department, agency,
19 or element—
20 "(A) are authorized to review the compli-
21 ance with the targeting and minimization proce-
22 dures required by subsections (d) and (e);
23 "(B) with respect to acquisitions author-
24 ized under subsection (a), shall review the num-
25 ber of disseminated intelligence reports con-

1 taining a reference to a United States person
2 identity and the number of United States per-
3 son identities subsequently disseminated by the
4 element concerned in response to requests for
5 identities that were not referred to by name or
6 title in the original reporting;
7 "(C) with respect to acquisitions author-
8 ized under subsection (a), shall review the num-
9 ber of targets that were later determined to be
10 located in the United States and, to the extent
11 possible, whether their communications were re-
12 viewed; and
13 "(D) shall provide each such review to—
14 "(i) the Attorney General;
15 "(ii) the Director of National Intel-
16 ligence; and
17 "(iii) the congressional intelligence
18 committees.
19 "(3) ANNUAL REVIEW.—
20 "(A) REQUIREMENT TO CONDUCT.—The
21 head of an element of the intelligence commu-
22 nity conducting an acquisition authorized under
23 subsection (a) shall direct the element to con-
24 duct an annual review to determine whether
25 there is reason to believe that foreign intel-

1 ligence information has been or will be obtained
2 from the acquisition. The annual review shall
3 provide, with respect to such acquisitions au-
4 thorized under subsection (a)—
5 "(i) an accounting of the number of
6 disseminated intelligence reports con-
7 taining a reference to a United States per-
8 son identity;
9 "(ii) an accounting of the number of
10 United States person identities subse-
11 quently disseminated by that element in re-
12 sponse to requests for identities that were
13 not referred to by name or title in the
14 original reporting;
15 "(iii) the number of targets that were
16 later determined to be located in the
17 United States and, to the extent possible,
18 whether their communications were re-
19 viewed; and
20 "(iv) a description of any procedures
21 developed by the head of an element of the
22 intelligence community and approved by
23 the Director of National Intelligence to as-
24 sess, in a manner consistent with national
25 security, operational requirements and the

1 privacy interests of United States persons,
2 the extent to which the acquisitions au-
3 thorized under subsection (a) acquire the
4 communications of United States persons,
5 as well as the results of any such assess-
6 ment.
7 "(B) USE OF REVIEW.—The head of each
8 element of the intelligence community that con-
9 ducts an annual review under subparagraph (A)
10 shall use each such review to evaluate the ade-
11 quacy of the minimization procedures utilized
12 by such element or the application of the mini-
13 mization procedures to a particular acquisition
14 authorized under subsection (a).
15 "(C) PROVISION OF REVIEW.—The head of
16 each element of the intelligence community that
17 conducts an annual review under subparagraph
18 (A) shall provide such review to—
19 "(i) the Foreign Intelligence Surveil-
20 lance Court;
21 "(ii) the Attorney General;
22 "(iii) the Director of National Intel-
23 ligence; and
24 "(iv) the congressional intelligence
25 committees.

1 **"SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED**
2 **STATES OF UNITED STATES PERSONS OUT-**
3 **SIDE THE UNITED STATES.**
4 "(a) JURISDICTION OF THE FOREIGN INTELLIGENCE
5 SURVEILLANCE COURT.—
6 "(1) IN GENERAL.—The Foreign Intelligence
7 Surveillance Court shall have jurisdiction to enter an
8 order approving the targeting of a United States
9 person reasonably believed to be located outside the
10 United States to acquire foreign intelligence infor-
11 mation, if such acquisition constitutes electronic sur-
12 veillance (as defined in section 101(f), regardless of
13 the limitation of section 701) or the acquisition of
14 stored electronic communications or stored electronic
15 data that requires an order under this Act, and such
16 acquisition is conducted within the United States.
17 "(2) LIMITATION.—In the event that a United
18 States person targeted under this subsection is rea-
19 sonably believed to be located in the United States
20 during the pendency of an order issued pursuant to
21 subsection (c), such acquisition shall cease until au-
22 thority, other than under this section, is obtained
23 pursuant to this Act or the targeted United States
24 person is again reasonably believed to be located out-
25 side the United States during the pendency of an
26 order issued pursuant to subsection (c).

1 "(b) APPLICATION.—
2 "(1) IN GENERAL.—Each application for an
3 order under this section shall be made by a Federal
4 officer in writing upon oath or affirmation to a
5 judge having jurisdiction under subsection (a)(1).
6 Each application shall require the approval of the
7 Attorney General based upon the Attorney General's
8 finding that it satisfies the criteria and requirements
9 of such application, as set forth in this section, and
10 shall include—
11 "(A) the identity of the Federal officer
12 making the application;
13 "(B) the identity, if known, or a descrip-
14 tion of the United States person who is the tar-
15 get of the acquisition;
16 "(C) a statement of the facts and cir-
17 cumstances relied upon to justify the appli-
18 cant's belief that the United States person who
19 is the target of the acquisition is—
20 "(i) a person reasonably believed to be
21 located outside the United States; and
22 "(ii) a foreign power, an agent of a
23 foreign power, or an officer or employee of
24 a foreign power;

1 "(D) a statement of the proposed mini-
2 mization procedures that meet the definition of
3 minimization procedures under section 101(h)
4 or section 301(4);
5 "(E) a description of the nature of the in-
6 formation sought and the type of communica-
7 tions or activities to be subjected to acquisition;
8 "(F) a certification made by the Attorney
9 General or an official specified in section
10 104(a)(6) that—
11 "(i) the certifying official deems the
12 information sought to be foreign intel-
13 ligence information;
14 "(ii) a significant purpose of the ac-
15 quisition is to obtain foreign intelligence
16 information;
17 "(iii) such information cannot reason-
18 ably be obtained by normal investigative
19 techniques;
20 "(iv) designates the type of foreign in-
21 telligence information being sought accord-
22 ing to the categories described in section
23 101(e); and
24 "(v) includes a statement of the basis
25 for the certification that—

1 "(I) the information sought is
2 the type of foreign intelligence infor-
3 mation designated; and
4 "(II) such information cannot
5 reasonably be obtained by normal in-
6 vestigative techniques;
7 "(G) a summary statement of the means
8 by which the acquisition will be conducted and
9 whether physical entry is required to effect the
10 acquisition;
11 "(H) the identity of any electronic commu-
12 nication service provider necessary to effect the
13 acquisition, provided, however, that the applica-
14 tion is not required to identify the specific fa-
15 cilities, places, premises, or property at which
16 the acquisition authorized under this section
17 will be directed or conducted;
18 "(I) a statement of the facts concerning
19 any previous applications that have been made
20 to any judge of the Foreign Intelligence Surveil-
21 lance Court involving the United States person
22 specified in the application and the action taken
23 on each previous application; and
24 "(J) a statement of the period of time for
25 which the acquisition is required to be main-

1 tained, provided that such period of time shall
2 not exceed 90 days per application.
3 "(2) OTHER REQUIREMENTS OF THE ATTOR-
4 NEY GENERAL.—The Attorney General may require
5 any other affidavit or certification from any other
6 officer in connection with the application.
7 "(3) OTHER REQUIREMENTS OF THE JUDGE.—
8 The judge may require the applicant to furnish such
9 other information as may be necessary to make the
10 findings required by subsection (c)(1).
11 "(c) ORDER.—
12 "(1) FINDINGS.—Upon an application made
13 pursuant to subsection (b), the Foreign Intelligence
14 Surveillance Court shall enter an ex parte order as
15 requested or as modified approving the acquisition if
16 the Court finds that—
17 "(A) the application has been made by a
18 Federal officer and approved by the Attorney
19 General;
20 "(B) on the basis of the facts submitted by
21 the applicant, for the United States person who
22 is the target of the acquisition, there is prob-
23 able cause to believe that the target is—
24 "(i) a person reasonably believed to be
25 located outside the United States; and

1 "(ii) a foreign power, an agent of a
2 foreign power, or an officer or employee of
3 a foreign power;
4 "(C) the proposed minimization procedures
5 meet the definition of minimization procedures
6 under section 101(h) or section 301(4); and
7 "(D) the application which has been filed
8 contains all statements and certifications re-
9 quired by subsection (b) and the certification or
10 certifications are not clearly erroneous on the
11 basis of the statement made under subsection
12 (b)(1)(F)(v) and any other information fur-
13 nished under subsection (b)(3).
14 "(2) PROBABLE CAUSE.—In determining
15 whether or not probable cause exists for purposes of
16 an order under paragraph (1), a judge having juris-
17 diction under subsection (a)(1) may consider past
18 activities of the target, as well as facts and cir-
19 cumstances relating to current or future activities of
20 the target. However, no United States person may
21 be considered a foreign power, agent of a foreign
22 power, or officer or employee of a foreign power
23 solely upon the basis of activities protected by the
24 first amendment to the Constitution of the United
25 States.

1 "(3) REVIEW.—
2 "(A) LIMITATION ON REVIEW.—Review by
3 a judge having jurisdiction under subsection
4 (a)(1) shall be limited to that required to make
5 the findings described in paragraph (1).
6 "(B) REVIEW OF PROBABLE CAUSE.—If
7 the judge determines that the facts submitted
8 under subsection (b) are insufficient to estab-
9 lish probable cause to issue an order under
10 paragraph (1), the judge shall enter an order so
11 stating and provide a written statement for the
12 record of the reasons for such determination.
13 The Government may appeal an order under
14 this clause pursuant to subsection (f).
15 "(C) REVIEW OF MINIMIZATION PROCE-
16 DURES.—If the judge determines that the pro-
17 posed minimization procedures required under
18 paragraph (1)(C) do not meet the definition of
19 minimization procedures under section 101(h)
20 or section 301(4), the judge shall enter an
21 order so stating and provide a written state-
22 ment for the record of the reasons for such de-
23 termination. The Government may appeal an
24 order under this clause pursuant to subsection
25 (f).

1 "(D) REVIEW OF CERTIFICATION.—If the
2 judge determines that an application required
3 by subsection (b) does not contain all of the re-
4 quired elements, or that the certification or cer-
5 tifications are clearly erroneous on the basis of
6 the statement made under subsection
7 (b)(1)(F)(v) and any other information fur-
8 nished under subsection (b)(3), the judge shall
9 enter an order so stating and provide a written
10 statement for the record of the reasons for such
11 determination. The Government may appeal an
12 order under this clause pursuant to subsection
13 (f).
14 "(4) SPECIFICATIONS.—An order approving an
15 acquisition under this subsection shall specify—
16 "(A) the identity, if known, or a descrip-
17 tion of the United States person who is the tar-
18 get of the acquisition identified or described in
19 the application pursuant to subsection
20 (b)(1)(B);
21 "(B) if provided in the application pursu-
22 ant to subsection (b)(1)(H), the nature and lo-
23 cation of each of the facilities or places at
24 which the acquisition will be directed;

1 "(C) the nature of the information sought
2 to be acquired and the type of communications
3 or activities to be subjected to acquisition;
4 "(D) the means by which the acquisition
5 will be conducted and whether physical entry is
6 required to effect the acquisition; and
7 "(E) the period of time during which the
8 acquisition is approved.
9 "(5) DIRECTIONS.—An order approving acquisi-
10 tions under this subsection shall direct—
11 "(A) that the minimization procedures be
12 followed;
13 "(B) an electronic communication service
14 provider to provide to the Government forthwith
15 all information, facilities, or assistance nec-
16 essary to accomplish the acquisition authorized
17 under this subsection in a manner that will pro-
18 tect the secrecy of the acquisition and produce
19 a minimum of interference with the services
20 that such electronic communication service pro-
21 vider is providing to the target;
22 "(C) an electronic communication service
23 provider to maintain under security procedures
24 approved by the Attorney General any records
25 concerning the acquisition or the aid furnished

1 that such electronic communication service pro-
2 vider wishes to maintain; and
3 "(D) that the Government compensate, at
4 the prevailing rate, such electronic communica-
5 tion service provider for providing such infor-
6 mation, facilities, or assistance.
7 "(6) DURATION.—An order approved under this
8 paragraph shall be effective for a period not to ex-
9 ceed 90 days and such order may be renewed for ad-
10 ditional 90-day periods upon submission of renewal
11 applications meeting the requirements of subsection
12 (b).
13 "(7) COMPLIANCE.—At or prior to the end of
14 the period of time for which an acquisition is ap-
15 proved by an order or extension under this section,
16 the judge may assess compliance with the minimiza-
17 tion procedures by reviewing the circumstances
18 under which information concerning United States
19 persons was acquired, retained, or disseminated.
20 "(d) EMERGENCY AUTHORIZATION.—
21 "(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
22 TION.—Notwithstanding any other provision of this
23 Act, if the Attorney General reasonably determines
24 that—

1 "(A) an emergency situation exists with re-
2 spect to the acquisition of foreign intelligence
3 information for which an order may be obtained
4 under subsection (c) before an order author-
5 izing such acquisition can with due diligence be
6 obtained, and
7 "(B) the factual basis for issuance of an
8 order under this subsection to approve such ac-
9 quisition exists,
10 the Attorney General may authorize the emergency
11 acquisition if a judge having jurisdiction under sub-
12 section (a)(1) is informed by the Attorney General,
13 or a designee of the Attorney General, at the time
14 of such authorization that the decision has been
15 made to conduct such acquisition and if an applica-
16 tion in accordance with this subsection is made to a
17 judge of the Foreign Intelligence Surveillance Court
18 as soon as practicable, but not more than 7 days
19 after the Attorney General authorizes such acquisi-
20 tion.
21 "(2) MINIMIZATION PROCEDURES.—If the At-
22 torney General authorizes such emergency acquisi-
23 tion, the Attorney General shall require that the
24 minimization procedures required by this section for
25 the issuance of a judicial order be followed.

1 "(3) TERMINATION OF EMERGENCY AUTHOR-
2 IZATION.—In the absence of a judicial order approv-
3 ing such acquisition, the acquisition shall terminate
4 when the information sought is obtained, when the
5 application for the order is denied, or after the expi-
6 ration of 7 days from the time of authorization by
7 the Attorney General, whichever is earliest.
8 "(4) USE OF INFORMATION.—In the event that
9 such application for approval is denied, or in any
10 other case where the acquisition is terminated and
11 no order is issued approving the acquisition, no in-
12 formation obtained or evidence derived from such ac-
13 quisition, except under circumstances in which the
14 target of the acquisition is determined not to be a
15 United States person during the pendency of the 7-
16 day emergency acquisition period, shall be received
17 in evidence or otherwise disclosed in any trial, hear-
18 ing, or other proceeding in or before any court,
19 grand jury, department, office, agency, regulatory
20 body, legislative committee, or other authority of the
21 United States, a State, or political subdivision there-
22 of, and no information concerning any United States
23 person acquired from such acquisition shall subse-
24 quently be used or disclosed in any other manner by
25 Federal officers or employees without the consent of

1 such person, except with the approval of the Attor-
2 ney General if the information indicates a threat of
3 death or serious bodily harm to any person.
4 "(e) RELEASE FROM LIABILITY.—Notwithstanding
5 any other law, no cause of action shall lie in any court
6 against any electronic communication service provider for
7 providing any information, facilities, or assistance in ac-
8 cordance with an order or request for emergency assist-
9 ance issued pursuant to subsections (c) or (d).
10 "(f) APPEAL.—
11 "(1) APPEAL TO THE FOREIGN INTELLIGENCE
12 SURVEILLANCE COURT OF REVIEW.—The Govern-
13 ment may file an appeal with the Foreign Intel-
14 ligence Surveillance Court of Review for review of an
15 order issued pursuant to subsection (c). The Court
16 of Review shall have jurisdiction to consider such ap-
17 peal and shall provide a written statement for the
18 record of the reasons for a decision under this para-
19 graph.
20 "(2) CERTIORARI TO THE SUPREME COURT.—
21 The Government may file a petition for a writ of
22 certiorari for review of the decision of the Court of
23 Review issued under paragraph (1). The record for
24 such review shall be transmitted under seal to the

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

3 **"SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**
4 **STATES PERSONS OUTSIDE THE UNITED**
5 **STATES.**

6 "(a) JURISDICTION AND SCOPE.—

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

10 "(2) SCOPE.—No element of the intelligence
11 community may intentionally target, for the purpose
12 of acquiring foreign intelligence information, a
13 United States person reasonably believed to be lo-
14 cated outside the United States under circumstances
15 in which the targeted United States person has a
16 reasonable expectation of privacy and a warrant
17 would be required if the acquisition were conducted
18 inside the United States for law enforcement pur-
19 poses, unless a judge of the Foreign Intelligence
20 Surveillance Court has entered an order or the At-
21 torney General has authorized an emergency acquisi-
22 tion pursuant to subsections (c) or (d) or any other
23 provision of this Act.

24 "(3) LIMITATIONS.—

1 "(A) MOVING OR MISIDENTIFIED TAR-
2 GETS.—In the event that the targeted United
3 States person is reasonably believed to be in the
4 United States during the pendency of an order
5 issued pursuant to subsection (c), such acquisi-
6 tion shall cease until authority is obtained pur-
7 suant to this Act or the targeted United States
8 person is again reasonably believed to be lo-
9 cated outside the United States during the
10 pendency of an order issued pursuant to sub-
11 section (c).
12 "(B) APPLICABILITY.—If the acquisition is
13 to be conducted inside the United States and
14 could be authorized under section 704, the pro-
15 cedures of section 704 shall apply, unless an
16 order or emergency acquisition authority has
17 been obtained under a provision of this Act
18 other than under this section.
19 "(b) APPLICATION.—Each application for an order
20 under this section shall be made by a Federal officer in
21 writing upon oath or affirmation to a judge having juris-
22 diction under subsection (a)(1). Each application shall re-
23 quire the approval of the Attorney General based upon the
24 Attorney General's finding that it satisfies the criteria and

1 requirements of such application as set forth in this sec-
2 tion and shall include—
3 "(1) the identity, if known, or a description of
4 the specific United States person who is the target
5 of the acquisition;
6 "(2) a statement of the facts and circumstances
7 relied upon to justify the applicant's belief that the
8 United States person who is the target of the acqui-
9 sition is—
10 "(A) a person reasonably believed to be lo-
11 cated outside the United States; and
12 "(B) a foreign power, an agent of a foreign
13 power, or an officer or employee of a foreign
14 power;
15 "(3) a statement of the proposed minimization
16 procedures that meet the definition of minimization
17 procedures under section 101(h) or section 301(4);
18 "(4) a certification made by the Attorney Gen-
19 eral, an official specified in section 104(a)(6), or the
20 head of an element of the intelligence community
21 that—
22 "(A) the certifying official deems the infor-
23 mation sought to be foreign intelligence infor-
24 mation; and

1 "(B) a significant purpose of the acquisi-
2 tion is to obtain foreign intelligence informa-
3 tion;
4 "(5) a statement of the facts concerning any
5 previous applications that have been made to any
6 judge of the Foreign Intelligence Surveillance Court
7 involving the United States person specified in the
8 application and the action taken on each previous
9 application; and
10 "(6) a statement of the period of time for which
11 the acquisition is required to be maintained, pro-
12 vided that such period of time shall not exceed 90
13 days per application.
14 "(c) ORDER.—
15 "(1) FINDINGS.—If, upon an application made
16 pursuant to subsection (b), a judge having jurisdic-
17 tion under subsection (a) finds that—
18 "(A) on the basis of the facts submitted by
19 the applicant, for the United States person who
20 is the target of the acquisition, there is prob-
21 able cause to believe that the target is—
22 "(i) a person reasonably believed to be
23 located outside the United States; and

1 "(ii) a foreign power, an agent of a
2 foreign power, or an officer or employee of
3 a foreign power;
4 "(B) the proposed minimization proce-
5 dures, with respect to their dissemination provi-
6 sions, meet the definition of minimization pro-
7 cedures under section 101(h) or section 301(4);
8 and
9 "(C) the application which has been filed
10 contains all statements and certifications re-
11 quired by subsection (b) and the certification
12 provided under subsection (b)(4) is not clearly
13 erroneous on the basis of the information fur-
14 nished under subsection (b),
15 the Court shall issue an ex parte order so stating.
16 "(2) PROBABLE CAUSE.—In determining
17 whether or not probable cause exists for purposes of
18 an order under paragraph (1)(A), a judge having ju-
19 risdiction under subsection (a)(1) may consider past
20 activities of the target, as well as facts and cir-
21 cumstances relating to current or future activities of
22 the target. However, no United States person may
23 be considered a foreign power, agent of a foreign
24 power, or officer or employee of a foreign power
25 solely upon the basis of activities protected by the

first amendment to the Constitution of the United States.

"(3) REVIEW.—

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

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

"(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section

1 101(h) or section 301(4), the judge shall enter
2 an order so stating and provide a written state-
3 ment for the record of the reasons for such de-
4 termination. The Government may appeal an
5 order under this clause pursuant to subsection
6 (e).
7 "(D) SCOPE OF REVIEW OF CERTIFI-
8 CATION.—If the judge determines that the cer-
9 tification provided under subsection (b)(4) is
10 clearly erroneous on the basis of the informa-
11 tion furnished under subsection (b), the judge
12 shall enter an order so stating and provide a
13 written statement for the record of the reasons
14 for such determination. The Government may
15 appeal an order under this subparagraph pursu-
16 ant to subsection (e).
17 "(4) DURATION.—An order under this para-
18 graph shall be effective for a period not to exceed 90
19 days and such order may be renewed for additional
20 90-day periods upon submission of renewal applica-
21 tions meeting the requirements of subsection (b).
22 "(5) COMPLIANCE.—At or prior to the end of
23 the period of time for which an order or extension
24 is granted under this section, the judge may assess
25 compliance with the minimization procedures by re-

1 viewing the circumstances under which information
2 concerning United States persons was disseminated,
3 provided that the judge may not inquire into the cir-
4 cumstances relating to the conduct of the acquisi-
5 tion.
6 "(d) EMERGENCY AUTHORIZATION.—
7 "(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
8 TION.—Notwithstanding any other provision in this
9 subsection, if the Attorney General reasonably deter-
10 mines that—
11 "(A) an emergency situation exists with re-
12 spect to the acquisition of foreign intelligence
13 information for which an order may be obtained
14 under subsection (c) before an order under that
15 subsection may, with due diligence, be obtained,
16 and
17 "(B) the factual basis for issuance of an
18 order under this section exists,
19 the Attorney General may authorize the emergency
20 acquisition if a judge having jurisdiction under sub-
21 section (a)(1) is informed by the Attorney General
22 or a designee of the Attorney General at the time of
23 such authorization that the decision has been made
24 to conduct such acquisition and if an application in
25 accordance with this subsection is made to a judge

1 of the Foreign Intelligence Surveillance Court as
2 soon as practicable, but not more than 7 days after
3 the Attorney General authorizes such acquisition.
4 "(2) MINIMIZATION PROCEDURES.—If the At-
5 torney General authorizes such emergency acquisi-
6 tion, the Attorney General shall require that the
7 minimization procedures required by this section be
8 followed.
9 "(3) TERMINATION OF EMERGENCY AUTHOR-
10 IZATION.—In the absence of an order under sub-
11 section (c), the acquisition shall terminate when the
12 information sought is obtained, if the application for
13 the order is denied, or after the expiration of 7 days
14 from the time of authorization by the Attorney Gen-
15 eral, whichever is earliest.
16 "(4) USE OF INFORMATION.—In the event that
17 such application is denied, or in any other case
18 where the acquisition is terminated and no order is
19 issued approving the acquisition, no information ob-
20 tained or evidence derived from such acquisition, ex-
21 cept under circumstances in which the target of the
22 acquisition is determined not to be a United States
23 person during the pendency of the 7-day emergency
24 acquisition period, shall be received in evidence or
25 otherwise disclosed in any trial, hearing, or other

1 proceeding in or before any court, grand jury, de-
2 partment, office, agency, regulatory body, legislative
3 committee, or other authority of the United States,
4 a State, or political subdivision thereof, and no in-
5 formation concerning any United States person ac-
6 quired from such acquisition shall subsequently be
7 used or disclosed in any other manner by Federal of-
8 ficers or employees without the consent of such per-
9 son, except with the approval of the Attorney Gen-
10 eral if the information indicates a threat of death or
11 serious bodily harm to any person.
12 "(e) APPEAL.—
13 "(1) APPEAL TO THE COURT OF REVIEW.—The
14 Government may file an appeal with the Foreign In-
15 telligence Surveillance Court of Review for review of
16 an order issued pursuant to subsection (c). The
17 Court of Review shall have jurisdiction to consider
18 such appeal and shall provide a written statement
19 for the record of the reasons for a decision under
20 this paragraph.
21 "(2) CERTIORARI TO THE SUPREME COURT.—
22 The Government may file a petition for a writ of
23 certiorari for review of the decision of the Court of
24 Review issued under paragraph (1). The record for
25 such review shall be transmitted under seal to the

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

3 **"SEC. 706. JOINT APPLICATIONS AND CONCURRENT AU-**
4 **THORIZATIONS.**

5 "(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
6 quisition targeting a United States person under section
7 704 or section 705 is proposed to be conducted both inside
8 and outside the United States, a judge having jurisdiction
9 under section 704(a)(1) or section 705(a)(1) may issue si-
10 multaneously, upon the request of the Government in a
11 joint application complying with the requirements of sec-
12 tion 704(b) or section 705(b), orders under section 704(c)
13 or section 705(c), as applicable.

14 "(b) CONCURRENT AUTHORIZATION.—If an order
15 authorizing electronic surveillance or physical search has
16 been obtained under section 105 or section 304 and that
17 order is still in effect, the Attorney General may authorize,
18 without an order under section 704 or section 705, an ac-
19 quisition of foreign intelligence information targeting that
20 United States person while such person is reasonably be-
21 lieved to be located outside the United States.

22 **"SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE**
23 **VII.**

24 "(a) INFORMATION ACQUIRED UNDER SECTION
25 703.—Information acquired from an acquisition con-

1 ducted under section 703 shall be deemed to be informa-
2 tion acquired from an electronic surveillance pursuant to
3 title I for purposes of section 106, except for the purposes
4 of subsection (j) of such section.

5 "(b) INFORMATION ACQUIRED UNDER SECTION
6 704.—Information acquired from an acquisition con-
7 ducted under section 704 shall be deemed to be informa-
8 tion acquired from an electronic surveillance pursuant to
9 title I for purposes of section 106.

10 **"SEC. 708. CONGRESSIONAL OVERSIGHT.**

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

18 "(b) CONTENT.—Each report made under subpara-
19 graph (a) shall include—

20 "(1) with respect to section 703—

21 "(A) any certifications made under sub-
22 section 703(f) during the reporting period;

23 "(B) any directives issued under sub-
24 section 703(g) during the reporting period;

1 "(C) a description of the judicial review
2 during the reporting period of any such certifi-
3 cations and targeting and minimization proce-
4 dures utilized with respect to such acquisition,
5 including a copy of any order or pleading in
6 connection with such review that contains a sig-
7 nificant legal interpretation of the provisions of
8 this section;
9 "(D) any actions taken to challenge or en-
10 force a directive under paragraphs (4) or (5) of
11 section 703(g);
12 "(E) any compliance reviews conducted by
13 the Department of Justice or the Office of the
14 Director of National Intelligence of acquisitions
15 authorized under subsection 703(a);
16 "(F) a description of any incidents of non-
17 compliance with a directive issued by the Attor-
18 ney General and the Director of National Intel-
19 ligence under subsection 703(g), including—
20 "(i) incidents of noncompliance by an
21 element of the intelligence community with
22 procedures adopted pursuant to sub-
23 sections (d) and (e) of section 703; and
24 "(ii) incidents of noncompliance by a
25 specified person to whom the Attorney

1 General and Director of National Intel-
2 ligence issued a directive under subsection
3 703(g); and
4 "(G) any procedures implementing this
5 section;
6 "(2) with respect to section 704—
7 "(A) the total number of applications made
8 for orders under section 704(b);
9 "(B) the total number of such orders ei-
10 ther granted, modified, or denied; and
11 "(C) the total number of emergency acqui-
12 sitions authorized by the Attorney General
13 under section 704(d) and the total number of
14 subsequent orders approving or denying such
15 acquisitions; and
16 "(3) with respect to section 705—
17 "(A) the total number of applications made
18 for orders under 705(b);
19 "(B) the total number of such orders ei-
20 ther granted, modified, or denied; and
21 "(C) the total number of emergency acqui-
22 sitions authorized by the Attorney General
23 under subsection 705(d) and the total number
24 of subsequent orders approving or denying such
25 applications.".

1 (b) TABLE OF CONTENTS.—The table of contents in
2 the first section of the Foreign Intelligence Surveillance
3 Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—
4 (1) by striking the item relating to title VII;
5 (2) by striking the item relating to section 701;
6 and
7 (3) by adding at the end the following:

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

"Sec. 701. Limitation on definition of electronic surveillance.
"Sec. 702. Definitions.
"Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.
"Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.
"Sec. 705. Other acquisitions targeting United States persons outside the United States.
"Sec. 706. Joint applications and concurrent authorizations.
"Sec. 707. Use of information acquired under title VII.
"Sec. 708. Congressional oversight.".

8 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
9 (1) TITLE 18, UNITED STATES CODE.—
10 (A) SECTION 2232.—Section 2232(e) of
11 title 18, United States Code, is amended by in-
12 serting "(as defined in section 101(f) of the
13 Foreign Intelligence Surveillance Act of 1978,
14 regardless of the limitation of section 701 of
15 that Act)" after "electronic surveillance".
16 (B) SECTION 2511.—Section
17 2511(2)(a)(ii)(A) of title 18, United States
18 Code, is amended by inserting "or a court order
19 pursuant to section 705 of the Foreign Intel-

1 ligence Surveillance Act of 1978" after "assist-
2 ance".
3 (2) FOREIGN INTELLIGENCE SURVEILLANCE
4 ACT OF 1978.—
5 (A) SECTION 109.—Section 109 of the For-
6 eign Intelligence Surveillance Act of 1978 (50
7 U.S.C. 1809) is amended by adding at the end
8 the following:
9 "(e) DEFINITION.—For the purpose of this section,
10 the term 'electronic surveillance' means electronic surveil-
11 lance as defined in section 101(f) of this Act regardless
12 of the limitation of section 701 of this Act.".
13 (B) SECTION 110.—Section 110 of the For-
14 eign Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1810) is amended by—
16 (i) adding an "(a)" before "CIVIL AC-
17 TION",
18 (ii) redesignating subsections (a)
19 through (c) as paragraphs (1) through (3),
20 respectively; and
21 (iii) adding at the end the following:
22 "(b) DEFINITION.—For the purpose of this section,
23 the term 'electronic surveillance' means electronic surveil-
24 lance as defined in section 101(f) of this Act regardless
25 of the limitation of section 701 of this Act.".

1 (C) SECTION 601.—Section 601(a)(1) of
2 the Foreign Intelligence Surveillance Act of
3 1978 (50 U.S.C. 1871(a)(1)) is amended by
4 striking subparagraphs (C) and (D) and insert-
5 ing the following:
6 "(C) pen registers under section 402;
7 "(D) access to records under section 501;
8 "(E) acquisitions under section 704; and
9 "(F) acquisitions under section 705;".
10 (d) TERMINATION OF AUTHORITY.—
11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by subsections
13 (a)(2), (b), and (c) shall cease to have effect on De-
14 cember 31, 2013.
15 (2) CONTINUING APPLICABILITY.—Section
16 703(g)(3) of the Foreign Intelligence Surveillance
17 Act of 1978 (as amended by subsection (a)) shall re-
18 main in effect with respect to any directive issued
19 pursuant to section 703(g) of that Act (as so
20 amended) for information, facilities, or assistance
21 provided during the period such directive was or is
22 in effect. Section 704(e) of the Foreign Intelligence
23 Surveillance Act of 1978 (as amended by subsection
24 (a)) shall remain in effect with respect to an order
25 or request for emergency assistance under that sec-

1 tion. The use of information acquired by an acquisi-
2 tion conducted under section 703 of that Act (as so
3 amended) shall continue to be governed by the provi-
4 sions of section 707 of that Act (as so amended).

5 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
6 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
7 **TION OF DOMESTIC COMMUNICATIONS MAY**
8 **BE CONDUCTED.**

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

13 "STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
14 TRONIC SURVEILLANCE AND INTERCEPTION OF DO-
15 MESTIC COMMUNICATIONS MAY BE CONDUCTED

16 "SEC. 112. The procedures of chapters 119, 121, and
17 206 of title 18, United States Code, and this Act shall
18 be the exclusive means by which electronic surveillance (as
19 defined in section 101(f), regardless of the limitation of
20 section 701) and the interception of domestic wire, oral,
21 or electronic communications may be conducted.".

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

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

1 (c) CONFORMING AMENDMENTS.—Section 2511(2)
2 of title 18, United States Code, is amended in paragraph
3 (f), by striking ", as defined in section 101 of such Act,"
4 and inserting "(as defined in section 101(f) of such Act
5 regardless of the limitation of section 701 of such Act)".

6 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
7 **ORDERS UNDER THE FOREIGN INTEL-**
8 **LIGENCE SURVEILLANCE ACT OF 1978.**

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

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

17 "(c) SUBMISSIONS TO CONGRESS.—The Attorney
18 General shall submit to the committees of Congress re-
19 ferred to in subsection (a)—

20 "(1) a copy of any decision, order, or opinion
21 issued by the Foreign Intelligence Surveillance Court
22 or the Foreign Intelligence Surveillance Court of Re-
23 view that includes significant construction or inter-
24 pretation of any provision of this Act, and any

1 pleadings, applications, or memoranda of law associ-
2 ated with such decision, order, or opinion, not later
3 than 45 days after such decision, order, or opinion
4 is issued; and
5 "(2) a copy of any such decision, order, or opin-
6 ion, and any pleadings, applications, or memoranda
7 of law associated with such decision, order, or opin-
8 ion, that was issued during the 5-year period ending
9 on the date of the enactment of the FISA Amend-
10 ments Act of 2008 and not previously submitted in
11 a report under subsection (a).
12 "(d) PROTECTION OF NATIONAL SECURITY.—The
13 Attorney General, in consultation with the Director of Na-
14 tional Intelligence, may authorize redactions of materials
15 described in subsection (c) that are provided to the com-
16 mittees of Congress referred to in subsection (a), if such
17 redactions are necessary to protect the national security
18 of the United States and are limited to sensitive sources
19 and methods information or the identities of targets.".
20 (c) DEFINITIONS.—Such section 601, as amended by
21 subsections (a) and (b), is further amended by adding at
22 the end the following:
23 "(e) DEFINITIONS.—In this section:
24 "(1) FOREIGN INTELLIGENCE SURVEILLANCE
25 COURT; COURT.—The term "'Foreign Intelligence

1 Surveillance Court' " means the court established by
2 section 103(a).
3 "(2) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT OF REVIEW; COURT OF REVIEW.—The term
5 'Foreign Intelligence Surveillance Court of Review'
6 means the court established by section 103(b).".
7 **SEC. 104. APPLICATIONS FOR COURT ORDERS.**
8 Section 104 of the Foreign Intelligence Surveillance
9 Act of 1978 (50 U.S.C. 1804) is amended—
10 (1) in subsection (a)—
11 (A) by striking paragraphs (2) and (11);
12 (B) by redesignating paragraphs (3)
13 through (10) as paragraphs (2) through (9), re-
14 spectively;
15 (C) in paragraph (5), as redesignated by
16 subparagraph (B) of this paragraph, by striking
17 "detailed";
18 (D) in paragraph (6), as redesignated by
19 subparagraph (B) of this paragraph, in the
20 matter preceding subparagraph (A)—
21 (i) by striking "Affairs or" and insert-
22 ing "Affairs,"; and
23 (ii) by striking "Senate—" and insert-
24 ing "Senate, or the Deputy Director of the
25 Federal Bureau of Investigation, if des-

1 ignated by the President as a certifying of-
2 ficial—";
3 (E) in paragraph (7), as redesignated by
4 subparagraph (B) of this paragraph, by striking
5 "statement of" and inserting "summary state-
6 ment of";
7 (F) in paragraph (8), as redesignated by
8 subparagraph (B) of this paragraph, by adding
9 "and" at the end; and
10 (G) in paragraph (9), as redesignated by
11 subparagraph (B) of this paragraph, by striking
12 "; and" and inserting a period;
13 (2) by striking subsection (b);
14 (3) by redesignating subsections (c) through (e)
15 as subsections (b) through (d), respectively; and
16 (4) in paragraph (1)(A) of subsection (d), as re-
17 designated by paragraph (3) of this subsection, by
18 striking "or the Director of National Intelligence"
19 and inserting "the Director of National Intelligence,
20 or the Director of the Central Intelligence Agency".
21 **SEC. 105. ISSUANCE OF AN ORDER.**
22 Section 105 of the Foreign Intelligence Surveillance
23 Act of 1978 (50 U.S.C. 1805) is amended—
24 (1) in subsection (a)—
25 (A) by striking paragraph (1); and

1 (B) by redesignating paragraphs (2)
2 through (5) as paragraphs (1) through (4), re-
3 spectively;
4 (2) in subsection (b), by striking "(a)(3)" and
5 inserting "(a)(2)";
6 (3) in subsection (c)(1)—
7 (A) in subparagraph (D), by adding "and"
8 at the end;
9 (B) in subparagraph (E), by striking ";
10 and" and inserting a period; and
11 (C) by striking subparagraph (F);
12 (4) by striking subsection (d);
13 (5) by redesignating subsections (e) through (i)
14 as subsections (d) through (h), respectively;
15 (6) by amending subsection (e), as redesignated
16 by paragraph (5) of this section, to read as follows:
17 "(e)(1) Notwithstanding any other provision of this
18 title, the Attorney General may authorize the emergency
19 employment of electronic surveillance if the Attorney Gen-
20 eral—
21 "(A) reasonably determines that an emergency
22 situation exists with respect to the employment of
23 electronic surveillance to obtain foreign intelligence
24 information before an order authorizing such surveil-
25 lance can with due diligence be obtained;

1 "(B) resonably determines that the factual
2 basis for issuance of an order under this title to ap-
3 prove such electronic surveillance exists;
4 "(C) informs, either personally or through a
5 designee, a judge having jurisdiction under section
6 103 at the time of such authorization that the deci-
7 sion has been made to employ emergency electronic
8 surveillance; and
9 "(D) makes an application in accordance with
10 this title to a judge having jurisdiction under section
11 103 as soon as practicable, but not later than 7 days
12 after the Attorney General authorizes such surveil-
13 lance.
14 "(2) If the Attorney General authorizes the emer-
15 gency employment of electronic surveillance under para-
16 graph (1), the Attorney General shall require that the
17 minimization procedures required by this title for the
18 issuance of a judicial order be followed.
19 "(3) In the absence of a judicial order approving such
20 electronic surveillance, the surveillance shall terminate
21 when the information sought is obtained, when the appli-
22 cation for the order is denied, or after the expiration of
23 7 days from the time of authorization by the Attorney
24 General, whichever is earliest.

1 "(4) A denial of the application made under this sub-
2 section may be reviewed as provided in section 103.
3 "(5) In the event that such application for approval
4 is denied, or in any other case where the electronic surveil-
5 lance is terminated and no order is issued approving the
6 surveillance, no information obtained or evidence derived
7 from such surveillance shall be received in evidence or oth-
8 erwise disclosed in any trial, hearing, or other proceeding
9 in or before any court, grand jury, department, office,
10 agency, regulatory body, legislative committee, or other
11 authority of the United States, a State, or political sub-
12 division thereof, and no information concerning any
13 United States person acquired from such surveillance shall
14 subsequently be used or disclosed in any other manner by
15 Federal officers or employees without the consent of such
16 person, except with the approval of the Attorney General
17 if the information indicates a threat of death or serious
18 bodily harm to any person.
19 "(6) The Attorney General shall assess compliance
20 with the requirements of paragraph (5)."; and
21 (7) by adding at the end the following:
22 "(i) In any case in which the Government makes an
23 application to a judge under this title to conduct electronic
24 surveillance involving communications and the judge
25 grants such application, upon the request of the applicant,

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

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

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

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

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

14 (1) in subsection (a)—

15 (A) by striking paragraph (2);

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

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

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

1 (E) in paragraph (6), as redesignated by
2 subparagraph (B) of this paragraph, in the
3 matter preceding subparagraph (A)—
4 (i) by striking "Affairs or" and insert-
5 ing "Affairs,"; and
6 (ii) by striking "Senate—" and insert-
7 ing "Senate, or the Deputy Director of the
8 Federal Bureau of Investigation, if des-
9 ignated by the President as a certifying of-
10 ficial—"; and
11 (2) in subsection (d)(1)(A), by striking "or the
12 Director of National Intelligence" and inserting "the
13 Director of National Intelligence, or the Director of
14 the Central Intelligence Agency".
15 (b) ORDERS.—Section 304 of the Foreign Intel-
16 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
17 amended—
18 (1) in subsection (a)—
19 (A) by striking paragraph (1); and
20 (B) by redesignating paragraphs (2)
21 through (5) as paragraphs (1) through (4), re-
22 spectively; and
23 (2) by amending subsection (e) to read as fol-
24 lows:

1 "(e)(1) Notwithstanding any other provision of this
2 title, the Attorney General may authorize the emergency
3 employment of a physical search if the Attorney General
4 reasonably—
5 "(A) determines that an emergency situation
6 exists with respect to the employment of a physical
7 search to obtain foreign intelligence information be-
8 fore an order authorizing such physical search can
9 with due diligence be obtained;
10 "(B) determines that the factual basis for
11 issuance of an order under this title to approve such
12 physical search exists;
13 "(C) informs, either personally or through a
14 designee, a judge of the Foreign Intelligence Surveil-
15 lance Court at the time of such authorization that
16 the decision has been made to employ an emergency
17 physical search; and
18 "(D) makes an application in accordance with
19 this title to a judge of the Foreign Intelligence Sur-
20 veillance Court as soon as practicable, but not more
21 than 7 days after the Attorney General authorizes
22 such physical search.
23 "(2) If the Attorney General authorizes the emer-
24 gency employment of a physical search under paragraph
25 (1), the Attorney General shall require that the minimiza-

1 tion procedures required by this title for the issuance of
2 a judicial order be followed.
3 "(3) In the absence of a judicial order approving such
4 physical search, the physical search shall terminate when
5 the information sought is obtained, when the application
6 for the order is denied, or after the expiration of 7 days
7 from the time of authorization by the Attorney General,
8 whichever is earliest.
9 "(4) A denial of the application made under this sub-
10 section may be reviewed as provided in section 103.
11 "(5)(A) In the event that such application for ap-
12 proval is denied, or in any other case where the physical
13 search is terminated and no order is issued approving the
14 physical search, no information obtained or evidence de-
15 rived from such physical search shall be received in evi-
16 dence or otherwise disclosed in any trial, hearing, or other
17 proceeding in or before any court, grand jury, department,
18 office, agency, regulatory body, legislative committee, or
19 other authority of the United States, a State, or political
20 subdivision thereof, and no information concerning any
21 United States person acquired from such physical search
22 shall subsequently be used or disclosed in any other man-
23 ner by Federal officers or employees without the consent
24 of such person, except with the approval of the Attorney

1 General if the information indicates a threat of death or
2 serious bodily harm to any person.
3 "(B) The Attorney General shall assess compliance
4 with the requirements of subparagraph (A).".
5 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
7 is amended—
8 (1) in section 304(a)(4), as redesignated by
9 subsection (b) of this section, by striking
10 "303(a)(7)(E)" and inserting "303(a)(6)(E)"; and
11 (2) in section 305(k)(2), by striking
12 "303(a)(7)" and inserting "303(a)(6)".

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

15 Section 403 of the Foreign Intelligence Surveillance
16 Act of 1978 (50 U.S.C. 1843) is amended—
17 (1) in subsection (a)(2), by striking "48 hours"
18 and inserting "7 days"; and
19 (2) in subsection (c)(1)(C), by striking "48
20 hours" and inserting "7 days".

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

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

1 least" before "seven of the United States judicial cir-
2 cuits".
3 (b) EN BANC AUTHORITY.—
4 (1) IN GENERAL.—Subsection (a) of section
5 103 of the Foreign Intelligence Surveillance Act of
6 1978, as amended by subsection (a) of this section,
7 is further amended—
8 (A) by inserting "(1)" after "(a)"; and
9 (B) by adding at the end the following new
10 paragraph:
11 "(2)(A) The court established under this subsection
12 may, on its own initiative, or upon the request of the Gov-
13 ernment in any proceeding or a party under section 501(f)
14 or paragraph (4) or (5) of section 703(h), hold a hearing
15 or rehearing, en banc, when ordered by a majority of the
16 judges that constitute such court upon a determination
17 that—
18 "(i) en banc consideration is necessary to se-
19 cure or maintain uniformity of the court's decisions;
20 or
21 "(ii) the proceeding involves a question of ex-
22 ceptional importance.
23 "(B) Any authority granted by this Act to a judge
24 of the court established under this subsection may be exer-
25 cised by the court en banc. When exercising such author-

1 ity, the court en banc shall comply with any requirements
2 of this Act on the exercise of such authority.
3 "(C) For purposes of this paragraph, the court en
4 banc shall consist of all judges who constitute the court
5 established under this subsection.".
6 (2) CONFORMING AMENDMENTS.—The Foreign
7 Intelligence Surveillance Act of 1978 is further
8 amended—
9 (A) in subsection (a) of section 103, as
10 amended by this subsection, by inserting "(ex-
11 cept when sitting en banc under paragraph
12 (2))" after "no judge designated under this
13 subsection"; and
14 (B) in section 302(c) (50 U.S.C. 1822(c)),
15 by inserting "(except when sitting en banc)"
16 after "except that no judge".
17 (c) STAY OR MODIFICATION DURING AN APPEAL.—
18 Section 103 of the Foreign Intelligence Surveillance Act
19 of 1978 (50 U.S.C. 1803) is amended—
20 (1) by redesignating subsection (f) as sub-
21 section (g); and
22 (2) by inserting after subsection (e) the fol-
23 lowing new subsection:
24 "(f)(1) A judge of the court established under sub-
25 section (a), the court established under subsection (b) or

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

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

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

20 "(h)(1) Nothing in this Act shall be considered to re-
21 duce or contravene the inherent authority of the Foreign
22 Intelligence Surveillance Court to determine, or enforce,
23 compliance with an order or a rule of such Court or with
24 a procedure approved by such Court.

1 "(2) In this subsection, the terms 'Foreign Intel-
2 ligence Surveillance Court' and 'Court' mean the court es-
3 tablished by subsection (a).".

4 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

5 (a) DEFINITIONS.—

6 (1) FOREIGN POWER.—Subsection (a)(4) of sec-
7 tion 101 of the Foreign Intelligence Surveillance Act
8 of 1978 (50 U.S.C. 1801(a)(4)) is amended by in-
9 serting ", the international proliferation of weapons
10 of mass destruction," after "international ter-
11 rorism".

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

14 (A) in subparagraph (B), by striking "or"
15 at the end

16 (B) in subparagraph (C), by striking "or"
17 at the end; and

18 (C) by adding at the end the following new
19 subparagraphs:

20 "(D) engages in the international prolifera-
21 tion of weapons of mass destruction, or activi-
22 ties in preparation therefor; or

23 "(E) engages in the international prolifera-
24 tion of weapons of mass destruction, or activi-

1 ties in preparation therefor, for or on behalf of
2 a foreign power; or".
3 (3) FOREIGN INTELLIGENCE INFORMATION.—
4 Subsection (e)(1)(B) of such section 101 is amended
5 by striking "sabotage or international terrorism"
6 and inserting "sabotage, international terrorism, or
7 the international proliferation of weapons of mass
8 destruction".
9 (4) WEAPON OF MASS DESTRUCTION.—Such
10 section 101 is amended by inserting after subsection
11 (o) the following:
12 "(p) 'Weapon of mass destruction' means—
13 "(1) any destructive device described in section
14 921(a)(4)(A) of title 18, United States Code, that is
15 intended or has the capability to cause death or seri-
16 ous bodily injury to a significant number of people;
17 "(2) any weapon that is designed or intended to
18 cause death or serious bodily injury through the re-
19 lease, dissemination, or impact of toxic or poisonous
20 chemicals or their precursors;
21 "(3) any weapon involving a biological agent,
22 toxin, or vector (as such terms are defined in section
23 178 of title 18, United States Code); or

1 "(4) any weapon that is designed to release ra-
2 diation or radioactivity at a level dangerous to
3 human life.".
4 (b) USE OF INFORMATION.—
5 (1) IN GENERAL.—Section 106(k)(1)(B) of the
6 Foreign Intelligence Surveillance Act of 1978 (50
7 U.S.C. 1806(k)(1)(B)) is amended by striking "sab-
8 otage or international terrorism" and inserting "sab-
9 otage, international terrorism, or the international
10 proliferation of weapons of mass destruction".
11 (2) PHYSICAL SEARCHES.—Section
12 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
13 is amended by striking "sabotage or international
14 terrorism" and inserting "sabotage, international
15 terrorism, or the international proliferation of weap-
16 ons of mass destruction".
17 (c) TECHNICAL AND CONFORMING AMENDMENT.—
18 Section 301(1) of the Foreign Intelligence Surveillance
19 Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting
20 " 'weapon of mass destruction'," after " 'person',".
21 **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**
22 Section 103(e) of the Foreign Intelligence Surveil-
23 lance Act of 1978 (50 U.S.C. 1803(e)) is amended—
24 (1) in paragraph (1), by striking "105B(h) or
25 501(f)(1)" and inserting "501(f)(1) or 703"; and

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

3 Subtitle B—Protections for Electronic Communication Service Providers

6 SEC. 201. DEFINITIONS.

7 In this title:

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

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

18 (3) COVERED CIVIL ACTION.—The term "cov-
19 ered civil action" means a civil action filed in a Fed-
20 eral or State court that—

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

1 (B) seeks monetary or other relief from the
2 electronic communication service provider re-
3 lated to the provision of such assistance.
4 (4) ELECTRONIC COMMUNICATION SERVICE
5 PROVIDER.—The term "electronic communication
6 service provider" means—
7 (A) a telecommunications carrier, as that
8 term is defined in section 3 of the Communica-
9 tions Act of 1934 (47 U.S.C. 153);
10 (B) a provider of an electronic communica-
11 tion service, as that term is defined in section
12 2510 of title 18, United States Code;
13 (C) a provider of a remote computing serv-
14 ice, as that term is defined in section 2711 of
15 title 18, United States Code;
16 (D) any other communication service pro-
17 vider who has access to wire or electronic com-
18 munications either as such communications are
19 transmitted or as such communications are
20 stored;
21 (E) a parent, subsidiary, affiliate, suc-
22 cessor, or assignee of an entity described in
23 subparagraph (A), (B), (C), or (D); or

1 (F) an officer, employee, or agent of an en-
2 tity described in subparagraph (A), (B), (C),
3 (D), or (E).
4 (5) ELEMENT OF THE INTELLIGENCE COMMU-
5 NITY.—The term "element of the intelligence com-
6 munity" means an element of the intelligence com-
7 munity specified in or designated under section 3(4)
8 of the National Security Act of 1947 (50 U.S.C.
9 401a(4)).
10 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**
11 **TRONIC COMMUNICATION SERVICE PRO-**
12 **VIDERS.**
13 (a) LIMITATIONS.—
14 (1) IN GENERAL.—Notwithstanding any other
15 provision of law, a covered civil action shall not lie
16 or be maintained in a Federal or State court, and
17 shall be promptly dismissed, if the Attorney General
18 certifies to the court that—
19 (A) the assistance alleged to have been
20 provided by the electronic communication serv-
21 ice provider was—
22 (i) in connection with an intelligence
23 activity involving communications that
24 was—

1 (I) authorized by the President
2 during the period beginning on Sep-
3 tember 11, 2001, and ending on Jan-
4 uary 17, 2007; and
5 (II) designed to detect or prevent
6 a terrorist attack, or activities in
7 preparation for a terrorist attack,
8 against the United States; and
9 (ii) described in a written request or
10 directive from the Attorney General or the
11 head of an element of the intelligence com-
12 munity (or the deputy of such person) to
13 the electronic communication service pro-
14 vider indicating that the activity was—
15 (I) authorized by the President;
16 and
17 (II) determined to be lawful; or
18 (B) the electronic communication service
19 provider did not provide the alleged assistance.
20 (2) REVIEW.—A certification made pursuant to
21 paragraph (1) shall be subject to review by a court
22 for abuse of discretion.
23 (b) REVIEW OF CERTIFICATIONS.—If the Attorney
24 General files a declaration under section 1746 of title 28,
25 United States Code, that disclosure of a certification made

1 pursuant to subsection (a) would harm the national secu-
2 rity of the United States, the court shall—
3 (1) review such certification in camera and ex
4 parte; and
5 (2) limit any public disclosure concerning such
6 certification, including any public order following
7 such an ex parte review, to a statement that the con-
8 ditions of subsection (a) have been met, without dis-
9 closing the subparagraph of subsection (a)(1) that is
10 the basis for the certification.
11 (c) NONDELEGATION.—The authority and duties of
12 the Attorney General under this section shall be performed
13 by the Attorney General (or Acting Attorney General) or
14 a designee in a position not lower than the Deputy Attor-
15 ney General.
16 (d) CIVIL ACTIONS IN STATE COURT.—A covered
17 civil action that is brought in a State court shall be
18 deemed to arise under the Constitution and laws of the
19 United States and shall be removable under section 1441
20 of title 28, United States Code.
21 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion may be construed to limit any otherwise available im-
23 munity, privilege, or defense under any other provision of
24 law.

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

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

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

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

14 **"SEC. 801. DEFINITIONS.**

15 "In this title:

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

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

1 "(3) CONTENTS.—The term 'contents' has the
2 meaning given that term in section 101(n).
3 "(4) ELECTRONIC COMMUNICATION SERVICE
4 PROVIDER.—The term 'electronic communication
5 service provider' means—
6 "(A) a telecommunications carrier, as that
7 term is defined in section 3 of the Communica-
8 tions Act of 1934 (47 U.S.C. 153);
9 "(B) a provider of electronic communica-
10 tion service, as that term is defined in section
11 2510 of title 18, United States Code;
12 "(C) a provider of a remote computing
13 service, as that term is defined in section 2711
14 of title 18, United States Code;
15 "(D) any other communication service pro-
16 vider who has access to wire or electronic com-
17 munications either as such communications are
18 transmitted or as such communications are
19 stored;
20 "(E) a parent, subsidiary, affiliate, suc-
21 cessor, or assignee of an entity described in
22 subparagraph (A), (B), (C), or (D); or
23 "(F) an officer, employee, or agent of an
24 entity described in subparagraph (A), (B), (C),
25 (D), or (E).

1 "(5) ELEMENT OF THE INTELLIGENCE COMMU-
2 NITY.—The term 'element of the intelligence com-
3 munity' means an element of the intelligence com-
4 munity as specified or designated under section 3(4)
5 of the National Security Act of 1947 (50 U.S.C.
6 401a(4)).
7 "(6) PERSON.—The term 'person' means—
8 "(A) an electronic communication service
9 provider; or
10 "(B) a landlord, custodian, or other person
11 who may be authorized or required to furnish
12 assistance pursuant to—
13 "(i) an order of the court established
14 under section 103(a) directing such assist-
15 ance;
16 "(ii) a certification in writing under
17 section 2511(2)(a)(ii)(B) or 2709(b) of
18 title 18, United States Code; or
19 "(iii) a directive under section
20 102(a)(4), 105B(e), as in effect on the day
21 before the date of the enactment of the
22 FISA Amendments Act of 2008 or 703(h).
23 "(7) STATE.—The term 'State' means any
24 State, political subdivision of a State, the Common-
25 wealth of Puerto Rico, the District of Columbia, and

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

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

7 "(a) REQUIREMENT FOR CERTIFICATION.—

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

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

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

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

1 fore the date of the enactment of the FISA
2 Amendments Act of 2008, or 703(h) directing
3 such assistance; or
4 "(D) the person did not provide the alleged
5 assistance.
6 "(2) REVIEW.—A certification made pursuant
7 to paragraph (1) shall be subject to review by a
8 court for abuse of discretion.
9 "(b) LIMITATIONS ON DISCLOSURE.—If the Attorney
10 General files a declaration under section 1746 of title 28,
11 United States Code, that disclosure of a certification made
12 pursuant to subsection (a) would harm the national secu-
13 rity of the United States, the court shall—
14 "(1) review such certification in camera and ex
15 parte; and
16 "(2) limit any public disclosure concerning such
17 certification, including any public order following
18 such an ex parte review, to a statement that the con-
19 ditions of subsection (a) have been met, without dis-
20 closing the subparagraph of subsection (a)(1) that is
21 the basis for the certification.
22 "(c) REMOVAL.—A civil action against a person for
23 providing assistance to an element of the intelligence com-
24 munity that is brought in a State court shall be deemed
25 to arise under the Constitution and laws of the United

1 States and shall be removable under section 1441 of title
2 28, United States Code.
3 "(d) RELATIONSHIP TO OTHER LAWS.—Nothing in
4 this section may be construed to limit any otherwise avail-
5 able immunity, privilege, or defense under any other provi-
6 sion of law.
7 "(e) APPLICABILITY.—This section shall apply to a
8 civil action pending on or filed after the date of enactment
9 of the FISA Amendments Act of 2008.".
10 **SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.**
11 Title VIII of the Foreign Intelligence Surveillance
12 Act (50 U.S.C. 1801 et seq.), as added by section 203
13 of this Act, is amended by adding at the end the following
14 new section:
15 **"SEC. 803. PREEMPTION.**
16 "(a) IN GENERAL.—No State shall have authority
17 to—
18 "(1) conduct an investigation into an electronic
19 communication service provider's alleged assistance
20 to an element of the intelligence community;
21 "(2) require through regulation or any other
22 means the disclosure of information about an elec-
23 tronic communication service provider's alleged as-
24 sistance to an element of the intelligence community;

1 "(3) impose any administrative sanction on an
2 electronic communication service provider for assist-
3 ance to an element of the intelligence community; or
4 "(4) commence or maintain a civil action or
5 other proceeding to enforce a requirement that an
6 electronic communication service provider disclose
7 information concerning alleged assistance to an ele-
8 ment of the intelligence community.
9 "(b) SUITS BY THE UNITED STATES.—The United
10 States may bring suit to enforce the provisions of this sec-
11 tion.
12 "(c) JURISDICTION.—The district courts of the
13 United States shall have jurisdiction over any civil action
14 brought by the United States to enforce the provisions of
15 this section.
16 "(d) APPLICATION.—This section shall apply to any
17 investigation, action, or proceeding that is pending on or
18 filed after the date of enactment of the FISA Amendments
19 Act of 2008.".
20 **SEC. 205. TECHNICAL AMENDMENTS.**
21 The table of contents in the first section of the For-
22 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
23 1801 et seq.), as amended by section 101(b), is further
24 amended by adding at the end the following:

"TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

"Sec. 801. Definitions.
"Sec. 802. Procedures for implementing statutory defenses.
"Sec. 803. Preemption.".

1 **Subtitle C—Other Provisions**

2 **SEC. 301. SEVERABILITY.**

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

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

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

14 (b) REPEAL.—

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

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

24 (c) TRANSITIONS PROCEDURES.—

1 (1) PROTECTION FROM LIABILITY.—Notwith-
2 standing subsection (b)(1), subsection (l) of section
3 105B of the Foreign Intelligence Surveillance Act of
4 1978 shall remain in effect with respect to any di-
5 rectives issued pursuant to such section 105B for in-
6 formation, facilities, or assistance provided during
7 the period such directive was or is in effect.
8 (2) ORDERS IN EFFECT.—
9 (A) ORDERS IN EFFECT ON DATE OF EN-
10 ACTMENT.—Notwithstanding any other provi-
11 sion of this Act or of the Foreign Intelligence
12 Surveillance Act of 1978—
13 (i) any order in effect on the date of
14 enactment of this Act issued pursuant to
15 the Foreign Intelligence Surveillance Act of
16 1978 or section 6(b) of the Protect Amer-
17 ica Act of 2007 (Public Law 110–55; 121
18 Stat. 556) shall remain in effect until the
19 date of expiration of such order; and
20 (ii) at the request of the applicant,
21 the court established under section 103(a)
22 of the Foreign Intelligence Surveillance Act
23 of 1978 (50 U.S.C. 1803(a)) shall reau-
24 thorize such order if the facts and cir-
25 cumstances continue to justify issuance of

1 such order under the provisions of such
2 Act, as in effect on the day before the date
3 of the enactment of the Protect America
4 Act of 2007, except as amended by sec-
5 tions 102, 103, 104, 105, 106, 107, 108,
6 109, and 110 of this Act.
7 (B) ORDERS IN EFFECT ON DECEMBER 31,
8 2013.—Any order issued under title VII of the
9 Foreign Intelligence Surveillance Act of 1978,
10 as amended by section 101 of this Act, in effect
11 on December 31, 2013, shall continue in effect
12 until the date of the expiration of such order.
13 Any such order shall be governed by the appli-
14 cable provisions of the Foreign Intelligence Sur-
15 veillance Act of 1978, as so amended.
16 (3) AUTHORIZATIONS AND DIRECTIVES IN EF-
17 FECT.—
18 (A) AUTHORIZATIONS AND DIRECTIVES IN
19 EFFECT ON DATE OF ENACTMENT.—Notwith-
20 standing any other provision of this Act or of
21 the Foreign Intelligence Surveillance Act of
22 1978, any authorization or directive in effect on
23 the date of the enactment of this Act issued
24 pursuant to the Protect America Act of 2007,
25 or any amendment made by that Act, shall re-

1 main in effect until the date of expiration of
2 such authorization or directive. Any such au-
3 thorization or directive shall be governed by the
4 applicable provisions of the Protect America Act
5 of 2007 (121 Stat. 552), and the amendment
6 made by that Act, and, except as provided in
7 paragraph (4) of this subsection, any acquisi-
8 tion pursuant to such authorization or directive
9 shall be deemed not to constitute electronic sur-
10 veillance (as that term is defined in section
11 101(f) of the Foreign Intelligence Surveillance
12 Act of 1978 (50 U.S.C. 1801(f)), as construed
13 in accordance with section 105A of the Foreign
14 Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1805a)).
16 (B) AUTHORIZATIONS AND DIRECTIVES IN
17 EFFECT ON DECEMBER 31, 2013.—Any author-
18 ization or directive issued under title VII of the
19 Foreign Intelligence Surveillance Act of 1978,
20 as amended by section 101 of this Act, in effect
21 on December 31, 2013, shall continue in effect
22 until the date of the expiration of such author-
23 ization or directive. Any such authorization or
24 directive shall be governed by the applicable
25 provisions of the Foreign Intelligence Surveil-

1 lance Act of 1978, as so amended, and, except
2 as provided in section 707 of the Foreign Intel-
3 ligence Surveillance Act of 1978, as so amend-
4 ed, any acquisition pursuant to such authoriza-
5 tion or directive shall be deemed not to con-
6 stitute electronic surveillance (as that term is
7 defined in section 101(f) of the Foreign Intel-
8 ligence Surveillance Act of 1978, to the extent
9 that such section 101(f) is limited by section
10 701 of the Foreign Intelligence Surveillance Act
11 of 1978, as so amended).
12 (4) USE OF INFORMATION ACQUIRED UNDER
13 PROTECT AMERICA ACT.—Information acquired from
14 an acquisition conducted under the Protect America
15 Act of 2007, and the amendments made by that Act,
16 shall be deemed to be information acquired from an
17 electronic surveillance pursuant to title I of the For-
18 eign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1801 et seq.) for purposes of section 106 of
20 that Act (50 U.S.C. 1806), except for purposes of
21 subsection (j) of such section.
22 (5) NEW ORDERS.—Notwithstanding any other
23 provision of this Act or of the Foreign Intelligence
24 Surveillance Act of 1978—

1 (A) the government may file an application
2 for an order under the Foreign Intelligence
3 Surveillance Act of 1978, as in effect on the
4 day before the date of the enactment of the
5 Protect America Act of 2007, except as amend-
6 ed by sections 102, 103, 104, 105, 106, 107,
7 108, 109, and 110 of this Act; and
8 (B) the court established under section
9 103(a) of the Foreign Intelligence Surveillance
10 Act of 1978 shall enter an order granting such
11 an application if the application meets the re-
12 quirements of such Act, as in effect on the day
13 before the date of the enactment of the Protect
14 America Act of 2007, except as amended by
15 sections 102, 103, 104, 105, 106, 107, 108,
16 109, and 110 of this Act.
17 (6) EXTANT AUTHORIZATIONS.—At the request
18 of the applicant, the court established under section
19 103(a) of the Foreign Intelligence Surveillance Act
20 of 1978 shall extinguish any extant authorization to
21 conduct electronic surveillance or physical search en-
22 tered pursuant to such Act.
23 (7) APPLICABLE PROVISIONS.—Any surveillance
24 conducted pursuant to an order entered pursuant to
25 this subsection shall be subject to the provisions of

1 the Foreign Intelligence Surveillance Act of 1978, as
2 in effect on the day before the date of the enactment
3 of the Protect America Act of 2007, except as
4 amended by sections 102, 103, 104, 105, 106, 107,
5 108, 109, and 110 of this Act.

6 (8) TRANSITION PROCEDURES CONCERNING
7 THE TARGETING OF UNITED STATES PERSONS OVER-
8 SEAS.—Any authorization in effect on the date of
9 enactment of this Act under section 2.5 of Executive
10 Order 12333 to intentionally target a United States
11 person reasonably believed to be located outside the
12 United States shall remain in effect, and shall con-
13 stitute a sufficient basis for conducting such an ac-
14 quisition targeting a United States person located
15 outside the United States until the earlier of—

16 (A) the date that authorization expires; or

17 (B) the date that is 90 days after the date
18 of the enactment of this Act.