

1
2 Be it enacted by the Senate and House of Representatives of the United States of America in
3 Congress assembled,

Deleted: House Amendment to
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Offered by M. _____
In lieu
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by the Senate, insert the following:
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4 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

5 (a) Short Title.—This Act may be cited as the “Foreign Intelligence Surveillance Act of 1978
6 Amendments Act of 2008” or the “FISA Amendments Act of 2008”.

7 (b) Table of Contents.—The table of contents for this Act is as follows:

8 Sec.1.Short title; table of contents.

9 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

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

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

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

15 Sec.104.Applications for court orders.

16 Sec.105.Issuance of an order.

17 Sec.106.Use of information.

18 Sec.107.Amendments for physical searches.

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

20 Sec.109.Foreign Intelligence Surveillance Court,

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21 Sec.110.Review of previous actions.

22 Sec.111.Weapons of mass destruction.

23 **TITLE II—PROTECTIONS FOR ELECTRONIC**
24 **COMMUNICATION SERVICE PROVIDERS**

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25 Sec.201.Definitions.

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THE GOVERNMENT¶
Sec.201.Statutory defenses.¶
Sec.202.Technical amendments.¶
TITLE III—COMMISSION ON
WARRANTLESS

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

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ACTIVITIES

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

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29 Sec.204.Preemption of State investigations.

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30 Sec.205.Technical amendments.

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31 **TITLE III—OTHER PROVISIONS**

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32 Sec.301.Severability.

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Sec.402.Effective

33 Sec.302.Effective date.

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Sec.406.Surveillance to protect the United States.¶

1 | Sec. 303. Repeals.

2 | Sec. 304. Transition procedures.

3 | **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

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

6 | (a) In General.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
7 | amended—

- 8 | (1) by striking title VII; and
- 9 | (2) by adding after title VI the following new title:

10 | **“TITLE VII—ADDITIONAL PROCEDURES REGARDING**
11 | **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

12 | **“SEC. 701. DEFINITIONS.**

13 | “(a) In General.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’,
14 | ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’, ‘minimization
15 | procedures’, ‘person’, ‘United States’, and ‘United States person’ shall have the meanings given
16 | such terms in section 101, except as specifically provided in this title.

17 | “(b) Additional Definitions.—

18 | “(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence
19 | committees’ means—

- 20 | “(A) the Select Committee on Intelligence of the Senate; and
- 21 | “(B) the Permanent Select Committee on Intelligence of the House of
22 | Representatives.

23 | “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign
24 | Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

25 | “(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The
26 | terms ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the
27 | court established by section 103(b).

28 | “(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic
29 | communication service provider’ means—

- 30 | “(A) a telecommunications carrier, as that term is defined in section 3 of the
31 | Communications Act of 1934 (47 U.S.C. 153);
- 32 | “(B) a provider of electronic communication service, as that term is defined in
33 | section 2510 of title 18, United States Code;
- 34 | “(C) a provider of a remote computing service, as that term is defined in section
35 | 2711 of title 18, United States Code;

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

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

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

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

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11 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN**
12 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**
13 **UNITED STATES PERSONS.**

14 “(a) Authorization.—Notwithstanding any other provision of law, pursuant to an order issued
15 in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B), the Attorney
16 General and the Director of National Intelligence may authorize jointly, for a period of up to 1
17 year from the effective date of the authorization, the targeting of persons reasonably believed to
18 be located outside the United States to acquire foreign intelligence information.

19 “(b) Limitations.—An acquisition authorized under subsection (a)—

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

22 “(2) may not intentionally target a person reasonably believed to be located outside the
23 United States if the purpose of such acquisition is to target a particular, known person
24 reasonably believed to be in the United States;

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25 “(3) may not intentionally target a United States person reasonably believed to be located
26 outside the United States;

27 “(4) may not intentionally acquire any communication as to which the sender and all
28 intended recipients are known at the time of the acquisition to be located in the United
29 States; and

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

32 “(c) Conduct of Acquisition.—

33 “(1) IN GENERAL.—An acquisition authorized under subsection (a) may be conducted
34 only in accordance with—

35 “(A) the certification made by the Attorney General and the Director of National
36 Intelligence required by subsection (g) or a determination under paragraph (1)(B) of
37 such subsection; and

38 “(B) the targeting and minimization procedures required by subsections (d) and

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

6 “(d) Targeting Procedures.—

7 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
8 of National Intelligence, shall adopt targeting procedures that are reasonably designed to
9 ensure that any acquisition authorized under subsection (a) is limited to targeting persons
10 reasonably believed to be located outside the United States and does not result in the
11 intentional acquisition of any communication as to which the sender and all intended
12 recipients are known at the time of the acquisition to be located in the United States.

13 “(2) JUDICIAL REVIEW.—The procedures required by paragraph (1) shall be subject to
14 judicial review pursuant to subsection (i).

15 “(e) Minimization Procedures.—

16 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
17 of National Intelligence, shall adopt minimization procedures that meet the definition of
18 minimization procedures under section 101(h) or section 301(4) for acquisitions authorized
19 under subsection (a).

20 “(2) JUDICIAL REVIEW.—The minimization procedures required by paragraph (1) shall be
21 subject to judicial review pursuant to subsection (i).

22 “(f) Guidelines for Compliance with Limitations.—

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

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

26 “(B) that an application is filed under section 104 or section 303, if otherwise required
27 by this Act.

28 “(2) TRAINING.—The Director of National Intelligence shall establish a training program
29 for appropriate intelligence community personnel to ensure that the guidelines adopted pursuant
30 to paragraph (1) are properly implemented.

31 “(3) SUBMISSION TO CONGRESS.—The Attorney General shall provide the guidelines adopted
32 pursuant to paragraph (1) to—

33 (A) the congressional intelligence committees; and

34 (B) the Committees on the Judiciary of the House of Representatives and the
35 Senate.

36 “(g) Certification.—

37 “(1) IN GENERAL.—

38 “(A) REQUIREMENT.—Subject to subparagraph (B), if the Attorney General and the
39 Director of National Intelligence authorize an acquisition under this section, the

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

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“(A) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;”

“(B) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United State ... [1]

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1 Attorney General and the Director of National Intelligence shall provide to the Foreign
2 Intelligence Surveillance Court, under oath, a written certification, as described in this
3 subsection.

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4 "(B) EXCEPTION FOR IMMEDIATE ACTION.—If the Attorney General and the Director
5 of National Intelligence determine that immediate action by the Government is
6 required and time does not permit the issuance of an order pursuant to subsection (i)(3)
7 prior to the initiation of an acquisition, the Attorney General and the Director of
8 National Intelligence may authorize the acquisition and shall submit to the Foreign
9 Intelligence Surveillance Court a certification under this subsection as soon as possible
10 but in no event more than 7 days after such determination is made.

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

12 "(A) attest that—

13 "(i) there are reasonable procedures in place, which have been approved or
14 submitted for approval to the Foreign Intelligence Surveillance Court, for
15 determining that the acquisition authorized under subsection (a)—

16 "(I) is targeted at persons reasonably believed to be located outside the
17 United States and such procedures; and

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18 "(II) does not result in the intentional acquisition of any communication as to
19 which the sender and all intended recipients are known at the time of the
20 acquisition to be located in the United States;

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21 "(ii) guidelines have been adopted by the Attorney General, in consultation
22 with the Director of National Intelligence, in accordance with subsection (f) to
23 ensure compliance with the limitations in subsection (b) and to ensure that
24 applications are filed under section 104 or section 303, if otherwise required by
25 this Act;

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

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27 "(I) meet the definition of minimization procedures under section 101(h)
28 or section 301(4), as appropriate; and

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29 "(II) have been approved by, or submitted for approval by, the Foreign
30 Intelligence Surveillance Court;

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31 "(iv) the procedures referred to in clauses (i), (ii) and (iii) are consistent with
32 the requirements of the fourth amendment to the Constitution of the United States;

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

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

37 "(vii) the acquisition complies with the limitations in subsection (b); and

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

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

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“(ii) the head of an element of the intelligence community; and
“(C) include —

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“(i) an effective date for the authorization that is between 30 and 60 days from the submission of the written certification to the court; or

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“(ii) if the acquisition has begun or the effective date is less than 30 days from the submission of the written certification to the court—

“(I) the date the acquisition began or the effective date for the acquisition;

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“(II) a description of why initiation of the acquisition is required in less than 30 days from the submission of the written certification to the court; and

“(III) if the acquisition is authorized under paragraph (1)(B), a description of why immediate action by the government is required and time does not permit the issuance of an order pursuant to subsection (i)(3) prior to the initiation of the acquisition.

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

“(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court before the initiation of an acquisition under this section, except in accordance with paragraph (1)(B). The Attorney General shall maintain such certification under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

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

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“(h) Directives and Judicial Review of Directives.—

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

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

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

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

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“(3) RELEASE FROM LIABILITY.—No cause of action shall lie in any court against any

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

3 “(4) CHALLENGING OF DIRECTIVES.—

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

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

11 “(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set
12 aside a directive may grant such petition only if the judge finds that the directive does
13 not meet the requirements of this section, or is otherwise unlawful.

14 “(D) PROCEDURES FOR INITIAL REVIEW.—A judge shall conduct an initial review of a
15 petition filed under subparagraph (A) not later than 5 days after being assigned such
16 petition. If the judge determines that the petition does not consist of claims, defenses,
17 or other legal contentions that are warranted by existing law or by a nonfrivolous
18 argument for extending, modifying, or reversing existing law or for establishing new
19 law, the judge shall immediately deny the petition and affirm the directive or any part
20 of the directive that is the subject of the petition and order the recipient to comply with
21 the directive or any part of it. Upon making such a determination or promptly
22 thereafter, the judge shall provide a written statement for the record of the reasons for a
23 determination under this subparagraph.

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24 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition filed
25 under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set
26 aside the directive that is the subject of that petition not later than 30 days after being
27 assigned the petition. If the judge does not set aside the directive, the judge shall
28 immediately affirm the directive or order that the directive be modified, and order the
29 recipient to comply with the directive in its entirety or as modified. The judge shall
30 provide a written statement for the records of the reasons for a determination under this
31 subparagraph.

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

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

36 “(5) ENFORCEMENT OF DIRECTIVES.—

37 “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to
38 comply with a directive issued pursuant to paragraph (1), the Attorney General may
39 file a petition for an order to compel the electronic communication service provider to
40 comply with the directive with the Foreign Intelligence Surveillance Court, which shall
41 have jurisdiction to review such a petition.

42 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed

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1 under subparagraph (A) to 1 of the judges serving in the pool established by section
2 103(e)(1) not later than 24 hours after the filing of the petition.

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

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

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

14 “(6) APPEAL.—

15 “(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic
16 communication service provider receiving a directive issued pursuant to paragraph (1)
17 may file a petition with the Foreign Intelligence Surveillance Court of Review for
18 review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall
19 have jurisdiction to consider such a petition and shall provide a written statement for
20 the record of the reasons for a decision under this paragraph.

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

27 “(i) Judicial Review of Certifications and Procedures.—

28 “(1) IN GENERAL.—

29 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
30 Intelligence Surveillance Court shall have jurisdiction to review any certification
31 required by subsection (c) and the targeting and minimization procedures required by
32 subsections (d) and (e), and any amendments to such certification or procedures.

33 “(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification required
34 by subsection (g) and the targeting and minimization procedures required by
35 subsections (d) and (e) and approve or deny an order under this subsection not later
36 than 30 days after the date on which a certification is submitted.

37 “(2) REVIEW.—The Court shall review the following:

38 “(A) CERTIFICATION.—A certification required by subsection (g) to determine
39 whether the certification contains all the required elements.

40 “(B) TARGETING PROCEDURES.—The targeting procedures required by subsection
41 (d) to assess whether the procedures are reasonably designed to ensure that the

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1 acquisition authorized under subsection (a) is limited to the targeting of persons
2 reasonably believed to be located outside the United States and does not result in the
3 intentional acquisition of any communication as to which the sender and all intended
4 recipients are known at the time of the acquisition to be located in the United States.

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

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8 ~~“(3) ORDERS.—~~

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9 ~~“(A) APPROVAL.—If the Court finds that a certification required by subsection (g)~~
10 ~~contains all of the required elements and that the targeting and minimization~~
11 ~~procedures required by subsections (d) and (e) are consistent with the requirements of~~
12 ~~those subsections and with the fourth amendment to the Constitution of the United~~
13 ~~States, the Court shall enter an order approving the certification and the use of the~~
14 ~~procedures for the acquisition.~~

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

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21 ~~“(i) correct any deficiency identified by the Court not later than 30 days after~~
22 ~~the date the Court issues the order; or~~

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“(i) in the case of a certification submitted in accordance with subsection (g)(1)(A), the Court shall deny the order, identify any deficiency in the certification or procedures, and provide the Government with an opportunity to correct such deficiency; and
“(ii) in the case of a certification submitted in accordance with subsection (g)(1)(B),

23 ~~“(ii) cease or not begin the acquisition authorized under subsection (a).~~

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

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27 ~~“(4) APPEAL.—~~

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28 ~~“(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order~~
29 ~~under this section to the Foreign Intelligence Surveillance Court of Review, which~~
30 ~~shall have jurisdiction to review such order. For any decision affirming, reversing, or~~
31 ~~modifying an order of the Foreign Intelligence Surveillance Court, the Court of~~
32 ~~Review shall provide for the record a written statement of its reasons.~~

33 ~~“(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any~~
34 ~~acquisition affected by an order under paragraph (3)(B), may continue—~~

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35 ~~“(i) during the pendency of any rehearing of the order by the Court en banc;~~
36 ~~and~~

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37 ~~“(ii) if the Government appeals an order under this section, subject to the entry~~
38 ~~of an order under subparagraph (C).~~

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39 ~~“(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of~~
40 ~~an appeal of an order issued under paragraph (3)(B), directing the correction of a~~
41 ~~deficiency, the Court of Review shall determine, and enter a corresponding order~~

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1 regarding, whether all or any part of the correction order, as issued or modified, shall
2 be implemented during the pendency of the appeal.

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

8 “(5) SCHEDULE.—

9 “(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and
10 the Director of National Intelligence replace an authorization issued pursuant to section
11 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the
12 Protect America Act of 2007 (Public Law 110-55), the Attorney General and the
13 Director of National Intelligence shall, to the extent practicable, submit to the Court
14 the certification required by subsection (g) and the procedures required by subsections
15 (d) and (e) at least 30 days before the expiration of such authorization.

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16 “(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General
17 and the Director of National Intelligence replace an authorization issued pursuant to
18 this section, the Attorney General and the Director of National Intelligence shall, to the
19 extent practicable, submit to the Court the certification required by section (g) and the
20 procedures required by subsections (d) and (e) at least 30 days prior to the expiration
21 of such authorization.

22 “(C) CONSOLIDATED SUBMISSIONS.—The Attorney General and Director of National
23 Intelligence shall, to the extent practicable, annually submit to the Court a
24 consolidation of—

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25 “(i) certifications required by section (g) for reauthorization of authorizations in
26 effect;

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27 “(ii) the procedures required by subsections (d) and (e); and

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28 “(iii) the annual review required by subsection (l)(4) for the preceding year.

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29 “(D) TIMING OF REVIEWS.—The Attorney General and the Director of National
30 Intelligence shall schedule the completion of the annual review required by subsection
31 (l)(4) and a semiannual assessment required by subsection (l)(1) so that they may be
32 submitted to the Court at the time of the consolidated submission under subparagraph
33 (C).

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Deleted: (g) and procedures required by subsection (d) and (e) are approved by an order under this section,

Deleted: Foreign Intelligence Surveillance Court

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34 “(E) CONSTRUCTION.—The requirements of subparagraph (C) shall not be construed
35 to preclude the Attorney General and the Director of National Intelligence from
36 submitting certifications for additional authorizations at other times during the year as
37 necessary.

38 “(6) COMPLIANCE.—At or before the end of the period of time for which an authorization
39 under subsection (a) expires, the judge may assess compliance with the minimization procedures
40 required under subsection (e) by reviewing the circumstances under which information
41 concerning United States persons was acquired, retained, or disseminated.

1 “(j) Judicial Proceedings.—

2 “(1) EXPEDITED PROCEEDINGS.—Judicial proceedings under this section shall be
3 conducted as expeditiously as possible.

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

7 “(k) Maintenance and Security of Records and Proceedings.—

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

Deleted: “(1) STANDARDS.—The
Foreign Intelligence Surveillance Court
shall maintain a

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

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

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19 “(l) Assessments and Reviews.—

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

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24 “(A) the Foreign Intelligence Surveillance Court;

25 “(B) the congressional intelligence committees; and

26 “(B) the Committees on the Judiciary of the House of Representatives and the
27 Senate.

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Deleted: “(C) the Foreign Intelligence
Surveillance Court.”

28 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of
29 each element of the intelligence community authorized to acquire foreign intelligence
30 information under subsection (a), with respect to their department, agency, or element—

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31 “(A) are authorized to review the compliance with the targeting and minimization
32 procedures required by subsections (d) and (e);

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

38 “(C) with respect to acquisitions authorized under subsection (a), shall review the
39 number of targets that were later determined to be located in the United States and, to
40 the extent possible, whether their communications were reviewed; and

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

2 “(i) the Attorney General;

3 “(ii) the Director of National Intelligence;

4 “(iii) the congressional intelligence committees; and

5 “(iv) the Committees on the Judiciary of the House of Representatives and the
6 Senate.

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Deleted: “(v) the Foreign Intelligence
Surveillance Court.”

7 “(3) ANNUAL REVIEW.—

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

14 “(i) the number and nature of disseminated intelligence reports containing a
15 reference to a United States person identity;

16 “(ii) the number and nature of United States person identities subsequently
17 disseminated by that element in response to requests for identities that were not
18 referred to by name or title in the original reporting;

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

22 “(iv) a description of any procedures developed by the head of an element of
23 the intelligence community and approved by the Director of National Intelligence
24 to assess, in a manner consistent with national security, operational requirements
25 and the privacy interests of United States persons, the extent to which the
26 acquisitions authorized under subsection (a) acquire the communications of
27 United States persons, and the results of any such assessment.

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

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

36 “(i) the Foreign Intelligence Surveillance Court;

37 “(ii) the Attorney General;

38 “(iii) the Director of National Intelligence;

39 “(iv) the congressional intelligence committees; and

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1 | “(v) the Committees on the Judiciary of the House of Representatives and the
2 | Senate.

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3 | “SEC. 703. CERTAIN ACQUISITIONS INSIDE THE
4 | UNITED STATES OF UNITED STATES PERSONS
5 | OUTSIDE THE UNITED STATES.

Deleted: “(m) Construction.—Nothing in this Act shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.”

6 | “(a) Jurisdiction of the Foreign Intelligence Surveillance Court.—

7 | “(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to
8 | approve the targeting of a United States person reasonably believed to be located outside the
9 | United States to acquire foreign intelligence information, if such acquisition constitutes
10 | electronic surveillance or the acquisition of stored electronic communications or stored
11 | electronic data that requires an order under this Act, and such acquisition is conducted
12 | within the United States.

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13 | “(2) LIMITATION.—If a United States person targeted under this subsection is reasonably
14 | believed to be located in the United States during the pendency of an order issued pursuant
15 | to subsection (c), such acquisition shall cease unless authority, other than under this section,
16 | is obtained pursuant to this Act or the targeted United States person is again reasonably
17 | believed to be located outside the United States during the pendency of an order issued
18 | pursuant to subsection (c).

19 | “(b) Application.—

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

25 | “(A) the identity of the Federal officer making the application;

26 | “(B) the identity, if known, or a description of the United States person who is the
27 | target of the acquisition;

28 | “(C) a statement of the facts and circumstances relied upon to justify the applicant’s
29 | belief that the United States person who is the target of the acquisition is—

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

31 | “(ii) a foreign power, an agent of a foreign power, or an officer or employee of
32 | a foreign power;

33 | “(D) a statement of proposed minimization procedures that meet the definition of
34 | minimization procedures in section 101(h) or section 301(4), as appropriate;

35 | “(E) a description of the nature of the information sought and the type of
36 | communications or activities to be subjected to acquisition;

37 | “(F) a certification made by the Attorney General or an official specified in section
38 | 104(a)(6) that—

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Deleted: “(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and”
“(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);”

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1 “(i) the certifying official deems the information sought to be foreign
2 intelligence information;

3 “(ii) a significant purpose of the acquisition is to obtain foreign intelligence
4 information;

5 “(iii) such information cannot reasonably be obtained by normal investigative
6 techniques;

7 “(iv) designates the type of foreign intelligence information being sought
8 according to the categories described in section 101(e); and

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

10 “(I) the information sought is the type of foreign intelligence information
11 designated; and

12 “(II) such information cannot reasonably be obtained by normal
13 investigative techniques;

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

16 “(H) the identity of any electronic communication service provider necessary to
17 effect the acquisition, provided, however, that the application is not required to identify
18 the specific facilities, places, premises, or property at which the acquisition authorized
19 under this section will be directed or conducted;

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

24 “(J) a statement of the period of time for which the acquisition is required to be
25 maintained, provided that such period of time shall not exceed 90 days per application.

26 “(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may
27 require any other affidavit or certification from any other officer in connection with the
28 application.

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

32 “(4) CONSTRUCTION.—Nothing in the definition of electronic surveillance shall be
33 construed to require an application under section 104 for an acquisition that is targeted in
34 accordance with this section at a United States person reasonably believed to be located
35 outside the United States.

36
37 “(c) Order.—

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

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1 “(A) the application has been made by a Federal officer and approved by the
2 Attorney General;

3 “(B) on the basis of the facts submitted by the applicant, for the United States person
4 who is the target of the acquisition, there is probable cause to believe that the target
5 is—

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

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

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

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

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

21 “(3) REVIEW.—

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

25 “(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted
26 under subsection (b) are insufficient to establish probable cause under paragraph
27 (1)(B), the judge shall enter an order so stating and provide a written statement for the
28 record of the reasons for such determination. The Government may appeal an order
29 under this subparagraph pursuant to subsection (f).

30 “(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the
31 proposed minimization procedures referred to in paragraph (1)(C) do not meet the
32 definition of minimization procedures under section 101(h) or section 301(4), as
33 appropriate, the judge shall enter an order so stating and provide a written statement
34 for the record of the reasons for such determination. The Government may appeal an
35 order under this subparagraph pursuant to subsection (f).

36 “(D) REVIEW OF CERTIFICATION.—If the judge determines that an application
37 required by subsection (b) does not contain all of the required elements, or that the
38 certification or certifications are clearly erroneous on the basis of the statement made
39 under subsection (b)(1)(F)(v) and any other information furnished under subsection
40 (b)(3), the judge shall enter an order so stating and provide a written statement for the
41 record of the reasons for such determination. The Government may appeal an order
42 under this subparagraph pursuant to subsection (f).

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“(i) in the case of electronic surveillance,
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“(ii) in the case of a physical search, meet
the definition of minimization procedures
in
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1 “(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall
2 specify—

3 “(A) the identity, if known, or a description of the United States person who is the
4 target of the acquisition identified or described in the application pursuant to
5 subsection (b)(1)(B);

6 “(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and
7 location of each of the facilities or places at which the acquisition will be directed;

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

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

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

13 “(5) DIRECTIONS.—An order approving an acquisition under this subsection shall
14 direct—

15 “(A) that the minimization procedures referred to in paragraph (1)(C), as approved
16 or modified by the Court, be followed;

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

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

26 “(D) that the Government compensate, at the prevailing rate, such electronic
27 communication service provider for providing such information, facilities, or
28 assistance.

29 “(6) DURATION.—An order approved under this subsection shall be effective for a period
30 not to exceed 90 days and such order may be renewed for additional 90-day periods upon
31 submission of renewal applications meeting the requirements of subsection (b).

32 “(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition
33 is approved by an order or extension under this section, the judge may assess compliance
34 with the minimization procedures referred to in paragraph (1)(C) by reviewing the
35 circumstances under which information concerning United States persons was acquired,
36 retained, or disseminated.

37 “(d) Emergency Authorization.—

38 “(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other
39 provision of this Act, if the Attorney General reasonably determines that—

40 “(A) an emergency situation exists with respect to the acquisition of foreign

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1 intelligence information for which an order may be obtained under subsection (c)
2 before an order authorizing such acquisition can with due diligence be obtained, and

3 “(B) the factual basis for issuance of an order under this subsection to approve such
4 acquisition exists,

5 the Attorney General may authorize such acquisition if a judge having jurisdiction under
6 subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney
7 General, at the time of such authorization that the decision has been made to conduct such
8 acquisition and if an application in accordance with this section is made to a judge of the
9 Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days
10 after the Attorney General authorizes such acquisition.

11 “(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an acquisition
12 under paragraph (1), the Attorney General shall require that the minimization procedures
13 referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

14 “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order
15 approving an acquisition under paragraph (1), such acquisition shall terminate when the
16 information sought is obtained, when the application for the order is denied, or after the
17 expiration of 7 days from the time of authorization by the Attorney General, whichever is
18 earliest.

19 “(4) USE OF INFORMATION.—If an application for approval submitted pursuant to
20 paragraph (1) is denied, or in any other case where the acquisition is terminated and no
21 order is issued approving the acquisition, no information obtained or evidence derived from
22 such acquisition, except under circumstances in which the target of the acquisition is
23 determined not to be a United States person, shall be received in evidence or otherwise
24 disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,
25 department, office, agency, regulatory body, legislative committee, or other authority of the
26 United States, a State, or political subdivision thereof, and no information concerning any
27 United States person acquired from such acquisition shall subsequently be used or disclosed
28 in any other manner by Federal officers or employees without the consent of such person,
29 except with the approval of the Attorney General if the information indicates a threat of
30 death or serious bodily harm to any person.

31 “(e) Release From Liability.—No cause of action shall lie in any court against any electronic
32 communication service provider for providing any information, facilities, or assistance in
33 accordance with an order or request for emergency assistance issued pursuant to subsections (c)
34 or (d).

35 “(f) Appeal.—

36 “(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The
37 Government may file an appeal with the Foreign Intelligence Surveillance Court of Review
38 for review of an order issued pursuant to subsection (c). The Court of Review shall have
39 jurisdiction to consider such appeal and shall provide a written statement for the record of
40 the reasons for a decision under this paragraph.

41 “(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a
42 writ of certiorari for review of a decision of the Court of Review issued under paragraph
43 (1). The record for such review shall be transmitted under seal to the Supreme Court of the

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

“SEC. 704. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

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“(a) Jurisdiction and Scope.—

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

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“(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsection (c) or (d) or any other provision of this Act.

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“(3) LIMITATIONS.—

“(A) MOVING OR MISIDENTIFIED TARGETS.—If a targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease unless authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

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“(B) APPLICABILITY.—If an acquisition is to be conducted inside the United States and could be authorized under section 703, the acquisition may only be conducted if authorized under section 703 or in accordance with another provision of this Act other than this section.

“(b) Application.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General’s finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

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

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

“(3) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the United States person who is the target of the acquisition is—

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

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

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“(4) a statement of proposed minimization procedures that meet the definition of

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“(A) in the case of electronic surveillance,

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1 | minimization procedures under section 101(h) or section 301(4), as appropriate;

2 | “(5) a certification made by the Attorney General, an official specified in section
3 | 104(a)(6), or the head of an element of the intelligence community that—

4 | “(A) the certifying official deems the information sought to be foreign intelligence
5 | information; and

6 | “(B) a significant purpose of the acquisition is to obtain foreign intelligence
7 | information;

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

11 | “(7) a statement of the period of time for which the acquisition is required to be
12 | maintained, provided that such period of time shall not exceed 90 days per application.

13 | “(c) Order.—

14 | “(1) FINDINGS.—Upon an application made pursuant to subsection (b), a judge having
15 | jurisdiction under subsection (a) shall enter an ex parte order as requested or as modified by
16 | the Court approving the acquisition if the Court finds that—

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

19 | “(B) on the basis of the facts submitted by the applicant, for the United States person
20 | who is the target of the acquisition, there is probable cause to believe that the target
21 | is—

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

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

25 | “(C) the proposed minimization procedures, with respect to their dissemination
26 | provisions, meet the definition of minimization procedures under section 101(h) or
27 | section 301(4); and

28 | “(D) the application that has been filed contains all statements and certifications
29 | required by subsection (b) and the certification provided under subsection (b)(5) is not
30 | clearly erroneous on the basis of the information furnished under subsection (b).

31 | “(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for
32 | purposes of an order under paragraph (1)(B), a judge having jurisdiction under subsection
33 | (a)(1) may consider past activities of the target and facts and circumstances relating to
34 | current or future activities of the target. No United States person may be considered a
35 | foreign power, agent of a foreign power, or officer or employee of a foreign power solely
36 | upon the basis of activities protected by the first amendment to the Constitution of the
37 | United States.

38 | “(3) REVIEW.—

39 | “(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under
40 | subsection (a)(1) shall be limited to that required to make the findings described in

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“(B) in the case of a physical search,
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procedures in
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Surveillance Court

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“(i) in the case of electronic surveillance,

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“(ii) in the case of a physical search,
meet the definition of minimization
procedures in

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1 paragraph (1). The judge shall not have jurisdiction to review the means by which an
2 acquisition under this section may be conducted.

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

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8 ~~“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the~~
9 ~~minimization procedures applicable to dissemination of information obtained through~~
10 ~~an acquisition under this subsection do not meet the definition of minimization~~
11 ~~procedures under section 101(h) or section 301(4), as appropriate, the judge shall enter~~
12 ~~an order so stating and provide a written statement for the record of the reasons for~~
13 ~~such determination. The Government may appeal an order under this clause pursuant~~
14 ~~to subsection (e).~~

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15 ~~“(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the~~
16 ~~certification provided under subsection (b)(5) is clearly erroneous on the basis of the~~
17 ~~information furnished under subsection (b), the judge shall enter an order so stating~~
18 ~~and provide a written statement for the record of the reasons for such determination.~~
19 ~~The Government may appeal an order under this clause pursuant to subsection (e).~~

Deleted: that an application under subsection (b) does not contain all the required elements, or

20 ~~“(4) DURATION.—An order under this paragraph shall be effective for a period not to~~
21 ~~exceed 90 days and such order may be renewed for additional 90-day periods upon~~
22 ~~submission of renewal applications meeting the requirements of subsection (b).~~

23 ~~“(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or~~
24 ~~extension is granted under this section, the judge may assess compliance with the~~
25 ~~minimization procedures referred to in paragraph (1)(B) by reviewing the circumstances~~
26 ~~under which information concerning United States persons was disseminated, provided that~~
27 ~~the judge may not inquire into the circumstances relating to the conduct of the acquisition.~~

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28 ~~“(d) Emergency Authorization.—~~

29 ~~“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other~~
30 ~~provision of this section, if the Attorney General reasonably determines that—~~

31 ~~“(A) an emergency situation exists with respect to the acquisition of foreign~~
32 ~~intelligence information for which an order may be obtained under subsection (c)~~
33 ~~before an order under that subsection may, with due diligence, be obtained, and~~

34 ~~“(B) the factual basis for the issuance of an order under this section exists,~~
35 ~~the Attorney General may authorize the emergency acquisition if a judge having jurisdiction~~
36 ~~under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney~~
37 ~~General at the time of such authorization that the decision has been made to conduct such~~
38 ~~acquisition and if an application in accordance with this section is made to a judge of the~~
39 ~~Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days~~
40 ~~after the Attorney General authorizes such acquisition.~~

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41 ~~“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an emergency~~
42 ~~acquisition under paragraph (1), the Attorney General shall require that the minimization~~

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1 | procedures referred to in subsection (c)(1)(B), be followed.

Deleted: (c)(1)(C)

2 | “(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under
3 | subsection (c), an acquisition shall terminate when the information sought is obtained, if the
4 | application for the order is denied, or after the expiration of 7 days from the time of
5 | authorization by the Attorney General, whichever is earliest.

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6 | “(4) USE OF INFORMATION.—If an application submitted to the Court pursuant to
7 | paragraph (1) is denied, or in any other case where the acquisition is terminated and no
8 | order is issued approving the acquisition, no information obtained or evidence derived from
9 | such acquisition, except under circumstances in which the target of the acquisition is
10 | determined not to be a United States person, shall be received in evidence or otherwise
11 | disclosed in any trial, hearing, or other proceeding in or before any court, grand jury,
12 | department, office, agency, regulatory body, legislative committee, or other authority of the
13 | United States, a State, or political subdivision thereof, and no information concerning any
14 | United States person acquired from such acquisition shall subsequently be used or disclosed
15 | in any other manner by Federal officers or employees without the consent of such person,
16 | except with the approval of the Attorney General if the information indicates a threat of
17 | death or serious bodily harm to any person.

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Deleted: with respect to the target of the acquisition is

Deleted: under subsection (c).

18 | “(e) Appeal.—

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

24 | “(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a
25 | writ of certiorari for review of a decision of the Court of Review issued under paragraph
26 | (1). The record for such review shall be transmitted under seal to the Supreme Court of the
27 | United States, which shall have jurisdiction to review such decision.

28 | “SEC. 705. JOINT APPLICATIONS AND CONCURRENT 29 | AUTHORIZATIONS.

30 | “(a) Joint Applications and Orders.—If an acquisition targeting a United States person under
31 | section 703 or section 704 is proposed to be conducted both inside and outside the United States,
32 | a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue
33 | simultaneously, upon the request of the Government in a joint application complying with the
34 | requirements of section 703(b) and section 704(b), orders under section 703(c) and section
35 | 704(c), as appropriate.

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36 | “(b) Concurrent Authorization.—

37 | “(1) ELECTRONIC SURVEILLANCE.—If an order authorizing electronic surveillance has
38 | been obtained under section 105 and that order is still in effect, during the pendency of
39 | that order, the Attorney General may authorize, without an order under section 703 or
40 | 704, electronic surveillance for the purpose of acquiring foreign intelligence information
41 | targeting that United States person while such person is reasonably believed to be located
42 | outside the United States.

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1 “(2) PHYSICAL SEARCH.—If an order authorizing a physical search has been obtained
2 under section 304 and that order is still in effect, during the pendency of that order the
3 Attorney General may authorize, without an order under section 703 or section 704, an
4 acquisition of foreign intelligence information targeting that United States person while
5 such person is reasonably believed to be located outside the United States.

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Deleted: acquiring

6 “SEC. 706. USE OF INFORMATION ACQUIRED UNDER 7 TITLE VII.

8 “(a) Information Acquired Under Section 702.—Information acquired from an acquisition
9 conducted under section 702 shall be deemed to be information acquired from an electronic
10 surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection
11 (j) of such section.

12 “(b) Information Acquired Under Section 703.—Information acquired from an acquisition
13 conducted under section 703 shall be deemed to be information acquired from an electronic
14 surveillance pursuant to title I for purposes of section 106.

Deleted: “Information acquired pursuant to section 702 or 703 shall be considered

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15 “SEC. 708. CONGRESSIONAL OVERSIGHT.

16 “(a) Semiannual Report.—Not less frequently than once every 6 months, the Attorney General
17 shall fully inform, in a manner consistent with national security, the congressional intelligence
18 committees, and the Committees on the Judiciary of the Senate and the House of
19 Representatives, concerning the implementation of this title.

20 “(b) Content.—Each report made under subsection (a) shall include—

21 “(1) with respect to section 702—

22 “(A) any certifications made under subsection 702(g) during the reporting period;

23 “(B) with respect to each certification made under subsection 702(g)(1)(B), the
24 reasons for exercising the authority under such paragraph;

25 “(C) any directives issued under subsection 702(h) during the reporting period;

26 “(D) a description of the judicial review during the reporting period of any such
27 certifications and targeting and minimization procedures required by subsections (d)
28 and (e) of section 702 and utilized with respect to such acquisition, including a copy of
29 any order or pleading in connection with such review that contains a significant legal
30 interpretation of the provisions of section 702;

31 “(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5)
32 of section 702(h);

33 “(F) any compliance reviews conducted by the Attorney General or the Office of the
34 Director of National Intelligence of acquisitions authorized under subsection 702(a);

35 “(G) a description of any incidents of noncompliance with a directive issued by the
36 Attorney General and the Director of National Intelligence under subsection 702(h),
37 including—

38 “(i) incidents of noncompliance by an element of the intelligence community

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with procedures required by subsections (d) and (e) of section 702; and

“(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 702(h); and

“(G) any procedures implementing section 702;

“(2) with respect to section 703—

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

“(B) the total number of such orders—

“(i) granted;

“(ii) modified; or

“(iii) denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under section 703(d) and the total number of subsequent orders approving or denying such acquisitions; and

“(3) with respect to section 704—

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

“(B) the total number of such orders

“(i) granted;

“(ii) modified; or

“(iii) denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 704(d) and the total number of subsequent orders approving or denying such applications.”

“SEC. 708. SAVINGS PROVISION

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

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

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

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

(3) by adding at the end the following:

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

“Sec. 701. Definitions.

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Deleted: , and (f)

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- 1 | "Sec.702.Procedures for targeting certain persons outside the United States other than United
- 2 | States persons: Deleted:
- 3 | "Sec.703.Certain acquisitions inside the United States of United States persons outside the
- 4 | United States. Deleted:
- 5 | "Sec.704.Other acquisitions targeting United States persons outside the United States. Deleted:
- 6 | "Sec.705.Joint applications and concurrent authorizations. Deleted:
- 7 | "Sec.706.Use of information acquired under title VII. Deleted:
- 8 | "Sec.707.Congressional oversight.
- 9 | "Sec.708.Savings provision."

10 (c) Technical and Conforming Amendments.—

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

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

- 17 "(C) pen registers under section 402;
- 18 "(D) access to records under section 501;
- 19 "(E) acquisitions under section 703; and
- 20 "(F) acquisitions under section 704;" Deleted: (A) in subparagraph (C), by striking "and"; and (B) by adding at the end the following new subparagraphs: Deleted:

21 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY**
 22 **WHICH ELECTRONIC SURVEILLANCE AND**
 23 **INTERCEPTION OF CERTAIN COMMUNICATIONS MAY**
 24 **BE CONDUCTED.**

25 (a) Statement of Exclusive Means.—Title I of the Foreign Intelligence Surveillance Act of
 26 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section: Deleted: "statement"

27 "Statement of exclusive means by which electronic surveillance and interception of certain
 28 communications may be conducted

29 "Sec. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and
 30 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic
 31 surveillance and the interception of domestic wire, oral, or electronic communications may be
 32 conducted. Deleted: "

33 (b) Only an express statutory authorization for electronic surveillance or the interception of
 34 domestic wire, oral, or electronic communications, other than as an amendment to this Act or
 35 chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive
 36 means for the purpose of subsection (a)." Deleted: 3:53

1 (b) Offense.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
2 1809(a)) is amended by striking “authorized by statute” each place it appears in such section and
3 inserting “authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any
4 express statutory authorization that is an additional exclusive means for conducting electronic
5 surveillance under section 112.”; and

6 (c) Conforming Amendments.—

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

9 “(iii) If a certification under subparagraph (ii)(B) for assistance to obtain
10 foreign intelligence information is based on statutory authority, the certification
11 shall identify the specific statutory provision, and shall certify that the statutory
12 requirements have been met.”; and

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

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

18 SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN 19 COURT ORDERS UNDER THE FOREIGN INTELLIGENCE 20 SURVEILLANCE ACT OF 1978.

21 (a) Inclusion of Certain Orders in Semiannual Reports of Attorney General.—Subsection
22 (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is
23 amended by striking “(not including orders)” and inserting “, orders,”.

24 (b) Reports by Attorney General on Certain Other Orders.—Such section 601 is further
25 amended by adding at the end the following:

26 “(c) Submissions to Congress.—The Attorney General shall submit to the committees of
27 Congress referred to in subsection (a)—

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

33 “(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or
34 memoranda of law associated with such decision, order, or opinion, that was issued during
35 the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008
36 and not previously submitted in a report under subsection (a).

37 “(d) Protection of National Security.—The Attorney General, in consultation with the Director
38 of National Intelligence, may authorize redactions of materials described in subsection (c) that
39 are provided to the committees of Congress referred to in subsection (a), if such redactions are
40 necessary to protect the national security of the United States and are limited to sensitive sources

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1 and methods information or the identities of targets.”

2 (c) Definitions.—Such section 601, as amended by subsections (a) and (b), is further amended
3 by adding at the end the following:

4 “(e) Definitions.—In this section:

5 “(1) FOREIGN INTELLIGENCE SURVEILLANCE ~~COURT~~; COURT.—The term ‘Foreign
6 Intelligence Surveillance Court’ means the court established by section 103(a).

7 “(2) FOREIGN INTELLIGENCE SURVEILLANCE ~~COURT OF REVIEW~~; COURT OF REVIEW.—The
8 term ‘Foreign Intelligence Surveillance Court of Review’ means the court established by
9 section 103(b).”

10 SEC. 104. APPLICATIONS FOR COURT ORDERS.

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

13 (1) in subsection (a)—

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

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

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

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

21 (i) by striking “Affairs or” and inserting “Affairs.”; and

22 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the
23 Federal Bureau of Investigation, if designated by the President as a certifying
24 official—”;

25 (E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by
26 striking “statement of” and inserting “summary statement of”;

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

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

31 (2) by striking subsection (b);

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

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

37 SEC. 105. ISSUANCE OF AN ORDER.

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

3 (1) in subsection (a)—

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

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

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

8 (3) in subsection (c)(1)—

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

10 (B) in subparagraph (E), by striking “; 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) as subsections (d) through (h),
14 respectively;

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

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

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

22 | “(B) reasonably determines that the factual basis for the issuance of an order under this
23 | title to approve such electronic surveillance exists;

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

27 | “(D) makes an application in accordance with this title to a judge having jurisdiction
28 | under section 103 as soon as practicable, but not later than 7 days after the Attorney General
29 | authorizes such surveillance.

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

33 | “(3) In the absence of a judicial order approving such electronic surveillance, the surveillance
34 | shall terminate when the information sought is obtained, when the application for the order is
35 | denied, or after the expiration of 7 days from the time of authorization by the Attorney General,
36 | whichever is earliest.

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

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

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

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

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

19 SEC. 106. USE OF INFORMATION.

20 Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C.
21 1806) is amended by striking “radio communication” and inserting “communication”.

22 SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

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

25 (1) in subsection (a)—

26 (A) by striking paragraph (2);

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

29 (C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by
30 striking “detailed”;

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

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

35 (i) by striking “Affairs or” and inserting “Affairs.”; and

36 (ii) by striking “Senate—” and inserting “Senate, or the Deputy Director of the
37 Federal Bureau of Investigation, if designated by the President as a certifying
38 official—”; and

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39 (2) in subsection (d)(1)(A), by striking “or the Director of National Intelligence” and

1 inserting "the Director of National Intelligence, or the Director of the Central Intelligence
2 Agency".

3 (b) Orders.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
4 1824) is amended—

5 (1) in subsection (a)—

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

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

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

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

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

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

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

20 "(D) makes an application in accordance with this title to a judge of the Foreign
21 Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the
22 Attorney General authorizes such physical search.

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

26 "(3) In the absence of a judicial order approving such physical search, the physical search shall
27 terminate when the information sought is obtained, when the application for the order is denied,
28 or after the expiration of 7 days from the time of authorization by the Attorney General,
29 whichever is earliest.

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

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

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1 bodily harm to any person.

2 | “(B) The Attorney General shall assess compliance with the requirements of subparagraph
3 (A).”.

4 (c) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
5 1801 et seq.) is amended—

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

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

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

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

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

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

15 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE**
16 **COURT.**

17 (a) Designation of Judges.—Subsection (a) of section 103 of the Foreign Intelligence
18 Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting “at least” before “seven of
19 the United States judicial circuits”.

20 (b) En Banc Authority.—

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

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

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

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

Deleted: 703(h).

29 “(i) en banc consideration is necessary to secure or maintain uniformity of the court’s
30 decisions; or

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

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

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

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

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

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

8 (c) Stay or Modification During an Appeal.—Section 103 of the Foreign Intelligence
9 Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

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

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

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

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

22 (d) Authority of Foreign Intelligence Surveillance Court.—Section 103 of the Foreign
23 Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is amended by
24 adding at the end the following:

25 “(i) Nothing in this Act shall be construed to reduce or contravene the inherent authority of the
26 court established by subsection (a) to determine, or enforce, compliance with an order or a rule
27 of such court or with a procedure approved by such court.”

28 SEC. 110. REVIEW OF PREVIOUS ACTIONS.

29 (a) Definitions.—In this section:

30 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of
31 Congress” means—

32 (A) the Select Committee on Intelligence and the Committee on the Judiciary of the
33 Senate; and

34 (B) the Permanent Select Committee on Intelligence and the Committee on the
35 Judiciary of the House of Representatives.

36 (2) PRESIDENT’S SURVEILLANCE PROGRAM AND PROGRAM.—The terms “Presidents
37 Surveillance Program” and “Program” mean the intelligence activity involving
38 communications that was authorized by the President during the period beginning on
39 September 11, 2001, and ending on January 17, 2007, including the program referred to by

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

3 (b) Reviews.—

4 (1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice,
5 the Office of the Director of National Intelligence, the National Security Agency, and any
6 other element of the intelligence community that participated in the President's Surveillance
7 Program, shall complete a comprehensive review of, with respect to the oversight authority
8 and responsibility of each such Inspector General—

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

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

12 (C) communications with, and participation of, individuals and entities in the private
13 sector related to the Program;

14 (D) interaction with the Foreign Intelligence Surveillance Court and transition to
15 court orders related to the Program; and

16 (E) any other matters identified by any such Inspector General that would enable
17 that Inspector General to report a complete description of the Program, with respect to
18 such element.

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19 (2) COOPERATION AND COORDINATION.—

20 (A) COOPERATION.—Each Inspector General required to conduct a review under
21 paragraph (1) shall—

22 (i) work in conjunction, to the extent possible, with any other Inspector General
23 required to conduct such a review; and

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24 (ii) utilize, to the extent practicable, and not unnecessarily duplicate or delay,
25 such reviews or audits that have been completed or are being undertaken by any
26 such Inspector General or by any other office of the Executive Branch related to
27 the Program.

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28 (B) COORDINATION.—The Inspectors General shall designate one of the Inspectors
29 General required to conduct a review under paragraph (1) that is appointed by the
30 President, by and with the advice and consent of the Senate, to coordinate the conduct
31 of the reviews and the preparation of the reports.

32 (c) Reports.—

33 (1) PRELIMINARY REPORTS.—Not later than 60 days after the date of the enactment of this
34 Act, the Inspectors General of the Department of Justice, the Office of the Director of
35 National Intelligence, the National Security Agency, and any other Inspector General
36 required to conduct a review under subsection (b)(1), shall submit to the appropriate
37 committees of Congress an interim report that describes the planned scope of such review.

38 (2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the
39 Inspectors General of the Department of Justice, the Office of the Director of National
40 Intelligence, the National Security Agency, and any other Inspector General required to

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1 | conduct a review under subsection (b)(1), shall submit to the appropriate committees of
2 | Congress, ~~to the extent practicable, a comprehensive report on such reviews that includes~~
3 | any recommendations of any such Inspectors General within the oversight authority and
4 | responsibility of any such Inspector General ~~with respect to the reviews.~~

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5 | (3) FORM.—A report submitted under this subsection shall be submitted in unclassified
6 | form, but may include a classified annex. The unclassified report shall not disclose the name
7 | or identity of any individual or entity of the private sector that participated in the Program
8 | or with whom there was communication about the Program.

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9 | (d) Resources.—

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

15 | (2) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR THE INSPECTORS GENERAL.—An
16 | Inspector General required to conduct a review under subsection (b)(1) and submit a report
17 | under subsection (c) is authorized to hire such additional legal or other personnel as may be
18 | necessary to carry out such review and prepare such report in a prompt and timely manner.
19 | Personnel authorized to be hired under this paragraph—

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

22 | (B) are in addition to any other personnel authorized by law.

23 | SEC. 111. WEAPONS OF MASS DESTRUCTION.

24 | (a) Definitions.—

25 | (1) FOREIGN POWER.—Subsection (a)(4) of section 101 of the Foreign Intelligence
26 | Surveillance Act of 1978 (50 U.S.C. 1801(a)) is amended—

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

28 | (B) in paragraph (6) by striking the period and inserting “; or”; and

29 | (C) by adding at the end the following new paragraph:

30 | (7) an entity not substantially composed of United States persons that is engaged in the
31 | international proliferation of weapons of mass destruction.”

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

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

34 | (B) by adding at the end the following new subparagraph:

35 | “(D) engages in the international proliferation of weapons of mass destruction, or
36 | activities in preparation therefor; or”.

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37 | (3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is
38 | amended by striking “sabotage or international terrorism” and inserting “sabotage,

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international terrorism, or the international proliferation of weapons of mass destruction”.

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by adding at the end the following new subsection:

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

“(1) any explosive, incendiary, or poison gas device that is intended or has the capability to cause a mass casualty incident;

“(2) any weapon that is designed or intended to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

“(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code) that is designed, intended, or has the capability of causing death, illness, or serious bodily injury to a significant number of persons; or

“(4) any weapon that is designed, intended, or has the capability of releasing radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.”.

(b) Use of Information.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(c) Technical and Conforming Amendment.—Section 301(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting “weapon of mass destruction,” after “person.”.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

SEC. 201. DEFINITIONS.

In this title:

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

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

(3) COVERED CIVIL ACTION.—The term “covered civil action” means a civil action filed

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(b) Application.—The amendment made by subsection (a) shall apply to any offense committed before the date of the enactment of this Act if the statute of limitations applicable to that offense has not run as of such date.¶

TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT¶ SEC. 201. STATUTORY DEFENSES.¶ The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801, et seq.) is amended by adding after title VII the following:¶

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT¶ “SEC. 801. DEFINITIONS.¶

“In this title:¶ “(1) ASSISTANCE.—The term ‘assistance’ means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.¶

“(2) ATTORNEY GENERAL.—The term ‘Attorney General’ has the meaning given that term in section 101(g).¶

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

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1 in a Federal or State court that—

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

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

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

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

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

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

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

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

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

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

24 SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR 25 ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

26 (a) Limitations.—

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

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

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

34 (I) authorized by the President during the period beginning on September
35 11, 2001, and ending on January 17, 2007; and

36 (II) designed to detect or prevent a terrorist attack, or activities in
37 preparation for a terrorist attack, against the United States; and

38 (ii) described in a written request or directive from the Attorney General or the

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1 head of an element of the intelligence community (or the deputy of such person)
2 to the electronic communication service provider indicating that the activity
3 was—

4 (I) authorized by the President; and

5 (II) determined to be lawful; or

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

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

10 (b) Review of Certifications.—If the Attorney General files a declaration under section 1746
11 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a)
12 would harm the national security of the United States, the court shall—

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

14 (2) limit any public disclosure concerning such certification, including any public order
15 following such an ex parte review, to a statement that the conditions of subsection (a) have
16 been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the
17 certification.

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

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

24 (e) Rule of Construction.—Nothing in this section may be construed to limit any otherwise
25 available immunity, privilege, or defense under any other provision of law.

26 (f) Effective Date and Application.—This section shall apply to any covered civil action that is
27 pending on or filed after the date of enactment of this Act.

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

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

33 “TITLE VIII—PROTECTION OF PERSONS ASSISTING
34 THE GOVERNMENT

35 “SEC. 801. DEFINITIONS.

36 “In this title:

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1 “(1) ASSISTANCE.—The term ‘assistance’ means the provision of, or the provision of
2 access to, information (including communication contents, communications records, or
3 other information relating to a customer or communication), facilities, or another form of
4 assistance.

5 “(2) ATTORNEY GENERAL.—The term ‘Attorney General’ has the meaning give that term
6 in section 101(g).

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

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

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

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

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

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

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

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

23 “(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the intelligence
24 community’ means an element of the intelligence community as specified or designated
25 under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

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

27 “(A) an electronic communication service provider; or

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

30 “(i) an order of the court established under section 103(a) directing such
31 assistance;

32 “(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title
33 18, United States Code; or

34 “(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before
35 the date of the enactment of the FISA Amendments Act of 2008 or 702(h).

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

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1 “SEC. 802. PROCEDURES FOR IMPLEMENTING
2 STATUTORY DEFENSES.

3 “(a) Requirement for Certification.—

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

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

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

12 “(C) any assistance by that person was provided pursuant to a directive under
13 sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of
14 the FISA Amendments Act of 2008, or 702(h) directing such assistance; or

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

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

18 “(b) Limitations on Disclosure.—If the Attorney General files a declaration under section
19 1746 of title 28, United States Code, that disclosure of a certification made pursuant to
20 subsection (a) would harm the national security of the United States, the court shall—

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

22 “(2) limit any public disclosure concerning such certification, including any public order
23 following such an ex parte review, to a statement that the conditions of subsection (a) have
24 been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the
25 certification.

26 “(c) Removal.—A civil action against a person for providing assistance to an element of the
27 intelligence community that is brought in a State court shall be deemed to arise under the
28 Constitution and laws of the United States and shall be removable under section 1441 of title 28,
29 United States Code.

30 “(d) Relationship to Other Laws.—Nothing in this section may be construed to limit any
31 otherwise available immunity, privilege, or defense under any other provision of law.

32 “(e) Applicability.—This section shall apply to a civil action pending on or filed after the date
33 of enactment of the FISA Amendments Act of 2008.”

34 SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.

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

37 “SEC. 803. PREEMPTION.

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- Deleted: may submit any information in any form the Attorney General determines is appropriate and the court shall consider all such submissions.
- Deleted: “(b) Factual and Legal Determinations.—In any covered civil action, any party may submit to the court evidence, briefs, arguments, or other information on any matter with respect to which a privilege based on state secrets is asserted. The court shall review any such submission in accordance with the procedures set forth in section 106(f) and may, based on the review, make any appropriate determination of fact or law. The court may, on motion of the Attorney General, take any additional actions the court deems necessary to protect classified information. The court may, to the extent practicable and consistent with national security, request that any party present briefs and arguments on any legal question the court determines is raised by such a submission even if that party does not have full access to the submission. The court shall consider whether the employment of a special master or an expert witness, or both, would facilitate proceedings under this section.¶
- Deleted: “(c) Location of Review.—The court may conduct the review in a location and facility specified by the Attorney General as necessary to ensure security.¶
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- Deleted: “(e) Special Rule for Certain Cases.—For any covered civil action alleging that a person provided assistance to an element of the intelligence community pursuant to a request or directive during the period from September 11, 2001 through January 17, 2007, the Attorney General shall provide to the court any request or directive ... [2]
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1 “(a) In General.—No State shall have authority to—

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

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

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

9 “(4) commence or maintain a civil action or other proceeding to enforce a requirement
10 that an electronic communication service provider disclose information concerning alleged
11 assistance to an element of the intelligence community.

12 “(b) Suits by the United States.—The United States may bring suit to enforce the provisions of
13 this section.

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

16 “(d) Application.—This section shall apply to any investigation, action, or proceeding that is
17 pending on or filed after the date of enactment of the FISA Amendments Act of 2008.”

18 **SEC. 205. TECHNICAL AMENDMENTS.**

19 The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978
20 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end
21 the following:

22 **“TITLE VIII—PROTECTION OF PERSONS ASSISTING**
23 **THE GOVERNMENT**

24 **“Sec.801.Definitions.**

25 **“Sec.802.Procedures for implementing statutory defenses.**

26 **“Sec.803.Preemption.”**

27 **TITLE III—OTHER PROVISIONS**

28 **SEC. 301. SEVERABILITY.**

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

33 **SEC. 302. EFFECTIVE DATE.**

34 Except as provided in section 304, the amendments made by this Act shall take effect on the
35 date of the enactment of this Act.

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TITLE III—COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES¶

SEC. 301. COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES.¶

(a) Establishment of Commission.—¶

There is established in the legislative branch a commission to be known as the “Commission on Warrantless Electronic Surveillance Activities” (in this section referred to as the “Commission”).¶

(b) Duties of Commission.—¶

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

(A) ascertain, evaluate, and report upon the facts and circumstances relating to electronic surveillance activities conducted without a warrant between September 11, 2001 and January 17, 2007;¶

(B) evaluate the lawfulness of such activities;¶

(C) examine all programs and activities relating to intelligence collection inside the United States or regarding United States persons that were in effect or operation on September 11, 2001, and all such programs and activities undertaken since that date, including the legal framework or justification for those activities; and¶

(D) report to the President and Congress the findings and conclusions of the Commission and any recommendations the Commission considers appropriate.¶

(2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the duties of the Commission under this section in a manner consistent with the need to protect national security.¶

(c) Composition of Commission.—... [3]

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1 **SEC. 302. REPEALS.**

2 **(a) Repeal of Protect America Act of 2007 Provisions.—**

3 **(1) AMENDMENTS TO FISA.—**

4 **(A) IN GENERAL.—**Except as provided in section 304, sections 105A, 105B, and
5 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b,
6 and 1805c) are repealed.

7 **(B) TECHNICAL AND CONFORMING AMENDMENTS.—**

8 **(i) TABLE OF CONTENTS.—**The table of contents in the first section of the Foreign
9 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 nt) is amended by striking the
10 items relating to sections 105A, 105B, and 105C.

11 **(ii) Conforming amendments.—**Except as provided in section 304, section 103(e)
12 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is
13 amended—

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

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

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

20 **(2) REPORTING REQUIREMENTS.—**Except as provided in section 304, section 4 of the
21 Protect America Act of 2007 (Public Law 110-55; 121 Stat. 555) is repealed.

22 **(3) Transition procedures.—**Except as provided in section 304, subsection (b) of
23 section 6 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) is
24 repealed.

25 **(b) FISA Amendments Act of 2008.—**

26 **(1) IN GENERAL.—**Except as provided in section 304, effective December 31, 2011,
27 title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section
28 101(a), is repealed.

29 **(2) TECHNICAL AND CONFORMING AMENDMENTS.—**Effective December 31, 2011—

30 **(A)** the table of contents in the first section of such Act (50 U.S.C. 1801 nt) is
31 amended by striking the items related to title VII;

32 **(B)** except as provided in section 304, section 601(a)(1) of such Act (50 U.S.C.
33 1871(a)(1)) is amended to read as such section read on the day before the date of the
34 enactment of this Act; and

35 **(C)** except as provided in section 304, section 2511(2)(a)(ii)(A) of title 18, United
36 States Code, is amended by striking “or a court order pursuant to section 704 of the
37 Foreign Intelligence Surveillance Act of 1978”.

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1 **SEC. 304. TRANSITION PROCEDURES.**

2 **(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—**

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

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

11 (A) subject to paragraph (3), section 105A of such Act, as added by section 2 of the
12 Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to
13 apply to any acquisition conducted pursuant to an order, authorization, or directive
14 referred to in paragraph (1); and

15 (B) sections 105B and 105C of such Act (as so added) shall continue to apply with
16 respect to an order, authorization, or directive referred to in paragraph (1) until the
17 expiration of such order, authorization, or directive.

18 (3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant
19 to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be
20 information acquired from an electronic surveillance pursuant to title I of the Foreign
21 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106
22 of such Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

23 (4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign
24 Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act
25 of 2007, shall continue to apply with respect to any directives issued pursuant to such
26 section 105B.

27 (5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding
28 any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978
29 (50 U.S.C. 1801 et seq.), section 103(e), as amended by section 5(a) of the Protect
30 America Act of 2007 (Public Law 110-55; 121 Stat. 556), shall continue to apply with
31 respect to a directive issued pursuant to section 105B of the Foreign Intelligence
32 Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, until
33 the expiration of all orders, authorizations, and directives issued or made pursuant to such
34 section.

35 **(6) REPORTING REQUIREMENTS.—**

36 (A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this
37 Act, the Protect America Act of 2007 (Public Law 110-55), or the Foreign
38 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the
39 Protect America Act of 2007 shall continue to apply until the date that the
40 certification described in subparagraph (B) is submitted.

41 (B) CERTIFICATION.—The certification described in this subparagraph is a

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certification—

(i) made by the Attorney General;

(ii) submitted as part of a semi-annual report required by section 4 of the Protect America Act of 2007;

(iii) that states that there will be no further acquisitions carried out under section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, after the date of such certification; and

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

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

(b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.—

(1) ORDERS IN EFFECT ON ~~DECEMBER 31, 2011~~.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

(2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), with respect to any order, authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by section 101(a), shall continue to apply until the expiration of such order, authorization, or directive.

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

(A) section 103(e) of such Act, as amended by section 113, shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act, as added by section 101(a);

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

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

(D) section 706 of such Act (as so added) shall continue to apply to an acquisition conducted under section 702 or 703 of such Act (as so added); and

(E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the

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Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

(4) REPORTING REQUIREMENTS.—

(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

(i) made by the Attorney General;

(ii) submitted to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives;

(iii) that states that there will be no further acquisitions carried out under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), after the date of such certification; and

(iv) that states that the information required to be included in a review, assessment, or report under section 601 of such Act, as amended by section 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating to any acquisition conducted under title VII of such Act, as amended by section 101(a), has been included in a review, assessment, or report under such section 601, 702(l), or 707.

(5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section 2.5 of Executive Order 12333 to intentionally target a United States person reasonably believed to be located outside the United States shall remain in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

(A) the date that authorization expires; or

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

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

SEC. 406. SURVEILLANCE TO PROTECT THE UNITED STATES.¶

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

(1) prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist organization from attacking the United States, any United States person, or any ally of the United States;¶

(2) ensure the safety and security of members of the United States Armed Forces or any other officer or employee of the Federal Government involved in protecting the national security of the United States; or¶

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

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