

109TH CONGRESS
2D SESSION

S. 3931

To establish procedures for the review of electronic surveillance programs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2006

Mr. McCONNELL (for himself and Mr. FRIST) introduced the following bill;
which was read the first time pursuant to the order of September 21,
2006, as modified on September 22, 2006

A BILL

To establish procedures for the review of electronic
surveillance programs.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Terrorist Surveillance
5 Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) After the terrorist attacks of September 11,
9 2001, President Bush authorized the National Secu-
10 rity Agency to intercept communications between

1 people inside the United States, including American
2 citizens, and terrorism suspects overseas.

3 (2) One of the lessons learned from September
4 11, 2001, is that the enemies who seek to greatly
5 harm and terrorize our Nation utilize technologies
6 and techniques that defy conventional law enforce-
7 ment practices.

8 (3) The President, as the constitutional officer
9 most directly responsible for protecting the United
10 States from attack, requires the ability and means
11 to detect and track an enemy that can master and
12 exploit modern technology.

13 (4) It is equally essential, however, that in pro-
14 tecting the United States against our enemies, the
15 President does not compromise the very civil lib-
16 erties that he seeks to safeguard. As Justice Hugo
17 Black observed, “The President’s power, if any, to
18 issue [an] order must stem either from an Act of
19 Congress or from the Constitution itself.” *Youngs-*
20 *town Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,
21 585 (1952) (opinion by Black, J.). Similarly, in
22 2004, Justice Sandra Day O’Connor explained in
23 her plurality opinion for the Supreme Court in
24 *Hamdi v. Rumsfeld*: “We have long since made clear
25 that a state of war is not a blank check for the

1 President when it comes to the rights of the Na-
2 tion's citizens." Hamdi v. Rumsfeld, 542 U.S. 507,
3 536 (2004) (citations omitted).

4 (5) When deciding issues of national security, it
5 is in our Nation's best interest that, to the extent
6 feasible, all 3 branches of the Federal Government
7 should be involved. This helps guarantee that elec-
8 tronic surveillance programs do not infringe on the
9 constitutional rights of Americans, while at the same
10 time ensuring that the President has all the powers
11 and means necessary to detect and track our en-
12 emies and protect our Nation from attack.

13 (6) As Justice Sandra Day O'Connor explained
14 in her plurality opinion for the Supreme Court in
15 Hamdi v. Rumsfeld, "Whatever power the United
16 States Constitution envisions for the Executive in its
17 exchanges with other nations or with enemy organi-
18 zations in times of conflict, it most assuredly envi-
19 sions a role for all 3 branches when individual lib-
20 erties are at stake." Hamdi v. Rumsfeld, 542 U.S.
21 507, 536 (2004) (citations omitted).

22 (7) Similarly, Justice Jackson famously ex-
23 plained in his Youngstown concurrence: "When the
24 President acts pursuant to an express or implied au-
25 thorization of Congress, his authority is at its max-

1 imum, for it includes all that he possesses in his own
 2 right plus all that Congress can delegate ... When
 3 the President acts in absence of either a congres-
 4 sional grant or denial of authority, he can only rely
 5 upon his own independent powers, but there is a
 6 zone of twilight in which he and Congress may have
 7 concurrent authority, or in which its distribution is
 8 uncertain. Therefore, congressional inertia, indiffer-
 9 ence or quiescence may sometimes, at least as a
 10 practical matter, enable, if not invite, measures on
 11 independent presidential responsibility ... When the
 12 President takes measures incompatible with the ex-
 13 pressed or implied will of Congress, his power is at
 14 its lowest ebb, for then he can rely only upon his
 15 own constitutional powers minus any constitutional
 16 powers of Congress over the matter. Courts can sus-
 17 tain exclusive Presidential control in such a case
 18 only by disabling the Congress from acting upon the
 19 subject.” *Youngstown Sheet & Tube Co. v. Sawyer*,
 20 343 U.S. 579, 635–38 (1952) (Jackson, J., concur-
 21 ring).

22 (8) Congress clearly has the authority to enact
 23 legislation with respect to electronic surveillance pro-
 24 grams. The Constitution provides Congress with
 25 broad powers of oversight over national security and

stitution of the United States, which confers on Congress numerous powers, including the powers—

(A) “To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water”;

(B) “To raise and support Armies”;

(C) “To provide and maintain a Navy”;

(D) “To make Rules for the Government and Regulation of the land and naval Forces”;

(E) “To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions”; and

(F) “To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States”.

(9) While Attorney General Alberto Gonzales explained that the executive branch reviews the electronic surveillance program of the National Security Agency every 45 days to ensure that the program is not overly broad, it is the belief of Congress that approval and supervision of electronic surveillance programs should be conducted outside of the executive branch, by the article III court established under section 103 of the Foreign Intelligence Surveillance

1 Act of 1978 (50 U.S.C. 1803) and the congressional
2 intelligence committees. It is also the belief of Con-
3 gress that it is appropriate for an article III court
4 to pass upon the constitutionality of electronic sur-
5 veillance programs that may be directed at Ameri-
6 cans.

7 (10) The Foreign Intelligence Surveillance
8 Court is the proper court to approve and supervise
9 classified electronic surveillance programs because it
10 is adept at maintaining the secrecy with which it
11 was charged and it possesses the requisite expertise
12 and discretion for adjudicating sensitive issues of
13 national security.

14 (11) In 1975, [then] Attorney General Edward
15 Levi, a strong defender of executive authority, testi-
16 fied that in times of conflict, the President needs the
17 power to conduct long-range electronic surveillance
18 and that a foreign intelligence surveillance court
19 should be empowered to issue special approval orders
20 in these circumstances.

21 (12) Granting the Foreign Intelligence Surveil-
22 lance Court the authority to review electronic sur-
23 veillance programs and pass upon their constitu-
24 tionality is consistent with well-established, long-
25 standing practices.

1 (13) The Foreign Intelligence Surveillance
2 Court already has broad authority to approve sur-
3 veillance of members of international conspiracies, in
4 addition to granting warrants for surveillance of a
5 particular individual under sections 104, 105, and
6 402 of the Foreign Intelligence Surveillance Act of
7 1978 (50 U.S.C. 1804, 1805, and 1842).

8 (14) Prosecutors have significant flexibility in
9 investigating domestic conspiracy cases. Courts have
10 held that flexible warrants comply with the 4th
11 amendment to the Constitution of the United States
12 when they relate to complex, far-reaching, and
13 multifaceted criminal enterprises like drug conspir-
14 acies and money laundering rings. The courts recog-
15 nize that applications for search warrants must be
16 judged in a common sense and realistic fashion, and
17 the courts permit broad warrant language where,
18 due to the nature and circumstances of the inves-
19 tigation and the criminal organization, more precise
20 descriptions are not feasible.

21 (15) The Supreme Court, in the “Keith Case”,
22 United States v. United States District Court for
23 the Eastern District of Michigan, 407 U.S. 297
24 (1972), recognized that the standards and proce-
25 dures used to fight ordinary crime may not be appli-

1 cable to cases involving national security. The Court
 2 recognized that national “security surveillance may
 3 involve different policy and practical considerations
 4 from the surveillance of ordinary crime” and that
 5 courts should be more flexible in issuing warrants in
 6 national security cases. *United States v. United*
 7 *States District Court for the Eastern District of*
 8 *Michigan*, 407 U.S. 297, 322 (1972).

9 (16) By authorizing the Foreign Intelligence
 10 Surveillance Court to review electronic surveillance
 11 programs, Congress enables the President to use the
 12 necessary means to guard our national security,
 13 while also protecting the civil liberties and constitu-
 14 tional rights that we cherish.

15 **SEC. 3. DEFINITIONS.**

16 The Foreign Intelligence Surveillance Act of 1978
 17 (50 U.S.C. 1801 et seq.) is amended—

18 (1) by redesignating title VII as title VIII;

19 (2) by redesignating section 701 as section 801;

20 and

21 (3) by inserting after title VI the following:

22 **“TITLE VII—ELECTRONIC**
 23 **SURVEILLANCE PROGRAMS**

24 **“SEC. 701. DEFINITIONS.**

25 “As used in this title—

1 “(1) the terms ‘agent of a foreign power’, ‘At-
2 torney General’, ‘contents’, ‘electronic surveillance’,
3 ‘foreign power’, ‘international terrorism’, ‘minimiza-
4 tion procedures’, ‘person’, ‘United States’, and
5 ‘United States person’ have the same meaning as in
6 section 101;

7 “(2) the term ‘congressional intelligence com-
8 mittees’ means the Select Committee on Intelligence
9 of the Senate and the Permanent Select Committee
10 on Intelligence of the House of Representatives;

11 “(3) the term ‘electronic surveillance program’
12 means a program to engage in electronic surveil-
13 lance—

14 “(A) that has as a significant purpose the
15 gathering of foreign intelligence information or
16 protecting against international terrorism;

17 “(B) where it is not feasible to name every
18 person, address, or location to be subjected to
19 electronic surveillance;

20 “(C) where effective gathering of foreign
21 intelligence information requires the flexibility
22 to begin electronic surveillance immediately
23 after learning of suspect activity; and

1 “(D) where effective gathering of foreign
2 intelligence information requires an extended
3 period of electronic surveillance;

4 “(4) the term ‘foreign intelligence information’
5 has the same meaning as in section 101(e) and in-
6 cludes information necessary to protect against
7 international terrorism;

8 “(5) the term ‘Foreign Intelligence Surveillance
9 Court’ means the court established under section
10 103(a); and

11 “(6) the term ‘Foreign Intelligence Surveillance
12 Court of Review’ means the court established under
13 section 103(b).”.

14 **SEC. 4. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
15 **JURISDICTION TO REVIEW ELECTRONIC SUR-**
16 **VEILLANCE PROGRAMS.**

17 (a) IN GENERAL.—Title VII of the Foreign Intel-
18 ligence Surveillance Act of 1978, as amended by section
19 3, is amended by adding at the end the following:

20 **“SEC. 702. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
21 **JURISDICTION TO REVIEW ELECTRONIC SUR-**
22 **VEILLANCE PROGRAMS.**

23 “(a) AUTHORIZATION OF REVIEW.—

24 “(1) INITIAL AUTHORIZATION.—The Foreign
25 Intelligence Surveillance Court shall have jurisdic-

1 tion to issue an order under this title, lasting not
2 longer than 90 days, that authorizes an electronic
3 surveillance program to obtain foreign intelligence
4 information or to protect against international ter-
5 rorism.

6 “(2) REAUTHORIZATION.—The Foreign Intel-
7 ligence Surveillance Court shall have jurisdiction to
8 reauthorize an electronic surveillance program for a
9 period of time not longer than such court determines
10 to be reasonable. There shall be no limit on the
11 number of times the Attorney General may seek re-
12 authorization of an electronic surveillance program.

13 “(3) RESUBMISSION OR APPEAL.—In the event
14 that the Foreign Intelligence Surveillance Court re-
15 fuses to approve an application under this sub-
16 section, the court shall state its reasons in a written
17 opinion, which it shall submit to the Attorney Gen-
18 eral. The Attorney General or his designee may sub-
19 mit a new application under section 703 for the elec-
20 tronic surveillance program, with no limit on the
21 number of resubmissions that may be made. Alter-
22 natively, the Attorney General may appeal the deci-
23 sion of the Foreign Intelligence Surveillance Court
24 to the Foreign Intelligence Surveillance Court of Re-
25 view.

1 “(4) CONTINUED SURVEILLANCE UNDER TITLE

2 I.—

3 “(A) IN GENERAL.—If, at any time, the
 4 Attorney General determines that the known
 5 facts and circumstances relating to any target
 6 within the United States under this title satisfy
 7 the criteria for an application under section 104
 8 for an order for electronic surveillance of the
 9 target under section 105, the Attorney General
 10 shall—

11 “(i) discontinue the surveillance of the
 12 target under this title; or

13 “(ii) continue the surveillance of the
 14 target under this title, subject to the re-
 15 quirements of subparagraph (B).

16 “(B) CONTINUATION OF SURVEILLANCE.—

17 “(i) IN GENERAL.—The Attorney
 18 General may continue surveillance of a tar-
 19 get under this title as specified in subpara-
 20 graph (A)(ii) only if the Attorney General
 21 makes an application under section 104 for
 22 an order for electronic surveillance of the
 23 target under section 105 as soon as the
 24 Attorney General determines practicable
 25 after the date on which the Attorney Gen-

1 eral makes the determination to continue
2 surveillance of the target under subpara-
3 graph (A)(ii).

4 “(ii) PERIOD.—The period during
5 which the Attorney General may continue
6 surveillance of a target under this title
7 after the Attorney General has determined
8 that making an application is practicable
9 shall be limited to a reasonable period, as
10 determined by the Attorney General, dur-
11 ing which the application is prepared and
12 the period during which the application of
13 the Attorney General under section 104 for
14 an order for electronic surveillance of the
15 target under section 105 is pending under
16 title I, including during any period in
17 which appeal from the denial of the appli-
18 cation is pending with the Foreign Intel-
19 ligence Surveillance Court of Review or the
20 Supreme Court under section 103(b).

21 “(b) MANDATORY TRANSFER FOR REVIEW.—

22 “(1) IN GENERAL.—In any case before any
23 court challenging the legality of classified commu-
24 nications intelligence activity relating to a foreign
25 threat, including an electronic surveillance program,

1 or in which the legality of any such activity or pro-
2 gram is in issue, if the Attorney General files an af-
3 fidavit under oath that the case should be trans-
4 ferred to the Foreign Intelligence Surveillance Court
5 of Review because further proceedings in the origi-
6 nating court would harm the national security of the
7 United States, the originating court shall transfer
8 the case of the Foreign Intelligence Surveillance for
9 further proceedings under this subsection.

10 “(2) PROCEDURES FOR REVIEW.—The Foreign
11 Intelligence Surveillance Court shall have jurisdic-
12 tion as appropriate to determine standing and the
13 legality of the program to the extent necessary for
14 resolution of the underlying case. All proceedings
15 under this paragraph shall be conducted in accord-
16 ance with the procedures set forth in section 106(f).
17 In the event the Foreign Intelligence Surveillance
18 Court determines that, in the context of a criminal
19 proceeding, the Constitution of the United States
20 would require the disclosure of national security in-
21 formation, any such constitutionally required disclo-
22 sure shall be governed by the Classified Information
23 Procedures Act, (18 U.S.C. App.), or if applicable,
24 section 2339B(f) of title 18, United States Code.

1 “(3) APPEAL, CERTIORARI, AND EFFECTS OF
2 DECISIONS.—The decision of the Foreign Intel-
3 ligence Surveillance Court made under paragraphs
4 (1) and (2), including a decision that the disclosure
5 of national security information is constitutionally
6 required, shall be subject to review by the Foreign
7 Intelligence Surveillance Court of Review under sec-
8 tion 103(b). The Supreme Court of the United
9 States shall have jurisdiction to review decisions of
10 the Foreign Intelligence Surveillance Court of Re-
11 view by writ of certiorari granted upon the petition
12 of the United States. The decision by the Foreign
13 Intelligence Surveillance Court shall otherwise be
14 binding in all other courts.

15 “(4) DISMISSAL.—The Foreign Intelligence
16 Surveillance Court or a court that is an originating
17 court under paragraph (1) may dismiss a challenge
18 to the legality of an electronic surveillance program
19 for any reason provided for under law.

20 “(5) PRESERVATION OF LITIGATION PRIVI-
21 LEGES.—Nothing in this Act shall be construed to
22 abrogate, limit, or affect any litigation privileges in
23 any court.”.

1 **SEC. 5. APPLICATIONS FOR APPROVAL OF ELECTRONIC**
2 **SURVEILLANCE PROGRAMS.**

3 Title VII of the Foreign Intelligence Surveillance Act
4 of 1978, as amended by section 4, is amended by adding
5 at the end the following:

6 **“SEC. 703. APPLICATIONS FOR APPROVAL OF ELECTRONIC**
7 **SURVEILLANCE PROGRAMS.**

8 “(a) IN GENERAL.—Each application for approval of
9 an electronic surveillance program under this title (includ-
10 ing resubmission or application for reauthorization)
11 shall—

12 “(1) be made by the Attorney General or his
13 designee;

14 “(2) include a statement of the authority con-
15 ferred on the Attorney General by the President of
16 the United States;

17 “(3) include a statement setting forth the legal
18 basis for the conclusion by the Attorney General
19 that the electronic surveillance program is consistent
20 with the Constitution of the United States;

21 “(4) certify that a significant purpose of the
22 electronic surveillance program is to obtain foreign
23 intelligence information or to protect against inter-
24 national terrorism;

1 “(5) certify that the information sought cannot
2 reasonably be obtained by normal investigative tech-
3 niques

4 “(6) certify that the information sought cannot
5 reasonably be obtained through an application under
6 section 104;

7 “(7) include a statement of the means and
8 operational procedures by which the electronic sur-
9 veillance will be executed and effected;

10 “(8) include an explanation of how the elec-
11 tronic surveillance program is reasonably designed to
12 ensure that the communications that are acquired
13 are communications of or with—

14 “(A) a foreign power that engages in inter-
15 national terrorism or activities in preparation
16 therefor;

17 “(B) an agent of a foreign power that en-
18 gages in international terrorism or activities in
19 preparation therefor;

20 “(C) a person reasonably believed to have
21 communication with or be associated with a for-
22 eign power that engages in international ter-
23 rorism or activities in preparation therefor or
24 an agent of a foreign power that engages in

1 international terrorism or activities in prepara-
2 tion therefor; or

3 “(D) a foreign power that poses an immi-
4 nent threat of attack likely to cause death, seri-
5 ous injury, or substantial economic damage to
6 the United States, or an agent of a foreign
7 power thereof;

8 “(9) include a statement of the proposed mini-
9 mization procedures;

10 “(10) if the electronic surveillance program that
11 is the subject of the application was initiated prior
12 to the date the application was submitted, specify
13 the date that the program was initiated;

14 “(11) include a description of all previous appli-
15 cations that have been made under this title involv-
16 ing the electronic surveillance program in the appli-
17 cation (including the minimization procedures and
18 the means and operational procedures proposed) and
19 the decision on each previous application; and

20 “(12) include a statement of facts concerning
21 the implementation of the electronic surveillance pro-
22 gram described in the application, including, for any
23 period of operation of the program authorized not
24 less than 90 days prior to the date of submission of
25 the application—

1 “(A) the minimization procedures imple-
2 mented; and

3 “(B) the means and operational procedures
4 by which the electronic surveillance was exe-
5 cuted and effected.

6 “(b) ADDITIONAL INFORMATION.—The Foreign In-
7 telligence Surveillance Court may require the Attorney
8 General to furnish such other information as may be nec-
9 essary to make a determination under section 704.”.

10 **SEC. 6. APPROVAL OF ELECTRONIC SURVEILLANCE PRO-**
11 **GRAMS.**

12 Title VII of the Foreign Intelligence Surveillance Act
13 18 of 1978, as amended by section 5, is amended by add-
14 ing at the end the following:

15 **“SEC. 704. APPROVAL OF ELECTRONIC SURVEILLANCE**
16 **PROGRAMS.**

17 “(a) NECESSARY FINDINGS.—Upon receipt of an ap-
18 plication under section 703, the Foreign Intelligence Sur-
19 veillance Court shall enter an ex parte order as requested,
20 or as modified, approving the electronic surveillance pro-
21 gram if it finds that—

22 “(1) the President has authorized the Attorney
23 General to make the application for electronic sur-
24 veillance for foreign intelligence information or to
25 protect against international terrorism;

1 “(2) approval of the electronic surveillance pro-
2 gram in the application is consistent with the Con-
3 stitution of the United States;

4 “(3) the electronic surveillance program is rea-
5 sonably designed to ensure that the communications
6 that are acquired are communications of or with—

7 “(A) a foreign power that engages in inter-
8 national terrorism or activities in preparation
9 therefor;

10 “(B) an agent of a foreign power that is
11 engaged in international terrorism or activities
12 in preparation therefor;

13 “(C) a person reasonably believed to have
14 communication with or be associated with a for-
15 eign power that is engaged in international ter-
16 rorism or activities in preparation therefor or
17 an agent of a foreign power that is engaged in
18 international terrorism or activities in prepara-
19 tion therefor; or

20 “(D) a foreign power that poses an immi-
21 nent threat of attack likely to cause death, seri-
22 ous injury, or substantial economic damage to
23 the United States, or an agent of a foreign
24 power thereof;

1 “(4) the proposed minimization procedures
2 meet the definition of minimization procedures
3 under section 101(h); and

4 “(5) the application contains all statements and
5 certifications required by section 703.

6 “(b) CONSIDERATIONS.—In considering the constitu-
7 tionality of the electronic surveillance program under sub-
8 section (a), the Foreign Intelligence Surveillance Court
9 may consider—

10 “(1) whether the electronic surveillance pro-
11 gram has been implemented in accordance with the
12 proposal by the Attorney General, by comparing—

13 “(A) the minimization procedures proposed
14 with the minimization procedures actually im-
15 plemented;

16 “(B) the nature of the information sought
17 with the nature of the information actually ob-
18 tained; and

19 “(C) the means and operational procedures
20 proposed with the means and operational proce-
21 dures actually implemented; and

22 “(2) whether foreign intelligence information
23 has been obtained through the electronic surveillance
24 program.

1 “(c) CONTENTS OF ORDER.—An order approving an
2 electronic surveillance program under this section shall di-
3 rect—

4 “(1) that the minimization procedures be fol-
5 lowed;

6 “(2) that, upon the request of the applicant,
7 specified communication or other common carriers,
8 landlords, custodians, or other specified persons, fur-
9 nish the applicant forthwith with all information, fa-
10 cilities, or technical assistance necessary to under-
11 take the electronic surveillance program in such a
12 manner as will protect its secrecy and produce a
13 minimum of interference with the services that such
14 carriers, landlords, custodians, or other persons are
15 providing potential targets of the electronic surveil-
16 lance program;

17 “(3) that any records concerning the electronic
18 surveillance program or the aid furnished or retained
19 by such carriers, landlords, custodians, or other per-
20 sons are maintained under security procedures ap-
21 proved by the Attorney General and the Director of
22 National Intelligence; and

23 “(4) that the applicant compensate, at the pre-
24 vailing rate, such carriers, landlords, custodians, or
25 other persons for furnishing such aid.”.

1 **SEC. 7. CONGRESSIONAL OVERSIGHT.**

2 Title VII of the Foreign Intelligence Surveillance Act
3 of 1978, as amended by section 6, is amended by adding
4 at the end the following:

5 **“SEC. 705. CONGRESSIONAL OVERSIGHT.**

6 “(a) IN GENERAL.—Not less often than every 180
7 days, the Attorney General shall submit to the congres-
8 sional intelligence committees a report in classified form
9 on the activities during the previous 180-day period under
10 any electronic surveillance program authorized under this
11 title.

12 “(b) CONTENTS.—Each report submitted under sub-
13 section (a) shall provide, with respect to the previous 180-
14 day period, a description of—

15 “(1) the minimization procedures implemented;

16 “(2) the means and operational procedures by
17 which the electronic surveillance program was exe-
18 cuted and effected;

19 “(3) significant decisions of the Foreign Intel-
20 ligence Surveillance Court on applications made
21 under section 703;

22 “(4) the total number of applications made for
23 orders approving electronic surveillance programs
24 pursuant to this title; and

25 “(5) the total number of orders applied for that
26 have been granted, modified, or denied.

1 “(c) RULE OF CONSTRUCTION.—Nothing in this title
 2 shall be construed to limit the authority or responsibility
 3 of any committee of either House of Congress to obtain
 4 such information as such committee may need to carry
 5 out its respective functions and duties.”.

6 **SEC. 8. CLARIFICATION OF THE FOREIGN INTELLIGENCE**
 7 **SURVEILLANCE ACT OF 1978.**

8 (a) REPEAL.—Sections 111, 309, and 404 of the
 9 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
 10 1811, 1829, and 1844) are repealed.

11 (b) CLARIFYING AMENDMENTS.—

12 (1) TITLE 18.—Section 2511(2) of title 18,
 13 United States Code, is amended—

14 (A) in paragraph (e), by striking “, as de-
 15 fined in section 101” and all that follows
 16 through the end of the paragraph and inserting
 17 the following: “under the Constitution or the
 18 Foreign Intelligence Surveillance Act of 1978.”;
 19 and

20 (B) in paragraph (f), by striking “from
 21 international or foreign communications,” and
 22 all that follows through the end of the para-
 23 graph and inserting “that is authorized under
 24 a Federal statute or the Constitution of the
 25 United States.”.

1 (2) FISA.—Section 109 of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C. 1809)
3 is amended—

4 (A) in subsection (a)—

5 (i) in paragraph (1)—

6 (I) by striking “authorized by
7 statute” and inserting “authorized by
8 law”; and

9 (II) by striking “or” at the end;

10 (ii) in paragraph (2)—

11 (I) by striking “authorized by
12 statute” and inserting “authorized by
13 law”; and

14 (II) by striking the period and
15 inserting “; or”; and

16 (iii) by adding at the end the fol-
17 lowing:

18 “(3) and knowingly discloses or uses informa-
19 tion obtained under color of law by electronic sur-
20 veillance in a manner or for a purpose not author-
21 ized by law.”; and

22 (B) in subsection (c)—

23 (i) by striking “\$10,000” and insert-
24 ing “\$100,000”; and

1 (ii) by striking “five years” and in-
 2 serting “15 years”.

3 **SEC. 9. MODERNIZING AMENDMENTS TO FISA.**

4 (a) REFERENCE.—In this section, a reference to
 5 “FISA” shall mean the Foreign Intelligence Surveillance
 6 Act of 1978 (50 U.S.C. 1801 et seq.).

7 (b) DEFINITIONS.—Section 101 of FISA (50 U.S.C.
 8 1801) is amended—

9 (1) in subsection (b)(1)—

10 (A) in subparagraph (C), by striking “or”
 11 after the semicolon; and

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

13 “(D) otherwise is reasonably expected to
 14 possess, control, transmit, or receive foreign in-
 15 telligence information while that person is in
 16 the United States, provided that the official
 17 making the certification required by section
 18 104(a)(6) deems such foreign intelligence infor-
 19 mation to be significant; or”;

20 (2) by striking subsection (f) and inserting the
 21 following:

22 “(f) ‘Electronic surveillance’ means—

23 “(1) the installation or use of an electronic, me-
 24 chanical, or other surveillance device for acquiring
 25 information by intentionally directing the surveil-

1 lance at a particular known person who is reason-
2 ably believed to be in the United States under cir-
3 cumstances in which that person has a reasonable
4 expectation of privacy and a warrant would be re-
5 quired for law enforcement purposes; or

6 “(2) the intentional acquisition of the contents
7 of any communication under circumstances in which
8 a person has a reasonable expectation of privacy and
9 a warrant would be required for law enforcement
10 purposes, and if both the sender and all intended re-
11 cipients are reasonably believed to be located within
12 the United States.”;

13 (3) in subsection (h), by striking paragraph (4)
14 and inserting the following:

15 “(4) notwithstanding paragraphs (1), (2), and
16 (3), with respect to any electronic surveillance ap-
17 proved pursuant to section 102 or 704, procedures
18 that require that no contents of any communication
19 originated or sent by a United States person shall
20 be disclosed, disseminated, used or retained for
21 longer than 7 days unless a court order under sec-
22 tion 105 is obtained or unless the Attorney General
23 determines that the information indicates a threat of
24 death or serious bodily harm to any person.”.

25 (4) by striking subsection (l); and

1 (5) by striking subsection (n) and inserting the
2 following:

3 “(n) ‘contents’, when used with respect to a commu-
4 nication, includes any information concerning the sub-
5 stance, symbols, sounds, words, purport, or meaning of a
6 communication, and does not include dialing, routing, ad-
7 dressing, or signaling information.”.

8 (c) ELECTRONIC SURVEILLANCE AUTHORIZATION.—
9 Section 102 of FISA (50 U.S.C. 1802) is amended to read
10 as follows:

11 “ELECTRONIC SURVEILLANCE AUTHORIZATION WITHOUT
12 COURT ORDER; CERTIFICATION BY ATTORNEY GEN-
13 ERAL; REPORTS TO CONGRESSIONAL COMMITTEES;
14 TRANSMITTAL UNDER SEAL; DUTIES AND COM-
15 PENSATION OF COMMUNICATION COMMON CARRIER;
16 APPLICATIONS; JURISDICTION OF COURT

17 “SEC. 102. (a)(1) Notwithstanding any other law, the
18 President through the Attorney General, may authorize
19 electronic surveillance without a court order under this
20 title to acquire foreign intelligence information for periods
21 of up to 1 year if the Attorney General certifies in writing
22 under oath that the electronic surveillance is directed at—

23 “(A)(i) the acquisition of the contents of com-
24 munications of foreign powers, as defined in para-
25 graph (1), (2), or (3) of section 101(a), or a person
26 other than a United States person acting as an

1 agent of a foreign power, as defined in section
2 101(b)(1)(A) or (B); or

3 “(ii) the acquisition of technical intelligence,
4 other than the spoken communications of individ-
5 uals, from property or premises under the open and
6 exclusive control of a foreign power, as defined in
7 paragraph (1), (2), or (3) of section 101(a); and

8 “(B) the proposed minimization procedures
9 with respect to such surveillance meet the definition
10 of minimization procedures under section 101(h);

11 if the Attorney General reports such minimization proce-
12 dures and any changes thereto to the Select Committee
13 on Intelligence of the Senate and the Permanent Select
14 Committee on Intelligence of the House of Representatives
15 at least 30 days prior to their effective date, unless the
16 Attorney General determines immediate action is required
17 and notifies the committees immediately of such minimiza-
18 tion procedures and the reason for their becoming effective
19 immediately.

20 “(2) An electronic surveillance authorized by this
21 subsection may be conducted only in accordance with the
22 Attorney General’s certification and the minimization pro-
23 cedures. The Attorney General shall assess compliance
24 with such procedures and shall report such assessments
25 to the Select Committee on Intelligence of the Senate and

1 the Permanent Select Committee on Intelligence of the
2 House of Representatives under section 108(a). If an elec-
3 tronic surveillance authorized by this subsection is di-
4 rected at an agent of a foreign power, the Attorney Gen-
5 eral's report assessing compliance with the minimization
6 procedures shall also include a statement of the facts and
7 circumstances relied upon to justify the belief that the tar-
8 get of the electronic surveillance is an agent of a foreign
9 power.

10 “(3) The Attorney General shall immediately trans-
11 mit under seal to the court established under section
12 103(a) a copy of any certification under this subsection.
13 Such certification shall be maintained under security
14 measures established by the Chief Justice with the concur-
15 rence of the Attorney General, in consultation with the
16 Director of National Intelligence, and shall remain sealed
17 unless—

18 “(A) an application for a court order with re-
19 spect to the surveillance is made under section 104;
20 or

21 “(B) the certification is necessary to determine
22 the legality of the surveillance under section 106(f).

23 “(b)(1) Notwithstanding any other provision of law,
24 the President, through the Attorney General, may author-
25 ize the acquisition of foreign intelligence information for

1 periods of up to 1 year concerning a person reasonably
2 believed to be outside the United States if the Attorney
3 General certifies in writing under oath that he has deter-
4 mined that—

5 “(A) the acquisition does not constitute elec-
6 tronic surveillance as defined in section 101(f);

7 “(B) the acquisition involves obtaining the for-
8 eign intelligence information from or with the assist-
9 ance of a wire or electronic communications service
10 provider, custodian, or other person (including any
11 officer, employee, agent, or other specified person
12 thereof) who has access to wire or electronic commu-
13 nications, either as they are transmitted or while
14 they are stored, or equipment that is being or may
15 be used to transmit or store such communications;

16 “(C) a significant purpose of the acquisition is
17 to obtain foreign intelligence information; and

18 “(D) the minimization procedures to be em-
19 ployed with respect to such acquisition activity meet
20 the definition of minimization procedures under sec-
21 tion 101(h).

22 “(2) Such certification need not identify the specific
23 facilities, places, premises, or property at which the acqui-
24 sition will be directed.

1 “(3) An acquisition undertaken pursuant to this sub-
2 section may be conducted only in accordance with the At-
3 torney General’s certification and the minimization proce-
4 dures adopted by the Attorney General. The Attorney
5 General shall assess compliance with such procedures and
6 shall report such assessments to the Select Committee on
7 Intelligence of the Senate and the Permanent Select Com-
8 mittee on Intelligence of the House of Representatives
9 under section 108(a).

10 “(4) The Attorney General shall immediately trans-
11 mit under seal to the court established under section
12 103(a) a copy of any certification of the Attorney General
13 under this subsection. Such certification shall be main-
14 tained under security measures established by the Chief
15 Justice with the concurrence of the Attorney General, in
16 consultation with the Director of National Intelligence,
17 and shall remain sealed unless the certification is nec-
18 essary to determine the legality of the acquisition under
19 subsection (o).

20 “(c) With respect to the acquisition authorized under
21 this section, the Attorney General may direct a specified
22 person to—

23 “(1) furnish the government forthwith all infor-
24 mation, facilities, and assistance necessary to accom-
25 plish the acquisition in such a manner as will protect

1 its secrecy and produce a minimum of interference
2 with the services that such person is providing to the
3 target; and

4 “(2) maintain under security procedures ap-
5 proved by the Attorney General and the Director of
6 National Intelligence any records concerning the ac-
7 quisition or the aid furnished that such person wish-
8 es to maintain.

9 “(d) The government shall compensate, at the pre-
10 vailing rate, such specified person for furnishing the aid
11 set forth in subsection (c).

12 “(e) In the case of a failure to comply with a directive
13 issued pursuant to this section, the Attorney General may
14 invoke the aid of the court established under section
15 103(a) to compel compliance with the directive. The court
16 shall issue an order requiring the person or entity to com-
17 ply with the directive forthwith if it finds that the directive
18 was issued in accordance with subsection (a) or (b) and
19 is otherwise lawful. Any failure to obey the order of the
20 court may be punished by the court as contempt thereof.
21 Any process under this section may be served in any judi-
22 cial district in which the person or entity may be found.

23 “(f)(1)(A) A person receiving an Attorney General di-
24 rective issued pursuant to this section may challenge the

1 legality of that directive by filing a petition with the pool
2 established by section 103(e)(1).

3 “(B) The presiding judge shall immediately assign a
4 petition to one of the judges serving in the pool established
5 by section 103(e)(1). Not later than 24 hours after the
6 assignment of such petition, the assigned judge shall con-
7 duct an initial review of the directive. If the assigned judge
8 determines that the petition is frivolous, the assigned
9 judge shall immediately deny the petition and affirm the
10 directive or any part thereof that is the subject of the peti-
11 tion. If the assigned judge determines the petition is not
12 frivolous, the assigned judge shall within 72 hours con-
13 sider the petition in accordance with the procedures estab-
14 lished under section 103(e)(2) and provide a written state-
15 ment for the record of the reasons for any determination
16 under this subsection.

17 “(2) A judge considering a petition to modify or set
18 aside a directive may grant such petition only if the judge
19 finds that such directive does not meet the requirements
20 of this section or is otherwise unlawful. If the judge does
21 not modify or set aside the directive, the judge shall imme-
22 diately affirm such directive, and order the recipient to
23 comply therewith.

24 “(3) Any directive not explicitly modified or set aside
25 consistent with this subsection shall remain in full effect.

1 “(g) A petition for review of a decision under sub-
2 section (f) to affirm, modify, or set aside a directive by
3 the Government or any person receiving such directive
4 shall be made within 7 days of issuance of the decision
5 required by subsection (f) to the court of review estab-
6 lished under section 103(b), which shall have jurisdiction
7 to consider such petitions. The court of review shall pro-
8 vide for the record a written statement of the reasons for
9 its decision and, on petition by the Government or any
10 person receiving such directive for a writ of certiorari, the
11 record shall be transmitted under seal to the Supreme
12 Court of the United States, which shall have jurisdiction
13 to review such decision.

14 “(h) Judicial proceedings under this section shall be
15 concluded as expeditiously as possible. The record of pro-
16 ceedings, including petitions filed, orders granted, and
17 statements of reasons for decision, shall be maintained
18 under security measures established by the Chief Justice
19 of the United States, in consultation with the Attorney
20 General and the Director of National Intelligence.

21 “(i) All petitions under this section shall be filed
22 under seal. In any proceedings under this section, the
23 court shall, upon request of the Government, review ex
24 parte and in camera any Government submission, or por-
25 tions thereof, which may include classified information.

1 “(j) No cause of action shall lie in any court against
2 any provider of a communication service or other person
3 (including any officer, employee, agent, or other specified
4 person thereof) for furnishing any information, facilities,
5 or assistance in accordance with a directive under sub-
6 section (a) or (b).

7 “(k) Information acquired pursuant to an Attorney
8 General authorization under this section concerning any
9 United States person may be used and disclosed by Fed-
10 eral officers and employees without the consent of the
11 United States person only in accordance with the mini-
12 mization procedures required by subsection (a) or (b), as
13 applicable. No otherwise privileged communication ob-
14 tained in accordance with, or in violation of, the provisions
15 of this section shall lose its privileged character. No infor-
16 mation from an acquisition under this section may be used
17 or disclosed by Federal officers or employees except for
18 lawful purposes.

19 “(l) No information acquired pursuant to this section
20 shall be disclosed for law enforcement purposes unless
21 such disclosure is accompanied by a statement that such
22 information, or any information derived therefrom, may
23 only be used in a criminal proceeding with the advance
24 authorization of the Attorney General.

1 “(m) Whenever the Government intends to enter into
2 evidence or otherwise use or disclose in any trial, hearing,
3 or other proceeding in or before any court, department,
4 officer, agency, regulatory body, or other authority of the
5 United States, against an aggrieved person, any informa-
6 tion obtained or derived from an acquisition under this
7 section, the Government shall, prior to the trial, hearing,
8 or other proceeding or at a reasonable time prior to an
9 effort to so disclose or so use that information or submit
10 it in evidence, notify the aggrieved person and the court
11 or other authority in which the information is to be dis-
12 closed or used that the Government intends to so disclose
13 or so use such information.

14 “(n) Whenever any State or political subdivision
15 thereof intends to enter into evidence or otherwise use or
16 disclose in any trial, hearing, or other proceeding in or
17 before any court, department, officer, agency, regulatory
18 body, or other authority of a State or a political subdivi-
19 sion thereof, against an aggrieved person any information
20 obtained or derived from an acquisition under this section,
21 the State or political subdivision thereof shall notify the
22 aggrieved person, the court or other authority in which
23 the information is to be disclosed or used, and the Attor-
24 ney General that the State or political subdivision thereof
25 intends to so disclose or so use such information.

1 “(o) Any person against whom evidence obtained or
2 derived from an acquisition authorized pursuant to this
3 section to which he is an aggrieved person is to be, or
4 has been, introduced or otherwise used or disclosed in any
5 trial, hearing, or other proceeding in or before any court,
6 department, officer, agency, regulatory body, or other au-
7 thority of the United States, a State, or a political subdivi-
8 sion thereof, may move to suppress the evidence obtained
9 or derived from such acquisition on the grounds that—

10 “(1) the information was unlawfully acquired;

11 or

12 “(2) the acquisition was not made in conformity
13 with an order of authorization or approval.

14 Such a motion shall be made before the trial, hearing, or
15 other proceeding unless there was no opportunity to make
16 such a motion or the person was not aware of the grounds
17 of the motion.

18 “(p) Whenever a court or other authority is notified
19 pursuant to subsection (m) or (n), whenever a motion is
20 made pursuant to subsection (o), or whenever any motion
21 or request is made by an aggrieved person pursuant to
22 any other statute or rule of the United States or any State
23 before any court or other authority of the United States
24 or any State to discover or obtain an Attorney General
25 directive or other materials relating to the acquisition au-

1 thorized under this section or to discover, obtain, or sup-
2 press evidence or information obtained or derived from the
3 acquisition authorized under this section, the United
4 States district court or, where the motion is made before
5 another authority, the United States district court in the
6 same district as the authority, shall, notwithstanding any
7 other law, if the Attorney General files an affidavit under
8 oath that disclosure or an adversary hearing would harm
9 the national security of the United States, review in cam-
10 era and ex parte the directive, and such other materials
11 relating to the acquisition as may be necessary to deter-
12 mine whether the acquisition authorized under this section
13 was lawfully authorized and conducted. In making this de-
14 termination, the court may disclose to the aggrieved per-
15 son, under appropriate security procedures and protective
16 orders, portions of the directive or other materials relating
17 to the acquisition only where such disclosure is necessary
18 to make an accurate determination of the legality of the
19 acquisition.

20 “(q) If the United States district court pursuant to
21 subsection (o) determines that the acquisition authorized
22 under this section was not lawfully authorized or con-
23 ducted, it shall, in accordance with the requirements of
24 law, suppress the evidence which was unlawfully obtained
25 or derived or otherwise grant the motion of the aggrieved

1 person. If the court determines that such acquisition was
2 lawfully authorized and conducted, it shall deny the mo-
3 tion of the aggrieved person except to the extent that due
4 process requires discovery or disclosure.

5 “(r) Orders granting motions or requests under sub-
6 section (o), decisions under this section that an acquisition
7 was not lawfully authorized or conducted, and orders of
8 the United States district court requiring review or grant-
9 ing disclosure of directives or other materials relating to
10 such acquisition shall be final orders and binding upon
11 all courts of the United States and the several States ex-
12 cept a United States court of appeals and the Supreme
13 Court.

14 “(s) Federal officers who acquire foreign intelligence
15 information under this section may consult with Federal
16 law enforcement officers or law enforcement personnel of
17 a State or political subdivision of a State (including the
18 chief executive officer of that State or political subdivision
19 who has the authority to appoint or direct the chief law
20 enforcement officer of that State or political subdivision)
21 to coordinate efforts to investigate or protect against—

22 “(1) actual or potential attack or other grave
23 hostile acts of a foreign power or an agent of a for-
24 eign power;

1 “(2) sabotage, international terrorism, or the
2 development or proliferation of weapons of mass de-
3 struction by a foreign power or an agent of a foreign
4 power; or

5 “(3) clandestine intelligence activities by an in-
6 telligence service or network of a foreign power or by
7 an agent of a foreign power.

8 “(t) Coordination authorized by subsection (s) shall
9 not preclude the certification required by subsection (a)
10 or (b), as applicable.

11 “(u) RETENTION OF DIRECTIVES AND ORDERS.—Di-
12 rectives made and orders granted under this section shall
13 be retained for a period of at least 10 years from the date
14 when they were made.”.

15 (d) DESIGNATION OF JUDGES.—Section 103 of FISA
16 (50 U.S.C. 1803) is amended—

17 (1) in subsection (a), by inserting, “at least”
18 before “seven of the United States judicial circuits”;
19 and

20 (2) at the end by adding the following new sub-
21 section:

22 “(g) Applications for a court order under this title
23 are authorized if the President has, by written authoriza-
24 tion, empowered the Attorney General to approve applica-
25 tions to the court having jurisdiction under this section,

1 and a judge to whom an application is made may, notwith-
 2 standing any other law, grant an order, in conformity with
 3 section 105, approving electronic surveillance of a foreign
 4 power or an agent of a foreign power for the purpose of
 5 obtaining foreign intelligence information.”.

6 (e) APPLICATIONS FOR COURT ORDERS.—Section
 7 104 of FISA (50 U.S.C. 1804) is amended—

8 (1) in subsection (a), by striking paragraphs
 9 (6) through (11) and inserting the following:

10 “(6) a certification or certifications by the As-
 11 sistant to the President for National Security Af-
 12 fairs or an executive branch official authorized by
 13 the President to conduct electronic surveillance for
 14 foreign intelligence purposes—

15 “(A) that the certifying official deems the
 16 information sought to be foreign intelligence in-
 17 formation;

18 “(B) that a significant purpose of the sur-
 19 veillance is to obtain foreign intelligence infor-
 20 mation;

21 “(C) that such information cannot reason-
 22 ably be obtained by normal investigative tech-
 23 niques; and

24 “(D) including a statement of the basis for
 25 the certification that—

1 “(i) the information sought is the type
2 of foreign intelligence information des-
3 ignated; and

4 “(ii) such information cannot reason-
5 ably be obtained by normal investigative
6 techniques;

7 “(7) a statement of the period of time for which
8 the electronic surveillance is required to be main-
9 tained, and if the nature of the intelligence gath-
10 ering is such that the approval of the use of elec-
11 tronic surveillance under this title should not auto-
12 matically terminate when the described type of infor-
13 mation has first been obtained, a description of facts
14 supporting the belief that additional information of
15 the same type will be obtained thereafter;

16 “(8) a summary description of the nature of the
17 information sought and the type of communications
18 or activities to be subject to the surveillance;

19 “(9) a summary statement of the facts con-
20 cerning all previous applications that have been
21 made to any judge under this title involving any of
22 the persons, facilities, or places specified in the ap-
23 plication, and the action taken on each previous ap-
24 plication; and

1 “(10) a summary statement of the means by
2 which the surveillance will be effected and a state-
3 ment whether physical entry is required to effect the
4 surveillance.”;

5 (2) by striking subsection (b);

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

8 (4) in subsection (d)(1)(A), as redesignated by
9 paragraph (3), by inserting after “Secretary of
10 State” inserting “Director of the Central Intel-
11 ligence Agency”.

12 (f) ISSUANCE OF ORDER.—Section 105 of FISA (50
13 U.S.C. 1805) is amended—

14 (1) in subsection (a), by—

15 (A) striking paragraph (1); and

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

18 (2) by striking paragraph (1) of subsection (c)
19 and inserting the following:

20 “(1) An order approving an electronic surveil-
21 lance under this section shall specify—

22 “(A) the identity, if known, or a descrip-
23 tion of the target of the electronic surveillance
24 identified or described in the application pursu-
25 ant to section 104(a)(3);

1 “(B) the nature and location of each of the
2 facilities or places at which the electronic sur-
3 veillance will be directed, if known;

4 “(C) the period of time during which the
5 electronic surveillance is approved;

6 “(D) the type of information sought to be
7 acquired and the type of communications or ac-
8 tivities to be subjected to the surveillance; and

9 “(E) the means by which the electronic
10 surveillance will be effected and whether phys-
11 ical entry will be used to effect the surveil-
12 lance.”;

13 (3) by striking subsection (d) and inserting the
14 following:

15 “(d) Each order under this section shall specify the
16 type of electronic surveillance involved, including whether
17 physical entry is required.”;

18 (4) by striking paragraph (2) of subsection (e)
19 and inserting the following:

20 “(2) Extensions of an order issued under this title
21 may be granted on the same basis as an original order
22 upon an application for an extension and new findings
23 made in the same manner as required for an original order
24 and may be for a period not longer than the court deter-
25 mines to be reasonable or 1 year, whichever is less.”;

1 (5) by striking subsection (f) and inserting the
2 following:

3 “(f)(1) Notwithstanding any other provision of this
4 title, when an executive branch officer appointed by the
5 President with the advice and consent of the Senate who
6 is authorized by the President to conduct electronic sur-
7 veillance reasonably determines that—

8 “(A) an emergency situation exists with respect
9 to the employment of electronic surveillance to ob-
10 tain foreign intelligence information before an order
11 authorizing such surveillance can with due diligence
12 be obtained; and

13 “(B) the factual basis for issuance of an order
14 under this title to approve such surveillance exists;
15 that official may authorize the emergency employment of
16 electronic surveillance in accordance with paragraph (2).

17 “(2) Under paragraph (1), the following require-
18 ments shall be satisfied:

19 “(A) The Attorney General shall be informed of
20 the emergency electronic surveillance.

21 “(B) A judge having jurisdiction under section
22 103 shall be informed by the Attorney General or
23 his designee as soon as practicable following such
24 authorization that the decision has been made to
25 employ emergency electronic surveillance.

1 “(C) An application in accordance with this
2 title shall be made to that judge or another judge
3 having jurisdiction under section 103 as soon as
4 practicable, but not more than 7 days after such
5 surveillance is authorized. In the absence of a judi-
6 cial order approving such electronic surveillance, the
7 surveillance shall terminate when the information
8 sought is obtained, when the application for the
9 order is denied, or after the expiration of 7 days
10 from the time of emergency authorization, whichever
11 is earliest. In the event that such application for ap-
12 proval is denied, or in any other case where the elec-
13 tronic surveillance is terminated and no order is
14 issued approving the surveillance, no information ob-
15 tained or evidence derived from such surveillance
16 shall be received in evidence or otherwise disclosed
17 in any trial, hearing, or other proceeding in or be-
18 fore any court, grand jury, department, office, agen-
19 cy, regulatory body, legislative committee, or other
20 authority of the United States, a State, or political
21 subdivision thereof, and no information concerning
22 any United States person acquired from such sur-
23 veillance shall subsequently be used or disclosed in
24 any other manner by Federal officers or employees
25 without the consent of such person, except with the

1 approval of the Attorney General if the information
 2 indicates a threat of death or serious bodily harm to
 3 any person. A denial of the application made under
 4 this subsection may be reviewed as provided in sec-
 5 tion 103.

6 “(D) The official authorizing the emergency
 7 employment of electronic surveillance shall require
 8 that the minimization procedures required by this
 9 title for the issuance of a judicial order be fol-
 10 lowed.”; and

11 (6) in subsection (i)—

12 (A) by striking “a wire or” and inserting
 13 “any”;

14 (B) by striking “chapter” and inserting
 15 “title”; and

16 (C) by adding at the end “, or in response
 17 to certification by the Attorney General or his
 18 designee seeking information, facilities, or tech-
 19 nical assistance from such person under section
 20 102 of this title”.

21 (g) USE OF INFORMATION.—Section 106 of FISA
 22 (50 U.S.C. 1806) is amended—

23 (1) in subsection (i)—

24 (A) by striking “radio”; and

1 (B) by inserting “contain foreign intel-
2 ligence information or” after “the Attorney
3 General determines that the contents” inserting
4 “contain foreign intelligence information or”;
5 and

6 (2) in subsection (k), by striking “1804(a)(7)”
7 and inserting “104(a)(6)”.

8 (h) CONGRESSIONAL OVERSIGHT.—Section 108 of
9 FISA (50 U.S.C. 1808) is amended by adding at the end
10 the following:

11 “(c) DOCUMENT MANAGEMENT SYSTEM FOR APPLI-
12 CATIONS FOR ORDERS APPROVING ELECTRONIC SURVEIL-
13 LANCE.—

14 “(1) SYSTEM PROPOSED.—The Attorney Gen-
15 eral and Director of National Intelligence shall, in
16 consultation with the Director of the Federal Bu-
17 reau of Investigation, the Director of the National
18 Security Agency, the Director of the Central Intel-
19 ligence Agency, and the court established under sec-
20 tion 103(b), conduct a feasibility study to develop
21 and implement a secure, classified document man-
22 agement system that permits the prompt prepara-
23 tion, modification, and review by appropriate per-
24 sonnel of the Department of Justice, the Federal
25 Bureau of Investigation, the National Security

1 Agency, and other applicable elements of the United
2 States Government of applications under section 104
3 before their submittal to that court.

4 “(2) SCOPE OF SYSTEM.—The document man-
5 agement system proposed in paragraph (1) shall—

6 “(A) permit and facilitate the prompt sub-
7 mittal of applications and all other matters, in-
8 cluding electronic filings, to the court estab-
9 lished under section 103(b) under section 104
10 or 105(g)(5); and

11 “(B) permit and facilitate the prompt
12 transmittal of rulings of that court to personnel
13 submitting applications described in paragraph
14 (1).”.

15 (i) AMENDMENTS TO FISA TITLE I RELATING TO
16 WEAPONS OF MASS DESTRUCTION.—

17 (1) Section 101 of FISA, as amended by sub-
18 section (b) of this section, is further amended—

19 (A) in subsection (b)(1)—

20 (i) by striking “or” at the end of sub-
21 paragraph (D);

22 (ii) by redesignating subparagraph
23 (E) as subparagraph (F); and

24 (iii) by inserting after subparagraph
25 (D) the following new subparagraph (E):

1 “(E) engages in the development or pro-
 2 liferation of weapons of mass destruction, or ac-
 3 tivities in preparation therefor; or;”;

4 (B) in subsection (b)(2)(C), by striking
 5 “sabotage or international terrorism” and in-
 6 serting “sabotage, international terrorism, or
 7 the development or proliferation of weapons of
 8 mass destruction”; and

9 (C) by inserting after subsection (k) the
 10 following new subsection (l):

11 “(l) ‘Weapon of mass destruction’ means—

12 “(1) any destructive device (as that term is de-
 13 fined in section 921 of title 18, United States Code)
 14 that is intended or has the capability, to cause death
 15 or serious bodily injury to a significant number of
 16 people;

17 “(2) any weapon that is designed or intended to
 18 cause death or serious bodily injury through the re-
 19 lease, dissemination, or impact of toxic or poisonous
 20 chemicals, or their precursors;

21 “(3) any weapon involving a biological agent,
 22 toxin, or vector (as those terms are defined in sec-
 23 tion 178 of title 18, United States Code); or

1 “(4) any weapon that is designed to release ra-
 2 diation or radioactivity at a level dangerous to
 3 human life.”.

4 (2) Sections 101(e)(1)(B), 106(k)(1)(B), and
 5 305(k)(1)(B) of FISA are each amended by striking
 6 “sabotage or international terrorism” and inserting
 7 “sabotage, international terrorism, or the develop-
 8 ment or proliferation of weapons of mass destruc-
 9 tion”.

10 (j) CONFORMING AMENDMENTS TO TITLES I AND III
 11 OF FISA TO ACCOMMODATE INTERNATIONAL MOVEMENTS
 12 OF TARGETS.—

13 (1) Section 105(e) of FISA is amended by add-
 14 ing at the end the following new paragraph:

15 “(4) An order issued under this section shall remain
 16 in force during the authorized period of surveillance not-
 17 withstanding the absence of the target from the United
 18 States, unless the Government files a motion to extinguish
 19 the order and the court grants the motion.”.

20 (2) Section 304(d) of FISA is amended by add-
 21 ing at the end the following new paragraph:

22 “(4) An order issued under this section shall remain
 23 in force during the authorized period of physical search
 24 notwithstanding the absence of the target from the United

1 States, unless the Government files a motion to extinguish
 2 the order and the court grants the motion.”.

3 **SEC. 10. CONFORMING AMENDMENT TO TABLE OF CON-**
 4 **TENTS.**

5 The table of contents for the Foreign Intelligence
 6 Surveillance Act of 1978 is amended—

7 (1) by striking the item relating to section 102
 8 and inserting the following new item:

“Sec. 102. Electronic surveillance authorization without court order; certifi-
 cation by attorney general; reports to congressional commit-
 tees; transmittal under seal; duties and compensation of com-
 munication common carrier; applications; jurisdiction of
 court.”;

9 (2) by striking the items relating to sections
 10 111, 309, and 404; and

11 (3) by striking the items related to title VII and
 12 section 701 and inserting the following:

“TITLE VII—ELECTRONIC SURVEILLANCE PROGRAMS

“Sec. 701. Definitions.

“Sec. 702. Foreign intelligence surveillance court jurisdiction to review elec-
 tronic surveillance programs.

“Sec. 703. Applications for approval of electronic surveillance programs.

“Sec. 704. Approval of electronic surveillance programs.

“Sec. 705. Congressional oversight.

“TITLE VIII—EFFECTIVE DATE

“Sec. 801. Effective date.”.

