

**Calendar No. 453**110TH CONGRESS  
1ST SESSION**S. 2248****[Report No. 110-209]**

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

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IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2007

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

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**A BILL**

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

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

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

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

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

Sec. 1. Short title; table of contents.

#### TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

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

Sec. 109. Foreign Intelligence Surveillance Court.

Sec. 110. Technical and conforming amendments.

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

Sec. 201. Definitions.

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

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

Sec. 204. Preemption of State investigations.

Sec. 205. Technical amendments.

#### TITLE III—OTHER PROVISIONS

Sec. 301. Severability.

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

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

7 (a) IN GENERAL.—The Foreign Intelligence Surveil-  
 8 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—  
 9 (1) by striking title VII; and  
 10 (2) by adding after title VI the following new  
 11 title:

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

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

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

13 **“SEC. 702. DEFINITIONS.**

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

21 “(b) ADDITIONAL DEFINITIONS.—

22 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-  
23 TEES.—The term ‘congressional intelligence commit-  
24 tees’ means—

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1 States person reasonably believed to be outside the  
2 United States to acquire the contents of a wire or  
3 radio communication sent by or intended to be re-  
4 ceived by that United States person under cir-  
5 cumstances in which a person has a reasonable ex-  
6 pectation of privacy and a warrant would be re-  
7 quired for law enforcement purposes if the technique  
8 were used inside the United States unless—

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

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

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

1           “(ii) issues an ex parte order as re-  
2           requested or as modified approving the tar-  
3           geting of that United States person.

4           “(3) PROCEDURES.—

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

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

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



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

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

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

9       “(e) TARGETING PROCEDURES.—

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

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

20       “(f) MINIMIZATION PROCEDURES.—

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

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

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

6       “(g) CERTIFICATION.—

7               “(1) IN GENERAL.—

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

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

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

3           “(A) attest that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(h) DIRECTIVES.—

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

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

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

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

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

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

22          “(4) CHALLENGING OF DIRECTIVES.—

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

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

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

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

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

24 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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



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

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

7 “(6) APPEAL.—

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

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

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

5           “(i) JUDICIAL REVIEW.—

6           “ (1) IN GENERAL.—

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

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

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

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

1 subsection (e) to assess whether the procedures are  
2 reasonably designed to ensure that the acquisition  
3 authorized under subsection (a) is limited to the tar-  
4 geting of persons reasonably believed to be located  
5 outside the United States.

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

11 “(5) ORDERS.—

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

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

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

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

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

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

20 “(6) APPEAL.—

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

1           sion affirming, reversing, or modifying an order  
2           of the Foreign Intelligence Surveillance Court,  
3           the Court of Review shall provide for the record  
4           a written statement of its reasons.

5           “(B) CONTINUATION OF ACQUISITION  
6           PENDING REHEARING OR APPEAL.—Any acqui-  
7           sitions affected by an order under paragraph  
8           (5)(B) may continue—

9                   “(i) during the pending of any rehear-  
10                  ing of the order by the Court en banc; and

11                   “(ii) during the pendency of any ap-  
12                  peal of the order to the Foreign Intel-  
13                  ligence Surveillance Court of Review.

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

22           “(j) JUDICIAL PROCEEDINGS.—Judicial proceedings  
23           under this section shall be conducted as expeditiously as  
24           possible.

25           “(k) MAINTENANCE OF RECORDS.—

1           “(1) STANDARDS.—A record of a proceeding  
2           under this section, including petitions filed, orders  
3           granted, and statements of reasons for decision,  
4           shall be maintained under security measures adopted  
5           by the Chief Justice of the United States, in con-  
6           sultation with the Attorney General and the Director  
7           of National Intelligence.

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

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

20          “(1) OVERSIGHT.—

21                 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-  
22                 quently than once every 6 months, the Attorney  
23                 General and Director of National Intelligence shall  
24                 assess compliance with the targeting and minimiza-

1 tion procedures required by subsections (e) and (f)  
2 and shall submit each such assessment to—

3 “(A) the Foreign Intelligence Surveillance  
4 Court; and

5 “(B) the congressional intelligence commit-  
6 tees.

7 “(2) AGENCY ASSESSMENT.—The Inspectors  
8 General of the Department of Justice and of any  
9 element of the intelligence community authorized to  
10 acquire foreign intelligence information under sub-  
11 section (a)—

12 “(A) are authorized to review the compli-  
13 ance of their agency or element with the tar-  
14 geting and minimization procedures required by  
15 subsections (e) and (f);

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

1           “(C) with respect to acquisitions author-  
2           ized under subsection (a), shall review the num-  
3           ber of targets that were later determined to be  
4           located in the United States and the number of  
5           persons located in the United States whose  
6           communications were reviewed; and

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

8                   “(i) the Attorney General;

9                   “(ii) the Director of National Intel-  
10           ligence; and

11                   “(iii) the congressional intelligence  
12           committees.

13           “(3) ANNUAL REVIEW.—

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

24                   “(i) an accounting of the number of  
25           disseminated intelligence reports con-



1           taining a reference to a United States per-  
2           son identity;

3           “(ii) an accounting of the number of  
4           United States person identities subse-  
5           quently disseminated by that element in re-  
6           sponse to requests for identities that were  
7           not referred to by name or title in the  
8           original reporting; and

9           “(iii) the number of targets that were  
10          later determined to be located in the  
11          United States and the number of persons  
12          located in the United States whose commu-  
13          nications were reviewed.

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

22          “(C) PROVISION OF REVIEW TO FOREIGN  
23          INTELLIGENCE SURVEILLANCE COURT.—The  
24          head of each element of the intelligence commu-  
25          nity that conducts an annual review under sub-

1 paragraph (A) shall provide such review to the  
2 Foreign Intelligence Surveillance Court.

3 “(4) REPORTS TO CONGRESS.—

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

12 “(B) CONTENT.—Each report made under  
13 subparagraph (A) shall include—

14 “(i) any certifications made under  
15 subsection (g) during the reporting period;

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

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

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

4           “(v) any compliance reviews con-  
5           ducted by the Department of Justice or  
6           the Office of the Director of National In-  
7           telligence of acquisitions authorized under  
8           subsection (a);

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

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

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

23           “(vii) any procedures implementing  
24          this section; and

1                   “(viii) any annual review conducted  
2                   pursuant to paragraph (3).

3   **“SEC. 704. USE OF INFORMATION ACQUIRED UNDER SEC-**  
4                   **TION 703.**

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

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

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

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

15           and

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

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

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

“Sec. 702. Definitions.

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

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

17           (c) SUNSET.—

18                   (1) IN GENERAL.—Except as provided in para-  
19 graph (2), the amendments made by subsections

20                   (a)(2) and (b) shall cease to have effect on Decem-  
21                   ber 31, 2013.

1           (2) CONTINUING APPLICABILITY.—Section  
 2           703(h)(3) of the Foreign Intelligence Surveillance  
 3           Act of 1978 (as amended by subsection (a)) shall re-  
 4           main in effect with respect to any directive issued  
 5           pursuant to section 703(h) of that Act (as so  
 6           amended) during the period such directive was in ef-  
 7           fect. The use of information acquired by an acquisi-  
 8           tion conducted under section 703 of that Act (as so  
 9           amended) shall continue to be governed by the provi-  
 10          sions of section 704 of that Act (as so amended).

11 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**  
 12                           **ELECTRONIC SURVEILLANCE AND INTERCEP-**  
 13                           **TION OF DOMESTIC COMMUNICATIONS MAY**  
 14                           **BE CONDUCTED.**

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

19 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-  
 20           TRONIC SURVEILLANCE AND INTERCEPTION OF DO-  
 21           MESTIC COMMUNICATIONS MAY BE CONDUCTED

22           “SEC. 112. Chapters 119 and 121 of title 18, United  
 23 States Code, and this Act shall be the exclusive means by  
 24 which electronic surveillance (as defined in section 101(f),  
 25 regardless of the limitation of section 701) and the inter-

1 ception of domestic wire, oral, or electronic communica-  
 2 tions may be conducted.”.

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

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

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

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

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

18 “(c) The Attorney General shall submit to the com-  
 19 mittees of Congress referred to in subsection (a) a copy  
 20 of any decision, order, or opinion issued by the court es-  
 21 tablished under section 103(a) or the court of review es-  
 22 tablished under section 103(b) that includes significant  
 23 construction or interpretation of any provision of this Act

1 not later than 45 days after such decision, order, or opin-  
2 ion is issued.”.

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

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

6 (1) in subsection (a)—

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

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

11 (C) in paragraph (5), as redesignated by  
12 subparagraph (B) of this paragraph, by striking  
13 “detailed”;

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

17 (i) by striking “Affairs or” and insert-  
18 ing “Affairs,”; and

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

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

1 “statement of” and inserting “summary state-  
2 ment of”;

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

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

9 (2) by striking subsection (b);

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

12 (4) in paragraph (1)(A) of subsection (d), as re-  
13 designated by paragraph (3) of this subsection, by  
14 striking “or the Director of National Intelligence”  
15 and inserting “the Director of National Intelligence,  
16 or the Director of the Central Intelligence Agency”.

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

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

20 (1) in subsection (a)—

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

22 (B) by redesignating paragraphs (2)  
23 through (5) as paragraphs (1) through (4), re-  
24 spectively;



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

3           (3) in subsection (c)(1)—

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

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

8                 (C) by striking subparagraph (F);

9           (4) by striking subsection (d);

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

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

14           “(e)(1) Notwithstanding any other provision of this  
15 title, the Attorney General may authorize the emergency  
16 employment of electronic surveillance if the Attorney Gen-  
17 eral—

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

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

1           “(C) informs, either personally or through a  
2           designee, a judge having jurisdiction under section  
3           103 at the time of such authorization that the deci-  
4           sion has been made to employ emergency electronic  
5           surveillance; and

6           “(D) makes an application in accordance with  
7           this title to a judge having jurisdiction under section  
8           103 as soon as practicable, but not later than 168  
9           hours after the Attorney General authorizes such  
10          surveillance.

11          “(2) If the Attorney General authorizes the emer-  
12          gency employment of electronic surveillance under para-  
13          graph (1), the Attorney General shall require that the  
14          minimization procedures required by this title for the  
15          issuance of a judicial order be followed.

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

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

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

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

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

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

18 “(i) In any case in which the Government makes an  
19 application to a judge under this title to conduct electronic  
20 surveillance involving communications and the judge  
21 grants such application, upon the request of the applicant,  
22 the judge shall also authorize the installation and use of  
23 pen registers and trap and trace devices, and direct the  
24 disclosure of the information set forth in section  
25 402(d)(2).”.

1 **SEC. 106. USE OF INFORMATION.**

2 Subsection (i) of section 106 of the Foreign Intel-  
3 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is  
4 amended by striking “radio communication” and inserting  
5 “communication”.

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

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

10 (1) in subsection (a)—

11 (A) by striking paragraph (2);

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

15 (C) in paragraph (2), as redesignated by  
16 subparagraph (B) of this paragraph, by striking  
17 “detailed”;

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

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

24 (i) by striking “Affairs or” and insert-  
25 ing “Affairs,”; and

1                   (ii) by striking “Senate—” and insert-  
2                   ing “Senate, or the Deputy Director of the  
3                   Federal Bureau of Investigation, if des-  
4                   ignated by the President as a certifying of-  
5                   ficial—”; and

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

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

13                   (1) in subsection (a)—

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

15                           (B) by redesignating paragraphs (2)  
16                   through (5) as paragraphs (1) through (4), re-  
17                   spectively; and

18                   (2) by amending subsection (e) to read as fol-  
19                  lows:

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

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

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

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

6 “(C) informs, either personally or through a  
7 designee, a judge of the Foreign Intelligence Surveil-  
8 lance Court at the time of such authorization that  
9 the decision has been made to employ an emergency  
10 physical search; and

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

16 “(2) If the Attorney General authorizes the emer-  
17 gency employment of a physical search under paragraph  
18 (1), the Attorney General shall require that the minimiza-  
19 tion procedures required by this title for the issuance of  
20 a judicial order be followed.

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

1 hours from the time of authorization by the Attorney Gen-  
2 eral, whichever is earliest.

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

5 “(5)(A) In the event that such application for ap-  
6 proval is denied, or in any other case where the physical  
7 search is terminated and no order is issued approving the  
8 physical search, no information obtained or evidence de-  
9 rived from such physical search shall be received in evi-  
10 dence or otherwise disclosed in any trial, hearing, or other  
11 proceeding in or before any court, grand jury, department,  
12 office, agency, regulatory body, legislative committee, or  
13 other authority of the United States, a State, or political  
14 subdivision thereof, and no information concerning any  
15 United States person acquired from such physical search  
16 shall subsequently be used or disclosed in any other man-  
17 ner by Federal officers or employees without the consent  
18 of such person, except with the approval of the Attorney  
19 General if the information indicates a threat of death or  
20 serious bodily harm to any person.

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

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

1 (1) in section 304(a)(4), as redesignated by  
2 subsection (b) of this section, by striking  
3 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

4 (2) in section 305(k)(2), by striking  
5 “303(a)(7)” and inserting “303(a)(6)”.

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

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

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

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

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

15 (a) DESIGNATION OF JUDGES.—Subsection (a) of  
16 section 103 of the Foreign Intelligence Surveillance Act  
17 of 1978 (50 U.S.C. 1803) is amended by inserting “at  
18 least” before “seven of the United States judicial cir-  
19 cuits”.

20 (b) EN BANC AUTHORITY.—

21 (1) IN GENERAL.—Subsection (a) of section  
22 103 of the Foreign Intelligence Surveillance Act of  
23 1978, as amended by subsection (a) of this section,  
24 is further amended—

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



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

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

10 “(i) en banc consideration is necessary to se-  
11 cure or maintain uniformity of the court’s decisions;  
12 or

13 “(ii) the proceeding involves a question of ex-  
14 ceptional importance.

15 “(B) Any authority granted by this Act to a judge  
16 of the court established under this subsection may be exer-  
17 cised by the court en banc. When exercising such author-  
18 ity, the court en banc shall comply with any requirements  
19 of this Act on the exercise of such authority.

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

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

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

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

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

12 (1) by redesignating subsection (f) as sub-  
13 section (g); and

14 (2) by inserting after subsection (e) the fol-  
15 lowing new subsection:

16 “(f)(1) A judge of the court established under sub-  
17 section (a), the court established under subsection (b) or  
18 a judge of that court, or the Supreme Court of the United  
19 States or a justice of that court, may, in accordance with  
20 the rules of their respective courts, enter a stay of an order  
21 or an order modifying an order of the court established  
22 under subsection (a) or the court established under sub-  
23 section (b) entered under any title of this Act, while the  
24 court established under subsection (a) conducts a rehear-  
25 ing, while an appeal is pending to the court established

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

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

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

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

10 (1) in paragraph (1), by striking “105B(h) or  
11 501(f)(1)” and inserting “501(f)(1) or 703”; and

12 (2) in paragraph (2), by striking “105B(h) or  
13 501(f)(1)” and inserting “501(f)(1) or 703”.

14 **TITLE II—PROTECTIONS FOR**  
15 **ELECTRONIC COMMUNICA-**  
16 **TION SERVICE PROVIDERS**

17 **SEC. 201. DEFINITIONS.**

18 In this title:

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

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

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

8                   (A) alleges that an electronic communica-  
9 tion service provider furnished assistance to an  
10 element of the intelligence community; and

11                   (B) seeks monetary or other relief from the  
12 electronic communication service provider re-  
13 lated to the provision of such assistance.

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

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

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

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

1 (D) any other communication service pro-  
2 vider who has access to wire or electronic com-  
3 munications either as such communications are  
4 transmitted or as such communications are  
5 stored;

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

9 (F) an officer, employee, or agent of an en-  
10 tity described in subparagraph (A), (B), (C),  
11 (D), or (E).

12 (5) ELEMENT OF THE INTELLIGENCE COMMU-  
13 NITY.—The term “element of the intelligence com-  
14 munity” means an element of the intelligence com-  
15 munity specified in or designated under section 3(4)  
16 of the National Security Act of 1947 (50 U.S.C.  
17 401a(4)).

18 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**  
19 **TRONIC COMMUNICATION SERVICE PRO-**  
20 **VIDERS.**

21 (a) LIMITATIONS.—

22 (1) IN GENERAL.—Notwithstanding any other  
23 provision of law, a covered civil action shall not lie  
24 or be maintained in a Federal or State court, and

1 shall be promptly dismissed, if the Attorney General  
2 certifies to the court that—

3 (A) the assistance alleged to have been  
4 provided by the electronic communication serv-  
5 ice provider was—

6 (i) in connection with an intelligence  
7 activity involving communications that  
8 was—

9 (I) authorized by the President  
10 during the period beginning on Sep-  
11 tember 11, 2001, and ending on Jan-  
12 uary 17, 2007; and

13 (II) designed to detect or prevent  
14 a terrorist attack, or activities in  
15 preparation for a terrorist attack,  
16 against the United States; and

17 (ii) described in a written request or  
18 directive from the Attorney General or the  
19 head of an element of the intelligence com-  
20 munity (or the deputy of such person) to  
21 the electronic communication service pro-  
22 vider indicating that the activity was—

23 (I) authorized by the President;

24 and

25 (II) determined to be lawful; or

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

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

6 (b) REVIEW OF CERTIFICATIONS.—If the Attorney  
7 General files a declaration under section 1746 of title 28,  
8 United States Code, that disclosure of a certification made  
9 pursuant to subsection (a) would harm the national secu-  
10 rity of the United States, the court shall—

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

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

19 (c) NONDELEGATION.—The authority and duties of  
20 the Attorney General under this section shall be performed  
21 by the Attorney General (or Acting Attorney General) or  
22 a designee in a position not lower than the Deputy Attor-  
23 ney General.

24 (d) CIVIL ACTIONS IN STATE COURT.—A covered  
25 civil action that is brought in a State court shall be

1 deemed to arise under the Constitution and laws of the  
 2 United States and shall be removable under section 1441  
 3 of title 28, United States Code.

4 (e) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
 5 tion may be construed to limit any otherwise available im-  
 6 munity, privilege, or defense under any other provision of  
 7 law.

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

11 **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY**  
 12 **DEFENSES UNDER THE FOREIGN INTEL-**  
 13 **LIGENCE SURVEILLANCE ACT OF 1978.**

14 The Foreign Intelligence Surveillance Act of 1978  
 15 (50 U.S.C. 1801 et seq.), as amended by section 101, is  
 16 further amended by adding after title VII the following  
 17 new title:

18 **“TITLE VIII—PROTECTION OF**  
 19 **PERSONS ASSISTING THE**  
 20 **GOVERNMENT**

21 **“SEC. 801. DEFINITIONS.**

22 “In this title:

23 “(1) **ASSISTANCE.**—The term ‘assistance’  
 24 means the provision of, or the provision of access to,  
 25 information (including communication contents,



1 communications records, or other information relat-  
2 ing to a customer or communication), facilities, or  
3 another form of assistance.

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

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

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

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

15 “(B) a provider of electronic communica-  
16 tions service, as that term is defined in section  
17 2510 of title 18, United States Code;

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

21 “(D) any other communication service pro-  
22 vider who has access to wire or electronic com-  
23 munications either as such communications are  
24 transmitted or as such communications are  
25 stored;

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

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

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

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

14               “(A) an electronic communication service  
15               provider; or

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

19                       “(i) an order of the court established  
20                       under section 103(a) directing such assist-  
21                       ance;

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

1                   “(iii) a directive under section  
2                   102(a)(4), 105B(e), as in effect on the day  
3                   before the date of the enactment of the  
4                   FISA Amendments Act of 2007 or 703(h).

5                   “(7) STATE.—The term ‘State’ means any  
6                   State, political subdivision of a State, the Common-  
7                   wealth of Puerto Rico, the District of Columbia, and  
8                   any territory or possession of the United States, and  
9                   includes any officer, public utility commission, or  
10                  other body authorized to regulate an electronic com-  
11                  munication service provider.

12 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**  
13 **DEFENSES.**

14                  “(a) REQUIREMENT FOR CERTIFICATION.—

15                  “(1) IN GENERAL.—Notwithstanding any other  
16                  provision of law, no civil action may lie or be main-  
17                  tained in a Federal or State court against any per-  
18                  son for providing assistance to an element of the in-  
19                  telligence community, and shall be promptly dis-  
20                  missed, if the Attorney General certifies to the court  
21                  that—

22                  “(A) any assistance by that person was  
23                  provided pursuant to an order of the court es-  
24                  tablished under section 103(a) directing such  
25                  assistance;

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

5           “(C) any assistance by that person was  
6           provided pursuant to a directive under sections  
7           102(a)(4), 105B(e), as in effect on the day be-  
8           fore the date of the enactment of the FISA  
9           Amendments Act of 2007, or 703(h) directing  
10          such assistance; or

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

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

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

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

23                 “(2) limit any public disclosure concerning such  
24                 certification, including any public order following  
25                 such an ex parte review, to a statement that the con-

1       ditions of subsection (a) have been met, without dis-  
2       closing the subparagraph of subsection (a)(1) that is  
3       the basis for the certification.

4       “(c) REMOVAL.—A civil action against a person for  
5       providing assistance to an element of the intelligence com-  
6       munity that is brought in a State court shall be deemed  
7       to arise under the Constitution and laws of the United  
8       States and shall be removable under section 1441 of title  
9       28, United States Code.

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

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

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

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

22       **“SEC. 803. PREEMPTION.**

23       “(a) IN GENERAL.—No State shall have authority  
24       to—

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

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

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

11          “(4) commence or maintain a civil action or  
12          other proceeding to enforce a requirement that an  
13          electronic communication service provider disclose  
14          information concerning alleged assistance to an ele-  
15          ment of the intelligence community.

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

19          “(c) JURISDICTION.—The district courts of the  
20          United States shall have jurisdiction over any civil action  
21          brought by the United States to enforce the provisions of  
22          this section.

23          “(d) APPLICATION.—This section shall apply to any  
24          investigation, action, or proceeding that is pending on or

1 filed after the date of enactment of the FISA Amendments  
2 Act of 2007.”.

3 **SEC. 205. TECHNICAL AMENDMENTS.**

4 The table of contents in the first section of the For-  
5 eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
6 1801 et seq.), as amended by section 101(b), is further  
7 amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE  
GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.

8 **TITLE III—OTHER PROVISIONS**

9 **SEC. 301. SEVERABILITY.**

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

16 **SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCE-  
17 DURES.**

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

21 (b) REPEAL.—

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

5           (2) TABLE OF CONTENTS.—The table of con-  
6           tents in the first section of the Foreign Intelligence  
7           Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
8           is amended by striking the items relating to sections  
9           105A, 105B, and 105C.

10          (c) TRANSITIONS PROCEDURES.—

11           (1) PROTECTION FROM LIABILITY.—Notwith-  
12           standing subsection (b)(1), subsection (l) of section  
13           105B of the Foreign Intelligence Surveillance Act of  
14           1978 shall remain in effect with respect to any di-  
15           rectives issued pursuant to such section 105B for in-  
16           formation, facilities, or assistance provided during  
17           the period such directive was or is in effect.

18           (2) ORDERS IN EFFECT.—

19           (A) ORDERS IN EFFECT ON DATE OF EN-  
20           ACTMENT.—Notwithstanding any other provi-  
21           sion of this Act or of the Foreign Intelligence  
22           Surveillance Act of 1978—

23                   (i) any order in effect on the date of  
24                   enactment of this Act issued pursuant to  
25                   the Foreign Intelligence Surveillance Act of



1           1978 or section 6(b) of the Protect Amer-  
2           ica Act of 2007 (Public Law 110–55; 121  
3           Stat. 556) shall remain in effect until the  
4           date of expiration of such order; and

5           (ii) at the request of the applicant,  
6           the court established under section 103(a)  
7           of the Foreign Intelligence Surveillance Act  
8           of 1978 (50 U.S.C. 1803(a)) shall reau-  
9           thorize such order if the facts and cir-  
10          cumstances continue to justify issuance of  
11          such order under the provisions of such  
12          Act, as in effect on the day before the date  
13          of the enactment of the Protect America  
14          Act of 2007, except as amended by sec-  
15          tions 102, 103, 104, 105, 106, 107, 108,  
16          and 109 of this Act.

17          (B) ORDERS IN EFFECT ON DECEMBER 31,  
18          2013.—Any order issued under title VII of the  
19          Foreign Intelligence Surveillance Act of 1978,  
20          as amended by section 101 of this Act, in effect  
21          on December 31, 2013, shall continue in effect  
22          until the date of the expiration of such order.  
23          Any such order shall be governed by the appli-  
24          cable provisions of the Foreign Intelligence Sur-  
25          veillance Act of 1978, as so amended.

1           (3) AUTHORIZATIONS AND DIRECTIVES IN EF-  
2       FECT.—

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

1           (B) AUTHORIZATIONS AND DIRECTIVES IN  
2           EFFECT ON DECEMBER 31, 2013.—Any author-  
3           ization or directive issued under title VII of the  
4           Foreign Intelligence Surveillance Act of 1978,  
5           as amended by section 101 of this Act, in effect  
6           on December 31, 2013, shall continue in effect  
7           until the date of the expiration of such author-  
8           ization or directive. Any such authorization or  
9           directive shall be governed by the applicable  
10          provisions of the Foreign Intelligence Surveil-  
11          lance Act of 1978, as so amended, and, except  
12          as provided in section 704 of the Foreign Intel-  
13          ligence Surveillance Act of 1978, as so amend-  
14          ed, any acquisition pursuant to such authoriza-  
15          tion or directive shall be deemed not to con-  
16          stitute electronic surveillance (as that term is  
17          defined in section 101(f) of the Foreign Intel-  
18          ligence Surveillance Act of 1978, to the extent  
19          that such section 101(f) is limited by section  
20          701 of the Foreign Intelligence Surveillance Act  
21          of 1978, as so amended).

22          (4) USE OF INFORMATION ACQUIRED UNDER  
23          PROTECT AMERICA ACT.—Information acquired from  
24          an acquisition conducted under the Protect America  
25          Act of 2007, and the amendments made by that Act,

1 shall be deemed to be information acquired from an  
2 electronic surveillance pursuant to title I of the For-  
3 eign Intelligence Surveillance Act of 1978 (50  
4 U.S.C. 1801 et seq.) for purposes of section 106 of  
5 that Act (50 U.S.C. 1806), except for purposes of  
6 subsection (j) of such section.

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

10 (A) the government may file an application  
11 for an order under the Foreign Intelligence  
12 Surveillance Act of 1978, as in effect on the  
13 day before the date of the enactment of the  
14 Protect America Act of 2007, except as amend-  
15 ed by sections 102, 103, 104, 105, 106, 107,  
16 108, and 109 of this Act; and

17 (B) the court established under section  
18 103(a) of the Foreign Intelligence Surveillance  
19 Act of 1978 shall enter an order granting such  
20 an application if the application meets the re-  
21 quirements of such Act, as in effect on the day  
22 before the date of the enactment of the Protect  
23 America Act of 2007, except as amended by  
24 sections 102, 103, 104, 105, 106, 107, 108,  
25 and 109 of this Act.

1           (6) EXTANT AUTHORIZATIONS.—At the request  
2 of the applicant, the court established under section  
3 103(a) of the Foreign Intelligence Surveillance Act  
4 of 1978 shall extinguish any extant authorization to  
5 conduct electronic surveillance or physical search en-  
6 tered pursuant to such Act.

7           (7) APPLICABLE PROVISIONS.—Any surveillance  
8 conducted pursuant to an order entered pursuant to  
9 this subsection shall be subject to the provisions of  
10 the Foreign Intelligence Surveillance Act of 1978, as  
11 in effect on the day before the date of the enactment  
12 of the Protect America Act of 2007, except as  
13 amended by sections 102, 103, 104, 105, 106, 107,  
14 108, and 109 of this Act.

Calendar No. 453

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 2248**

[Report No. 110-209]

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## **A BILL**

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

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OCTOBER 26, 2007

Read twice and placed on the calendar