

Calendar No. 530

110TH CONGRESS
1ST SESSION

S. 2441

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2007

Mr. REID introduced the following bill; which was read the first time

DECEMBER 11, 2007

Read the second time and placed on the calendar

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 certain communications may be conducted.

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

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

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

Sec. 109. Foreign Intelligence Surveillance Court.

Sec. 110. Review of previous actions.

Sec. 111. Technical and conforming amendments.

TITLE 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

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

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

8 **“SEC. 701. DEFINITIONS.**

9 “In this title:

10 “(1) IN GENERAL.—The terms ‘agent of a for-

11 eign power’, ‘Attorney General’, ‘contents’, ‘elec-

12 tronic surveillance’, ‘foreign intelligence informa-

13 tion’, ‘foreign power’, ‘minimization procedures’,

14 ‘person’, ‘United States’, and ‘United States person’

15 shall have the meanings given such terms in section

16 101.

17 “(2) ADDITIONAL DEFINITIONS.—

18 “(A) CONGRESSIONAL INTELLIGENCE COM-

19 MITTEES.—The term ‘congressional intelligence

20 committees’ means—

21 “(i) the Select Committee on Intel-

22 ligence of the Senate; and

23 “(ii) the Permanent Select Committee

24 on Intelligence of the House of Represent-

25 atives.

1 “(B) FOREIGN INTELLIGENCE SURVEIL-
2 LANCE COURT; COURT.—The terms ‘Foreign In-
3 telligence Surveillance Court’ and ‘Court’ mean
4 the court established by section 103(a).

5 “(C) FOREIGN INTELLIGENCE SURVEIL-
6 LANCE COURT OF REVIEW; COURT OF RE-
7 VIEW.—The terms ‘Foreign Intelligence Surveil-
8 lance Court of Review’ and ‘Court of Review’
9 mean the court established by section 103(b).

10 “(D) ELECTRONIC COMMUNICATION SERV-
11 ICE PROVIDER.—The term ‘electronic commu-
12 nication service provider’ means—

13 “(i) a telecommunications carrier, as
14 that term is defined in section 3 of the
15 Communications Act of 1934 (47 U.S.C.
16 153);

17 “(ii) a provider of electronic commu-
18 nications service, as that term is defined in
19 section 2510 of title 18, United States
20 Code;

21 “(iii) a provider of a remote com-
22 puting service, as that term is defined in
23 section 2711 of title 18, United States
24 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 a significant purpose of such acquisition is to ac-
7 quire the communications of a specific person rea-
8 sonably believed to be located in the United States,
9 except in accordance 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 under sub-
18 section (a) that constitutes electronic surveillance
19 and occurs inside the United States may not inten-
20 tionally target a United States person reasonably be-
21 lieved to be outside the United States, except in ac-
22 cordance with the procedures under title I.

23 “(2) ACQUISITION OUTSIDE THE UNITED
24 STATES OF UNITED STATES PERSONS OUTSIDE THE
25 UNITED STATES.—

1 “(A) IN GENERAL.—An acquisition by an
2 electronic, mechanical, or other surveillance de-
3 vice outside the United States may not inten-
4 tionally target a United States person reason-
5 ably believed to be outside the United States to
6 acquire the contents of a wire or radio commu-
7 nication sent by or intended to be received by
8 that United States person under circumstances
9 in which a person has reasonable expectation of
10 privacy and a warrant would be required for
11 law enforcement purposes if the technique were
12 used inside the United States unless—

13 “(i) the Foreign Intelligence Surveil-
14 lance Court has entered an order approv-
15 ing electronic surveillance of that United
16 States person under section 105, or in the
17 case of an emergency situation, electronic
18 surveillance against the target is being
19 conducted in a manner consistent with title
20 I; or

21 “(ii)(I) the Foreign Intelligence Sur-
22 veillance Court has entered a order under
23 subparagraph (B) that there is probable
24 cause to believe that the United States

1 person is a foreign power or an agent of a
2 foreign power;

3 “(II) the Attorney General has estab-
4 lished minimization procedures for that ac-
5 quisition that meet the definition of mini-
6 mization procedures under section 101(h);
7 and

8 “(III) the dissemination provisions of
9 the minimization procedures described in
10 subclause (II) have been approved under
11 subparagraph (C).

12 “(B) PROBABLE CAUSE DETERMINATION;
13 REVIEW.—

14 “(i) IN GENERAL.—The Attorney
15 General may submit to the Foreign Intel-
16 ligence Surveillance Court the determina-
17 tion of the Attorney General, together with
18 any supporting affidavits, that a United
19 States person who is outside the United
20 States is a foreign power or an agent of a
21 foreign power.

22 “(ii) REVIEW.—The Court shall re-
23 view, any probable cause determination
24 submitted by the Attorney General under
25 this subparagraph. The review under this

1 clause shall be limited to whether, on the
2 basis of the facts submitted by the Attor-
3 ney General, there is probable cause to be-
4 lieve that the United States person who is
5 outside the United States is a foreign
6 power or an agent of a foreign power.

7 “(iii) ORDER.—If the Court, after
8 conducting a review under clause (ii), de-
9 termines that there is probable cause to
10 believe that the United States person is a
11 foreign power or an agent of a foreign
12 power, the court shall issue an order ap-
13 proving the acquisition. An order under
14 this clause shall be effective for 90 days,
15 and may be renewed for additional 90-day
16 periods.

17 “(iv) NO PROBABLE CAUSE.—If the
18 Court, after conducting a review under
19 clause (ii), determines that there is not
20 probable cause to believe that a United
21 States person is a foreign power or an
22 agent of a foreign power, it shall enter an
23 order so stating and provide a written
24 statement for the record of the reasons for
25 such determination. The Government may

1 appeal an order under this clause to the
2 Foreign Intelligence Surveillance Court of
3 Review.

4 “(C) REVIEW OF MINIMIZATION PROCE-
5 DURES.—

6 “(i) IN GENERAL.—The Foreign Intel-
7 ligence Surveillance Court shall review the
8 minimization procedures applicable to dis-
9 semination of information obtained
10 through an acquisition authorized under
11 subparagraph (A) to assess whether such
12 procedures meet the definition of mini-
13 mization procedures under section 101(h)
14 with respect to dissemination.

15 “(ii) REVIEW.—The Court shall issue
16 an order approving the procedures applica-
17 ble to dissemination as submitted or as
18 modified to comply with section 101(h).

19 “(iii) PROCEDURES DO NOT MEET
20 DEFINITION.—If the Court determines that
21 the procedures applicable to dissemination
22 of information obtained through an acqui-
23 sition authorized under subparagraph (A)
24 do not meet the definition of minimization
25 procedures under section 101(h) with re-

1 spect to dissemination, it shall enter an
2 order so stating and provide a written
3 statement for the record of the reasons for
4 such determination. The Government may
5 appeal an order under this clause to the
6 Foreign Intelligence Surveillance Court of
7 Review.

8 “(D) EMERGENCY PROCEDURES.—

9 “(i) IN GENERAL.—Notwithstanding
10 any other provision of this paragraph, the
11 Attorney General may authorize the emer-
12 gency employment of an acquisition under
13 subparagraph (A) if the Attorney Gen-
14 eral—

15 “(I) reasonably determines
16 that—

17 “(aa) an emergency situa-
18 tion exists with respect to the
19 employment of an acquisition
20 under subparagraph (A) before a
21 determination of probable cause
22 can with due diligence be ob-
23 tained; and

24 “(bb) the factual basis for
25 issuance of a determination

1 under subparagraph (B) to ap-
2 prove such an acquisition exists;

3 “(II) informs a judge of the For-
4 eign Intelligence Surveillance Court at
5 the time of such authorization that
6 the decision has been made to employ
7 an emergency acquisition;

8 “(III) submits a request in ac-
9 cordance with subparagraph (B) to
10 the judge notified under subclause
11 (II) as soon as practicable, but later
12 than 72 hours after the Attorney Gen-
13 eral authorizes such an acquisition;
14 and

15 “(IV) requires that minimization
16 procedures meeting the definition of
17 minimization procedures under section
18 101(h) be followed.

19 “(ii) TERMINATION.—In the absence
20 of a judicial determination finding probable
21 cause to believe that the United States
22 person that is the subject of an emergency
23 employment of an acquisition under clause
24 (i) is a foreign power or an agent of a for-
25 eign power, the emergency employment of

1 an acquisition under clause (i) shall termi-
2 nate when the information sought is ob-
3 tained, when the request for a determina-
4 tion is denied, or after the expiration of 72
5 hours from the time of authorization by
6 the Attorney General, whichever is earliest.

7 “(iii) USE OF INFORMATION.—If the
8 Court determines that there is not prob-
9 able cause to believe that a United States
10 is a foreign power or an agent of a foreign
11 power in response to a request for a deter-
12 mination under clause (i)(III), or in any
13 other case where the emergency employ-
14 ment of an acquisition under this subpara-
15 graph is terminated and no determination
16 finding probable cause is issued, no infor-
17 mation obtained or evidence derived from
18 such acquisition shall be received in evi-
19 dence or otherwise disclosed in any trial,
20 hearing, or other proceeding in or before
21 any court, grand jury, department, office,
22 agency, regulatory body, legislative com-
23 mittee, or other authority of the United
24 States, a State, or political subdivision
25 thereof, and no information concerning any

1 United States person acquired from such
2 acquisition shall subsequently be used or
3 disclosed in any other manner by Federal
4 officers or employees without the consent
5 of such person, except with the approval of
6 the Attorney General if the information in-
7 dicates a threat of death or serious bodily
8 harm to any person.

9 “(3) PROCEDURES.—

10 “(A) SUBMITTAL TO FOREIGN INTEL-
11 LIGENCE SURVEILLANCE COURT.—Not later
12 than 30 days after the date of the enactment of
13 the FISA Amendments Act of 2007, the Attor-
14 ney General shall submit to the Foreign Intel-
15 ligence Surveillance Court the procedures to be
16 used in determining whether a target reason-
17 ably believed to be outside the United States is
18 a United States person.

19 “(B) REVIEW BY FOREIGN INTELLIGENCE
20 SURVEILLANCE COURT.—The Foreign Intel-
21 ligence Surveillance Court shall review, the pro-
22 cedures submitted under subparagraph (A), and
23 shall approve those procedures if they are rea-
24 sonably designed to determine whether a target
25 reasonably believed to be outside the United

1 States is a United States person. If the Court
2 concludes otherwise, the Court shall enter an
3 order so stating and provide a written state-
4 ment for the record of the reasons for such de-
5 termination. The Government may appeal such
6 an order to the Foreign Intelligence Surveil-
7 lance Court of Review.

8 “(C) USE IN TARGETING.—Any targeting
9 of persons reasonably believed to be located out-
10 side the United States shall use the procedures
11 approved by the Foreign Intelligence Surveil-
12 lance Court under subparagraph (B). Any new
13 or amended procedures may be used with re-
14 spect to the targeting of persons reasonably be-
15 lieved to be located outside the United States
16 upon approval of the new or amended proce-
17 dures by the Court, which shall review such
18 procedures under paragraph (B).

19 “(4) TRANSITION PROCEDURES CONCERNING
20 THE TARGETING OF UNITED STATES PERSONS OVER-
21 SEAS.—Any authorization in effect on the date of
22 enactment of the FISA Amendments Act of 2007
23 under section 2.5 of Executive Order 12333 to in-
24 tentiously target a United States person reasonably
25 believed to be located outside the United States, to

1 acquire the contents of a wire or radio communica-
2 tion sent by or intended to be received by that
3 United States person, shall remain in effect, and
4 shall constitute a sufficient basis for conducting
5 such an acquisition of a United States person lo-
6 cated outside the United States, until that author-
7 ization expires or 90 days after the date of enact-
8 ment of the FISA Amendments Act of 2007, which-
9 ever is earlier.

10 “(d) CONDUCT OF ACQUISITION.—An acquisition au-
11 thorized under subsection (a) may be conducted only in
12 accordance with—

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

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

18 “(e) TARGETING PROCEDURES.—

19 “(1) REQUIREMENT TO ADOPT.—The Attorney
20 General, in consultation with the Director of Na-
21 tional Intelligence, shall adopt targeting procedures
22 that are reasonably designed to ensure that any ac-
23 quisition authorized under subsection (a) is limited
24 to targeting persons reasonably believed to be lo-
25 cated outside the United States, and that an appli-

1 cation is filed under title I, if otherwise required,
2 when a significant purpose of an acquisition author-
3 ized under subsection (a) is to acquire the commu-
4 nications of a specific person reasonably believed to
5 be located in the United States.

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

9 “(f) MINIMIZATION PROCEDURES.—

10 “(1) REQUIREMENT TO ADOPT.—The Attorney
11 General, in consultation with the Director of Na-
12 tional Intelligence, shall adopt, consistent with the
13 requirements of section 101(h), minimization proce-
14 dures for acquisitions authorized under subsection
15 (a).

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

19 “(g) CERTIFICATION.—

20 “(1) IN GENERAL.—

21 “(A) REQUIREMENT.—Subject to subpara-
22 graph (B), prior to the initiation of an acquisi-
23 tion authorized under subsection (a), the Attor-
24 ney General and the Director of National Intel-

1 intelligence shall provide, under oath, a written cer-
2 tification, as described in this subsection.

3 “(B) EXCEPTION.—If the Attorney Gen-
4 eral and the Director of National Intelligence
5 determine that immediate action by the Govern-
6 ment is required and time does not permit the
7 preparation of a certification under this sub-
8 section prior to the initiation of an acquisition,
9 the Attorney General and the Director of Na-
10 tional Intelligence shall prepare such certifi-
11 cation, including such determination, as soon as
12 possible but in no event more than 168 hours
13 after such determination is made.

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

16 “(A) attest that—

17 “(i) there are reasonable procedures
18 in place for determining that the acquisi-
19 tion authorized under subsection (a) is tar-
20 geted at persons reasonably believed to be
21 located outside the United States and that
22 such procedures have been approved by, or
23 will promptly be submitted for approval by,
24 the Foreign Intelligence Surveillance Court
25 pursuant to subsection (i);

1 “(ii) the procedures referred to in
2 clause (i) are consistent with the require-
3 ments of the fourth amendment to the
4 Constitution of the United States and do
5 not permit the intentional targeting of any
6 person who is known at the time of acqui-
7 sition to be located in the United States;

8 “(iii) the procedures referred to in
9 clause (i) require that an application is
10 filed under title I, if otherwise required,
11 when a significant purpose of an acquisi-
12 tion authorized under subsection (a) is to
13 acquire the communications of a specific
14 person reasonably believed to be located in
15 the United States;

16 “(iv) a significant purpose of the ac-
17 quisition is to obtain foreign intelligence
18 information;

19 “(v) the minimization procedures to
20 be used with respect to such acquisition—

21 “(I) meet the definition of mini-
22 mization procedures under section
23 101(h); and

24 “(II) have been approved by, or
25 will promptly be submitted for ap-

1 proval by, the Foreign Intelligence
2 Surveillance Court pursuant to sub-
3 section (i);

4 “(vi) the acquisition involves obtaining
5 the foreign intelligence information from or
6 with the assistance of an electronic com-
7 munication service provider; and

8 “(vii) the acquisition is limited to
9 communications to which at least 1 party
10 is a specific individual target who is rea-
11 sonably believed to be located outside of
12 the United States, and a significant pur-
13 pose of the acquisition of the communica-
14 tions of any target is to obtain foreign in-
15 telligence information; 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, and are reasonably de-
6 signed to ensure that an application is filed under
7 title I, if otherwise required, when a significant pur-
8 pose of an acquisition authorized under subsection
9 (a) is to acquire the communications of a specific
10 person reasonably believed to be located in the
11 United States.

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

17 “(5) ORDERS.—

18 “(A) APPROVAL.—If the Court finds that
19 a certification required by subsection (g) con-
20 tains all of the required elements and that the
21 targeting and minimization procedures required
22 by subsections (e) and (f) are consistent with
23 the requirements of those subsections and with
24 the fourth amendment to the Constitution of
25 the United States, the Court shall enter an

1 order approving the continued use of the proce-
2 dures for the acquisition authorized under sub-
3 section (a).

4 “(B) CORRECTION OF DEFICIENCIES.—

5 “(i) IN GENERAL.—If the Court finds
6 that a certification required by subsection
7 (g) does not contain all of the required ele-
8 ments, or that the procedures required by
9 subsections (e) and (f) are not consistent
10 with the requirements of those subsections
11 or the fourth amendment to the Constitu-
12 tion of the United States, the Court shall
13 issue an order directing the Government
14 to, at the Government’s election and to the
15 extent required by the Court’s order—

16 “(I) correct any deficiency identi-
17 fied by the Court’s order not later
18 than 30 days after the date the Court
19 issues the order; or

20 “(II) cease the acquisition au-
21 thorized under subsection (a).

22 “(ii) LIMITATION ON USE OF INFOR-
23 MATION.—

24 “(I) IN GENERAL.—Except as
25 provided in subclause (II), no infor-

1 mation obtained or evidence derived
2 from an acquisition under clause (i)(I)
3 shall be received in evidence or other-
4 wise disclosed in any trial, hearing, or
5 other proceeding in or before any
6 court, grand jury, department, office,
7 agency, regulatory body, legislative
8 committee, or other authority of the
9 United States, a State, or political
10 subdivision thereof, and no informa-
11 tion concerning any United States
12 person acquired from such acquisition
13 shall subsequently be used or dis-
14 closed in any other manner by Fed-
15 eral officers or employees without the
16 consent of such person, except with
17 the approval of the Attorney General
18 if the information indicates a threat
19 of death or serious bodily harm to any
20 person.

21 “(II) EXCEPTION.—If the Gov-
22 ernment corrects any deficiency iden-
23 tified by the Court’s order under
24 clause (i), the Court may permit the
25 use or disclosure of information ac-

1 required before the date of the correc-
2 tion pursuant to such minimization
3 procedures as the Court shall estab-
4 lish for purposes of this clause.

5 “(C) REQUIREMENT FOR WRITTEN STATE-
6 MENT.—In support of its orders under this sub-
7 section, the Court shall provide, simultaneously
8 with the orders, for the record a written state-
9 ment of its reasons.

10 “(6) APPEAL.—

11 “(A) APPEAL TO THE COURT OF RE-
12 VIEW.—The Government may appeal any order
13 under this section to the Foreign Intelligence
14 Surveillance Court of Review, which shall have
15 jurisdiction to review such order. For any deci-
16 sion affirming, reversing, or modifying an order
17 of the Foreign Intelligence Surveillance Court,
18 the Court of Review shall provide for the record
19 a written statement of its reasons.

20 “(B) STAY PENDING APPEAL.—The Gov-
21 ernment may move for a stay of any order of
22 the Foreign Intelligence Surveillance Court
23 under paragraph (5)(B)(i) pending review by
24 the Court en banc or pending appeal to the

1 Foreign Intelligence Surveillance Court of Re-
2 view.

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

11 “(7) COMPLIANCE REVIEW.—The Court may
12 review and assess compliance with the minimization
13 procedures submitted to the Court pursuant to sub-
14 sections (c) and (f) by reviewing the semiannual as-
15 sessments submitted by the Attorney General and
16 the Director of National Intelligence pursuant to
17 subsection (l)(1) with respect to compliance with
18 minimization procedures. In conducting a review
19 under this paragraph, the Court may, to the extent
20 necessary, require the Government to provide addi-
21 tional information regarding the acquisition, reten-
22 tion, or dissemination of information concerning
23 United States persons during the course of an acqui-
24 sition authorized under subsection (a).

1 “(8) REMEDIAL AUTHORITY.—The Foreign In-
2 telligence Surveillance Court shall have authority to
3 fashion remedies as necessary to enforce—

4 “(A) any order issued under this section;
5 and

6 “(B) compliance with any such order.

7 “(j) JUDICIAL PROCEEDINGS.—Judicial proceedings
8 under this section shall be conducted as expeditiously as
9 possible.

10 “(k) MAINTENANCE OF RECORDS.—

11 “(1) STANDARDS.—A record of a proceeding
12 under this section, including petitions filed, orders
13 granted, and statements of reasons for decision,
14 shall be maintained under security measures adopted
15 by the Chief Justice of the United States, in con-
16 sultation with the Attorney General and the Director
17 of National Intelligence.

18 “(2) FILING AND REVIEW.—All petitions under
19 this section shall be filed under seal. In any pro-
20 ceedings under this section, the court shall, upon re-
21 quest of the Government, review *ex parte* and *in*
22 *camera* any Government submission, or portions of
23 a submission, which may include classified informa-
24 tion.

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

6 “(1) OVERSIGHT.—

7 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
8 quently than once every 6 months, the Attorney
9 General and Director of National Intelligence shall
10 assess compliance with the targeting and minimiza-
11 tion procedures required by subsections (c), (e), and
12 (f) and shall submit each such assessment to—

13 “(A) the Foreign Intelligence Surveillance
14 Court; and

15 “(B) the congressional intelligence commit-
16 tees.

17 “(2) AGENCY ASSESSMENT.—The Inspectors
18 General of the Department of Justice and of any
19 element of the intelligence community authorized to
20 acquire foreign intelligence information under sub-
21 section (a)—

22 “(A) are authorized to review the compli-
23 ance of their agency or element with the tar-
24 geting and minimization procedures required by
25 subsections (c), (e), and (f);

1 “(B) with respect to acquisitions author-
2 ized under subsection (a), shall review the num-
3 ber of disseminated intelligence reports con-
4 taining a reference to a United States person
5 identity and the number of United States per-
6 son identities subsequently disseminated by the
7 element concerned in response to requests for
8 identities that were not referred to by name or
9 title in the original reporting;

10 “(C) with respect to acquisitions author-
11 ized under subsection (a), shall review the num-
12 ber of targets that were later determined to be
13 located in the United States and the number of
14 persons located in the United States whose
15 communications were reviewed; and

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

17 “(i) the Attorney General;

18 “(ii) the Director of National Intel-
19 ligence; and

20 “(iii) the congressional intelligence
21 committees.

22 “(3) ANNUAL REVIEW.—

23 “(A) REQUIREMENT TO CONDUCT.—The
24 head of an element of the intelligence commu-
25 nity conducting an acquisition authorized under

1 subsection (a) shall direct the element to con-
2 duct an annual review to determine whether
3 there is reason to believe that foreign intel-
4 ligence information has been or will be obtained
5 from the acquisition. The annual review shall
6 provide, with respect to such acquisitions au-
7 thorized under subsection (a)—

8 “(i) an accounting of the number of
9 disseminated intelligence reports con-
10 taining a reference to a United States per-
11 son identity;

12 “(ii) an accounting of the number of
13 United States person identities subse-
14 quently disseminated by that element in re-
15 sponse to requests for identities that were
16 not referred to by name or title in the
17 original reporting; and

18 “(iii) the number of targets that were
19 later determined to be located in the
20 United States and the number of persons
21 located in the United States whose commu-
22 nications were reviewed.

23 “(B) USE OF REVIEW.—The head of each
24 element of the intelligence community that con-
25 ducts an annual review under subparagraph (A)

1 shall use each such review to evaluate the ade-
2 quacy of the minimization procedures utilized
3 by such element or the application of the mini-
4 mization procedures to a particular acquisition
5 authorized under subsection (a).

6 “(C) PROVISION OF REVIEW TO FOREIGN
7 INTELLIGENCE SURVEILLANCE COURT.—The
8 head of each element of the intelligence commu-
9 nity that conducts an annual review under sub-
10 paragraph (A) shall provide such review to the
11 Foreign Intelligence Surveillance Court.

12 “(4) REPORTS TO CONGRESS.—

13 “(A) SEMIANNUAL REPORT.—Not less fre-
14 quently than once every 6 months, the Attorney
15 General shall fully inform, in a manner con-
16 sistent with national security, the congressional
17 intelligence committees, the Committee on the
18 Judiciary of the Senate, and the Committee on
19 the Judiciary of the House of Representatives,
20 concerning the implementation of this Act.

21 “(B) CONTENT.—Each report made under
22 subparagraph (A) shall include—

23 “(i) any certifications made under
24 subsection (g) during the reporting period;

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

3 “(iii) the judicial review during the re-
4 porting period of any such certifications
5 and targeting and minimization procedures
6 utilized with respect to such acquisition,
7 including a copy of any order or pleading
8 in connection with such review that con-
9 tains a significant legal interpretation of
10 the provisions of this Act;

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

14 “(v) any compliance reviews con-
15 ducted by the Department of Justice or
16 the Office of the Director of National In-
17 telligence of acquisitions authorized under
18 subsection (a);

19 “(vi) a description of any incidents of
20 noncompliance with a directive issued by
21 the Attorney General and the Director of
22 National Intelligence under subsection (h),
23 including—

24 “(I) incidents of noncompliance
25 by an element of the intelligence com-

1 munity with procedures adopted pur-
2 suant to subsections (c), (e), and (f);
3 and

4 “(II) incidents of noncompliance
5 by a specified person to whom the At-
6 torney General and Director of Na-
7 tional Intelligence issued a directive
8 under subsection (h);

9 “(vii) any procedures implementing
10 this section; and

11 “(viii) any annual review conducted
12 pursuant to paragraph (3).

13 **“SEC. 703. USE OF INFORMATION ACQUIRED UNDER SEC-**
14 **TION 702.**

15 “Information acquired from an acquisition conducted
16 under section 702 shall be deemed to be information ac-
17 quired from an electronic surveillance pursuant to title I
18 for purposes of section 106, except for the purposes of
19 subsection (j) of such section.”.

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

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

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

25 and

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

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

“Sec. 701. Definitions.

“Sec. 702. Procedures for acquiring the communications of certain persons outside the United States.

“Sec. 703. Use of information acquired under section 702.”.

2 (c) SUNSET.—

3 (1) IN GENERAL.—Except as provided in para-
4 graph (2), the amendments made by subsections
5 (a)(2) and (b) shall cease to have effect on Decem-
6 ber 31, 2011.

7 (2) CONTINUING APPLICABILITY.—Section
8 702(h)(3) of the Foreign Intelligence Surveillance
9 Act of 1978 (as amended by subsection (a)) shall re-
10 main in effect with respect to any directive issued
11 pursuant to section 702(h) of that Act (as so
12 amended) during the period such directive was in ef-
13 fect. The use of information acquired by an acquisi-
14 tion conducted under section 702 of that Act (as so
15 amended) shall continue to be governed by the provi-
16 sions of section 703 of that Act (as so amended).

17 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
18 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
19 **TION OF CERTAIN COMMUNICATIONS MAY BE**
20 **CONDUCTED.**

21 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
22 the Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1801 et seq.) is amended by adding at the end
2 the following new section:

3 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
4 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
5 TAIN COMMUNICATIONS MAY BE CONDUCTED

6 “SEC. 112. (a) This Act shall be the exclusive means
7 for targeting United States persons for the purpose of ac-
8 quiring their communications or communications informa-
9 tion for foreign intelligence purposes, whether such per-
10 sons are inside the United States or outside the United
11 States, except in cases where specific statutory authoriza-
12 tion exists to obtain communications information without
13 an order under this Act.

14 “(b) Chapters 119 and 121 of title 18, United States
15 Code, and this Act shall be the exclusive means by which
16 electronic surveillance and the interception of domestic
17 wire, oral, or electronic communications may be con-
18 ducted.

19 “(c) Subsections (a) and (b) shall apply unless spe-
20 cific statutory authorization for electronic surveillance,
21 other than as an amendment to this Act, is enacted. Such
22 specific statutory authorization shall be the only exception
23 to subsection (a) and (b).”.

24 (b) CONFORMING AMENDMENTS.—

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

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

11 (2) TABLE OF CONTENTS.—The table of con-
12 tents in the first section of the Foreign Intelligence
13 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
14 is amended by adding after the item relating to sec-
15 tion 111, the following:

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

16 (c) OFFENSE.—Section 109(a) of the Foreign Intel-
17 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
18 amended by striking “authorized by statute” each place
19 it appears in such section and inserting “authorized by
20 this title or chapter 119, 121, or 206 of title 18, United
21 States Code”.

1 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
2 **ORDERS UNDER THE FOREIGN INTEL-**
3 **LIGENCE SURVEILLANCE ACT OF 1978.**

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

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

12 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
13 General shall submit to the committees of Congress re-
14 ferred to in subsection (a)—

15 “(1) a copy of any decision, order, or opinion
16 issued by the Foreign Intelligence Surveillance Court
17 or the Foreign Intelligence Surveillance Court of Re-
18 view that includes significant construction or inter-
19 pretation of any provision of this Act, and any
20 pleadings associated with such decision, order, or
21 opinion, not later than 45 days after such decision,
22 order, or opinion is issued; and

23 “(2) a copy of any such decision, order, or opin-
24 ion, and the pleadings associated with such decision,
25 order, or opinion, that was issued during the 5-year
26 period ending on the date of the enactment of the

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

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 the Di-
22 rector of the Federal Bureau of Investiga-
23 tion is unavailable—”;

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 the Di-
4 rector of the Federal Bureau of Investiga-
5 tion is unavailable—”; 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 702(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. REVIEW OF PREVIOUS ACTIONS.**

8 (a) DEFINITIONS.—In this section—

9 (1) the term “element of the intelligence com-
10 munity” means an element of the intelligence com-
11 munity specified in or designated under section 3(4)
12 of the National Security Act of 1947 (50 U.S.C.
13 401a(4)); and

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

19 (b) AUDIT.—Not later than 180 days after the date
20 of the enactment of this Act, the Inspectors General of
21 the Department of Justice and relevant elements of the
22 intelligence community shall work in conjunction to com-
23 plete a comprehensive audit of the Terrorist Surveillance
24 Program and any closely related intelligence activities,
25 which shall include acquiring all documents relevant to

1 such programs, including memoranda concerning the legal
2 authority of a program, authorizations of a program, cer-
3 tifications to telecommunications carriers, and court or-
4 ders.

5 (c) REPORT.—

6 (1) IN GENERAL.—Not later than 30 days after
7 the completion of the audit under subsection (b), the
8 Inspectors General shall submit to the Permanent
9 Select Committee on Intelligence and the Committee
10 on the Judiciary of the House of Representatives
11 and the Select Committee on Intelligence and the
12 Committee on the Judiciary of the Senate a joint re-
13 port containing the results of that audit, including
14 all documents acquired pursuant to the conduct of
15 that audit.

16 (2) FORM.—The report under paragraph (1)
17 shall be submitted in unclassified form, but may in-
18 clude a classified annex.

19 (d) EXPEDITED SECURITY CLEARANCE.—The Direc-
20 tor of National Intelligence shall ensure that the process
21 for the investigation and adjudication of an application by
22 an Inspector General or any appropriate staff of an In-
23 spector General for a security clearance necessary for the
24 conduct of the audit under subsection (b) is conducted as
25 expeditiously as possible.

1 (e) ADDITIONAL LEGAL AND OTHER PERSONNEL
 2 FOR THE INSPECTORS GENERAL.—The Inspectors Gen-
 3 eral of the Department of Justice and of the relevant ele-
 4 ments of the intelligence community are authorized such
 5 additional legal and other personnel as may be necessary
 6 to carry out the prompt and timely preparation of the
 7 audit and report required under this section. Personnel
 8 authorized by this subsection shall perform such duties re-
 9 lating to the audit as the relevant Inspector General shall
 10 direct. The personnel authorized by this subsection are in
 11 addition to any other personnel authorized by law.

12 **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

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

15 (1) in paragraph (1), by striking “105B(h) or
 16 501(f)(1)” and inserting “501(f)(1) or 702”; and

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

19 **TITLE II—PROTECTIONS FOR**
 20 **ELECTRONIC COMMUNICA-**
 21 **TION SERVICE PROVIDERS**

22 **SEC. 201. DEFINITIONS.**

23 In this title:

24 (1) ASSISTANCE.—The term “assistance”
 25 means the provision of, or the provision of access to,

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

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

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

12 (A) alleges that an electronic communica-
13 tion service provider furnished assistance to an
14 element of the intelligence community; and

15 (B) seeks monetary or other relief from the
16 electronic communication service provider re-
17 lated to the provision of such assistance.

18 (4) ELECTRONIC COMMUNICATION SERVICE
19 PROVIDER.—The term “electronic communication
20 service provider” means—

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

1 (B) a provider of an electronic communica-
2 tion service, as that term is defined in section
3 2510 of title 18, United States Code;

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

7 (D) any other communication service pro-
8 vider who has access to wire or electronic com-
9 munications either as such communications are
10 transmitted or as such communications are
11 stored;

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

15 (F) an officer, employee, or agent of an en-
16 tity described in subparagraph (A), (B), (C),
17 (D), or (E).

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

1 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**
2 **TRONIC COMMUNICATION SERVICE PRO-**
3 **VIDERS.**

4 (a) LIMITATIONS.—

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

10 (A) the assistance alleged to have been
11 provided by the electronic communication serv-
12 ice provider was—

13 (i) in connection with an intelligence
14 activity involving communications that
15 was—

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

20 (II) designed to detect or prevent
21 a terrorist attack, or activities in
22 preparation for a terrorist attack,
23 against the United States; and

24 (ii) described in a written request or
25 directive from the Attorney General or the
26 head of an element of the intelligence com-

1 munity (or the deputy of such person) to
2 the electronic communication service pro-
3 vider indicating that the activity was—

4 (I) authorized by the President;

5 and

6 (II) determined to be lawful; or

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

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

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

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

19 (2) limit any public disclosure concerning such
20 certification, including any public order following
21 such an ex parte review, to a statement that the con-
22 ditions of subsection (a) have been met, without dis-
23 closing the subparagraph of subsection (a)(1) that is
24 the basis for the certification.

1 (c) NONDELEGATION.—The authority and duties of
2 the Attorney General under this section shall be performed
3 by the Attorney General (or Acting Attorney General) or
4 a designee in a position not lower than the Deputy Attor-
5 ney General.

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

11 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion may be construed to limit any otherwise available im-
13 munity, privilege, or defense under any other provision of
14 law.

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

18 **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY**
19 **DEFENSES UNDER THE FOREIGN INTEL-**
20 **LIGENCE SURVEILLANCE ACT OF 1978.**

21 The Foreign Intelligence Surveillance Act of 1978
22 (50 U.S.C. 1801 et seq.), as amended by section 101, is
23 further amended by adding after title VII the following
24 new title:

1 **“TITLE VIII—PROTECTION OF**
 2 **PERSONS ASSISTING THE**
 3 **GOVERNMENT**

4 **“SEC. 801. DEFINITIONS.**

5 “In this title:

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

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

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

17 “(4) ELECTRONIC COMMUNICATION SERVICE
 18 PROVIDER.—The term ‘electronic communication
 19 service provider’ means—

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

23 “(B) a provider of electronic communica-
 24 tions service, as that term is defined in section
 25 2510 of title 18, United States Code;

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

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

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

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

15 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
16 NITY.—The term ‘element of the intelligence com-
17 munity’ means an element of the intelligence com-
18 munity as specified or designated under section 3(4)
19 of the National Security Act of 1947 (50 U.S.C.
20 401a(4)).

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

22 “(A) an electronic communication service
23 provider; or

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

4 “(i) an order of the court established
5 under section 103(a) directing such assist-
6 ance;

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

10 “(iii) a directive under section
11 102(a)(4), 105B(e), as in effect on the day
12 before the date of the enactment of the
13 FISA Amendments Act of 2007 or 703(h).

14 “(7) STATE.—The term ‘State’ means any
15 State, political subdivision of a State, the Common-
16 wealth of Puerto Rico, the District of Columbia, and
17 any territory or possession of the United States, and
18 includes any officer, public utility commission, or
19 other body authorized to regulate an electronic com-
20 munication service provider.

21 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
22 **DEFENSES.**

23 “(a) REQUIREMENT FOR CERTIFICATION.—

24 “(1) IN GENERAL.—Notwithstanding any other
25 provision of law, no civil action may lie or be main-

1 tained in a Federal or State court against any per-
2 son for providing assistance to an element of the in-
3 telligence community, and shall be promptly dis-
4 missed, if the Attorney General certifies to the court
5 that—

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

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

14 “(C) any assistance by that person was
15 provided pursuant to a directive under sections
16 102(a)(4), 105B(e), as in effect on the day be-
17 fore the date of the enactment of the FISA
18 Amendments Act of 2007, or 703(h) directing
19 such assistance; or

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

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

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

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

8 “(2) limit any public disclosure concerning such
9 certification, including any public order following
10 such an ex parte review, to a statement that the con-
11 ditions of subsection (a) have been met, without dis-
12 closing the subparagraph of subsection (a)(1) that is
13 the basis for the certification.

14 “(c) REMOVAL.—A civil action against a person for
15 providing assistance to an element of the intelligence com-
16 munity that is brought in a State court shall be deemed
17 to arise under the Constitution and laws of the United
18 States and shall be removable under section 1441 of title
19 28, United States Code.

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

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

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

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

9 **“SEC. 803. PREEMPTION.**

10 “(a) IN GENERAL.—No State shall have authority
11 to—

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

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

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

22 “(4) commence or maintain a civil action or
23 other proceeding to enforce a requirement that an
24 electronic communication service provider disclose

1 information concerning alleged assistance to an ele-
 2 ment of the intelligence community.

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

6 “(c) JURISDICTION.—The district courts of the
 7 United States shall have jurisdiction over any civil action
 8 brought by the United States to enforce the provisions of
 9 this section.

10 “(d) APPLICATION.—This section shall apply to any
 11 investigation, action, or proceeding that is pending on or
 12 filed after the date of enactment of the FISA Amendments
 13 Act of 2007.”.

14 **SEC. 205. TECHNICAL AMENDMENTS.**

15 The table of contents in the first section of the For-
 16 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
 17 1801 et seq.), as amended by section 101(b), is further
 18 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.”.

19 **TITLE III—OTHER PROVISIONS**

20 **SEC. 301. SEVERABILITY.**

21 If any provision of this Act, any amendment made
 22 by this Act, or the application thereof to any person or

1 circumstances is held invalid, the validity of the remainder
2 of the Act, any such amendments, and of the application
3 of such provisions to other persons and circumstances
4 shall not be affected thereby.

5 **SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCE-**
6 **DURES.**

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

10 (b) REPEAL.—

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

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

20 (c) TRANSITIONS PROCEDURES.—

21 (1) PROTECTION FROM LIABILITY.—Notwith-
22 standing subsection (b)(1), subsection (l) of section
23 105B of the Foreign Intelligence Surveillance Act of
24 1978 shall remain in effect with respect to any di-
25 rectives issued pursuant to such section 105B for in-

1 formation, facilities, or assistance provided during
2 the period such directive was or is in effect.

3 (2) ORDERS IN EFFECT.—

4 (A) ORDERS IN EFFECT ON DATE OF EN-
5 ACTMENT.—Notwithstanding any other provi-
6 sion of this Act or of the Foreign Intelligence
7 Surveillance Act of 1978—

8 (i) any order in effect on the date of
9 enactment of this Act issued pursuant to
10 the Foreign Intelligence Surveillance Act of
11 1978 or section 6(b) of the Protect Amer-
12 ica Act of 2007 (Public Law 110–55; 121
13 Stat. 556) shall remain in effect until the
14 date of expiration of such order; and

15 (ii) at the request of the applicant,
16 the court established under section 103(a)
17 of the Foreign Intelligence Surveillance Act
18 of 1978 (50 U.S.C. 1803(a)) shall reau-
19 thorize such order if the facts and cir-
20 cumstances continue to justify issuance of
21 such order under the provisions of such
22 Act, as in effect on the day before the date
23 of the enactment of the Protect America
24 Act of 2007, except as amended by sec-

1 tions 102, 103, 104, 105, 106, 107, 108,
2 and 109 of this Act.

3 (B) ORDERS IN EFFECT ON DECEMBER 31,
4 2013.—Any order issued under title VII of the
5 Foreign Intelligence Surveillance Act of 1978,
6 as amended by section 101 of this Act, in effect
7 on December 31, 2013, shall continue in effect
8 until the date of the expiration of such order.
9 Any such order shall be governed by the appli-
10 cable provisions of the Foreign Intelligence Sur-
11 veillance Act of 1978, as so amended.

12 (3) AUTHORIZATIONS AND DIRECTIVES IN EF-
13 FECT.—

14 (A) AUTHORIZATIONS AND DIRECTIVES IN
15 EFFECT ON DATE OF ENACTMENT.—Notwith-
16 standing any other provision of this Act or of
17 the Foreign Intelligence Surveillance Act of
18 1978, any authorization or directive in effect on
19 the date of the enactment of this Act issued
20 pursuant to the Protect America Act of 2007,
21 or any amendment made by that Act, shall re-
22 main in effect until the date of expiration of
23 such authorization or directive. Any such au-
24 thorization or directive shall be governed by the
25 applicable provisions of the Protect America Act

1 of 2007 (121 Stat. 552), and the amendment
2 made by that Act, and, except as provided in
3 paragraph (4) of this subsection, any acquisi-
4 tion pursuant to such authorization or directive
5 shall be deemed not to constitute electronic sur-
6 veillance (as that term is defined in section
7 101(f) of the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1801(f)), as construed
9 in accordance with section 105A of the Foreign
10 Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1805a)).

12 (B) AUTHORIZATIONS AND DIRECTIVES IN
13 EFFECT ON DECEMBER 31, 2013.—Any author-
14 ization or directive issued under title VII of the
15 Foreign Intelligence Surveillance Act of 1978,
16 as amended by section 101 of this Act, in effect
17 on December 31, 2013, shall continue in effect
18 until the date of the expiration of such author-
19 ization or directive. Any such authorization or
20 directive shall be governed by the applicable
21 provisions of the Foreign Intelligence Surveil-
22 lance Act of 1978, as so amended, and, except
23 as provided in section 704 of the Foreign Intel-
24 ligence Surveillance Act of 1978, as so amend-
25 ed, any acquisition pursuant to such authoriza-

1 tion or directive shall be deemed not to con-
2 stitute electronic surveillance (as that term is
3 defined in section 101(f) of the Foreign Intel-
4 ligence Surveillance Act of 1978, to the extent
5 that such section 101(f) is limited by section
6 701 of the Foreign Intelligence Surveillance Act
7 of 1978, as so amended).

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

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

21 (A) the government may file an application
22 for an order under the Foreign Intelligence
23 Surveillance Act of 1978, as in effect on the
24 day before the date of the enactment of the
25 Protect America Act of 2007, except as amend-

1 ed by sections 102, 103, 104, 105, 106, 107,
2 108, and 109 of this Act; and

3 (B) the court established under section
4 103(a) of the Foreign Intelligence Surveillance
5 Act of 1978 shall enter an order granting such
6 an application if the application meets the re-
7 quirements of such Act, as in effect on the day
8 before the date of the enactment of the Protect
9 America Act of 2007, except as amended by
10 sections 102, 103, 104, 105, 106, 107, 108,
11 and 109 of this Act.

12 (6) EXTANT AUTHORIZATIONS.—At the request
13 of the applicant, the court established under section
14 103(a) of the Foreign Intelligence Surveillance Act
15 of 1978 shall extinguish any extant authorization to
16 conduct electronic surveillance or physical search en-
17 tered pursuant to such Act.

18 (7) APPLICABLE PROVISIONS.—Any surveillance
19 conducted pursuant to an order entered pursuant to
20 this subsection shall be subject to the provisions of
21 the Foreign Intelligence Surveillance Act of 1978, as
22 in effect on the day before the date of the enactment
23 of the Protect America Act of 2007, except as
24 amended by sections 102, 103, 104, 105, 106, 107,
25 108, and 109 of this Act.

Calendar No. 530

110TH CONGRESS
1ST Session

S. 2441

A BILL

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

DECEMBER 11, 2007

Read the second time and placed on the calendar